

FIRST MIDWEST BANCORP INC

Form 8-K

December 09, 2008

**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): December 3, 2008**

**First Midwest Bancorp, Inc.**

(Exact name of registrant as specified in its charter)

**Delaware**  
(State or other jurisdiction

of Incorporation)

**0-10967**  
(Commission

File Number)

**36-3161078**  
(IRS Employer

Identification No.)

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**One Pierce Place, Suite 1500, Itasca, Illinois**  
**(Address of principal executive offices)**

**(630) 875-7450**

**60143**  
**(Zip Code)**

(Registrant's telephone number, including area code)

**N/A**

(Former name or former address, if changed since last report)

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:

- 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))

**Item 1.01. Entry into a Material Definitive Agreement.**

On December 5, 2008, First Midwest Bancorp, Inc. (the Company or First Midwest ), issued and sold, and the United States Department of the Treasury ( Treasury ) purchased, for an aggregate purchase price of \$193 million in cash: (1) 193,000 shares (the Preferred Shares ) of the Company s Fixed Rate Cumulative Perpetual Preferred Stock, Series B, liquidation preference of \$1,000 per share; and (2) a ten-year warrant ( Warrant ) to purchase up to 1,305,230 shares of the Company s common stock, par value \$0.01 per share ( Common Stock ) at an exercise price, subject to anti-dilution adjustments, of \$22.18 per share. Cumulative dividends on the Preferred Shares will accrue on the liquidation preference at a rate of 5% per annum for the first five years, and at a rate of 9% per annum thereafter. The securities were sold in a private placement exempt from registration pursuant to Section 4(2) of the Securities Act of 1933, as amended.

The Letter Agreement, dated December 5, 2008 and Securities Purchase Agreement Standard Terms attached thereto (collectively, Purchase Agreement ), pursuant to which the Preferred Shares and the Warrant were sold, limit the payment of dividends on the Common Stock to up to \$0.31 per share, and limits the Company s ability to repurchase shares of its capital stock. The Preferred Shares have no maturity date and rank senior to the Common Stock with respect to the payment of dividends and distributions and amounts payable upon liquidation, dissolution and winding up of the Company. The Preferred Shares are redeemable at the option of the Company at 100% of their liquidation preference, provided that the Preferred Shares may be redeemed prior to the first dividend payment date falling after the third anniversary of the Closing Date (December 5, 2011) only if: (1) the Company has raised aggregate gross proceeds in one or more Qualified Equity Offerings (as defined in the Purchase Agreement) in excess of \$193 million; and (2) the aggregate redemption price does not exceed the aggregate net proceeds from such Qualified Equity Offerings.

The Purchase Agreement also subjects the Company and its CEO, CFO and three most highly compensated executive officers (collectively, SEOs ) to certain compensation limitations included in the Emergency Economic Stabilization Act of 2008 ( EESA ). Consequently, under the terms of the Purchase Agreement, the Company has agreed that, until such time as Treasury ceases to own any securities acquired from the Company pursuant to the Purchase Agreement, the Company will take all necessary action to ensure that its benefit plans with respect to its SEOs comply with Section 111(b) of the EESA as implemented by any guidance or regulation under Section 111(b) of EESA that has been issued and is in effect as of the date of issuance of the Preferred Shares and the Warrant, and not adopt any benefit plans with respect to, or which cover, its SEOs that do not comply with EESA. The Company s SEOs have entered into letter agreements with the Company consenting to the foregoing, as well as executed waivers voluntarily waiving any claim against the Treasury and the Company for any changes to their compensation or benefits that are required to comply with the EESA or any regulation issued by the Treasury under the TARP Capital Purchase Program as published in the Federal Register on October 20, 2008.

Also, on December 3, 2008, the Company and First Midwest Bank, as rights agent, amended by an Amendment No. 3 the Company s Amended and Restated Rights Agreement, dated November 15, 1995 ( Rights Agreement ), and as previously amended, to provide that the rights would be exercisable for 1/1000 of a share of Participating Preferred Stock, the terms of which are set forth in Exhibit A to Amendment No. 3, and the Company filed a certificate of elimination with the Delaware Secretary of State ( Secretary of State ) with respect to the preferred stock for which the rights were previously exercisable. While this amendment has no material effect on the holders of rights, it does reduce the number of shares of preferred stock which would be required if the rights ever became exercisable.

The Purchase Agreement, Warrant, form of letter agreement executed by the SEOs, certificate of elimination and Amendment No. 3 are attached hereto as Exhibits 10.1, 4.3, 10.2, 4.2 and 10.3 respectively to this Report on Form 8-K and incorporated herein by reference. The foregoing summary of certain provisions of these documents is qualified in its entirety by reference thereto.

**Item 3.02. Unregistered Sales of Equity Securities.**

The information set forth under Item 1.01 Entry into a Material Definitive Agreement is incorporated by reference into this Item 3.02.

**Item 3.03. Material Modification to Rights of Security Holders.**

The information set forth under Item 1.01 Entry into a Material Definitive Agreement is incorporated by reference into this Item 3.03.

Prior to December 5, 2011, unless the Company has redeemed the Preferred Shares, or the Treasury has transferred the Preferred Shares to a third party, the consent of the Treasury will be required for the Company to: (1) declare or pay any dividend or make any distribution on shares of the Common Stock (other than regular quarterly cash dividends of not more than \$0.31 per share); or (2) redeem, purchase or acquire any shares of Common Stock or other equity or capital securities, other than in connection with benefit plans consistent with past practice and certain other circumstances specified in the Purchase Agreement. In addition, under the Certificate of Designations described in Item 5.03, the Company's ability to declare or pay dividends or repurchase shares of Common Stock or other equity or capital securities will be subject to restrictions in the event that the Company fails to declare and pay (or set aside for payment) full dividends on the Preferred Shares.

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

The information set forth under Item 1.01 Entry into a Material Definitive Agreement is incorporated by reference into this Item 5.02.

**Item 5.03. Amendment to Articles of Incorporation or Bylaws; Change in Fiscal Year.**

Article FOURTH of the Company's Restated Certificate of Incorporation, as amended ( Restated Certificate of Incorporation ), authorizes the issuance from time to time of shares of preferred stock without par value. On December 3, 2008, the Company filed with the Secretary of State a Certificate of Designations to its Restated Certificate of Incorporation establishing the designation, powers, preferences and rights of the Preferred Shares. The Certificate of Designations was effective immediately upon filing. A copy of the Certificate of Designations is included as Exhibit 4.1 to this Current Report on Form 8-K and is incorporated herein by reference. The foregoing summary of certain provisions of this document is qualified in its entirety by reference thereto.

**Item 8.01 Other Events.**

On December 5, 2008, First Midwest issued a press release announcing the closing of the transaction described under Item 1.01 Entry into a Material Definitive Agreement . The press release is furnished as Exhibit 99.1 to this Report on Form 8-K and incorporated herein by reference.

**Item 9.01 Financial Statements and Exhibits**

The following Exhibits are furnished as part of this Current Report on Form 8-K.

- 4.1 Certificate of Designation for Fixed Rate Cumulative Perpetual Preferred Stock, Series B
- 4.2 Certificate of Elimination
- 4.3 Form of Warrant for purchase of shares of Common Stock
- 10.1 Letter Agreement, dated December 5, 2008 by and between First Midwest Bancorp, Inc. and the United States Department of the Treasury and Securities Purchase Agreement Standard Terms attached thereto
- 10.2 Form of Senior Executive Officer letter agreement
- 10.3 Amendment No. 3 the Company's Amended and Restated Rights Agreement, dated November 15, 1995
- 99.1 December 5, 2008 Press Release of First Midwest Bancorp, Inc.

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 thereunto duly authorized.

First Midwest Bancorp, Inc.  
(Registrant)

Date: December 9, 2008

/s/ Cynthia A. Lance  
Cynthia A. Lance  
Executive Vice President and

Corporate Secretary