

COLONIAL BANCGROUP INC  
Form S-3ASR  
December 17, 2008  
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As filed with the Securities and Exchange Commission on December 17, 2008

Registration No. 333-

**SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

**FORM S-3**

**REGISTRATION STATEMENT**

*UNDER*

*THE SECURITIES ACT OF 1933*

**The Colonial BancGroup, Inc.**

(Exact name of registrant as specified in its charter)

Delaware  
(State or other jurisdiction of  
incorporation or organization)

100 Colonial Bank Boulevard  
Montgomery, Alabama 36117

63-0661573  
(I.R.S. Employer  
Identification Number)

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(334) 676-5000

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

**David B. Byrne, Jr.**

**The Colonial BancGroup, Inc.**

**100 Colonial Bank Boulevard**

**Montgomery, Alabama 36117**

**(334) 676-5000**

(Name, Address, including Zip Code and Telephone Number including Area Code, of Agent For Service)

*Copies of communications to:*

**Hugh C. Nickson, III**

**Jones, Walker, Waechter, Poitevent, Carrère & Denègre L.L.P.**

**100 Colonial Bank Boulevard, Suite B-101**

**Montgomery, Alabama 36117**

**(334) 834-5550**

**Approximate date of commencement of proposed sale to the public:** From time to time after the effective date of this Registration Statement.

If the only securities being registered on this form are being offered pursuant to dividend or interest reinvestment plans, please check the following box.

If any of the securities being registered on this form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, other than securities offered only in connection with dividend or reinvestment plans, please check the following box.

If this form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act of 1933, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a registration statement pursuant to General Instruction I.D. or a post-effective amendment thereto that shall become effective upon filing with the Commission pursuant to Rule 462(e) under the Securities Act, check the following box.

If this Form is a post-effective amendment to a registration statement filed pursuant to General Instruction I.D. filed to register additional securities or additional classes of securities pursuant to Rule 413(b) under the Securities Act, check the following box.

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CALCULATION OF REGISTRATION FEE

Title of each class of securities to be registered	Amount to Be Registered(1)	Proposed Maximum Offering Price per Unit	Proposed Maximum Aggregate Offering Price	Amount of Registration Fee
	(1)	(1)	(1)	(1)
Senior debt securities of The Colonial BancGroup, Inc				
Subordinated debt securities of The Colonial BancGroup, Inc				
Warrants of The Colonial BancGroup, Inc (2)				
Preferred Stock, par value \$2.50 per share, of The Colonial BancGroup, Inc (3)				
Common Stock, par value \$2.50 per share, of The Colonial BancGroup, Inc (4)				

- (1) An indeterminate aggregate initial offering price or number of the securities of each identified class is being registered as may from time to time be offered at indeterminate prices. In accordance with Rules 456(b) and 457(r), the registrant is deferring payment of all of the registration fee and will pay the registration fee subsequently in advance or on a pay-as-you-go basis. This registration statement includes an undetermined amount of securities that may be offered or sold in market-making transactions by or through affiliates of the registrant, for which no filing fee is required pursuant to Rule 457(q) under the Securities Act.
- (2) Preferred or common stock may be issued directly or upon conversion, exchange or exercise of warrants.
- (3) Preferred stock may be issued directly or upon conversion, exchange or exercise of debt securities.
- (4) Common stock may be issued directly or upon conversion, exchange or exercise of debt securities or preferred stock.

**Explanatory Note: This Automatic Shelf Registration Statement on Form S-3 replaces and supersedes the Automatic Shelf Registration Statement filed on Form S-3 with the Securities and Exchange Commission by The Colonial BancGroup, Inc. on April 18, 2008 (file no. 333-150325).**

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**PROSPECTUS**

**THE COLONIAL BANGROUP, INC.**

Senior Debt Securities

Subordinated Debt Securities

Warrants

Preferred Stock

Common Stock

The securities listed above may be offered and sold, from time to time and/or one or more selling security holders to be identified in the future. We will provide the specific terms of these securities in supplements to this prospectus. You should read this prospectus and the applicable prospectus supplement carefully before you invest in the securities described in the applicable prospectus supplement. Our common stock is listed on the New York Stock Exchange and trades under the ticker symbol CNB .

We may offer and sell these securities to or through one or more underwriters, dealers or agents, or directly to purchasers, on a continuous or delayed basis.

This prospectus may not be used to sell securities unless accompanied by the applicable prospectus supplement.

These securities will be our equity securities or unsecured obligations and are not savings accounts, deposits or other obligations of any bank or savings association, and will not be insured by the Federal Deposit Insurance Corporation, the bank insurance fund or any other governmental agency or instrumentality.

**Neither the Securities and Exchange Commission, or SEC, nor any other regulatory body has approved or disapproved of these securities or passed upon the accuracy or adequacy of this prospectus. Any representation to the contrary is a criminal offense.**

Prospectus dated December 17, 2008.

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Unless indicated elsewhere in this prospectus or the context requires otherwise, reference to (1) BancGroup, we, us, our, or similar terms are to The Colonial BancGroup, Inc.

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### **ABOUT THIS PROSPECTUS**

This prospectus is part of a registration statement that we filed with the SEC using a shelf registration process. Under this shelf registration statement, BancGroup may offer and sell from time to time any combination of senior debt securities, subordinated debt securities, warrants, preferred stock, and common stock in one or more offerings up to an indeterminate total dollar amount. The debt securities and preferred stock, may be convertible into or exercisable or exchangeable for common or preferred stock or other securities of us, or debt or equity securities of one or more other entities.

We may use this prospectus in the initial sale of the securities listed above.

Each time we offer and sell securities, we will provide a prospectus supplement that will contain specific information about the terms of that offering. The prospectus supplement may also add, update or change information contained in this prospectus. You should read this prospectus and the applicable prospectus supplement together with the additional information described under the heading **Where you Can Find More Information**.

The registration statement that contains this prospectus, including the exhibits to the registration statement, contains additional information about us and the securities offered under this prospectus. The registration statement can be read at the SEC web site or at the SEC offices mentioned under the heading **Where you Can Find More Information**.

### **WHERE YOU CAN FIND MORE INFORMATION**

We file annual, quarterly and current reports, proxy statements and other information with the SEC. You may read and copy any document we file at the SEC's public reference room at 100 F Street, NE, Room 1580, Washington, D.C. 20549. Please call the SEC at 1-800-SEC-0330 for further information on the public reference room. Our SEC filings are also available to the public at the SEC's web site at <http://www.sec.gov>. The address of the SEC's web site is provided for the information of prospective investors and not as an active link. You can also inspect reports, proxy statements and other information about us at the offices of the New York Stock Exchange, 20 Broad Street, New York, New York.

The SEC allows us to incorporate by reference into this prospectus the information in documents we file with the SEC, which means that we can disclose important information to you by referring you to those documents. The information incorporated by reference is considered to be a part of this prospectus and should be read with the same care. When we update the information contained in documents that have been incorporated by reference, by making future filings with the SEC, the information incorporated by reference in this prospectus is considered to be automatically updated and superseded. In other words, in all cases, if you are considering whether to rely on information contained in this prospectus or information incorporated by reference into this prospectus, you should rely on the information contained in the document that was filed later. We incorporate by reference the documents listed below and any additional documents we file with the SEC in the future under Sections 13(a), 13(c), 14, or 15(d) of the Securities Exchange Act of 1934 until our offering is completed (other than information in such additional documents that are deemed, under SEC rules, not to have been filed):

Annual Report on Form 10-K for the year ended December 31, 2007;

Quarterly Reports on Form 10-Q for the quarters ended March 31, 2008, June 30, 2008 and September 30, 2008;

Current Report on Form 8-K filed on December 2, 2008 and

The description of our common stock set forth in our registration statement on Form 8-A filed with the SEC on November 22, 1994.

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You may request a copy of these filings, at no cost, by writing to or telephoning us at the following address:

The Colonial BancGroup, Inc.

Attention: Investor Relations

100 Colonial Bank Boulevard

Montgomery, Alabama 36117

(334) 676-5000

**Table of Contents****RATIO OF EARNINGS TO FIXED CHARGES AND PREFERRED STOCK DIVIDENDS**

Our consolidated ratio of earnings to fixed charges for the nine months ended September 30, 2008 and for each of the five fiscal years ended December 31, 2003 through 2007 are as follows:

	Nine Months Ended September 30,		Year Ended December 31,			
	2008	2007	2006	2005	2004	2003
Income before income taxes	\$ (98,627)	\$ 268,486	\$ 402,746	\$ 343,105	\$ 261,806	\$ 220,396
Fixed charges:						
Interest expense	544,897	795,111	700,318	452,833	280,769	285,660
REIT Preferred Dividends	28,512	19,268				
1/3 Rent expense	12,295	14,595	13,083	12,516	10,656	9,935
Total fixed charges	585,704	828,974	713,401	465,349	291,425	295,595
Adjusted earnings	\$ 487,077	\$ 1,097,460	\$ 1,116,147	\$ 808,454	\$ 553,231	\$ 515,991
Ratio of earnings to fixed charges	0.83x*	1.32x	1.56x	1.74x	1.90x	1.75x
Interest on deposits	\$ 375,314	\$ 554,833	\$ 469,289	\$ 273,533	\$ 148,136	\$ 142,312
Ratio of earnings to fixed charges excluding interest on deposits	0.53x*	1.98x	2.65x	2.79x	2.83x	2.44x

\* the ratio is less than 1.00x because of the pretax loss of \$98.6 million.

The fixed charges above exclude interest accrued for uncertain tax positions because each such interest is classified as income tax expense in the Company's Consolidated Statements of Income.

For purposes of computing these ratios, earnings represent income before income taxes and fixed charges. Fixed charges, excluding interest on deposits, include interest (other than on deposits), whether expensed or capitalized, and that portion of rental expense (generally one-third) deemed representative of the interest factor. Fixed charges, including interest on deposits, consist of the foregoing items plus interest on deposits.

**USE OF PROCEEDS**

We intend to use the net proceeds from the sales of the securities in the manner and for the purposes set forth in the applicable prospectus supplement.

**PLAN OF DISTRIBUTION**

We may offer and sell the securities from time to time as follows:

through agents;

to or through dealers or underwriters;

directly to other purchasers; or



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through a combination of any of these methods of sale.

In addition, the securities may be issued as a dividend or distribution or in a subscription rights offering to existing holders of securities. In some cases, we may also repurchase securities and reoffer them to the public by one or more of the methods described above.

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The securities we distribute by any of these methods may be sold to the public, in one or more transactions, either:

at a fixed price or prices, which may be changed;

at market prices prevailing at the time of sale;

at prices related to prevailing market prices; or

at negotiated prices.

We may solicit offers to purchase securities directly from the public from time to time. We may also designate agents from time to time to solicit offers to purchase securities from the public on our behalf. The prospectus supplement relating to any particular offering of securities will name any agents designated to solicit offers, and will include information about any commissions we may pay the agents, in that offering. Agents may be deemed to be underwriters as that term is defined in the Securities Act.

From time to time, we may sell securities to one or more dealers as principals. The dealers, who may be deemed to be underwriters as that term is defined in the Securities Act, may then resell those securities to the public.

We may sell securities from time to time to one or more underwriters, who would purchase the securities as principal for resale to the public, either on a firm-commitment or best-efforts basis. If we sell securities to underwriters, we will execute an underwriting agreement with them at the time of sale and will name them in the applicable prospectus supplement. In connection with those sales, underwriters may be deemed to have received compensation from us in the form of underwriting discounts or commissions and may also receive commissions from purchasers of the securities for whom they may act as agents. Underwriters may resell the securities to or through dealers, and those dealers may receive compensation in the form of discounts, concessions or commissions from the underwriters and/or commissions from purchasers for whom they may act as agents. The applicable prospectus supplement will include information about any underwriting compensation we pay to underwriters, and any discounts, concessions or commissions underwriters allow to participating dealers, in connection with an offering of securities.

Underwriters, dealers, agents and other persons may be entitled, under agreements that they may enter into with us, to indemnification by us against civil liabilities, including liabilities under the Securities Act.

Underwriters may engage in stabilizing and syndicate covering transactions in accordance with Rule 104 of Regulation M. Rule 104 permits stabilizing bids to purchase the securities being offered as long as the stabilizing bids do not exceed a specified maximum. Underwriters may over-allot the offered securities in connection with the offering, thus creating a short position in their account. Syndicate covering transactions involve purchases of the offered securities by underwriters in the open market after the distribution has been completed in order to cover syndicate short positions. Stabilizing and syndicate covering transactions may cause the price of the offered securities to be higher than it would otherwise be in the absence of these transactions. These transactions, if commenced, may be discontinued at any time.

The underwriters, dealers and agents, as well as their associates, may be customers of or lenders to, and may engage in transactions with and perform services for, us and our subsidiaries in the ordinary course of business.

Colonial Brokerage, Inc., one of our subsidiaries, may act as a member of the selling group for an offering. Accordingly, any offering in which Colonial Brokerage, Inc. is a member of the selling group will conform with the requirements set forth in Rule 2720 of the Conduct Rules of FINRA. The maximum commission or discount to be received by any FINRA member or independent broker/dealer in any particular offering of securities will not exceed 8% of the aggregate principal amount of the securities offered pursuant to this prospectus.

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**DESCRIPTION OF THE SENIOR DEBT SECURITIES**

The following description of the senior debt securities sets forth the material terms and provisions of the senior debt securities to which any prospectus supplement may relate. The senior debt securities are to be issued under a senior indenture, referred to in this prospectus as the senior indenture, between BancGroup and The Bank of New York Mellon Trust Company, N.A., as trustee, the form of which is included as an exhibit to the registration statement of which this prospectus forms a part. The specific terms applicable to a particular issuance of senior debt securities and any variations from the terms set forth below will be set forth in the applicable prospectus supplement.

The following is a summary of the material terms and provisions of the senior indenture and the senior debt securities. You should refer to the senior indenture and the senior debt securities for complete information regarding the terms and provisions of the senior indenture and the senior debt securities.

**General**

The senior indenture does not limit the aggregate principal amount of senior debt securities which we may issue. We may issue senior debt securities under the senior indenture from time to time in one or more series. The senior indenture does not limit the amount of other indebtedness, other than secured indebtedness which we may issue.

Unless otherwise set forth in the applicable prospectus supplement, the senior debt securities will be our unsecured and unsubordinated obligations and will rank equally with all of our other unsecured and unsubordinated indebtedness.

We are a bank holding company that conducts substantially all of our operations through subsidiaries. As a result, claims of the holders of the debt securities will generally have a junior position to claims of creditors of our subsidiaries, except to the extent that BancGroup may be recognized, and receive payment, as a creditor of those subsidiaries. Claims of our subsidiaries' creditors other than BancGroup include substantial amounts of long-term debt, deposit liabilities, federal funds purchased, securities sold under repurchase agreements, commercial paper, and other short-term borrowings.

The applicable prospectus supplement will describe the following terms of the offered senior debt securities:

the title of the series;

any limit on the aggregate principal amount;

the principal payment dates;

the interest rates, if any, or the method by which the interest rates will be determined, including, if applicable, any remarketing option or similar option. This interest rate may be zero in the case of senior debt securities issued at an issue price representing a discount from the principal amount payable at maturity;

the date or dates from which interest, if any, will accrue or the method by which the date or dates will be determined;

the interest payment dates and regular record dates;

whether and under what circumstances we will pay additional amounts because of taxes or governmental charges that might be imposed on holders of the senior debt securities and, if so, whether and on what terms we will have the option to redeem the senior debt securities in lieu of paying these additional amounts;



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the place or places where the principal of, any premium or interest on or any additional amounts with respect to the senior debt securities will be payable, where any of the senior debt securities may be surrendered for registration of transfer or exchange, and where any of the senior debt securities may be surrendered for conversion or exchange;

whether any of the senior debt securities are to be redeemable at our option and, if so, the date or dates on which, the period or periods within which, the price or prices at which and the other terms and conditions upon which they may be redeemed, in whole or in part, at our option;

whether we will be obligated to redeem or purchase any of the senior debt securities pursuant to any sinking fund or analogous provision or at your option and, if so, the date or dates and other terms and conditions on which the senior debt securities will be redeemed or purchased pursuant to this obligation, and any provisions for the remarketing of the senior debt securities redeemed or purchased;

if other than denominations of \$1,000 and any integral multiple of \$1,000, the denominations in which any senior debt securities will be issuable;

whether the senior debt securities will be convertible into other securities of BancGroup and/or exchangeable for securities of BancGroup or other issuers and, if so, the terms and conditions upon which the senior debt securities will be convertible or exchangeable;

if other than the principal amount, the portion of the principal amount, or the method by which this portion will be determined, of the senior debt securities that will be payable upon declaration of acceleration of the maturity of the senior debt securities;

if other than United States dollars, the currency of payment in which the principal of, any premium or interest on or any additional amounts on the senior debt securities will be payable;

whether the principal of, any premium or interest on or any additional amounts on the senior debt securities will be payable, at our election or you, in a currency other than that in which the senior debt securities are stated to be payable and the dates and other terms upon which this election may be made;

any index, formula or other method used to determine the amount of payments of principal of, any premium or interest on or any additional amounts on the senior debt securities;

whether the senior debt securities are to be issued in the form of one or more global securities and, if so, the identity of the depository for the global security or securities;

whether the senior debt securities are senior or subordinated and, if subordinated, the applicable subordination provisions;

any deletions from, modifications of or additions to the events of default or covenants with respect to the senior debt securities;

whether the provisions described below under **Defeasance and Covenant Defeasance** will be applicable to the senior debt securities;

whether any of the senior debt securities are to be issued upon the exercise of warrants, and the time, manner and place for the senior debt securities to be authenticated and delivered; and

any other terms of the senior debt securities and any other deletions from or modifications or additions to the senior indenture in respect of the senior debt securities.

We will have the ability under the senior indenture to reopen a previously issued series of senior debt securities and issue additional senior debt securities of that series or establish additional terms of that series. We are also permitted to issue senior debt securities with the same terms as previously issued senior debt securities.

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Unless otherwise set forth in the applicable prospectus supplement, principal of, premium and interest on and additional amounts, if any, on the senior debt securities will initially be payable at the corporate trust office of the trustee, or any other office or agency designated by us for this purpose. Interest on senior debt securities issued:

may be paid by check mailed to the persons entitled to the payments at their addresses appearing on the security register or by transfer to an account maintained by the payee with a bank located in the United States; and

will be payable on any interest payment date to the persons in whose names the senior debt securities are registered at the close of business on the regular record date with respect to the interest payment date.

We will designate the initial paying agents, which will be named in the applicable prospectus supplement, and may, at any time, designate additional paying agents or rescind the designation of any paying agent or approve a change in the office through which any paying agent acts. However, we are required to maintain a paying agent in each place where the principal of, any premium or interest on or any additional amounts with respect to the senior debt securities are payable.

Unless otherwise set forth in the applicable prospectus supplement, you may present the senior debt securities for transfer, duly endorsed or accompanied by a written instrument of transfer if so required by us or the security registrar, or exchange for other senior debt securities of the same series containing identical terms and provisions, in any authorized denominations, and of a like aggregate principal amount, in each case at the office or agency maintained by us for these purposes. This office will initially be the corporate trust office of the trustee. Any transfer or exchange will be made without service charge, although we may require payment of a sum sufficient to cover any tax or other governmental charge and any other expenses then payable. We are not required to:

issue, register the transfer of, or exchange, senior debt securities during a period beginning at the opening of business 15 days before the day of mailing of a notice of redemption of any senior debt securities and ending at the close of business on the day of mailing; or

register the transfer of or exchange any senior debt security selected for redemption, in whole or in part, except the unredeemed portion of any senior debt security being redeemed in part.

We have appointed the trustee as security registrar. The security registrar and any transfer agent initially designated by us will be named in the applicable prospectus supplement. At any time, we may designate additional transfer agents or rescind the designation of any transfer agent or approve a change in the office through which any transfer agent acts. However, we are required to maintain a transfer agent in each place where the principal of, any premium or interest on or any additional amounts with respect to the senior debt securities are payable.

Unless otherwise set forth in the applicable prospectus supplement, we will only issue the senior debt securities in fully registered form without coupons in minimum denominations of \$1,000 and any integral multiple of \$1,000. If the senior debt securities are issued in bearer form, any restrictions and considerations, including offering restrictions and U.S. federal income tax considerations applicable to, and to payment on and transfer and exchange of, these securities will be described in the applicable prospectus supplement.

The senior debt securities may be issued as original issue discount securities which means that they will bear no interest or bear interest at a rate which, at the time of issuance, is below market rates. Senior debt securities issued as original issue discount securities will be sold at a substantial discount below their principal amount. U.S. federal income tax and other considerations applicable to original issue discount securities will be described in the applicable prospectus supplement.

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If the purchase price, or the principal of, any premium or interest on or any additional amounts with respect to, any senior debt securities is payable, or if any senior debt securities are denominated, in one or more foreign currencies or currency units, the restrictions, elections, U.S. federal income tax considerations, specific terms and other information will be set forth in the applicable prospectus supplement.

Unless otherwise set forth in the applicable prospectus supplement, other than as described below under **Covenants** **Limitation on Liens on the Stock of Designated Subsidiaries**, the senior indenture does not contain any provisions that would limit our ability to incur indebtedness or that would afford holders of senior debt securities protection in the event of a sudden and significant decline in our credit quality or a takeover, recapitalization or highly leveraged or similar transaction involving us. Accordingly, we could, in the future, enter into transactions that could increase the amount of our outstanding indebtedness that could affect our capital structure or credit rating.

## **Conversion and Exchange**

The terms, if any, on which senior debt securities are convertible into or exchangeable for, either mandatorily or at your or our option, shares of our common stock, our preferred shares or other securities, whether or not issued by us, property or cash, or a combination of any of these, will be set forth in the applicable prospectus supplement.

## **Global Securities**

The senior debt securities may be issued, in whole or in part, in the form of one or more global securities that will be deposited with, or on behalf of, a depository identified in the applicable prospectus supplement and registered in the name of the depository or its nominee. Interests in any global senior debt security will be shown on, and transfers of the senior debt securities will be effected only through, records maintained by the depository and its participants as described below.

The specific terms of the depository arrangement will be described in the applicable prospectus supplement.

## **Covenants**

For purposes of the covenants described below:

The term **Designated Banking Subsidiary** means each of:

each subsidiary of BancGroup that is a depository institution engaged primarily in the commercial banking business the consolidated assets of which constitute 10% or more of BancGroup's Consolidated Banking Assets;

any other subsidiary depository institution designated as a **Designated Banking Subsidiary** by our board of directors; and

any subsidiary of BancGroup that owns any voting shares or certain other rights to acquire voting shares of any **Designated Banking Subsidiary** and their respective successors and assigns; provided any such successor or assignee is a subsidiary of BancGroup.

**Consolidated Banking Assets** means the aggregate of the assets of all of our banking subsidiaries.

**Non-Voting Preferred Stock** means preferred stock that is not entitled in the ordinary course to vote for the election of directors. Preferred stock shall be treated as **Non-Voting Preferred Stock** notwithstanding that the holders of such stock are granted the right to vote for the election of directors or to appoint directors upon the happening of certain events outside the ordinary course.



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***Limitation on Liens on the Stock of Designated Banking Subsidiaries***

Under the senior indenture, we will covenant that, so long as the senior debt securities of a series are outstanding, we will not, nor will we permit any subsidiary to create, incur, assume, guarantee or otherwise permit to exist any indebtedness secured by any security interest on any shares of capital stock of any Designated Banking Subsidiary, unless we concurrently provide that the senior debt securities of such series and, if we elect, any other of our indebtedness that is not subordinate to the senior debt securities of such series and with respect to which the governing instruments require, or pursuant to which we are otherwise obligated, to provide such security, will be secured equally with the indebtedness for at least the time period the other indebtedness is so secured.

***Limitation on Disposition of Designated Banking Subsidiaries' Stock***

The senior indenture also provides that, so long as the senior debt securities of a series are outstanding and except in a transaction otherwise permitted under the senior indenture, we will not issue, sell, assign, transfer or otherwise dispose of any shares of, securities convertible into, or warrants, rights or options to subscribe for or purchase shares of, capital stock, other than director's qualifying shares and Non-Voting Preferred Stock, of any Designated Banking Subsidiary unless (i) such issuance, sale, assignment, transfer or other disposition is for at least fair value (as determined in good faith by our board of directors) and (ii) we will own, directly or indirectly, at least 80% of the shares of capital stock of such Designated Banking Subsidiary, other than director's qualifying shares and Non-Voting Preferred Stock. Similarly, we will not permit any Designated Banking Subsidiary to issue these types of securities, warrants, rights or options, other than director's qualifying shares and Non-Voting Preferred Stock, of any Designated Banking Subsidiary, if, after giving effect to the transaction and the issuance of the maximum number of shares issuable upon the conversion or exercise of all the convertible securities, warrants, rights or options, we would own, directly or indirectly, less than 80% of the shares of capital stock of the Designated Banking Subsidiary, other than director's qualifying shares and Non-Voting Preferred Stock.

These restrictions do not apply to:

issuances, sales, assignments, transfers or other dispositions to Bancgroup or one or more of its wholly owned subsidiaries;

transactions required by any law, or any regulation or order of any governmental authority;

transactions required as a condition imposed by any governmental authority to the acquisition by BancGroup, directly or indirectly, or any other entity if thereafter:

BancGroup would own, directly or indirectly, at least 80% of the shares of capital stock, other than director's qualifying shares and Non-Voting Preferred Stock, of such other entity, and

our Consolidated Banking Assets would be at least equal to our Consolidated Banking Assets prior thereto, and the other entity is designated a Designated Banking Subsidiary under the senior indenture by our board of directors; and

sales, assignments, transfers or other dispositions of all, but not less than all, of the stock of a Designated Banking Subsidiary (i) for fair value, as determined in good faith by our board of directors and (ii) where the proceeds are invested within 180 days after such transaction in any one or more other Designated Banking Subsidiaries.

The covenant described in the preceding sentence also does not apply to any transaction of the type described below under Merger, Consolidation, Sale, Lease or Conveyance of BancGroup.

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***Limitations on Disposition of Stock of Designated Subsidiaries***

The senior indenture also provides that, so long as any senior debt securities are outstanding and except in a transaction otherwise governed by the senior indenture, we will not issue, sell, assign, transfer or otherwise dispose of any shares of securities convertible into, or warrants, rights or options to subscribe for or purchase shares of, capital stock, other than preferred stock having no voting rights, of any designated subsidiary. Similarly, we will not permit any designated subsidiary to issue, other than to us, these types of securities, warrants, rights or options, other than director's qualifying shares and preferred stock having no voting rights, of any designated subsidiary, if, after giving effect to the transaction and the issuance of the maximum number of shares issuable upon the conversion or exercise of all the convertible securities, warrants, rights or options, we would own, directly or indirectly, less than 80% of the shares of capital stock of the designated subsidiary, other than preferred stock having no voting rights.

However, we may issue, sell, assign, transfer or otherwise dispose of securities if the consideration is at least a fair market value as determined by our board or if required by law or regulation. We may also merge or consolidate any designated subsidiary into or with another direct or indirect subsidiary, the shares of capital stock of which we owns at least 80% or, subject to the provisions described under *Merger, Consolidation, Sale Lease or Conveyance of a Designated Banking Subsidiary* below, sell, transfer or otherwise dispose of the entire capital stock of any designated subsidiary at one time if the consideration is at least fair market value as determined by our board.

***Merger, Consolidation, Sale, Lease or Conveyance of a Designated Banking Subsidiary***

We will not permit any of our Designated Banking Subsidiaries to:

merge or consolidate with or into any corporation or other person (other than us or another direct or indirect wholly-owned subsidiary of us), unless the Designated Banking Subsidiary is the surviving entity, or unless we will own, directly or indirectly, at least 80% of the shares of capital stock of such corporation or other person, other than director's qualifying shares and Non-Voting Preferred Stock; or

lease, sell, or convey all or substantially all of its properties and assets to any corporation or other person (other than to us or one of our direct or indirect wholly-owned subsidiaries), unless we will own, directly or indirectly, at least 80% of the shares of capital stock of that corporation or other person, other than director's qualifying shares and Non-Voting Preferred Stock.

However, we may agree to any such merger or consolidation or sale, lease, assignment or transfer of properties and assets if:

it is required by law or

it is required as a condition imposed by any law or any rule, regulation or order of any governmental agency or authority to the acquisition of another entity, if thereafter,

we would own, directly or indirectly, at least 80% of the shares of capital stock of such other entity, other than director's qualifying shares and Non-Voting Preferred Stock, and

our Consolidated Banking Assets would be at least equal to our Consolidated Banking Assets prior thereto, and

the other entity is designated a Designated Banking Subsidiary under the senior indenture our board of directors.

The senior indenture does not restrict the granting by any Designated Banking Subsidiary of mortgages, pledges, security interest or similar rights in respect of such Designated Banking Subsidiary's assets.



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***Merger, Consolidation, Sale, Lease or Conveyance of BancGroup***

The senior indenture provides that we may not:

consolidate with or merge into any person or convey, transfer or lease our properties and assets as an entirety or substantially as an entirety to any person; or

permit any person to consolidate with or merge into us, or convey, transfer or lease our properties and assets as an entirety or substantially as an entirety to us unless:

the person is a corporation organized and existing under the laws of the United States of America, any state of the United States or the District of Columbia;

the surviving entity expressly assumes the payment of all of the senior debt securities and the performance of our obligations under the senior indenture and the senior debt securities;

the surviving entity provides for conversion or exchange rights in accordance with the provisions of the senior debt securities of any series that are convertible or exchangeable into shares of our common stock or other securities ; and

immediately after giving effect to the transaction and treating any indebtedness which becomes an obligation of BancGroup or a subsidiary as a result of the transaction as having been incurred by BancGroup or the subsidiary at the time of the transaction, no event of default, and no event which after notice or lapse of time or both would become an event of default, will have happened and be continuing.

**Events of Default**

Each of the following events will constitute an event of default under the senior indenture, whether it be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body:

default in the payment of any interest on any senior debt security when the interest becomes due and payable, and continuance of this default for a period of 30 days;

default in the payment of the principal