

Ameris Bancorp
Form 10-K/A
May 22, 2009

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

Amendment No. 1 on

FORM 10-K/A

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

For the fiscal year ended December 31, 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: 001-13901

AMERIS BANCORP (A GEORGIA CORPORATION)

I.R.S. EMPLOYER IDENTIFICATION NUMBER 58-1456434

310 FIRST ST. SE, MOULTRIE, GEORGIA 31768

Edgar Filing: Ameris Bancorp - Form 10-K/A

TELEPHONE NUMBER: (229) 890-1111

Securities registered pursuant to Section 12(b) of the Act: Common Stock, Par Value \$1 Per Share

Securities registered pursuant to Section 12(g) of the Act: None

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes ☐ No ☒

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Securities Exchange Act. Yes ☐ No ☒

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 if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. ☒

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 definitions of large accelerated filer, accelerated filer and smaller reporting company in Rule 12b-2 of the Exchange Act.

Large accelerated filer ☐ Accelerated filer ☒

Non-accelerated filer ☐ Smaller reporting company ☐

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

As of the last business day of the registrant's most recently completed second fiscal quarter, the aggregate market value of the voting and non-voting common equity held by nonaffiliates of the registrant was approximately \$160.4 million. As of February 10, 2009, the registrant had outstanding 13,573,440 shares of common stock, \$1.00 par value per share.

EXPLANATORY NOTE

This Amendment No. 1 on Form 10-K/A (this Amendment) amends the Annual Report on Form 10-K for the year ended December 31, 2008 of Ameris Bancorp (the Company) filed with the Securities and Exchange Commission (the SEC) on March 16, 2009 (the Original Report). This Amendment amends and restates Part II, Item 9A of the Original Report to correct a typographical error. Item 9A of the Original Report contained a reference to December 31, 2007 under the caption Management's Annual Report on Internal Control Over Financial Reporting that should have been a reference to December 31, 2008. Except for the foregoing revision, this Amendment does not modify or update any disclosures presented in the Original Report. Accordingly, this Amendment does not reflect events occurring after the filing of the Original Report or modify or update those disclosures contained in the Original Report which may have been affected by subsequent events. Information not affected by this Amendment is unchanged and reflects the disclosures made at the time the Original Report was filed. The Original Report, as amended by this Amendment, is referenced to herein as the Annual Report.

PART II

ITEM 9A. CONTROLS AND PROCEDURES

Disclosure Controls and Procedures

The Company's Chief Executive Officer and Chief Financial Officer have evaluated the Company's disclosure controls and procedures (as such term is defined in Rules 13a-15(e) or 15d-15(e) promulgated under the Exchange Act as of the end of the period covered by this Annual Report, as required by paragraph (b) of Rules 13a-15 or 15d-15 of the Exchange Act. Based on such evaluation, such officers have concluded that, as of the end of the period covered by this Annual Report, the Company's disclosure controls and procedures are effective.

Management's Annual Report on Internal Control Over Financial Reporting

The management of Ameris is responsible for establishing and maintaining adequate internal control over financial reporting as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act. The Company's internal control over financial reporting is designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles.

All internal control systems, no matter how well designed, have inherent limitations. Therefore, even those systems determined to be effective can provide only reasonable assurance with respect to financial statement preparation and presentation.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions or that the degree of compliance with the policies or procedures may deteriorate.

Management assessed the effectiveness of the Company's internal control over financial reporting as of December 31, 2008. In making this assessment, management used the criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) in *Internal Control-Integrated Framework*. Based on this assessment and those criteria, management believes that the company maintained effective internal control over financial reporting as of December 31, 2008.

PKM, the Company's independent auditors, has issued an attestation report on the Company's internal control over financial reporting. That report is included in this Item under the heading Report of Independent Registered Public Accounting Firm.

Changes in Internal Control Over Financial Reporting

During the quarter ended December 31, 2008 there was no change in the Company's internal control over financial reporting identified in connection with the evaluation required by paragraph (d) of Rules 13a-15 or 15d-15 of the Exchange Act that has materially affected, or is reasonably likely to materially affect, the Company's internal control over financial reporting.

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Board of Directors

Ameris Bancorp

Moultrie, Georgia

We have audited Ameris Bancorp and subsidiaries (the Company) internal control over financial reporting as of December 31, 2008, based on criteria established in *Internal Control-Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). The Company's management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting included in the accompanying Management's Report on Internal Controls over Financial Reporting. Our responsibility is to express an opinion on the Company's internal control over financial reporting based on our audit.

We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, and testing and evaluating the design and operating effectiveness of internal control based on the assessed risk. Our audit also included performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the Company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the Company are being made only in accordance with authorizations of management and directors of the Company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the Company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

In our opinion, Ameris Bancorp and subsidiaries maintained effective internal control over financial reporting as of December 31, 2008, based on criteria established in *Internal Control-Integrated Framework* issued by COSO.

We have also audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the consolidated balance sheet of Ameris Bancorp and subsidiaries as of December 31, 2008, and the related statements of operations, comprehensive income, stockholders' equity and cash flows for the year then ended, and our report dated March 6, 2009, expressed an unqualified opinion on those consolidated financial statements.

Atlanta, Georgia

March 6, 2009

SIGNATURE

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report on Form 10-K/A to be signed on its behalf by the undersigned, thereunto duly authorized.

AMERIS BANCORP

Date: May 22, 2009

By: /s/ Dennis J. Zember Jr.
Dennis J. Zember Jr., Executive Vice President and

Chief Financial Officer

(Principal Accounting Officer)

EXHIBIT INDEX

Exhibit No.	Description
3.1	Articles of Incorporation of Ameris Bancorp, as amended (incorporated by reference to Exhibit 2.1 to Ameris Bancorp's Regulation A Offering Statement on Form 1-A filed August 14, 1987).
3.2	Amendment to Amended Articles of Incorporation (incorporated by reference to Exhibit 3.1.1 to Ameris Bancorp's Form 10-K filed March 28, 1996).
3.3	Amendment to Amended Articles of Incorporation (incorporated by reference to Exhibit 4.3 to Ameris Bancorp's Registration Statement on Form S-4 filed with the Commission on July 17, 1996).
3.4	Articles of Amendment to the Articles of Incorporation (incorporated by reference to Exhibit 3.5 to Ameris Bancorp's Annual Report on Form 10-K filed with the Commission on March 25, 1998).
3.5	Articles of Amendment to the Articles of Incorporation (incorporated by reference to Exhibit 3.7 to Ameris Bancorp's Annual Report on Form 10-K filed with the Commission on March 26, 1999).
3.6	Articles of Amendment to the Articles of Incorporation (incorporated by reference to Exhibit 3.9 to Ameris Bancorp's Annual Report on Form 10-K filed with the Commission on March 31, 2003).
3.7	Articles of Amendment to the Articles of Incorporation (incorporated by reference to Exhibit 3.1 to Ameris Bancorp's Current Report on Form 8-K filed with the Commission on December 1, 2005).
3.8	Amended and Restated Bylaws (incorporated by reference to Exhibit 3.1 to Ameris Bancorp's Current Report on Form 8-K filed with the Commission on March 14, 2005).
3.9	Articles of Amendment to the Articles of Incorporation (incorporated by reference to Exhibit 3.1 to Ameris Bancorp's Form 8-K filed with the Commission on November 21, 2008).
4.1	Placement Agreement between Ameris Bancorp, Ameris Statutory Trust I, FTN Financial Capital Markets and Keefe, Bruyette & Woods, Inc. dated September 13, 2006 (incorporated by reference to Exhibit 4.1 to Ameris Bancorp's Registration Statement on Form S-4 (Registration No. 333-138252) filed with the Commission on October 27, 2006).
4.2	Subscription Agreement between Ameris Bancorp, Ameris Statutory Trust I and First Tennessee Bank National Association dated September 20, 2006 (incorporated by reference to Exhibit 4.2 to Ameris Bancorp's Registration Statement on Form S-4 (Registration No. 333-138252) filed with the Commission on October 27, 2006).
4.3	Subscription Agreement between Ameris Bancorp, Ameris Statutory Trust I and TWE, Ltd. dated September 20, 2006 (incorporated by reference to Exhibit 4.3 to the Ameris Bancorp's Registration Statement on Form S-4 (Registration No. 333-138252) filed with the Commission on October 27, 2006).

- 4.4 Indenture between Ameris Bancorp and Wilmington Trust Company dated September 20, 2006 (incorporated by reference to Exhibit 4.4 to Ameris Bancorp's Registration Statement on Form S-4 (Registration No. 333-138252) filed with the Commission on October 27, 2006).
- 4.5 Amended and Restated Declaration of Trust between Ameris Bancorp, the Administrators of Ameris Statutory Trust I signatory thereto and Wilmington Trust Company dated September 20, 2006 (incorporated by reference to Exhibit 4.5 to Ameris Bancorp's Registration Statement on Form S-4 (Registration No. 333-138252) filed with the Commission on October 27, 2006).
- 4.6 Guarantee Agreement between Ameris Bancorp and Wilmington Trust Company dated September 20, 2006 (incorporated by reference to Exhibit 4.6 to Ameris Bancorp's Registration Statement on Form S-4 (Registration No. 333-138252) filed with the Commission on October 27, 2006).
- 4.7 Floating Rate Junior Subordinated Deferrable Interest Debenture dated September 20, 2006 issued to Ameris Statutory Trust I (incorporated by reference to Exhibit 4.7 to Ameris Bancorp's Registration Statement on Form S-4 (Registration No. 333-138252) filed with the Commission on October 27, 2006).
- 4.8 Warrant to Purchase 679,443 shares of Common Stock of Ameris Bancorp, issued to the U.S. Department of Treasury November 21, 2008 (incorporated by reference to Exhibit 3.2 to Ameris Bancorp's Form 8-K filed with the Commission on November 21, 2008).
- 10.1 Deferred Compensation Agreement for Kenneth J. Hunnicutt dated December 16, 1986 (incorporated by reference to Exhibit 5.3 to Ameris Bancorp's Regulation A Offering Statement on Form 1-A filed with the Commission on August 14, 1987).
- 10.2 Executive Salary Continuation Agreement dated February 14, 1984 (incorporated by reference to Exhibit 10.6 to Ameris Bancorp's Annual Report on Form 10-KSB filed with the Commission on March 27, 1989).
- 10.3 Form of Omnibus Stock Ownership and Long-Term Incentive Plan (incorporated by reference to Exhibit 10.17 to Ameris Bancorp's Annual Report on Form 10-K filed with the Commission on March 25, 1998).
- 10.4 Form of Rights Agreement between Ameris Bancorp and SunTrust Bank dated as of February 17, 1998 (incorporated by reference to Exhibit 10.18 to Ameris Bancorp's Annual Report on Form 10-K filed with the Commission on March 25, 1998).
- 10.5 ABC Bancorp 2000 Officer/Director Stock Bonus Plan (incorporated by reference to Exhibit 10.19 to Ameris Bancorp's Annual Report on Form 10-K filed with the Commission on March 29, 2000).
- 10.6 Joint Marketing Agreement by and between Ameris Bancorp and MBNA America Bank, N.A. dated as of December 19, 2002 (incorporated by reference to Exhibit 10.18 to Ameris Bancorp's Annual Report on Form 10-K filed with the Commission on March 31, 2003).
- 10.7 Executive Employment Agreement with Jon S. Edwards dated as of July 1, 2003 (incorporated by reference to Exhibit 10.1 to Ameris Bancorp's Quarterly Report on Form 10-Q filed with the Commission on November 12, 2003).

Edgar Filing: Ameris Bancorp - Form 10-K/A

- 10.8 Executive Employment Agreement with Edwin W. Hortman, Jr. dated as of December 31, 2003 (incorporated by reference to Exhibit 10.19 to Ameris Bancorp's Annual Report on Form 10-K filed with the Commission on March 15, 2004).
- 10.9 Executive Employment Agreement with Cindi H. Lewis dated as of December 31, 2003 (incorporated by reference to Exhibit 10.20 to Ameris Bancorp's Annual Report on Form 10-K filed with the Commission on March 15, 2004).
- 10.10 Amendment No. 1 to Executive Employment Agreement with Edwin W. Hortman, Jr. dated as of March 10, 2005 (incorporated by reference to Exhibit 10.1 to Ameris Bancorp's Current Report on Form 8-K filed with the Commission on March 14, 2005).
- 10.11 Form of 2005 Omnibus Stock Ownership and Long-Term Incentive Plan (incorporated by reference to Appendix A to Ameris Bancorp's Definitive Proxy Statement filed with the Commission on April 18, 2005).
- 10.12 Executive Employment Agreement with Dennis J. Zember Jr. dated as of May 5, 2005 (incorporated by reference to Exhibit 10.1 to Ameris Bancorp's Current Report on Form 8-K/A filed with the Commission on May 11, 2005).
- 10.13 Executive Employment Agreement with Johnny R. Myers dated as of May 11, 2005 (incorporated by reference to Exhibit 10.1 to Ameris Bancorp's Current Report on Form 8-K filed with the Commission on May 16, 2005).
- 10.14 Revolving Credit Agreement with SunTrust Bank dated as of December 14, 2005 (incorporated by reference to Exhibit 10.1 to Ameris Bancorp's Current Report on Form 8-K filed with the Commission on December 20, 2005).
- 10.15 Security Agreement with SunTrust Bank dated as of December 14, 2005 (incorporated by reference to Exhibit 10.2 to Ameris Bancorp's Current Report on Form 8-K filed with the Commission on December 20, 2005).
- 10.16 Form of Incentive Stock Option Agreement (incorporated by reference to Exhibit 4.2 to Ameris Bancorp's Registration Statement on Form S-8 filed with the Commission on January 24, 2006).
- 10.17 Form of Non-Qualified Stock Option Agreement (incorporated by reference to Exhibit 4.3 to Ameris Bancorp's Registration Statement on Form S-8 filed with the Commission on January 24, 2006).
- 10.18 Form of Restricted Stock Agreement (incorporated by reference to Exhibit 4.4 to Ameris Bancorp's Registration Statement on Form S-8 filed with the Commission on January 24, 2006).
- 10.19 Executive Employment Agreement with C. Johnson Hipp, III dated as of September 5, 2006 (incorporated by reference to Exhibit 10.1 to Ameris Bancorp's Current Report on Form 8-K filed with the Commission on September 8, 2006).
- 10.20 Executive Employment Agreement with C. Marc J. Bogan dated as of May 31, 2007 (incorporated by reference to Exhibit 10.1 to Ameris Bancorp's Current Report on Form 8-K filed with the Commission on June 6, 2007).

Edgar Filing: Ameris Bancorp - Form 10-K/A

- 10.21 Executive Employment Agreement with C. Richard Strum dated as of May 31, 2007 (incorporated by reference to Exhibit 10.1 to Ameris Bancorp's Current Report on Form 8-K filed with the Commission on June 6, 2007).
- 21.1 Schedule of subsidiaries of Ameris Bancorp.*
- 23.1 Consent of Porter Keadle Moore, LLP.*
- 23.2 Consent of Mauldin & Jenkins, LLC.*
- 24.1 Power of Attorney relating to this Form 10-K is set forth on the signature pages of this Form 10-K.*
- 31.1 Rule 13a-14(a)/15d-14(a) Certification by Ameris Bancorp's Chief Executive Officer.
- 31.2 Rule 13a-14(a)/15d-14(a) Certification by Ameris Bancorp's Chief Financial Officer.
- 32.1 Section 1350 Certification by Ameris Bancorp's Chief Executive Officer.
- 32.2 Section 1350 Certification by Ameris Bancorp's Chief Financial Officer.

* - Previously filed.