

Ameris Bancorp
Form S-8
July 02, 2014

As filed with the Securities and Exchange Commission on July 2, 2014

Registration No. 333-

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM S-8
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

AMERIS BANCORP

(Exact name of Registrant as specified in its charter)

Georgia
(State or other jurisdiction of
incorporation or organization)

310 First St., S.E.

58-1456434
(I.R.S. Employer
Identification No.)

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Moultrie, Georgia 31768

(229) 890-1111

(Address, including zip code, and telephone number, including area code, of Registrant's principal executive offices)

Coastal Bankshares, Inc. Stock Award Plan

(Full title of the plan)

Copies of communications to:

| | |
|-----------------------------------|-----------------------------------|
| Jody L. Spencer, Esq. | Mr. Edwin W. Hortman, Jr. |
| Rogers & Hardin LLP | Chief Executive Officer |
| 2700 International Tower | Ameris Bancorp |
| 229 Peachtree Street, NE | 310 First St., S.E. |
| Atlanta, Georgia 30303 | Moultrie, Georgia 31768 |
| (404) 522-4700 | (229) 890-1111 |
| (404) 525-2224 (facsimile) | (229) 890-2235 (facsimile) |

Indicate by check mark whether the Registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer or a smaller reporting company. See the definitions of large accelerated filer, accelerated filer, and smaller reporting company in Rule 12b-2 of the Exchange Act.

| | |
|--|---|
| Large accelerated filer <input type="checkbox"/> | Accelerated Filer <input checked="" type="checkbox"/> |
| Non-accelerated filer <input type="checkbox"/> | Smaller reporting company <input type="checkbox"/> |

Calculation of Registration Fee

| Title of each class of securities to be registered | Amount to be registered⁽¹⁾ | Proposed maximum offering price per share⁽²⁾ | Proposed maximum aggregate offering price⁽²⁾ | Amount of registration fee |
|---|--|--|--|-----------------------------------|
| Common Stock, \$1.00 par value | 46,708 | \$36.24 | \$1,692,822 | \$218.04 |

- (1) Represents the shares of the Registrant's common stock issuable upon exercise of options outstanding under the Coastal Bankshares, Inc. Stock Award Plan (the Plan), together with an indeterminate number of additional shares which may be necessary to adjust the number of shares reserved for issuance under the Plan as a result of any future stock split, stock dividend or similar adjustment of the outstanding common stock, as provided in Rule 416(a) under the Securities Act of 1933, as amended (the Securities Act).
- (2) Calculated pursuant to Rule 457(h) under the Securities Act based upon the weighted average exercise price at which the options outstanding under the Plan may be exercised and the aggregate proceeds payable to the Registrant upon the exercise of such options.

EXPLANATORY NOTE

Upon the consummation of the merger of Coastal Bankshares, Inc. (Coastal) with and into Ameris Bancorp (the Registrant) on June 30, 2014 pursuant to the terms of the Agreement and Plan of Merger dated as of March 10, 2014 between the Registrant and Coastal (the Merger Agreement), the Registrant assumed outstanding options granted under the Coastal Bankshares, Inc. Stock Award Plan to acquire shares of the common stock of Coastal (the Coastal Options). The purpose of this Registration Statement on Form S-8 (this Registration Statement) is to register the shares of the common stock, par value \$1.00 per share, of the Registrant for which the Coastal Options are now exercisable, pursuant to the terms of the Merger Agreement.

PART I

INFORMATION REQUIRED IN THE SECTION 10(A) PROSPECTUS

The Registrant will send or give the documents containing the information required by Part I of this Registration Statement to each participant in the Plan as specified by Rule 428(b)(1) under the Securities Act of 1933, as amended (the Securities Act). Such documents, and the documents incorporated by reference into this Registration Statement pursuant to Item 3 of Part II, taken together, constitute a prospectus that meets the requirements of Section 10(a) of the Securities Act.

Item 1. Plan Information.*

Item 2. Registrant Information and Employee Plan Annual Information.*

* Information required by Part I of Form S-8 is omitted from this Registration Statement in accordance with Rule 428 under the Securities Act and the Note to Part I of Form S-8.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The following documents are incorporated by reference into this Registration Statement:

- (i) The Registrant's Annual Report on Form 10-K for the year ended December 31, 2013, filed with the Securities and Exchange Commission (the Commission) on March 14, 2014 (the 2013 Form 10-K);
- (ii) Portions of the Registrant's Definitive Proxy Statement on Schedule 14A that are incorporated by reference into Part III of the 2013 Form 10-K, filed with the Commission on April 17, 2014;
- (iii) The Registrant's Quarterly Report on Form 10-Q for the quarter ended March 31, 2014, filed with the Commission on May 9, 2014;

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- (iv) The Registrant's Current Reports on Form 8-K filed with the Commission on February 21, 2014, March 11, 2014, March 25, 2014, June 2, 2014, June 4, 2014, June 12, 2014, June 25, 2014 and July 1, 2014;
- (v) The Registrant's Current Report on Form 8-K/A filed with the Commission on March 4, 2014; and

- (vi) The description of the Registrant's common stock contained under the caption "Description of Capital Stock" found in the Registrant's Preliminary Prospectus dated as of April 21, 1994, filed as part of the Registrant's Registration Statement on Form SB-2 (Registration No. 33-77930) with the Commission on April 21, 1994, and any amendments or reports filed for the purpose of updating such description.

In addition, all documents subsequently filed by the Registrant pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Securities Exchange Act of 1934, as amended, prior to the Registrant's filing of a post-effective amendment which indicates that all securities offered have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference into this Registration Statement and to be a part hereof from the date of filing of such documents.

Item 4. Description of Securities.

Not applicable.

Item 5. Interests of Named Experts and Counsel.

The validity of the shares of the Registrant's common stock registered hereby has been passed upon by Rogers & Hardin LLP, Atlanta, Georgia, counsel to the Registrant.

Item 6. Indemnification of Directors and Officers.

Subsection (a) of Section 14-2-851 of the Georgia Business Corporation Code (the "GBCC") provides that a corporation may indemnify an individual who is party to a proceeding because he or she is or was a director against liability incurred in the proceeding if: (1) such individual conducted himself or herself in good faith; and (2) such individual reasonably believed (A) in the case of conduct in his or her official capacity, that such conduct was in the best interests of the corporation, (B) in all other cases, that such conduct was at least not opposed to the best interests of the corporation, and (C) in the case of any criminal proceeding, that the individual had no reasonable cause to believe that such conduct was unlawful. Subsection (d) of Section 14-2-851 of the GBCC provides that a corporation may not indemnify a director in connection with a proceeding by or in the right of the corporation, except for reasonable expenses incurred in connection with the proceeding if it is determined that the director has met the relevant standard of conduct, or in connection with any proceeding with respect to conduct for which he or she was adjudged liable on the basis that personal benefit was improperly received by him or her, whether or not involving action in his or her official capacity. Notwithstanding the foregoing, pursuant to Section 14-2-854 of the GBCC, a court may order a corporation to indemnify a director if such court determines, in view of all the relevant circumstances, that it is fair and reasonable to indemnify or advance expenses to the director, even if the director has not met the relevant standard of conduct set forth in subsections (a) and (b) of Section 14-2-851 of the GBCC, failed to comply with Section 14-2-853 of the GBCC, or was adjudged liable in a proceeding referred to in paragraph (1) or (2) of subsection (d) of Section 14-2-851 of the GBCC but if the director was adjudged so liable, the indemnification shall be limited to reasonable expenses incurred in connection with the proceeding.

Section 14-2-852 of the GBCC provides that a corporation shall indemnify a director who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which he or she was a party because he or she was a director of the corporation against reasonable expenses incurred by the director in connection with the proceeding.

Section 14-2-857 of the GBCC provides that a corporation may indemnify and advance expenses to an officer of the corporation who is a party to a proceeding because he or she is an officer of the corporation to the same extent as a director. If the officer is not a director (or if the officer is a director but the sole basis on which he or she is made a party to the proceeding is an act or omission solely as an officer), the corporation may also indemnify and advance expenses to such officer to such further extent as may be provided by the articles of incorporation or the bylaws of the corporation, by a resolution of the board of directors of the corporation, or by contract, except for liability arising out of conduct that constitutes: (1) the appropriation, in violation of their duties, of any business opportunity of the corporation; (2) acts or omissions which involve intentional misconduct or a knowing violation of law; (3) the types of liability set forth in Section 14-2-832 of the GBCC; or (4) receipt of an improper personal benefit. An officer of a corporation who is not a director is entitled to mandatory indemnification under Section 14-2-852 of the GBCC and may apply to a court under Section 14-2-854 of the GBCC for indemnification or advances, in each case to the same extent to which a director may be entitled to indemnification under those provisions. Finally, a corporation may also indemnify an employee or agent who is not a director to the extent, consistent with public policy, that may be provided by its articles of incorporation or bylaws, by general or specific action by its board of directors or by contract.

Article XI of the articles of incorporation, as amended, of the Registrant provides that, except as may be limited by the GBCC or any successor law, no director shall be personally liable to the Registrant or any of its shareholders for monetary damages for breach of his or her duty of care or other duty as a director.

Article VII of the amended and restated bylaws of the Registrant provides that every person (and the heirs and legal representatives of such person) who is or was a director or officer of the Registrant or any other corporation of which he or she served as such at the request of the Registrant and of which the Registrant directly or indirectly is a shareholder or creditor, or in which or in the stocks, bonds, securities or other obligations of which the Registrant is in any way interested, may be indemnified for any liability and expense resulting from any threatened, pending or completed action, suit or proceeding, civil, criminal, administrative or investigative or derivative or otherwise, or in connection with any appeal relating thereto, in which he or she may become involved, as a party or prospective party or otherwise, by reason of any action taken or not taken in his or her capacity as a director or officer or as a member of any committee appointed by the board of directors of the Registrant to act for, in the interest of, or on behalf of the Registrant, whether or not he or she continues to be a director or officer at the time such liability or expense is incurred; provided such person acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Registrant and, in addition, with respect to any criminal action or proceeding, did not have reasonable cause to believe that his or her conduct was unlawful. The termination of any claim, action, suit or proceeding, by judgment, order, compromise, settlement (with or without court approval) or conviction or upon a plea of guilty or of nolo contendere, or its equivalent, does not create a presumption that a director or officer did not meet the standards of conduct set forth in the amended and restated bylaws. Expenses incurred with respect to any claim, action, suit or proceeding of the character described in Article VII of the bylaws of the Registrant may be advanced by the Registrant prior to the final disposition thereof upon receipt of any undertaking by or on behalf of the recipient to repay such amount, unless it is ultimately determined that he or she is entitled to indemnification under the bylaws.

Notwithstanding the foregoing, Article VII of the Registrant's bylaws provides that no officer or director who was or is a party to any action or suit by or in the right of the Registrant to procure a judgment in its favor by reason of the fact that he or she is or was an officer or director of the Registrant or such other corporation can be indemnified in respect of any claim, issue or matter as to which such person is adjudged to be liable for negligence or misconduct in the performance of his or her duty to the Registrant, unless the court in which such action or suit was brought determines that, despite the adjudication of liability and in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses as the court deems proper.

Article VII of the Registrant's bylaws further provides that every person (and the heirs and legal representatives of such person) referred to above who has been wholly successful, on the merits or otherwise, with the respect to such claim, action, suit or proceeding is entitled to indemnification as of right without any further action or approval by the board of directors of the Registrant, and any indemnification pursuant to the bylaws of the Registrant will be made at the discretion of the Registrant only if: (1) the board of directors, acting by majority vote of a quorum consisting of directors who were not parties to such claim, action, suit or proceeding, present or voting, finds that the director or officer met the standard of conduct set forth in the bylaws; or (2) no such quorum of the board of directors exists, independent legal counsel at the request of either the Registrant or the person seeking indemnification, delivers to the Registrant such counsel's written opinion that such director or officer met such standards; or (3) the holders of a majority of stock then entitled to vote for the election of directors determines by affirmative vote that such director or officer met such standards.

The rights of indemnification provided in Article VII of the Registrant's bylaws are in addition to: (1) any rights to which any director or officer may otherwise be entitled under any bylaw, agreement, vote of shareholders or otherwise; and (2) the power of the Registrant to purchase and maintain insurance on behalf of any director or officer against any liability asserted against him or her and incurred by him or her in such capacity, or arising out of his or her status as such, regardless of whether the Registrant would have the power to indemnify against such liability under the amended and restated bylaws or otherwise.

The Registrant's bylaws further provide that any repeal or modification of the bylaws by the shareholders of the Registrant cannot adversely affect any right or protection of a director of the Registrant existing at the time of such repeal or modification.

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits.

Reference is made to the Exhibit Index below filed as part of this Registration Statement. Each such exhibit is incorporated herein by reference.

Item 9. Undertakings.

(a) The undersigned Registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this Registration Statement:

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act of 1933;

(ii) To reflect in the prospectus any facts or events arising after the effective date of the Registration Statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the Registration Statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than 20% change in the maximum aggregate offering price set forth in the Calculation of Registration Fee table in the effective Registration Statement; and

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the Registration Statement or any material change to such information in the Registration Statement;

provided, however, that paragraphs (a)(1)(i) and (a)(1)(ii) of this section do not apply if the Registration Statement is on Form S-3, Form S-8 or Form F-3, and the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed with or furnished to the Commission by the Registrant pursuant to Section 13 or Section 15(d) of the Securities Exchange Act that are incorporated by reference in the Registration Statement.

(2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new Registration Statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(b) The undersigned Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the Registrant's annual report pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in the Registration Statement shall be deemed to be a new Registration Statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

(c) Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise, the Registrant has been advised that in the opinion of the Commission such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.

SIGNATURES

Pursuant to the requirements of the Securities Act, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Moultrie, State of Georgia, on July 2, 2014.

AMERIS BANCORP

By: /s/ Edwin W. Hortman, Jr.
Edwin W. Hortman, Jr.

Chief Executive Officer

SIGNATURES AND POWER OF ATTORNEY

Each person whose individual signature appears below hereby authorizes and appoints Edwin W. Hortman, Jr. and Dennis J. Zember Jr., and each of them, with full power of substitution and full power to act without the other, as his true and lawful attorney-in-fact and agent to act in his name, place and stead and to execute in the name and on behalf of each person, individually and in each capacity stated below, and to file any and all amendments to this Registration Statement, including any and all post-effective amendments.

Pursuant to the requirements of the Securities Act, this Power of Attorney has been signed by the following persons in the capacities indicated on July 2, 2014.

| Signature | Title |
|---------------------------|--|
| /s/ Edwin W. Hortman, Jr. | |
| Edwin W. Hortman, Jr. | President, Chief Executive Officer and Director (Principal Executive Officer) |
| /s/ Dennis J. Zember Jr. | |
| Dennis J. Zember Jr. | Executive Vice President and Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer) |
| /s/ R. Dale Ezzell | |
| R. Dale Ezzell | Director |
| /s/ J. Raymond Fulp | |
| J. Raymond Fulp | Director |
| /s/ Leo J. Hill | |
| Leo J. Hill | Director |
| /s/ Daniel B. Jeter | |
| Daniel B. Jeter | Director |
| /s/ Robert P. Lynch | |
| | Director |

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Robert P. Lynch

/s/ Brooks Sheldon

Brooks Sheldon

Director

/s/ William H. Stern

William H. Stern

Director

/s/ Jimmy D. Veal

Jimmy D. Veal

Director

Exhibit Index

| Exhibit Number | Description |
|----------------|---|
| 4.1 | Articles of Incorporation of Ameris Bancorp, as amended (incorporated by reference to Exhibit 2.1 to Ameris Bancorp's Regulation A Offering Statement on Form 1-A filed with the SEC on August 14, 1987). |
| 4.2 | Articles of Amendment to the Articles of Incorporation (incorporated by reference to Exhibit 3.7 to Ameris Bancorp's Annual Report on Form 10-K filed with the SEC on March 26, 1999). |
| 4.3 | Articles of Amendment to the Articles of Incorporation (incorporated by reference to Exhibit 3.9 to Ameris Bancorp's Annual Report on Form 10-K filed with the SEC on March 31, 2003). |
| 4.4 | Articles of Amendment to the Articles of Incorporation (incorporated by reference to Exhibit 3.1 to Ameris Bancorp's Current Report on Form 8-K filed with the SEC on December 1, 2005). |
| 4.5 | Articles of Amendment to the Articles of Incorporation (incorporated by reference to Exhibit 3.1 to Ameris Bancorp's Current Report on Form 8-K filed with the SEC on November 21, 2008). |
| 4.6 | Articles of Amendment to the Articles of Incorporation (incorporated by reference to Exhibit 3.1 to Ameris Bancorp's Current Report on Form 8-K filed with the SEC on June 1, 2011). |
| 4.7 | Amended and Restated Bylaws (incorporated by reference to Exhibit 3.1 to Ameris Bancorp's Current Report on Form 8-K filed with the SEC on March 14, 2005). |
| 5.1 | Opinion of Rogers & Hardin LLP as to the legality of securities being registered. |
| 23.1 | Consent of Porter Keadle Moore, LLC. |
| 23.2 | Consent of Rogers & Hardin LLP (included in Exhibit 5.1). |
| 24.1 | Powers of Attorney (included on signature page). |
| 99.1 | Coastal Bankshares, Inc. Stock Award Plan |