

FNB BANCORP/CA/
Form 8-K
February 27, 2009

United States
SECURITIES AND EXCHANGE COMMISSION
Washington D.C. 20549

FORM 8-K

Current Report
Pursuant to Section 13 or 15(d) of
the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported)

February 26, 2009

FNB BANCORP

(Exact name of registrant as specified in its charter)

California

(State or other jurisdiction of incorporation)

000-49693
(Commission File Number)

92-2115369
(IRS Employer Identification No.)

975 El Camino Real, South San Francisco, California 94080
(Address of principal executive offices) (Zip Code)

Registrant's telephone number, including area code: **(650) 588-6800**

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
 - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
 - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
 - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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Item 1.01. Entry into a Material Definitive Agreement.

On February 27, 2009, as part of the Troubled Asset Relief Program (TARP) Capital Purchase Program of the United States Department of the Treasury (Treasury), FNB Bancorp (the Company) entered into a Letter Agreement and Securities Purchase Agreement (collectively, the Purchase Agreement) with Treasury , pursuant to which the Company (i) sold to Treasury 12,000 shares of the Company s Fixed Rate Cumulative Perpetual Preferred Stock, Series A (the Series A Preferred Stock), having a liquidation preference amount of \$1,000 per share, for a purchase price of \$12,000,000 in cash, and (ii) issued to Treasury a warrant (the Warrant) to purchase 600,006 shares of the Company s Fixed Rate Cumulative Perpetual Preferred Stock, Series B (the Series B Preferred Stock), at an exercise price of \$0.01 per share. Immediately after the issuance of the Warrant, Treasury exercised the Warrant in a cashless exercise resulting in the net issuance of 600 shares of the Series B Preferred Stock, having a liquidation preference amount of \$1,000 per share, to Treasury.

The Series A Preferred Stock entitles its holder(s) to cumulative dividends on the liquidation preference amount on a quarterly basis at a rate of 5% per annum for the first five years, and 9% per annum thereafter. The Series B Preferred Stock entitles its holder(s) to cumulative dividends on the liquidation preference amount on a quarterly basis at a rate of 9% per annum from the date of issuance. The Series A and Series B Preferred Stock are redeemable at the option of the Company in whole or in part at a redemption price of 100% of the liquidation preference amount plus any accrued and unpaid dividends, provided that such stock may be redeemed prior to the first dividend payment date falling after the third anniversary of the issue date (i.e., prior to February 27, 2012) only if (i) the Company has raised aggregate gross proceeds in one or more Qualified Equity Offerings (as defined below) of at least \$3,000,000 (in the case of the Series A Preferred Stock) and \$150,000 (in the case of the Series B Preferred Stock) and (ii) the aggregate redemption price does not exceed the aggregate net proceeds from such Qualified Equity Offerings. None of the shares of Series A Preferred Stock may be redeemed until all of the shares of Series B Preferred Stock have been redeemed. A Qualified Equity Offering is defined as the sale for cash by the Company of common stock or preferred stock that qualifies as Tier 1 capital under applicable regulatory capital guidelines. The restrictions on redemption and other terms of the Series A and Series B Preferred Stock are set forth in the certificates of determination for the Series A and Series B Preferred Stock described in Item 5.03 below.

Neither the Series A Preferred Stock nor the Series B Preferred is subject to any contractual restrictions on transfer. The Company is required to take all steps as may be reasonably requested by Treasury to facilitate the transfer of the Series A and Series B Preferred Stock.

The Purchase Agreement also subjects the Company and its senior executive officers to executive compensation limitations included in the Emergency Economic Stabilization Act of 2008 (the EESA) and related Treasury regulations. In this connection, each of the Company s five executive officers to be named in the compensation tables in the Company s next annual meeting proxy statement (i) entered into a Compensation Modification Agreement with the Company, acknowledging that the EESA executive compensation limits and related Treasury regulations may require modification of their compensation plans, agreements and other arrangements to the extent these relate to the period during which Treasury holds any securities of the Company acquired through the TARP Capital Purchase Program and (ii) executed a waiver voluntarily waiving any claim against Treasury of the Company for any changes to such executive officer s compensation plans, agreements or arrangements that are required to comply with the requirements of the EESA and the rules and regulations under EESA.

Item 3.02. Unregistered Sales of Equity Securities.

The information set forth under Item 1.01 is incorporated by reference into this Item 3.02. The issuance and sale of the Series A Preferred Stock, Warrant and Series B Preferred Stock was exempt from registration under the Securities Act of 1933, as amended (the Securities Act), pursuant to Section 4(2) of the Securities Act. The Company has not engaged in a general solicitation or advertising with regard to the issuance and sale of such securities and has not offered securities to the public in connection with this issuance and sale.

Item 3.03. Material Modification to Rights of Securities Holders.

Under the terms of the Purchase Agreement, unless and until all of the shares of the Series A and Series B Stock have been transferred by Treasury to third parties or been redeemed by the Company, (i) prior to the third anniversary of the date of issuance of the Series A and Series B Preferred Stock, the Company may not pay dividends on its common stock without the consent of Treasury, (ii) from the third anniversary until the tenth anniversary of the date of issuance of the Series A and Series B Preferred Stock, the Company must obtain the consent of Treasury for any increase in annual cash dividends on the Company's common stock (if it is then paying dividends on its common stock) of more than 3% from the prior year, and (iii) after the tenth anniversary of the date of issuance of the Series A and Series B Preferred Stock, the Company must obtain Treasury's consent for any dividends on its common stock. In addition, unless all of the shares of the Series A and Series B Preferred Stock have been transferred to third parties or been redeemed by the Company, Treasury's consent is generally required for any repurchases by the Company of its common stock.

Under the terms of the Series A and Series B Preferred Stock, the ability of the Company to declare or pay dividends or distributions on, or repurchase, redeem or otherwise acquire for consideration, shares of its Junior Stock and Parity Stock will be subject to restrictions in the event that the Company fails to declare and pay full dividends on the Series A and Series B Preferred Stock. These restrictions are set forth in the certificates of determination for the Series A and Series B Preferred Stock described in Item 5.03.

Junior Stock means the Company's common stock and any other class or series of stock of the Company the terms of which expressly provide that it ranks junior to the Series A and Series B Preferred Stock as to dividend rights and/or rights on liquidation, dissolution or winding up of the Company. Parity Stock means any class or series of stock of the Company the terms of which do not expressly provide that such class or series will rank senior or junior to the Series A and Series B Preferred Stock as to dividend rights and/or rights on liquidation, dissolution or winding up of the Company (in each case without regard to whether dividends accrue cumulatively or non-cumulatively).

Item 5.02. Departure of Directors or Certain Officers; Election of; Appointment of Certain Officers; Compensation Arrangements of Certain Officers.

The information concerning executive compensation set forth under Item 1.01 is incorporated by reference into this Item 5.02.

Effective February 26, 2009, Jim D. Black tendered his resignation as a Director of FNB Bancorp.

Item 5.03. Amendment to Articles of Incorporation or Bylaws.

On February 25, 2009, the Company filed Certificates of Determination with the Secretary of State of California (CA SOS) for the purpose of fixing the designations, preferences, limitations and relative rights of the Series A and Series B Preferred Stock. The Certificates of Determination for the Series A and Series B Preferred Stock are attached hereto as Exhibits 3.2 and 3.3, respectively, and are incorporated herein by reference.

The terms of the Series A and Series B Preferred Stock provide that in the event the Company fails to pay dividends on the Series A and Series B Preferred Stock for six or more quarterly dividend periods (whether or not consecutive), the holder(s) of the Series A and Series B Preferred Stock have the right to elect two directors of the Company; this right ends when the unpaid dividends on the Series A and Series B Preferred Stock have been paid in full. As required by Treasury, effective as of February 27, 2009, the Board of Directors of the Company amended Article III, Section 16 of the Company's Bylaws to provide that so long as the Series A and Series B Preferred Stock remain outstanding, in the event the Company fails to pay dividends on the Series A and Series B Preferred Stock for six or more quarterly dividend periods (whether or not consecutive), the authorized number of directors of the Company will automatically increase by two. A copy of the Bylaw amendment is attached hereto as Exhibit 3.4 and is incorporated herein by reference. The Company is required by agreement with Treasury to maintain, so long as any shares of Series A or Series B Preferred Stock remain outstanding, at least two open director seats for the holder(s) of the Series A and Series B Preferred Stock to provide for the election of directors under the circumstances described above. A copy of the letter agreement between the Company and Treasury pertaining to the election of directors by the holder(s) of the Series A and Series B Preferred Stock is attached hereto as Exhibit 4.4 and is incorporated herein by reference.

Item 8.01. Other Information.

On February 27, 2009, the Company issued a press release announcing the issuance of the Series A and Series B Preferred Stock to Treasury. The press release is attached as Exhibit 99.70 and is incorporated herein by reference.

On February 27, 2009, the Company issued a letter to shareholders announcing the receipt of TARP funds from the U. S. Treasury Department and the resignation of Jim D. Black as director of the Company. The letter is attached as Exhibit 99.71 and is incorporated herein by reference.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits

The following exhibits are filed herewith.

Exhibit	Description of Exhibit
3.2	Certificate of Determination of Fixed Rate Cumulative Perpetual Preferred Stock, Series A (Series A Preferred Stock), of FNB Bancorp
3.3	Certificate of Determination of Fixed Rate Cumulative Perpetual Preferred Stock, Series B (Series B Preferred Stock), of FNB Bancorp
3.4	Amendment to Article III, Section 16 of the Bylaws of FNB Bancorp
4.1	Form of Certificate for the Series A Preferred Stock
4.2	Warrant for Purchase of Shares of Series B Preferred Stock (Warrant)
4.3	Form of Certificate for the Series B Preferred Stock
4.4	Letter Agreement dated February 27, 2009, between FNB Bancorp and United States Department of the Treasury pertaining to the election of directors by the holder(s) of the Series A and Series B Preferred Stock
10.1	Letter Agreement, including Schedule A through Schedule E, dated February 27, 2009, between FNB Bancorp and United States Department of the Treasury, with respect to the issuance and sale of the Series A and Series B Preferred Stock and the Warrant
10.2	Letter Agreement dated February 27, 2009, between FNB Bancorp and United States Department of the Treasury pertaining to the American Recovery and Reinvestment Act Of 2009
10.3	Letter Agreement dated February 27, 2009, between FNB Bancorp and United States Department of the Treasury amending certain sections of the Securities Purchase Agreement
10.4	Form of Compensation Modification Agreement and Waiver, executed by each of: Thomas C. McGraw Chief Executive Officer FNB Bancorp and First National Bank of Northern California Jim D. Black, President FNB Bancorp and First National Bank of Northern California Anthony J. Clifford Executive Vice President and Chief Operating Officer FNB Bancorp and First National Bank of Northern California David A. Curtis Senior Vice President and Chief Financial Officer FNB Bancorp and First National Bank of Northern California Randy R. Brugioni Senior Vice President and Senior Loan Officer First National Bank of Northern California
99.70	February 27, 2009 Press Release
99.71	Letter to Shareholders dated February 27, 2009

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SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

FNB BANCORP (Registrant)

Dated: February 27, 2009.

By: /s/ Dave A. Curtis

Dave A. Curtis
Senior Vice President and
Chief Financial Officer
