

FLAGSTAR BANCORP INC

Form PRER14A

April 23, 2009

Table of Contents

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

**SCHEDULE 14A
Proxy Statement Pursuant to Section 14(a) of the Securities
Exchange Act of 1934 (Amendment No. 2)**

Filed by the Registrant

Filed by a Party other than the Registrant

Check the appropriate box:

- Preliminary Proxy Statement
- Confidential, For Use of the Commission Only (as permitted by Rule 14a-6(e)(2))
- Definitive Proxy Statement
- Definitive Additional Materials
- Soliciting Material Pursuant to §240.14a-12

Flagstar Bancorp, Inc.

(Name of Registrant as Specified In Its Charter)

(Name of Person(s) Filing Proxy Statement, if other than the Registrant)

Payment of Filing Fee (Check the appropriate box):

- No fee required.
- Fee computed on table below per Exchange Act Rules 14a-6(i)(1) and 0-11.
 - 1) Title of each class of securities to which transaction applies:
 - 2) Aggregate number of securities to which transaction applies:
 - 3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (set forth the amount on which the filing fee is calculated and state how it was determined):
 - 4) Proposed maximum aggregate value of transaction:
 - 5) Total fee paid:
- Fee paid previously with preliminary materials.
- Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.
 - 1) Amount Previously Paid:
 - 2) Form, Schedule or Registration Statement No.:
 - 3) Filing Party:
 - 4) Date Filed:

Table of Contents

April __, 2009

To our stockholders:

We invite you to attend our Annual Meeting of Stockholders of Flagstar Bancorp, Inc. to be held at the national headquarters of the Company, 5151 Corporate Dr., Troy, Michigan on Tuesday, May 26, 2009 at 1:00 p.m., local time.

On January 30, 2009, we announced that the United States Department of the Treasury, pursuant to the TARP Capital Purchase Program, purchased 266,657 shares of our preferred stock, and warrants to purchase 64,513,790 shares of common stock of the Company, for approximately \$266.6 million. In addition, we raised an aggregate of approximately \$255.3 million through the sale of equity securities to MP Thrift Investments L.P. (MatlinPatterson), an entity formed by MP (Thrift) Global Partners III LLC, an affiliate of MatlinPatterson Global Advisers LLC, for \$250 million and through the sale of common stock to Mark T. Hammond, our Vice Chairman, President and Chief Executive Officer, to various directors and members of management and to me for \$5.3 million. With the proceeds of these offerings, we fortified our balance sheet and strengthened our regulatory capital position, such that we are positioned to grow our banking franchise and to continue our mission of being a top national originator and servicer of high quality residential mortgage loans.

In the offering to MatlinPatterson, we sold 250,000 shares of our convertible participating voting preferred stock with a liquidation preference of \$1,000 per share for a total of \$250 million. Subsequent to the offering, we sold to MatlinPatterson an additional 50,000 shares of our convertible participating voting preferred stock with a liquidation preference of \$1,000 per share for \$50 million and also expect to sell to MatlinPatterson trust preferred securities having an aggregate liquidation preference of \$50 million for a total of \$100 million. Upon approval by our stockholders of the proposals at the Annual Meeting, the total of 300,000 shares of convertible preferred stock held by MatlinPatterson will automatically convert into approximately 375,000,000 shares of our common stock, based upon a per share conversion price of \$0.80. As a result of these offerings, MatlinPatterson obtained the power to control our affairs and operations.

At the Annual Meeting, holders of our shares of common stock and certain other holders entitled to vote will be asked to consider and vote on proposals to, among other things, elect directors, approve an increase in the number of our authorized shares of common stock, approve other related matters which are required to be presented pursuant to the transactions described above and approve matters submitted at the direction of our Board of Directors. Our Board of Directors (as constituted prior and subsequent to the offerings) unanimously approved these proposals and recommended that our stockholders vote for these proposals. Many of our directors and officers as well as representatives of Virchow, Krause & Company, LLP, our registered public accountants for 2008, will be present at the Annual Meeting to respond to questions that you may have.

Please read the attached proxy statement carefully for information about the matters you are being asked to consider and vote upon. Your vote is very important to us. On behalf of the Board of Directors, we urge you to sign, date and return the enclosed proxy as soon as possible, even if you currently plan to attend the Annual Meeting. This will not prevent you from voting in person, but will assure that your vote is counted if you are unable to attend the Annual Meeting.

Thank you for your continuing support.

Sincerely,

/s/ Thomas J. Hammond

Thomas J. Hammond
Chairman of the Board

Table of Contents

**FLAGSTAR BANCORP, INC.
5151 CORPORATE DR.
TROY, MI 48098
(248) 312-2000**

**NOTICE OF ANNUAL MEETING OF STOCKHOLDERS
TO BE HELD ON MAY 26, 2009**

NOTICE IS HEREBY GIVEN that the 2009 Annual Meeting of Stockholders (the Annual Meeting) of Flagstar Bancorp, Inc. (the Company) will be held on Tuesday, May 26, 2009 at 1:00 p.m., local time, at the national headquarters of the Company, 5151 Corporate Dr., Troy, Michigan.

A proxy card and a proxy statement for the Annual Meeting are enclosed. We are also enclosing a copy of our 2008 Annual Report to Stockholders.

The Annual Meeting is for the purpose of considering and acting upon the following matters:

1. to elect ten directors to the Board of Directors to hold office for a term of two years and until their successors shall have been duly elected and qualified;
2. to amend the Company s Amended and Restated Articles of Incorporation to increase the number of authorized shares of common stock from 150,000,000 shares to 750,000,000 shares, as the number of common stock currently authorized is insufficient to provide for the conversion of the May Investor Warrants, the Treasury Warrant, the Investor Securities and the Additional Investor Securities (all of which are described in the attached proxy statement);
3. to amend the Company s Amended and Restated Articles of Incorporation to revise Article IX(B) thereof to delete the requirement to divide the Board of Directors into two classes of directors;
4. to amend the Company s Amended and Restated Articles of Incorporation to delete references to Chapter 7B of the Michigan Business Corporation Act, which has been rescinded by the Michigan legislature;
5. to approve the issuance of common stock issuable upon exercise of the warrant issued to the United States Department of the Treasury in connection with the TARP Capital Purchase Program, as described in the attached proxy statement;
6. to approve the issuance of common stock upon exercise of the May Investor Warrants that were issued in connection with amendments to the Purchase Agreement dated May 14, 2008. The May Investor Warrants were issued to certain institutional investors as described in the attached proxy statement;

7. to amend the Company's Amended and Restated Articles of Incorporation to require majority voting for the election of directors in non-contested elections;
8. to amend the Company's Amended and Restated Articles of Incorporation to reduce, to a majority of the Board of Directors, the vote required by directors to adopt, repeal, alter, amend and rescind the Company's bylaws;
9. to ratify the appointment of Virchow, Krause & Company, LLP as the Company's independent registered public accountants for the year ending December 31, 2009;
10. to consider and approve an advisory (non-binding) proposal relating to the executive pay-for-performance compensation employed by the Company;
11. to approve amendments to the Company's 2006 Equity Incentive Plan to increase the maximum number of shares available for awards and to increase the individual award limits; and
12. to transact such other business as may properly come before the Annual Meeting.

NOTE: The Board of Directors is not aware of any other business to come before the Annual Meeting.

These items of business are more fully described in the proxy statement accompanying this Notice. Submission of Proposals 2, 3, 4, and 11 to our stockholders is required under the terms of the Investment

Table of Contents

Agreement dated as of December 17, 2008 between the Company and to MP Thrift Investments L.P., an entity formed by MP (Thrift) Global Partners III LLC, an affiliate of MatlinPatterson Global Advisers LLC, in connection with our recent January 2009 equity investment transaction, submission of Proposals 5 and 6 is required by the rules of the New York Stock Exchange, submission of Proposal 10 is required by the American Recovery and Reinvestment Act of 2009, and submission of the remaining proposals is made at the direction of the Board of Directors.

The Board of Directors recommends that stockholders vote FOR all of the proposals.

Any action may be taken on any one of the foregoing proposals at the Annual Meeting on the date specified above or on any date or dates to which, by original or later adjournments, the Annual Meeting may be adjourned. Stockholders of record of our common stock and certain holders of our preferred stock at the close of business on April 7, 2009 will be entitled to vote at the Annual Meeting and any adjournments or postponements thereof.

You are requested to fill in and sign the enclosed form of proxy, which is solicited by the Board of Directors, and to mail it promptly in the enclosed envelope. This will ensure the presence of a quorum at the Annual Meeting and will save us the expense of additional solicitations. The proxy will not be used if you attend and choose to vote in person at the Annual Meeting.

BY ORDER OF THE BOARD OF DIRECTORS

/s/ Mary Kay Ruedisueli

Mary Kay Ruedisueli
Secretary

Troy, Michigan
April __, 2009

It is important that proxies be returned promptly. Therefore, whether or not you plan to be present in person at the Annual Meeting, please sign, date, and complete the enclosed proxy card and return it in the enclosed envelope. No postage is required if mailed in the United States.

Table of Contents**TABLE OF CONTENTS**

	Page
<u>QUESTIONS AND ANSWERS</u>	1
<u>Why am I receiving these materials?</u>	1
<u>Who is entitled to vote?</u>	3
<u>What information is contained in this Proxy Statement?</u>	3
<u>Who is soliciting my vote pursuant to this Proxy Statement?</u>	3
<u>How many shares are eligible to be voted?</u>	3
<u>What am I voting on?</u>	3
<u>What securities did we issue in the TARP transaction?</u>	4
<u>What securities did we issue in the equity investment transaction?</u>	4
<u>What securities will we issue under the closing agreement?</u>	4
<u>How will the conversion of the Investor Preferred Stock and the Additional Investor Preferred Stock occur?</u>	4
<u>Why is our Board seeking stockholder approval of the proposals?</u>	5
<u>How does the Board recommend that I vote?</u>	5
<u>Why is the Board recommending approval of the proposals related to the TARP Capital Purchase Programs and equity investment transaction (Proposals 2, 3, 4, 5, 6, 10 and 11)?</u>	5
<u>What happens if stockholder approval is received?</u>	6
<u>What happens if stockholder approval is not received?</u>	6
<u>How will the Investors vote?</u>	6
<u>How many votes are required to hold the Annual Meeting and what are the voting procedures?</u>	7
<u>What is a broker non-vote?</u>	7
<u>How may I cast my vote?</u>	8
<u>How may I revoke or change my vote?</u>	8
<u>Who is paying for the costs of this proxy solicitation?</u>	8
<u>Who will count the votes?</u>	8
<u>What happens if the Annual Meeting is postponed or adjourned?</u>	8
<u>What happens if a nominee is unable to serve, new business is introduced or procedural matters are voted upon?</u>	9
<u>SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS</u>	9
<u>BACKGROUND TO CERTAIN OF THE PROPOSALS</u>	10
<u>DESCRIPTION OF THE TARP CAPITAL PURCHASE PROGRAM</u>	12
<u>General</u>	12
<u>Description of the Treasury Securities</u>	12
<u>DESCRIPTION OF THE INVESTMENT AGREEMENT</u>	14
<u>Representations And Warranties</u>	15
<u>Certain of Our Agreements</u>	15
<u>Change of Control and Governance Matters</u>	15
<u>Agreement to Seek Stockholder Approval</u>	16
<u>Registration Rights</u>	16
<u>Voting Agreement</u>	16
<u>Closing Agreement</u>	16
<u>The May Investor Warrants</u>	17
<u>Description of the Investor Preferred Stock and the Additional Investor Preferred Stock</u>	17
<u>Description of the Trust Preferred Securities</u>	20

Table of Contents

	Page
<u>CONSEQUENCES IF PROPOSALS ARE APPROVED</u>	21
<u>The Investor Proposals</u>	21
<u>Proposals 5 and 6</u>	21
<u>Proposals 7 and 8</u>	21
<u>Proposals 9 and 10</u>	21
<u>CONSEQUENCES IF PROPOSALS ARE NOT APPROVED</u>	22
<u>The Investor Proposals</u>	22
<u>Proposals 5 and 6</u>	22
<u>Proposals 7 and 8</u>	22
<u>Proposals 9 and 10</u>	23
<u>USE OF PROCEEDS</u>	23
<u>PRO FORMA FINANCIAL INFORMATION</u>	23
<u>PROPOSAL 1 ELECTION OF DIRECTORS</u>	27
<u>Board and Committee Meetings and Committees</u>	30
<u>Nominating/Corporate Governance Committee</u>	30
<u>Compensation Committee</u>	31
<u>Audit Committee</u>	32
<u>Director Compensation</u>	33
<u>CORPORATE GOVERNANCE</u>	34
<u>General</u>	34
<u>Code of Business Conduct and Ethics</u>	34
<u>Stockholder Nominations</u>	34
<u>Independence</u>	35
<u>Director and Executive Officer Stock Ownership Guidelines</u>	35
<u>Executive Sessions of Non-Management Directors</u>	36
<u>Communications with the Board or the Lead Director</u>	36
<u>Succession Plan</u>	36
<u>SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS</u>	37
<u>EXECUTIVE OFFICERS</u>	38
<u>SECURITY OWNERSHIP OF MANAGEMENT</u>	40
<u>COMPENSATION DISCUSSION AND ANALYSIS</u>	41
<u>Overview</u>	41
<u>Impact of EESA and the Recovery Act</u>	42
<u>Compensation Committee</u>	44
<u>Compensation Philosophy and Objectives</u>	44
<u>Setting Executive Compensation</u>	44
<u>2008 Executive Compensation Components</u>	46
<u>Severance and Change-in Control Benefits</u>	50
<u>Tax and Accounting Implications</u>	50
<u>COMPENSATION COMMITTEE REPORT</u>	51
<u>EXECUTIVE COMPENSATION</u>	51
<u>Employment Agreements</u>	56
<u>Potential Payment Upon Termination or Change of Control</u>	56
<u>COMPENSATION COMMITTEE INTERLOCKS AND INSIDER PARTICIPATION</u>	61
<u>CERTAIN TRANSACTIONS AND BUSINESS RELATIONSHIPS</u>	61
<u>SECTION 16(A) BENEFICIAL OWNERSHIP REPORTING COMPLIANCE</u>	62

Table of Contents

	Page
<u>PROPOSAL 2 APPROVAL OF AMENDMENT TO THE AMENDED AND RESTATED ARTICLES OF INCORPORATION TO INCREASE THE NUMBER OF AUTHORIZED SHARES OF COMMON STOCK FROM 150,000,000 SHARES TO 750,000,000 SHARES, AS THE NUMBER OF COMMON STOCK CURRENTLY AUTHORIZED IS INSUFFICIENT TO PROVIDE FOR THE CONVERSION OF THE MAY INVESTOR WARRANTS, THE TREASURY WARRANT, THE INVESTOR SECURITIES AND THE ADDITIONAL INVESTOR SECURITIES</u>	62
<u>PROPOSAL 3 APPROVAL OF AMENDMENT TO ARTICLE IX OF THE AMENDED AND RESTATED ARTICLES OF INCORPORATION TO DELETE THE REQUIREMENT TO DIVIDE THE BOARD INTO TWO CLASSES OF DIRECTORS</u>	64
<u>PROPOSAL 4 APPROVAL OF AMENDMENT TO THE AMENDED AND RESTATED ARTICLES OF INCORPORATION TO DELETE REFERENCES TO CHAPTER 7B OF THE MBCA</u>	65
<u>PROPOSAL 5 APPROVAL OF THE ISSUANCE OF COMMON STOCK ISSUABLE UPON EXERCISE OF THE TREASURY WARRANT</u>	66
<u>PROPOSAL 6 APPROVAL OF THE ISSUANCE OF COMMON STOCK UPON EXERCISE OF THE WARRANTS ISSUED IN CONNECTION WITH AMENDMENTS TO THE PURCHASE AGREEMENT DATED MAY 14, 2008</u>	67
<u>PROPOSAL 7 APPROVAL OF AMENDMENT TO THE AMENDED AND RESTATED ARTICLES OF INCORPORATION TO REQUIRE MAJORITY VOTING FOR THE ELECTION OF DIRECTORS IN NON-CONTESTED ELECTIONS</u>	68
<u>PROPOSAL 8 APPROVAL OF AMENDMENT TO ARTICLE XVI OF THE AMENDED AND RESTATED ARTICLES OF INCORPORATION TO REDUCE, TO A MAJORITY OF OUR BOARD, THE VOTE REQUIRED BY DIRECTORS TO ADOPT, REPEAL, ALTER, AMEND AND RESCIND OUR BYLAWS</u>	69
<u>PROPOSAL 9 RATIFICATION OF INDEPENDENT REGISTERED PUBLIC ACCOUNTANTS AUDIT COMMITTEE REPORT</u>	70
Fees of Independent Registered Public Accountants	71
<u>PROPOSAL 10 ADVISORY VOTE ON EXECUTIVE PAY-FOR-PERFORMANCE COMPENSATION EMPLOYED BY THE COMPANY</u>	71
<u>PROPOSAL 11 APPROVAL OF AMENDMENTS TO THE 2006 EQUITY INCENTIVE PLAN TO INCREASE THE MAXIMUM NUMBER OF SHARES AVAILABLE FOR AWARDS AND TO INCREASE THE INDIVIDUAL AWARD LIMITS</u>	73
<u>WHERE YOU CAN FIND MORE INFORMATION</u>	74
<u>STOCKHOLDER PROPOSALS FOR THE 2010 ANNUAL MEETING</u>	74
<u>INCORPORATION BY REFERENCE</u>	75
<u>IMPORTANT NOTICE REGARDING THE AVAILABILITY OF PROXY MATERIALS FOR THE STOCKHOLDER MEETING TO BE HELD ON MAY 26, 2009</u>	75
<u>OTHER MATTERS</u>	75
<u>ANNEX A ARTICLE IX OF THE AMENDED AND RESTATED ARTICLES OF INCORPORATION</u>	A-1
<u>ANNEX B ARTICLE VI OF THE AMENDED AND RESTATED ARTICLES OF INCORPORATION</u>	B-1
<u>ANNEX C 2006 EQUITY INCENTIVE PLAN INFORMATION</u>	C-1

Table of Contents

**PROXY STATEMENT
OF
FLAGSTAR BANCORP, INC.
5151 CORPORATE DR.
TROY, MI 48098
(248) 312-2000**

ANNUAL MEETING OF STOCKHOLDERS

MAY 26, 2009

This proxy statement (Proxy Statement) and the enclosed Proxy Card are furnished in connection with the solicitation of proxies by the Board of Directors (the Board) of Flagstar Bancorp, Inc. (the Company). They will be used at the Annual Meeting of Stockholders of the Company (the Annual Meeting) to be held on Tuesday, May 26, 2009 at 1:00 p.m., local time, at the national headquarters of the Company and Flagstar Bank, fsb (the Bank), 5151 Corporate Dr., Troy, Michigan. The accompanying Notice of Annual Meeting, this Proxy Statement, and the Proxy Card are being first mailed to stockholders entitled to vote at the Annual Meeting on or about April 2, 2009. As used in this Proxy Statement, the terms we, us, and our refer to the Company.

QUESTIONS AND ANSWERS

Why am I receiving these materials?

Although certain aspects of our business model performed well in 2008, the market outlook for continuing weak domestic economic conditions caused us to take steps to increase capital levels that could help us weather the current economic downturn. In this regard, we recently participated in an investment by the United States Department of the Treasury (Treasury) under its Troubled Asset Relief Program Capital Purchase Program (the TARP Capital Purchase Program) established pursuant to the Emergency Economic Stabilization Act of 2008. The TARP Capital Purchase Program allows Treasury to invest in preferred stock and warrants of U.S. financial institutions. On December 19, 2008, we were preliminarily approved by Treasury (the Preliminary Approval) for participation in the TARP Capital Purchase Program through an investment by Treasury in our preferred stock and warrants in the amount of approximately \$266.6 million. As a condition of the Preliminary Approval, we were required to raise an aggregate of not less than \$250 million in private capital, which we accomplished through the equity investment transaction defined and described below.

On December 17, 2008, we entered into an investment agreement (the investment agreement) to raise an aggregate of \$250 million through the direct sale of equity securities to an institutional investor, MP Thrift Investments L.P. (MatlinPatterson), an entity formed by MP (Thrift) Global Partners III LLC, an affiliate of MatlinPatterson Global Advisers LLC, and to raise approximately \$5 million by the sale of common stock to individual investors, including Thomas J. Hammond, our Chairman, Mark T. Hammond, our Vice Chairman, President and Chief Executive Officer and certain other members of management and the Board (the Individual Investors, and together with MatlinPatterson, the Investors). As a condition to the investment by MatlinPatterson, we were required to raise at least \$250 million in capital through the TARP Capital Purchase Program.

The approximately \$266.6 million investment by Treasury, the \$250 million investment by MatlinPatterson and the \$5.3 million investment by the Individual Investors were closed on January 30, 2009. Pursuant to the TARP Capital Purchase Program, Treasury acquired 266,657 shares of our Fixed Rate Cumulative Perpetual Preferred Stock,

Series C (the Treasury Preferred Stock) at a purchase price and liquidation preference of \$1,000 per share, and a warrant to purchase 64,513,790 shares of our common stock (the

Table of Contents

Treasury Warrant and together with the Treasury Preferred Stock, the Treasury Securities) with an exercise price of \$0.62 per share, subject to anti-dilution provisions and certain other adjustments. Pursuant to the investment agreement, MatlinPatterson acquired 250,000 shares of our Convertible Participating Voting Preferred Stock, Series B (the Investor Preferred Stock), at a purchase price and liquidation preference of \$1,000 per share and convertible into common stock at \$0.80 per share. In addition, we issued 6,650,000 shares of our common stock (the Investor Common Stock and, together with the Investor Preferred Stock, the Investor Securities) to the Individual Investors at a price of \$0.80 per share for an aggregate purchase price of \$5.3 million. On January 30, 2009, the closing price of our common stock was \$0.60 per share. We refer to the transaction pursuant to the TARP Capital Purchase Program as the TARP transaction and transactions contemplated by the investment agreement as the equity investment transaction, and we refer to the Treasury Preferred Stock and the Investor Preferred Stock collectively herein as the Preferred Stock.

In addition, we entered into a closing agreement (the closing agreement) dated as of January 30, 2009 with MatlinPatterson which, among other things, waived certain conditions to closing that had not been and could not be satisfied and which obligated MatlinPatterson to acquire subsequent to the closing of the equity investment transaction (i) an additional 50,000 shares of our Convertible Participating Voting Preferred Stock, Series B (the Additional Investor Preferred Stock) for \$50 million and (ii) trust preferred securities (the Trust Preferred Securities and together with the Additional Investor Preferred Stock, the Additional Investor Securities) for \$50 million. The Additional Investor Securities are convertible into shares of our common stock.

As a condition to our sale of the Investor Preferred Stock, we agreed to seek stockholder approval, at a meeting of stockholders, to amend our Amended and Restated Articles of Incorporation (our articles of incorporation) to increase the number of our authorized shares of common stock to an amount that will allow for the conversion of the Investor Preferred Stock, to delete the requirement to divide our Board into two classes of directors, to opt out of Chapter 7B of the Michigan Business Corporation Act (the MBCA), which Chapter had previously been rescinded from the Act and to amend our 2006 Equity Incentive Plan These proposals are contained in this Proxy Statement (Proposals 2, 3, 4 and 11) and are sometimes referred to herein as the Investor Proposals. In addition, we are seeking stockholder approval of Proposal 2, as well as Proposal 5, required by the rules of the New York Stock Exchange (NYSE), allowing for the full exercise of the Treasury Warrant. Moreover, as a condition to obtaining waivers from certain investors (the May Investors) in our May 2008 private placement capital raise relating to the anti-dilution provisions applicable to them, we are required by the rules of the NYSE to seek stockholder approval allowing for the full exercise of the common stock warrants (the May Investor Warrants) that we granted to the May Investors in connection with obtaining those waivers and we are doing so through Proposal 6. We are also seeking, at the direction of the Board, approval of amendments to our articles of incorporation to provide for majority voting for the election of directors in non-contested elections (Proposal 7) and to reduce the vote required by directors to amend our bylaws (Proposal 8). Lastly, we are seeking an advisory vote on our executive pay-for-performance compensation (Proposal 10).

Accordingly, the Board is providing these proxy materials to you in connection with the Annual Meeting to be held on May 26, 2009. As a stockholder of record of our common stock on the Record Date, you are invited to attend the Annual Meeting and are entitled and requested to vote on the items of business described in this Proxy Statement. In addition to the proposals discussed above, you will be voting on the election of ten members to our Board and the ratification of the appointment of our independent registered public accountants. Pursuant to the Michigan Business Corporation Act, holders of the Preferred Stock are also receiving these proxy materials. Holders of the Treasury Preferred Stock are not entitled to vote those shares with respect to these proposals, but the holder of the Investor Preferred Stock and the Additional Investor Preferred Stock is entitled to vote those shares on an as-converted basis (i.e. equal to 375 million shares of common stock) with respect to these proposals together with the holders of our common stock. Many of our directors and officers as well as representatives of Virchow, Krause & Company, LLP, our independent registered public accountants for 2008, will be present to respond to questions that you may have.

See **BACKGROUND TO CERTAIN OF THE PROPOSALS** for more information relating to the TARP transaction and the equity investment transaction.

Table of Contents

Who is entitled to vote?

Only holders of record of the common stock, the Investor Preferred Stock and the Additional Investor Preferred Stock at the close of business on April 7, 2009 (the Record Date) will be entitled to notice of and vote at the Annual Meeting.

What information is contained in this Proxy Statement?

This information relates to the proposals to be voted on at the Annual Meeting, compensation of our directors and senior executive officers, the voting process and certain other information required to be disclosed in this Proxy Statement.

Who is soliciting my vote pursuant to this Proxy Statement?

The Board is soliciting your vote at the Annual Meeting. In addition, certain of our officers and employees may solicit, or be deemed to be soliciting, your vote.

How many shares are eligible to be voted?

As of the Record Date, we had 90,380,043 shares of common stock outstanding and entitled to vote. In addition, the Investor Preferred Stock and the Additional Investor Preferred Stock are entitled to vote on an as-converted basis together with our common stock on all matters on which our common stock is entitled to vote unless otherwise required by Michigan law. For voting purposes, the Investor Preferred Stock and Additional Investor Preferred Stock shall be entitled to an aggregate number of votes equal to 375 million shares of common stock. Our common stock outstanding on the Record Date and our common stock deemed issuable upon conversion of our Investor Preferred Stock and Additional Investor Preferred Stock are sometimes referred to collectively herein as our voting stock. Each outstanding share of voting stock will be entitled to one vote on each matter to be voted upon at the Annual Meeting. For information regarding security ownership by the beneficial owners of more than 5% of our voting stock and by management, see SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS and SECURITY OWNERSHIP OF MANAGEMENT.

What am I voting on?

You are voting on the following matters:

1. to elect ten directors to the Board. Our nominees are Walter N. Carter, James D. Coleman Gregory Eng, Lesley Goldwasser, Mark T. Hammond, Jay J. Hansen, David J. Matlin, Mark Patterson, B. Brian Tauber, and David L. Treadwell. Each will serve a term of two years. No other nominations have been received;
2. to amend our Amended and Restated Articles of Incorporation to increase the number of authorized shares of common stock from 150,000,000 shares to 750,000,000 shares, as the number of common stock currently authorized is insufficient to provide for the conversion of the May Investor Warrants, the Treasury Warrant, the Investor Securities and the Additional Investor Securities (all of which are described in greater detail herein);
3. to amend our Amended and Restated Articles of Incorporation to revise Article IX(B) thereof to delete the requirement to divide our Board into two classes of directors;

4. to amend our Amended and Restated Articles of Incorporation to delete references to Chapter 7B of the MBCA, which has been rescinded by the Michigan legislature;
5. to approve the issuance of common stock issuable upon exercise of the Treasury Warrant;
6. to approve the issuance of common stock issuable upon exercise of the May Investor Warrants, which were issued in connection with amendments to the Purchase Agreement dated May 14, 2008;
7. to amend our Amended and Restated Articles of Incorporation to require majority voting for the election of directors in non-contested elections;

Table of Contents

8. to amend our Amended and Restated Articles of Incorporation to reduce, to a majority of the Board, the vote required by directors to adopt, repeal, alter, amend and rescind our bylaws;

9. to ratify the appointment of Virchow, Krause & Company, LLP as our independent registered public accountants for the year ending December 31, 2009;

10. to consider and approve an advisory (non-binding) proposal relating to the executive pay-for-performance compensation employed by us; and

11. to approve amendments to our 2006 Equity Incentive Plan to increase the maximum number of shares available for awards and to increase the individual award limits.

You will also be entitled to vote on any other business that properly comes before the Annual Meeting or any adjournments thereof.

What securities did we issue in the TARP transaction?

We issued a total of 266,657 shares of Fixed Rate Cumulative Perpetual Preferred Stock, Series C (the Treasury Preferred Stock), and we also issued a warrant to purchase 64,513,790 shares of our common stock (the Treasury Warrant) in the TARP transaction. The Treasury Preferred Stock, which is not convertible into our common stock, has a liquidation preference of \$1,000 per share, and the Treasury Warrant is exercisable at \$0.62 per share, subject to anti-dilution provisions and certain other adjustments.

What securities did we issue in the equity investment transaction?

We issued a total of 250,000 shares of Investor Preferred Stock and a total of 6,650,000 shares of common stock in the equity investment transaction. The Investor Preferred Stock has a liquidation preference of \$1,000 per share and is automatically convertible, subject to anti-dilution provisions, into 312,500,000 shares of our common stock, based on a conversion price of \$0.80 per share of common stock, upon receipt of stockholder approval of Proposal 2.

What securities will we issue under the closing agreement?

Pursuant to the closing agreement, we issued a total of 50,000 shares of our Additional Investor Preferred Stock and expect to issue 50,000 shares of our Trust Preferred Securities in the future. The Additional Investor Preferred Stock has a liquidation preference of \$1,000 per share and will automatically convert, subject to anti-dilution provisions, into 62,500,000 shares of our common stock, based on a conversion price of \$0.80 per share of common stock, upon receipt of stockholder approval of Proposal 2. The Trust Preferred Securities will have an aggregate liquidation preference of \$50 million and, subject to stockholder approval of Proposal 2, will be convertible into shares of our common stock, in whole or in part, at the option of the holder on April 1, 2010 at a conversion price equal to 90% of the volume-weighted average price per share of our common stock during the period from February 1, 2009 to April 1, 2010, subject to a per share conversion price minimum of \$0.80 and maximum of \$2.00.

How will the conversion of the Investor Preferred Stock and the Additional Investor Preferred Stock occur?

Upon receipt of stockholder approval of Proposal 2, each share of Investor Preferred Stock and Additional Investor Preferred Stock will automatically convert into a number of shares of common stock determined by dividing (i) \$1,000 (the purchase price per share of the Investor Preferred Stock and of the Additional Investor Preferred Stock) by (ii) the conversion price of the Preferred Stock then in effect, subject to certain adjustments. For example, the initial conversion price of the Investor Preferred Stock and the Additional Investor Preferred Stock is \$0.80 per share,

which would result in an initial conversion rate of 1,250 shares of common stock for each share of Investor Preferred Stock or Additional Investor Preferred Stock.

Table of Contents

Why is our Board seeking stockholder approval of the proposals?

Our Board is seeking stockholder approval of Proposals 2, 3, 4 and 11 in order to fulfill the requirements of the investment agreement and the closing agreement. Proposal 2 authorizes sufficient common stock to provide for the conversion of the Investor Securities and the Additional Investor Securities and, should they be exercised, the May Investor Warrants and the Treasury Warrant. The number of shares of common stock currently authorized is 150,000,000, which is insufficient to provide for the conversion of the Investor Securities and the Additional Investor Securities and, should they be exercised, the May Investor Warrants and the Treasury Warrant Proposals 3 and 4 effect corporate governance changes required under the investment agreement. With respect to Proposal 11, we are required to receive stockholder approval pursuant to Section 312.03 of the NYSE Listed Company Manual (the NYSE Manual), because we are increasing the number shares of common stock issuable under and otherwise materially amending the 2006 Equity Incentive Plan.

With respect to Proposals 5 and 6, Section 312.03 of the NYSE Manual requires stockholder approval prior to any issuance or sale of common stock, or securities convertible into or exercisable for common stock, in any transaction or series of transactions (i) if the common stock to be issued has, or will have upon issuance, voting power equal to 20% or more of the voting power outstanding before the issuance, or (ii) if the number of shares of common stock to be issued is, or will be upon issuance, equal to 20% or more of the number of shares of common stock outstanding before the issuance. The exercise of each of the Treasury Warrant and the May Investor Warrants falls under this rule because the aggregate amount of shares of common stock to be issued upon conversion of (i) the Treasury Warrant or (ii) the May Investor Warrants combined with the common stock issued to the May Investors in the May 2008 private placement, will exceed 20% of both the voting power and number of shares of our common stock outstanding before either such issuance.

Our Board is seeking stockholder approval of (i) Proposal 7 to provide stockholders a more meaningful role in the election of our directors and (ii) Proposal 8 to provide greater flexibility to our Board in adopting, repealing, altering, amending and rescinding the provisions of our bylaws. Our Board is seeking approval of Proposal 10 as required by the American Recovery and Reinvestment Act of 2009. The remaining proposals are being submitted at the direction of the Board.

If all stockholder approvals are received as noted above, there will be 750,000,000 shares of common stock authorized and 465,380,043 shares of common stock issued and outstanding, subject to issuance under the terms of the conversion features of the securities described.

How does the Board recommend that I vote?

The Board unanimously recommends that you vote **FOR** each director nominee and **FOR** the approval of each of the proposals presented at this Annual Meeting.

Why is the Board recommending approval of the proposals related to the TARP Capital Purchase Programs and equity investment transaction (Proposals 2, 3, 4, 5, 6, 10 and 11)?

In the current banking and credit environment, the Board determined that it would be necessary to seek significant equity capital in order to strengthen our capital ratios in light of the deteriorating conditions in the U.S. housing and credit markets and resulting elevated credit losses in our loan portfolio. The Board also concluded that in light of a variety of factors, including the weakening economy, increasing loan delinquencies, and capital markets volatility, it was important that we raise additional equity promptly and with a high degree of certainty of completion. After

exploring and considering a broad range of potential financings and other alternatives, the Board determined that the TARP Capital Purchase Program and the equity investment transaction were the only means readily available to address our capital needs on a timely basis and was in the best interests of our stockholders. Accordingly, the Board unanimously recommends that stockholders vote FOR all of the proposals related to the TARP Capital Purchase Program and the equity investment transactions, as well as the other proposals set forth herein.

Table of Contents

What happens if stockholder approval is received?

If, with respect to the Investor Preferred Stock and the Additional Investor Preferred Stock, Proposal 2 is approved at the Annual Meeting, each share of Investor Preferred Stock and each share of Additional Investor Preferred Stock will automatically convert into the number of shares of common stock equal to \$1,000 divided by the then-applicable conversion price (currently, \$0.80 per share). Upon the conversion, all rights with respect to the Investor Preferred Stock and Additional Investor Preferred Stock will terminate and all shares of Investor Preferred Stock and Additional Investor Preferred Stock will be cancelled.

If Proposal 3 is approved, then beginning in 2010, each director nominee will be elected for one-year terms instead of two-year terms as currently provided. If Proposal 4 is approved, we will delete all references to Chapter 7B of the MBCA relating to control share acquisitions in our articles of incorporation. If Proposals 5 and 6, as well as Proposal 2, are approved at the Annual Meeting, the holders of the Treasury Warrant and the May Warrants will be entitled to exercise their warrants to purchase shares of our common stock at a price of \$0.62 per share. If Proposal 7 is approved, our directors may only be elected in the future by a majority vote of stockholders in non-contested elections; and if Proposal 8 is approved, a vote by only the majority of our directors will be required to adopt, repeal, alter, amend and rescind our bylaws. If Proposal 9 is ratified, we may retain Virchow, Krause & Company, LLC as our independent registered public accountants for the year ended December 31, 2009. If Proposal 10, which is an advisory vote only, is approved, our Compensation Committee will consider the vote in determining the compensation of our executives in the future. If Proposal 11 is approved, additional shares of common stock will be issuable under the 2006 Equity Incentive Plan and the individual plan limits will be increased.

What happens if stockholder approval is not received?

If stockholder approval of Proposal 2 is not received at the Annual Meeting, the Investor Preferred Stock and the Additional Investor Preferred Stock will remain outstanding in accordance with their terms and continue to rank senior to our common stock unless our stockholders approve similar proposals at a subsequent meeting. Moreover, if stockholder approval of Proposal 2 is not received by July 30, 2009, the exercise price of the Treasury Warrant will be reduced. We have agreed, pursuant to the investment agreement with MatlinPatterson and the securities purchase agreement with Treasury, to continue to seek to obtain stockholder approval until such approval of all the Investor Proposals is obtained. If Proposal 3 is not approved, the Board will continue to be classified and directors will continue to be elected for two-year terms. If Proposal 4 is not approved, we will continue to be subject to Chapter 7B of the MBCA relating to control share acquisitions as was in effect on the date of filing the articles of incorporation relating thereto (February 11, 1997).

If Proposal 5 or Proposal 6 is not approved at the Annual Meeting, the holders of the Treasury Warrant and May Warrants, as the case may be, will not be entitled to exercise their warrants. In addition, if stockholder approval of Proposal 5 is not received by July 30, 2009, the exercise price of the Treasury Warrant will be reduced. However, we have agreed, pursuant to the provisions of the Treasury Warrant (i.e, the securities purchase agreement with Treasury) and the May Warrants, to continue to seek to obtain stockholder approval until stockholder approval of Proposals 5 and 6 is obtained. If Proposal 7 is not approved, we will continue to elect our directors by a plurality of votes cast at the meetings set for their election. If Proposal 8 is not approved, we will continue to require a two-thirds vote of our directors to approve any changes to our bylaws proposed by the Board. If Proposal 9 is not ratified, the Audit Committee will reconsider whether to retain our independent registered public accountants for the year ended December 31, 2009. If Proposal 10 is not approved, our Compensation Committee will consider vote in determining the compensation of our executives in the future. If Proposal 11 is not approved, we have agreed, pursuant to the provisions of the investment agreement, to continue to seek to obtain stockholder approval until stockholder approval

of Proposal 11 is obtained.

How will the Investors vote?

All of the Investors, who own or control approximately 84% of our voting stock and approximately 29% of our outstanding common stock on the Record Date, have indicated their intention to vote in favor of all

Table of Contents

proposals for which they are entitled to vote, thereby assuring approval of the proposals except with respect to Proposal 2. Proposal 2 requires the affirmative vote of both a majority of our voting stock and a majority of our common stock, because Michigan law requires that the shares of a class, such as common stock, vote in favor of an increase in the aggregate number of authorized shares of such class. Failure to vote, broker non-votes and abstentions will have the same effect as a vote against this proposal.

In addition, pursuant to the investment agreement, MatlinPatterson is required to vote in favor of the Investor Proposals.

How many votes are required to hold the Annual Meeting and what are the voting procedures?

Quorum Requirement: Michigan law and our bylaws provides that a quorum be present to allow any stockholder action at a meeting. A quorum consists of a majority of all of our outstanding voting stock that is entitled to vote at the Annual Meeting. Therefore, at the Annual Meeting, the presence, in person or by proxy, of the holders of at least 232,690,022 shares of our voting stock will be required to establish a quorum. Stockholders of record who are present at the Annual Meeting in person or by proxy, but who abstain from voting are still counted towards the establishment of a quorum. This will include brokers holding customers' shares of record even though they may abstain from certain votes.

Required Vote:

1. Proposal 1:

The ten nominees who receive the greatest number of votes cast for directors will be elected. There is no cumulative voting allowed on our director nominees.

2. Proposal 2:

This proposal will be approved if greater than a majority of the shares of both voting stock and common stock outstanding as of the Record Date are cast for it. Approval of a majority of our common stock is required, because Michigan law requires that the shares of a class vote in favor of an increase in the aggregate number of authorized shares of such class. Failure to vote, broker non-votes and abstentions will have the same effect as a vote against this proposal.

3. Proposals 3, 4, 7, and 8:

Each of these proposals will be approved if greater than a majority of the shares of voting stock outstanding as of the Record Date are cast for it. Failure to vote, broker non-votes and abstentions will have the same effect as a vote against these proposals.

4. Proposals 5, 6, 9, 10, and 11:

Each of these proposals will be approved if greater than a majority of the shares of voting stock represented at the Annual Meeting, either in person or by proxy, entitled to vote are cast for it. Failure to vote and broker non-votes will have no effect because these shares will not be considered shares entitled to vote and therefore will not be counted as votes for or against. However, abstentions will have the same effect as voting against the approval of these proposals.

What is a broker non-vote?

If you hold your shares in street name through a broker or other nominee, whether the broker may vote your shares in its discretion depends on the proposals before the meeting. Under the rules of the NYSE, your broker may vote your shares in its discretion on routine matters. For example, election of directors and ratification of independent registered public accountants are currently considered routine matters. Proposals that are considered non-routine cannot be voted unless you specifically instruct your broker. The proposals being presented at the Annual Meeting are non-routine matters except Proposals 1 and 9. Accordingly, if your broker has not received your voting instructions with respect to these non-routine proposals, your broker cannot vote your shares on those proposals. This is referred to as a broker non-vote.

Table of Contents

How may I cast my vote?

If you are the stockholder of record: You may vote by one of the following methods:

1. in person at the Annual Meeting; or