

TOMPKINS FINANCIAL CORP
Form 10-K/A
March 05, 2018

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-K/A
(Amendment No. 1)

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE
SECURITIES EXCHANGE ACT OF 1934
For the fiscal year ended December 31, 2017

Commission File Number 1-12709

Tompkins Financial Corporation
(Exact name of registrant as specified in its charter)
New York 16-1482357
(State or other jurisdiction of incorporation or organization) (I.R.S. Employer Identification No.)

The Commons, P.O. Box 460, Ithaca, New York 14851
(Address of principal executive offices) (Zip Code)
Registrant's telephone number, including area code: (888) 503-5753
Securities registered pursuant to Section 12(b) of the Act:
Common Stock (\$.10 Par Value Per Share) NYSE American
(Title of class) (Name of exchange on which traded)

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 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 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 whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (S232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). 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 the 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 nonaccelerated filer, or a smaller reporting company.

| | | | | |
|-------------------------|-------------------|----------------------|---------------------------|-------------------------|
| Large Accelerated Filer | Accelerated Filer | Nonaccelerated Filer | Smaller Reporting Company | Emerging Growth Company |
|-------------------------|-------------------|----------------------|---------------------------|-------------------------|

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

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

The aggregate market value of the registrant's common stock held by non-affiliates was \$958,737,000 on June 30, 2017, based on the closing sales price of a share of the registrant's common stock, \$.10 par value (the "Common Stock"), as reported on the NYSE American, on such date.

The number of shares of the registrant's Common Stock outstanding as of February 19, 2018, was 15,262,686 shares.

DOCUMENTS INCORPORATED BY REFERENCE

Portions of the registrant's definitive Proxy Statement relating to its 2018 Annual Meeting of stockholders, to be held on May 8, 2018, are incorporated by reference into Part III of this Form 10-K where indicated.

EXLPLANATORY NOTE

The Registrant has prepared this Amendment No. 1 (“Amendment”) on Form 10-K/A to its Annual Report on Form 10-K for the fiscal year ended December 31, 2017, as filed on March 1, 2018 (the “Original Form 10-K”) for the sole purpose of re-filing Exhibit 23 to the Original Form 10-K. The Consent of Independent Registered Public Accounting Firm, filed as Exhibit 23 to the Original Form 10-K, inadvertently omitted a reference to the Registrant’s Registration Statement No. 333-219427, filed on Form S-3, from the list of registration statements into which the KPMG LLP’s reports, dated March 1, 2018, may be incorporated by reference. The registrant is now re-filing Exhibit 23 in order to add the reference to such registration statement and to eliminate references to registration statements under which the registrant is no longer offering securities. No other changes have been made to the Original Form 10-K, and this Amendment does not amend, update or change any other items or disclosure found in the Original Form 10-K. As such, this Amendment No1 should be read in conjunction with the Original From 10-K. Further, this Amendment does not reflect subsequent events occurring after the filing date of the Original Form 10-K or modify or update in any way disclosures made in the Original Form 10-K. This Amendment is an exhibit-only filing.

In addition, as required by Rule 12b-15 under the Securities Exchange Act of 1934, as amended, new certifications by our principal executive officer and principal financial officer are filed herewith as exhibits to this Amendment.

PART IV

Item 15. Exhibits and Financial Statement Schedules

(a)(3) Exhibits

The exhibits listed on the Exhibit Index of this Amendment, incorporated by reference in this Item 15, have been previously filed, are filed herewith, or are incorporated herein by reference to other filings, as indicated.

Item 15. Exhibits and Financial Statement Schedules

(a)(3) Exhibits

The documents listed on the attached Exhibit Index are filed as part of this Amendment No. 1

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 to be signed on its behalf by the undersigned, thereunto duly authorized.

TOMPKINS FINANCIAL CORPORATION

By: /s/ Stephen S. Romaine

Stephen S. Romaine

President and Chief

Executive Officer

(Principal Executive

Officer)

Date: March 5, 2018

EXHIBIT INDEX

| Item No. | Description |
|----------|---|
| 2.1 | Agreement and Plan of Reorganization, dated as of March 14, 1995, among the Bank, the Company and the Interim Bank, incorporated herein by reference to Exhibit 2 to the Company's Registration Statement on Form 8-A (No. 0-38625), filed with the Commission on January 22, 1996. |
| 2.2 | Agreement and Plan of Reorganization, dated as of July 30, 1999, between the Company and Letchworth, incorporated herein by reference to Annex A to the Company's Registration Statement on Form S-4 (Registration No. 333-90411), filed with the Commission on November 5, 1999. |
| 2.3 | <u>Agreement and Plan of Merger, dated January 25, 2012, by and among the Company, TMP Mergeco, Inc. and VIST Financial Corp., incorporated herein by reference to Exhibit 2.1 to the Company's Current Report on Form 8-K, filed with the Commission on January 26, 2012.</u> |
| 2.4 | <u>First Amendment to the Agreement and Plan of Merger, dated July 31, 2012, by and among the Company, TMP Mergeco, Inc. and VIST Financial Corp., incorporated herein by reference to Exhibit 10.1 to the Company's Amended Quarterly Report on Form 10-Q/A, filed with the Commission on September 7, 2012.</u> |
| 3.1 | <u>Amended and Restated Certificate of Incorporation of the Company, incorporated herein by reference to Exhibit 3(i) to the Company's Form 10-Q, filed with the Commission on August 11, 2008.</u> |
| 3.2 | <u>Second Amended and Restated Bylaws of the Company, incorporated herein by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K, filed with the Commission on January 31, 2011.</u> |
| 4.1 | Form of Specimen Common Stock Certificate of the Company, incorporated herein by reference to Exhibit 4 to the Company's Registration Statement on Form 8-A (No. 0-27514), filed with the Commission on December 29, 1995. |
| 4.2 | <u>Indenture (Tompkins Capital Trust I), dated as of April 10, 2009, incorporated herein by reference to Exhibit 4.1 to the Company's Current Report on Form 8-K, filed with the Commission on April 16, 2009.</u> |
| 4.3 | <u>Form of Subordinated Debenture (Tompkins Capital Trust I), included as Exhibit A to Exhibit 4.2 and incorporated herein by reference.</u> |
| 4.4 | <u>Amended and Restated Trust Agreement (Tompkins Capital Trust I), dated as of April 10, 2009, incorporated herein by reference to Exhibit 4.3 to the Company's Current Report on Form 8-K, filed with the Commission on April 16, 2009.</u> |

- 4.5 Form of Convertible Preferred Security Certificate of Tompkins Capital Trust I, included as Exhibit D to Exhibit 4.4 and incorporated herein by reference.
- 4.6 Preferred Securities Guarantee Agreement, dated as of April 10, 2009, incorporated herein by reference to Exhibit 4.5 to the Company's Current Report on Form 8-K, filed with the Commission on April 16, 2009.
- 4.7 Agreement as to Expenses and Liabilities, dated as of April 10, 2009, incorporated herein by reference to Exhibit 4.6 to the Company's Current Report on Form 8-K, filed with the Commission on April 16, 2009.
- 10.1* Amended and Restated Supplemental Executive Retirement Agreement, dated November 9, 2016, between Tompkins Financial Corporation and Scott L. Gruber, incorporated herein by reference to Exhibit 10.9 to the Company's Quarterly Report on Form 10-Q, as filed with the Commission on November 9, 2016.
- 10.2* Amended and Restated Retainer Plan for Eligible Directors of Tompkins Financial Corporation and Its Wholly-owned Subsidiaries incorporated by reference to Exhibit 10.2 to the Company's Annual Report on Form 10-K, filed with the Commission on March 16, 2009.
- 10.3* Form of Director Deferred Compensation Agreement, incorporated herein by reference to Exhibit 10.4 to the Company's Registration Statement on Form 8-A (No. 0-27514), filed with the Commission on December 29, 1995.
- 10.4* Deferred Compensation Plan for Senior Officers, incorporated herein by reference to Exhibit 10.5 to the Company's Registration Statement on Form 8-A (No. 0-27514), filed with the Commission on December 29, 1995.
- 10.5 Lease Agreement dated August 20, 1993, between Tompkins County Trust Company and Comex Plaza Associates, relating to leased property at the Rothschild Building, Ithaca, NY, incorporated herein by reference to Exhibit 10.8 to the Company's Form 10-K, filed with the Commission on March 26, 1996.
- 10.6* 2001 Stock Option Plan, incorporated herein by reference to Exhibit 99 to the Company's Registration Statement on Form S-8 (No. 333-75822), filed with the Commission on December 21, 2001.
- 10.7* Supplemental Executive Retirement Agreement between James W. Fulmer and Tompkins Trustco, Inc., dated December 28, 2005, incorporated herein by reference to Exhibit 10.14 to the Company's Annual Report on Form 10-K, filed with the Commission on March 16, 2006.
- 10.8* Amendment to Supplemental Executive Retirement Agreement between James W. Fulmer and the Company (formerly known as Tompkins Trustco, Inc.) dated as of September 2, 2014, incorporated herein by reference to Exhibit 10.1 to the Company's Quarterly Report on Form 10-Q, filed with the Commission on November 10, 2014.
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- 10.9* Amended and Restated Supplemental Executive Retirement Agreement, dated November 9, 2016, between Tompkins Financial Corporation and Stephen S. Romaine, incorporated herein by reference to Exhibit 10.3 to the Company's Quarterly Report on Form 10-Q, as filed with the Commission on November 9, 2016.
- 10.10* Amended and Restated Supplemental Executive Retirement Agreement, dated November 9, 2016, between Tompkins Financial Corporation and Francis M. Fetsko, incorporated herein by reference to Exhibit 10.5 to the Company's Quarterly Report on Form 10-Q, filed with the Commission on November 9, 2016.
- 10.11* Amended and Restated Supplemental Executive Retirement Agreement, dated November 9, 2016, between Tompkins Financial Corporation and David S. Boyce, incorporated herein by reference to Exhibit 10.4 to the Company's Quarterly Report on Form 10-Q, filed with the Commission on November 9, 2016.
- 10.12* Form of Officer Group Term Life Replacement Plan (the "Plan") among Tompkins Trust Company and the Participants in the Plan, incorporated herein by reference to Exhibit 10.20 to the Company's Annual Report on Form 10-K, filed with the Commission on March 16, 2006.
- 10.13* Tompkins Trustco, Inc. Officer Group Term Life Replacement Plan, as amended on June 26, 2006, incorporated herein by reference to Exhibit 10.2 to the Company's Quarterly Report on Form 10-Q, filed with the Commission on August 9, 2006.
- 10.14* 2009 Equity Plan, incorporated herein by reference to Exhibit 99 to the Company's Registration Statement on Form S-8 (No. 333-160738), filed with the Commission on July 22, 2009.
- 10.15* Amended and Restated Supplemental Executive Retirement Agreement, dated November 9, 2016, between Tompkins Financial Corporation and Gregory J. Hartz, incorporated herein by reference to Exhibit 10.6 to the Company's Quarterly Report on Form 10-Q, filed with the Commission on November 9, 2016.
- 10.16* Form of Award Agreement under 2009 Equity Plan (Restricted Stock), incorporated herein by reference to Exhibit 10.11 to the Company's Quarterly Report on Form 10-Q, filed with the Commission on November 9, 2016.
- 10.17* Form of Award Agreement under 2009 Equity Plan (Stock-Settled Stock Appreciation Right), incorporated herein by reference to Exhibit 10.12 to the Company's Quarterly Report on Form 10-Q, filed with the Commission on November 9, 2016.
- 10.18 Standard Form of Agreement Between Owner and Construction Manager for Construction dated as of May 27, 2016 by and between Tompkins Trust Company and LeChase Construction Services, LLC, incorporated herein by reference to Exhibit 10.1 to the Company's Quarterly Report on Form 10-Q, filed with the Commission on August 9, 2016.
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- 10.19 General Conditions of the Contract for Construction dated as of May 27, 2016 by and between Tompkins Trust Company and LeChase Construction Services, LLC, incorporated herein by reference to Exhibit 10.2 to the Company's Quarterly Report on Form 10-Q, filed with the Commission on August 9, 2016.
- 10.20* Form of Supplemental Executive Retirement Agreement, dated November 9, 2016, between Tompkins Financial Corporation and each of Stephen S. Romaine, David S. Boyce, and Francis M. Fetsko, incorporated herein by reference to Exhibit 10.1 to the Company's Quarterly Report on Form 10-Q, filed with the Commission on November 9, 2016.
- 10.21* Form of Supplemental Executive Retirement Agreement, dated November 9, 2016, between Tompkins Financial Corporation and each of Alyssa Hochberg Fontaine, Scott L. Gruber, Gregory J. Hartz, Gerald J. Klein, Jr., and John M. McKenna, incorporated herein by reference to Exhibit 10.2 to the Company's Quarterly Report on Form 10-Q, filed with the Commission on November 9, 2016.
- 10.22* Amended and Restated Supplemental Executive Retirement Agreement, dated November 9, 2016, between Tompkins Financial Corporation and Gerald J. Klein, Jr., incorporated herein by reference to Exhibit 10.7 to the Company's Quarterly Report on Form 10-Q, filed with the Commission on November 9, 2016.
- 10.23* Amended and Restated Supplemental Executive Retirement Agreement, dated November 9, 2016, between Tompkins Financial Corporation and Alyssa Hochberg Fontaine, incorporated herein by reference to Exhibit 10.8 to the Company's Quarterly Report on Form 10-Q, filed with the Commission on November 9, 2016.
- 10.24* Amended and Restated Supplemental Executive Retirement Agreement, dated November 9, 2016, between Tompkins Financial Corporation and John M. McKenna, incorporated herein by reference to Exhibit 10.10 to the Company's Quarterly Report on Form 10-Q, filed with the Commission on November 9, 2016.
- 10.25* Amendment No. 1 to Amended and Restated Retainer Plan for Eligible Directors of Tompkins Financial Corporation and Its Wholly-owned Subsidiaries, effective December 31, 2017, previously filed by the registrant with the Original Form 10-K.
- 21 Subsidiaries of Registrant, incorporated herein by reference to Exhibit 21 to the Company's Annual Report on Form 10-K, filed with the Commission on March 17, 2014.
- 23 Consent of Independent Registered Public Accounting Firm (filed herewith)
- 24 Power of Attorney, previously filed by the registrant with the Original 10-K.
- 31.1 Certification of the Chief Executive Officer as required pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 (filed herewith).
- 31.2 Certification of the Chief Financial Officer as required pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 (filed herewith).
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- 32.1 Certification of the Chief Executive Officer Pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, previously filed by the registrant with the Original Form 10-K.
- 32.2 Certification of the Chief Financial Officer Pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, previously filed by the registrant with the Original Form 10-K.

101 The following materials from the company's Annual report on Form 10-K for the year ended December 31, 2017, formatted in XBRL (eXtensible Business reporting Language), all of which were previously filed by the registrant with the Original Form 10-K: (i) Condensed Consolidated Statements of Condition as of December 31, 2017; (ii) Condensed Consolidated Statements of Income as of December 31, 2017; (iii) Condensed consolidated Statements of Comprehensive Income as of December 31, 2017; (iv) Condensed Consolidated Statements of Cash Flows as of December 31, 2017; (v) Condensed Consolidated Statements of Changes in Shareholders' Equity as of December 31, 2017; and (vi) Notes to Unaudited Condensed Consolidated Financial Statements, previously filed by the registrant with the Original 10-K.

*Denotes management contract or compensatory plan or arrangement