

BERKSHIRE BANCORP INC /DE/

Form 10-Q

November 14, 2008

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

**FORM 10-Q**

(Mark One)

☒ **QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15 (d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the quarterly period ended September 30, 2008

or

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15 (d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission file number: 0-13649

**BERKSHIRE BANCORP INC.**

(Exact Name of Registrant as Specified in Its Charter)

**Delaware**

**94-2563513**

(State or Other Jurisdiction of  
Incorporation or Organization)

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

**160 Broadway, New York, New York**

**10038**

(Address of Principal Executive Offices)

(Zip Code)

Registrant's Telephone Number, Including Area Code: **(212) 791-5362**

**N/A**

(Former Name, Former Address and Former Fiscal Year, if Changed Since Last Report)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

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

Large accelerated filer ☐

Accelerated filer ☐

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Non-accelerated filer ☐  
(Do not check if a smaller  
reporting company)

Smaller reporting company ☒

Indicate by check mark whether the Registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act).  
Yes ☐ No ☒

As of November 13, 2008, there were 7,054,183 outstanding shares of the issuer's Common Stock, \$.10 par value.

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BERKSHIRE BANCORP INC. AND SUBSIDIARIES

FORWARD-LOOKING STATEMENTS

**Forward-Looking Statements.** *Statements in this Quarterly Report on Form 10-Q that are not based on historical fact may be forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. Words such as believe, may, will, expect, estimate, anticipate, continue or similar terms identify forward-looking statements. A wide variety of factors could cause the actual results and experiences of Berkshire Bancorp Inc. (the Company) to differ materially from the results expressed or implied by the Company's forward-looking statements. Some of the risks and uncertainties that may affect operations, performance, results of the Company's business, the interest rate sensitivity of its assets and liabilities, and the adequacy of its loan loss allowance and the Berkshire Bank's ability to continue its status as well capitalized, include, but are not limited to: (i) deterioration in local, regional, national or global economic conditions which could result, among other things, in an increase in loan delinquencies, a decrease in property values, or a change in the housing turnover rate; (ii) changes in market interest rates or changes in the speed at which market interest rates change; (iii) changes in laws and regulations affecting the financial services industry; (iv) changes in competition; (v) changes in consumer preferences, (vi) changes in banking technology; (vii) ability to maintain key members of management, (viii) possible disruptions in the Company's operations at its banking facilities, (ix) cost of compliance with new corporate governance requirements, and other factors referred to in this Quarterly Report and in Item 1A, Risk Factors, of the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2007.*

*Certain information customarily disclosed by financial institutions, such as estimates of interest rate sensitivity and the adequacy of the loan loss allowance, are inherently forward-looking statements because, by their nature, they represent attempts to estimate what will occur in the future.*

*The Company cautions readers not to place undue reliance upon any forward-looking statement contained in this Quarterly Report. Forward-looking statements speak only as of the date they were made and the Company assumes no obligation to update or revise any such statements upon any change in applicable circumstances.*

**BERKSHIRE BANCORP INC. AND SUBSIDIARIES**  
**QUARTERLY REPORT ON FORM 10-Q**

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**BERKSHIRE BANCORP INC. AND SUBSIDIARIES**  
**CONSOLIDATED BALANCE SHEETS**  
(Dollars in Thousands)  
(unaudited)

	September 30, 2008	December 31, 2007
<b>ASSETS</b>		
Cash and due from banks	\$ 6,936	\$ 8,614
Interest bearing deposits	58,061	7,579
Federal funds sold	39,500	31,000
	<hr/>	<hr/>
Total cash and cash equivalents	104,497	47,193
Investment Securities:		
Available-for-sale	298,563	598,961
Held-to-maturity, fair value of \$382 in 2008 and \$405 in 2007	379	395
	<hr/>	<hr/>
Total investment securities	298,942	599,356
Loans, net of unearned income	476,496	434,785
Less: allowance for loan losses	(5,207)	(4,183)
	<hr/>	<hr/>
Net loans	471,289	430,602
Accrued interest receivable	6,645	8,602
Premises and equipment, net	8,965	9,362
Goodwill, net	18,549	18,549
Other assets	31,738	6,854
	<hr/>	<hr/>
Total assets	\$ 940,625	\$ 1,120,518
	<hr/>	<hr/>
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
<b>Deposits:</b>		
Non-interest bearing	\$ 48,739	\$ 53,805
Interest bearing	735,956	799,410
	<hr/>	<hr/>
Total deposits	784,695	853,215
Securities sold under agreements to repurchase	70,972	76,842
Long term borrowings	47,314	31,607
Subordinated debt	22,681	22,681
Accrued interest payable	4,603	9,089
Other liabilities	3,408	2,826
	<hr/>	<hr/>
Total liabilities	933,673	996,260
	<hr/>	<hr/>
<b>Stockholders' equity</b>		
Preferred stock - \$.01 Par value:		
2,000,000 shares authorized - none issued		
Common stock - \$.10 par value Authorized 10,000,000		
shares Issued 7,698,285 shares Outstanding September 30, 2008, 7,054,183 shares December 31, 2007, 7,054,183 shares	770	770
Additional paid-in capital	90,986	90,986
Retained earnings (accumulated deficit)	(41,754)	42,352
Accumulated other comprehensive loss, net	(36,639)	(3,439)
Treasury Stock - at cost September 30, 2008, 644,102 shares December 31, 2007, 644,102 shares	(6,411)	(6,411)
	<hr/>	<hr/>
Total stockholders' equity	6,952	124,258
	<hr/>	<hr/>

\$	940,625	\$	1,120,518
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**The accompanying notes are an integral part of these statements**

**BERKSHIRE BANCORP INC. AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENTS OF INCOME**  
(In Thousands, Except Per Share Data)  
(unaudited)

	For The Three Months Ended September 30,		For The Nine Months Ended September 30,	
	2008	2007	2008	2007
<b>INTEREST INCOME</b>				
Loans	\$ 8,296	\$ 7,363	\$ 24,597	\$ 21,841
Investment securities	5,793	7,086	20,914	19,337
Federal funds sold and interest bearing deposits	433	208	857	1,270
Total interest income	14,522	14,657	46,368	42,448
<b>INTEREST EXPENSE</b>				
Deposits	5,623	8,281	19,711	23,550
Securities sold under agreements to repurchase	636	462	1,750	1,328
Long-term borrowings and subordinated debt	840	939	2,450	2,845
Total interest expense	7,099	9,682	23,911	27,723
Net interest income	7,423	4,975	22,457	14,725
PROVISION FOR LOAN LOSSES	150	75	954	225
Net interest income after provision for loan losses	7,273	4,900	21,503	14,500
<b>NON-INTEREST INCOME</b>				
Service charges on deposits	149	148	442	512
Investment securities gains (losses)	(99)	(39)	(21)	86
Other income	217	236	689	653
Total non-interest income	267	345	1,110	1,251
<b>NON-INTEREST EXPENSE</b>				
Salaries and employee benefits	2,395	2,211	7,211	6,587
Net occupancy expense	521	603	1,566	1,519
Equipment expense	97	97	289	297
FDIC assessment	128	23	366	63
Data processing expense	118	111	339	306
Other than temporary impairment charges on securities	94,346		94,346	
Other	847	519	2,222	1,771
Total non-interest expense	98,452	3,564	106,339	10,543
Income (loss) before provision for taxes	(90,912)	1,681	(83,726)	5,208
Provision (benefit) for income taxes	(2,218)	406	(323)	1,813
Net income (loss)	\$ (88,694)	\$ 1,275	\$ (83,403)	\$ 3,395
<b>Net income (loss) per share:</b>				
Basic	\$ (12.57)	\$ .18	\$ (11.82)	\$ .49

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Diluted		\$ .18		\$ .49
Number of shares used to compute net income (loss) per share:				
Basic	7,054	7,051	7,054	6,965
Diluted	7,054	7,052	7,054	6,989
Dividends per share	\$	\$	\$ .10	\$ .09

The accompanying notes are an integral part of these statements.



**BERKSHIRE BANCORP INC. AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENT OF STOCKHOLDERS' EQUITY**

**For The Nine Months Ended September 30, 2008 and 2007**

(In Thousands)

(unaudited)

	<u>Common Shares</u>	<u>Stock Par value</u>	<u>Additional paid-in capital</u>	<u>Accumulated other comprehensive loss, net</u>	<u>Retained earnings</u>	<u>Treasury stock</u>	<u>Comprehensive loss</u>	<u>Total stockholders equity</u>
<b>Balance at January 1, 2007</b>	7,698	\$ 770	\$ 90,659	\$ (4,772)	\$ 37,285	\$ (8,165)		\$ 115,777
Adoption of FIN 48					965			965
Adjusted balance at January 1, 2007					38,250			116,742
Net income					3,395		3,395	3,395
Exercise of stock options			306			1,754		2,060
Other comprehensive loss net of reclassification adjustment and taxes				(350)			(350)	(350)
Comprehensive income loss							\$ 3,045	
Cash dividends					(620)			(620)
<b>Balance at September 30, 2007</b>	7,698	\$ 770	\$ 90,965	\$ (5,122)	\$ 41,025	\$ (6,411)		\$ 121,227
<b>Balance at January 1, 2008</b>	7,698	\$ 770	\$ 90,986	\$ (3,439)	\$ 42,352	\$ (6,411)		\$ 124,258
Net (loss)					(83,403)		(83,403)	(83,403)
Other comprehensive loss net of reclassification adjustment and taxes				(33,200)			(33,200)	(33,200)
Comprehensive loss							\$ (116,603)	
Cash dividends					(703)			(703)
<b>Balance at September 30, 2008</b>	7,698	\$ 770	\$ 90,986	\$ (36,639)	\$ (41,754)	\$ (6,411)		\$ 6,952

The accompanying notes are an integral part of this statement.

**BERKSHIRE BANCORP INC. AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENTS OF CASH FLOWS**  
(in thousands)  
(unaudited)

	For The Nine Months Ended September 30,	
	2008	2007
Cash flows from operating activities:		
Net income (loss)	\$ (83,403)	\$ 3,395
Adjustments to reconcile net income (loss) to net cash provided by (used in) operating activities:		
Realized losses (gains) on investment securities	21	(86)
Other than temporary impairment charges on securities	94,346	
Net (accretion) of premiums of investment securities	(178)	(1,195)
Depreciation and amortization	463	551
Provision for loan losses	954	225
Decrease (increase) in accrued interest receivable	1,957	(738)
(Increase) in other assets	(24,884)	(969)
(Decrease) in accrued interest payable and other liabilities	(3,904)	(2,000)
Net cash used in operating activities	(14,628)	(817)
Cash flows from investing activities:		
Investment securities available for sale		
Purchases	(2,910,325)	(1,175,702)
Sales, maturities and calls	3,083,334	1,095,769
Investment securities held to maturity		
Maturities	16	88
Net increase in loans	(41,641)	(25,843)
Acquisition of premises and equipment	(66)	(747)
Net cash provided by (used in) investing activities	131,318	(106,435)

**BERKSHIRE BANCORP INC. AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENTS OF CASH FLOWS**  
(in thousands)  
(unaudited)

	For The Nine Months Ended September 30,	
	2008	2007
Cash flows from financing activities:		
Net (decrease) increase in non interest bearing deposits	(5,066)	1,126
Net (decrease) increase in interest bearing deposits	(63,454)	138,900
Decrease in securities sold under agreements to repurchase	(5,870)	(20,741)
Proceeds from long term debt	25,000	16,000
Repayment of long term debt	(9,293)	(20,328)
Proceeds from exercise of common stock options		2,060
Dividends paid	(703)	(620)
Net cash (used in) provided by financing activities	(59,386)	116,397
Net increase in cash and cash equivalents	57,304	9,145
Cash and cash equivalents - beginning of period	47,193	24,311
Cash and cash equivalents - end of period	\$ 104,497	\$ 33,456
Supplemental disclosure of cash flow information:		
Cash used to pay interest	\$ 28,397	\$ 27,547
Cash used to pay taxes, net of refunds	\$ 1,790	\$ 2,945

**The accompanying notes are an integral part of these statements.**

**BERKSHIRE BANCORP INC. AND SUBSIDIARIES**  
**Notes to Consolidated Financial Statements**  
**September 30, 2008 and 2007**

**NOTE 1. General**

Berkshire Bancorp Inc., a Delaware corporation, is a bank holding company registered under the Bank Holding Company Act of 1956. References herein to Berkshire, the Company or we and similar pronouns, shall be deemed to refer to Berkshire Bancorp Inc. and its consolidated subsidiaries unless the context otherwise requires. Berkshire's principal activity is the ownership and management of its indirect wholly-owned subsidiary, The Berkshire Bank (the Bank), a New York State chartered commercial bank. The Bank is owned through Berkshire's wholly-owned subsidiary, Greater American Finance Group, Inc. (GAFG).

The accompanying financial statements of Berkshire Bancorp Inc. and subsidiaries includes the accounts of the parent company, Berkshire Bancorp Inc., and its wholly-owned subsidiaries: The Berkshire Bank, GAFG and East 39, LLC.

We have prepared the accompanying financial statements pursuant to the rules and regulations of the Securities and Exchange Commission (the SEC) for interim financial reporting. These consolidated financial statements are unaudited and, in our opinion, include all adjustments, consisting of normal recurring adjustments and accruals, necessary for a fair presentation of our consolidated balance sheets, operating results, and cash flows for the periods presented. Operating results for the periods presented are not necessarily indicative of the results that may be expected for the remaining quarter of fiscal 2008 due to a variety of factors. Certain information and footnote disclosures normally included in financial statements prepared in accordance with accounting principles generally accepted in the United States (U.S. GAAP) have been omitted in accordance with the rules and regulations of the SEC. These consolidated financial statements should be read in conjunction with the audited consolidated financial statements and accompanying notes included in our 2007 Annual Report on Form 10-K.

**NOTE 2. Trust Preferred Securities.**

As of May 18 2004, the Company established Berkshire Capital Trust I, a Delaware statutory trust, (BCTI). The Company owns all the common capital securities of BCTI. BCTI issued \$15.0 million of preferred capital securities to investors in a private transaction and invested the proceeds, combined with the proceeds from the sale of BCTI's common capital securities, in the Company through the purchase of \$15.464 million aggregate principal amount of Floating Rate Junior Subordinated Debentures (the 2004 Debentures) issued by the Company. The 2004 Debentures, the sole assets of BCTI, mature on July 23, 2034 and bear interest at a floating rate, three month LIBOR plus 2.70%, currently 5.50%.

On April 1, 2005, the Company established Berkshire Capital Trust II, a Delaware statutory trust, (BCTII). The Company owns all the common capital securities of BCTII. BCTII issued \$7.0 million of preferred capital securities to investors in a private transaction and invested the proceeds, combined with the proceeds from the sale of BCTII's common capital securities, in the Company through the purchase of \$7.217 million aggregate principal amount of Floating Rate Junior Subordinated Debentures (the 2005 Debentures) issued by the Company. The 2005 Debentures, the sole assets of BCTII, mature on May 23, 2035 and bear interest at a floating rate, three month LIBOR plus 1.95%, currently 4.76%.

**BERKSHIRE BANCORP INC. AND SUBSIDIARIES**  
**Notes to Consolidated Financial Statements (continued)**

**NOTE 2. - (continued)**

Based on current interpretations of the banking regulators, the 2004 Debentures and 2005 Debentures (collectively, the Debentures ) qualify under the risk-based capital guidelines of the Federal Reserve as Tier 1 capital, subject to certain limitations. The Debentures are callable by the Company, subject to any required regulatory approvals, at par, in whole or in part, at any time after five years from the date of issuance. The Company's obligations under the Debentures and related documents, taken together, constitute a full, irrevocable and unconditional guarantee on a subordinated basis by the Company of the obligations of BCTI and BCTII under the preferred capital securities sold by BCTI and BCTII to investors. FIN46(R) precludes consideration of the call option embedded in the preferred capital securities when determining if the Company has the right to a majority of BCTI and BCTII expected residual returns. Accordingly, BCTI and BCTII are not included in the consolidated balance sheet of the Company.

The Federal Reserve has issued guidance on the regulatory capital treatment for the trust-preferred securities issued by BCTI and BCTII. This rule would retain the current maximum percentage of total capital permitted for Trust Preferred Securities at 25%, but would enact other changes to the rules governing Trust Preferred Securities that affect their use as part of the collection of entities known as restricted core capital elements. The rule would take effect March 31, 2009; however, a five year transition period starting March 31, 2004 and leading up to that date would allow bank holding companies to continue to count Trust Preferred Securities as Tier 1 Capital after applying FIN-46(R). Management has evaluated the effects of this rule and does not anticipate a material impact on its capital ratios when the proposed rule is finalized.

**NOTE 3. Earnings (Loss) Per Share**

Basic earnings (loss) per share is calculated by dividing income available to common stockholders by the weighted average common shares outstanding, excluding stock options from the calculation. In calculating diluted earnings per share, the dilutive effect of stock options is calculated using the average market price for the Company's common stock during the period. There is no effect for dilutive shares for the three and nine months ended September 30, 2008 due to the net loss recognized. The following table presents the calculation of earnings per share for the periods indicated:

	For The Three Months Ended					
	September 30, 2008			September 30, 2007		
	Income (Loss) (numerator)	Shares (denominator)	Per share amount	Income (numerator)	Shares (denominator)	Per share amount
(In thousands, except per share data)						
Basic earnings (loss) per share						
Net (loss) income available to common stockholders	\$ (88,694)	7,054	\$ (12.57)	\$ 1,275	7,051	\$ .18
Effect of dilutive securities options			.			.
Diluted earnings per share						
Net (loss) income available to common stockholders plus assumed conversions		7,054	.	\$ 1,275	7,051	\$ .18

**BERKSHIRE BANCORP INC. AND SUBSIDIARIES**  
**Notes to Consolidated Financial Statements (continued)**

**NOTE 3. - (continued)**

## For The Nine Months Ended

	September 30, 2008			September 30, 2007		
	Income (Loss) (numerator)	Shares (denominator)	Per share amount	Income (numerator)	Shares (denominator)	Per share amount
(In thousands, except per share data)						
Basic earnings (loss) per share						
Net (loss) income available to common stockholders	\$ (83,403)	7,054	\$ (11.82)	\$ 3,395	6,965	\$ .49
Effect of dilutive securities options			.		24	.
Diluted earnings per share						
Net (loss) income available to common stockholders plus assumed conversions		7,054	.	\$ 3,395	6,989	\$ .49

**NOTE 4. Loan Portfolio**

The following table sets forth information concerning the Company's loan portfolio by type of loan at the dates indicated:

	September 30, 2008		December 31, 2007	
	Amount	% of Total	Amount	% of Total
(Dollars in thousands)				
Commercial and professional loans	\$ 79,757	16.7%	\$ 76,132	17.4%
Secured by real estate				
1-4 family	140,700	29.4	142,140	32.6
Multi family	3,179	0.7	3,506	0.8
Non-residential	253,634	53.1	212,850	48.8
Consumer	494	0.1	1,691	0.4