

UNITY BANCORP INC /DE/
Form S-8
May 07, 2003

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As filed with the Securities and Exchange Commission on May 7, 2003

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

FORM S-8

REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

UNITY BANCORP, INC.

(Exact Name of Registrant as Specified in Its Charter)

NEW JERSEY

(State or Other Jurisdiction of Incorporation or Organization)

22-3282551

(I.R.S. Employer Identification No.)

64 OLD HIGHWAY 22, CLINTON, NJ 08809

(Address of Principal Executive Offices) (Zip Code)

UNITY BANCORP, INC. 2002 STOCK OPTION PLAN

(Full Title of the Plan)

David Dallas

Chairman of the Board

Unity Bancorp, Inc.

64 Old Highway 22

Clinton, NJ 08809

(Name and Address of Agent for Service)

(908) 730-7630

(Telephone Number, Including Area Code, of Agent For Service)

CALCULATION OF REGISTRATION FEE

Title of Securities To Be Registered	Amount To Be Registered	Proposed Maximum Offering Price Per Share(1)	Proposed Maximum Aggregate Offering Price(1)	Amount of Registration Fee
Common Stock, no par value per share	150,000	\$8.68	\$1,302,000	\$105.33

- (1) Estimated solely for the purpose of calculating the registration fee pursuant to Rule 457 (h)(1) promulgated under the Securities Act of 1933, and based on the average high and low price of the Registrant's common stock on the NASDAQ National Market on May 2, 2003.
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PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

ITEM 3. Incorporation of Documents by Reference.

The following documents have been filed by Unity Bancorp, Inc., a corporation organized under the laws of the State of New Jersey (the "Company" or the "Registrant"), with the Securities and Exchange Commission (the "Commission") and are incorporated herein by reference (File No 001-12431):

- (a) Annual Report on Form 10-K for the fiscal year ended December 31, 2002;
- (b) Current Reports on Form 8-K filed on February 3, 2003 (two reports); and
- (c) The description of the Company's Common Stock, no par value per share, contained in the Registration Statement on Form 8-A filed on September 15, 1998, including any amendment or report filed for the purpose of updating that description.

In addition, all documents filed subsequent to the date hereof by the Registrant pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and prior to the filing of a post effective amendment which indicates that all securities offered hereby have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference in this Registration Statement and to be part hereof from their respective dates of filing; provided, however, that the documents enumerated above or subsequently filed by the Registrant pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act in each year during which the offering made hereby is in effect prior to the filing with the Commission of the Registrant's Annual Report on Form 10-K covering such year shall not be incorporated by reference herein or be a part hereof from and after the filing of such Annual Report on Form 10-K.

Any statement contained in a document incorporated by reference herein shall be deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement contained herein or in any other subsequently filed document which also is incorporated by reference herein modified or superseded such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement.

ITEM 4. Description of Securities.

Not applicable.

ITEM 5. Interests of Named Experts and Counsel.

Not applicable.

ITEM 6. Indemnification of Directors and Officers.

Section 14A:3-5 of the New Jersey Business Corporation Act ("NJBCA") gives a corporation the power, without a specific authorization in its certificate of incorporation or by laws, to indemnify a director, officer, employee or agent (a "corporate agent") against expenses and liabilities incurred in connection with certain proceedings involving the corporate agent by reason of his being or having been such a corporate

agent, provided that the corporate agent must have acted in good faith and in the manner reasonably believed to be in, or not opposed to, the best interest of the corporation and, with respect to any criminal proceeding, such corporate agent had no reasonable cause to believe his conduct was unlawful. In such proceeding, termination of a proceeding by judgment, order, settlement, conviction or upon plea of nolo contendere or its equivalent does not of itself create a presumption

that any such corporate agent failed to meet the above applicable standards of conduct. Subject to certain limitations, the indemnification provided by the NJBCA does not exclude any rights to which a corporate agent may be entitled under a certificate of incorporation, by law, agreement, vote of shareholders or otherwise. No indemnification, other than that required when a corporate agent is successful on the merits or otherwise in any of the above proceedings, is permitted if such indemnification would be inconsistent with a provision of the certificate of incorporation, a by law or a resolution of the board of directors or of the shareholders, an agreement or other proper corporate action, in effect at the time of the accrual of the alleged cause of action asserted in the proceeding, which prohibits, limits or otherwise conditions the exercise of indemnification powers by the corporation or the rights of indemnification to which a corporate agent may be entitled.

Article Ninth of the Company's Certificate of Incorporation provides that a director of the Company shall not be personally liable to the Company or its stockholders for monetary damages for breach of fiduciary duty as a director, except to the extent such exemption from liability or limitation thereof is not permitted under the NJBCA.

Article Ninth of the Company's Certificate of Incorporation requires that the Company indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil or criminal, administrative or investigative (other than an action by or in the right of the Company) by reason of the fact that he is or was a director or officer of the Company, or is or was serving at the request of the Company as a director or officer of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Company, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful.

Article Ninth of the Company's Certificate of Incorporation requires that the Company indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Company to procure a judgment in its favor by reason of the fact that he is or was a director or officer of the Company, or is or was serving at the request of the Company as a director or officer of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Company; provided, however, that no indemnification is permitted in respect of any person adjudged to be liable to the Company unless and only to the extent that the court in which such action or suit was brought determines upon application that such person is fairly and reasonably entitled to indemnity.

Policies of insurance are maintained by the Company under which its directors and officers are insured, within the limits and subject to the limitations of the policies, against certain expenses in connection with the defense of, and certain liabilities which might be imposed as a result of, actions, suits or proceedings to which they are parties by reason of being or having been such directors or officers.

ITEM 7. Exemption from Registration Claimed.

Not Applicable.

ITEM 8. Exhibits.

The Exhibits required to be filed as part of this Registration Statement are listed in the attached Index to Exhibits.

ITEM 9. Undertakings.

(a)

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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; 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) do not apply if 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 Exchange Act that are incorporated by reference in this Registration Statement.
- (2) That, for the purpose of determining any liability under the Securities Act of 1933, each 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 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 that is incorporated by reference in this Registration Statement shall be deemed to be a new registration statement relating to the securities offered herein, and the offering of such securities at that time shall be deemed to be in 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 Securities and Exchange Commission, such indemnification is against public policy as expressed in the Securities Act of 1933, 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 Securities Act of 1933 and will be governed by the final adjudication of such issue.

POWER OF ATTORNEY

The Registrant and each person whose signature appears below appoints Anthony J. Feraro and James A. Hughes as attorneys in fact with full power of substitution, severally, to execute in their respective names and on behalf of the Registrant and each such person individually and in each capacity stated below, one or more amendments (including post effective amendments) to the Registration Statement as the attorney in fact and in the premises each deems appropriate and to file any such amendment to the Registration Statement with the Securities and Exchange Commission.

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Donna S. Butler

/s/ ROBERT H. DALLAS, II

Director

February 25, 2003

Robert H. Dallas, II

/s/ SAMUEL STOTHOFF

Director

February 25, 2003

Samuel Stothoff

/s/ JAMES A. HUGHES

Executive Vice President, Chief Financial Officer,
Director (Principal Financial Officer)

February 25, 2003

James A. Hughes

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EXHIBIT INDEX

Exhibit No.

4.1*	Certificate of Incorporation of UB Newco Corp. (now known as Unity Bancorp, Inc.)
4.2**	Bylaws of the Registrant
4.3**	Form of Common Stock Certificate
4.4***	Unity Bancorp, Inc. 2002 Stock Option Plan
4.5	Form of Employee Non-Qualified Option Agreement
4.6	Form of Director Non-Qualified Option Agreement
5.1	Opinion of McCarter & English, LLP
23.1	Consent of McCarter & English, LLP (contained in Exhibit 5.1)
23.2	Consent of KPMG LLP
24.1	Power of Attorney (included on the signature page hereto)

*
Previously filed with the Securities and Exchange Commission as an Exhibit to the Current Report on Form 8 K filed on July 22, 2002 and incorporated by reference herein.

**
Previously filed with the Securities and Exchange Commission as an Exhibit to the Annual Report on Form 10 K filed on March 26, 2003 and incorporated by reference herein.

Previously filed with the Securities and Exchange Commission as an Exhibit to the Proxy Statement for the Annual Meeting of Shareholders filed on April 10, 2002 and incorporated by reference herein.

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PART II INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

POWER OF ATTORNEY

SIGNATURES

EXHIBIT INDEX