

COLONIAL BANCGROUP INC  
Form S-8  
May 23, 2007

As filed with the Securities and Exchange Commission on May 23, 2007

Registration No. 333-\_\_\_\_\_

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**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

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**Form S-8**  
**Registration Statement**

*Under*

*The Securities Act of 1933*

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**The Colonial BancGroup, Inc.**

(Exact name of registrant as specified in its charter)

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**Delaware**  
(State of Incorporation)

**63-0661573**  
(I.R.S. Employer Identification No.)

**100 Colonial Bank Blvd**  
  
**Montgomery, Alabama 36117**  
(Address of principal executive offices)

**(334) 676-5000**  
(Telephone No.)

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**The Colonial BancGroup, Inc.**

**2007 Stock Plan for Directors**

(Full title of the plan)

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*Copies to:*

**David B. Byrne, Jr.**  
**Executive Vice President**  
**and General Counsel**  
**100 Colonial Bank Blvd.**  
**Montgomery, Alabama 36117**  
(Name and address of agent for service)

**Hugh C. Nickson, III**  
**Miller, Hamilton, Snider &**  
**Odom, L.L.C.**  
**100 Colonial Bank Blvd.**  
**Suite B101**  
**Montgomery, Alabama 36104**

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**CALCULATION OF REGISTRATION FEE**

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| <b>Title of Each Class of</b>            | <b>Amount</b>     | <b>Proposed</b>       | <b>Proposed</b>       |                         |
|--|-------------------|-----------------------|-----------------------|-------------------------|
|  | <b>to be</b>      | <b>Maximum</b>        | <b>Maximum</b>        |                         |
| <b>Securities to be Registered</b>       | <b>Registered</b> | <b>Offering Price</b> | <b>Aggregate</b>      | <b>Amount of</b>        |
|  |                   | <b>Per Share (1)</b>  | <b>Offering Price</b> | <b>Registration Fee</b> |
| Common Stock, par value \$2.50 per share | 500,000           | \$ 24.98              | \$ 12,490,000         | \$ 383.44               |

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- (1) Pursuant to Rule 457 under the Securities Act of 1933, as amended, the proposed maximum offering price per share and the proposed maximum aggregate offering price are estimated solely for purposes of calculating the registration fee and are based upon the average of the high and low prices of the Common Stock of the registrant on the New York Stock Exchange on May 22, 2007.
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**EXPLANATORY NOTE**

The document(s) containing the information specified in Part I of Form S-8 will be sent or given to participants in The Colonial BancGroup, Inc.'s (BancGroup) 2007 Stock Plan for Directors (the Plan) as specified by Rule 428(b)(1) promulgated by the Securities and Exchange Commission (the Commission) under the Securities Act of 1933, as amended (the Securities Act). Such document(s) are not being filed with the Commission, but constitute (along with the documents incorporated by reference into the Registration Statement pursuant to Item 3 of Part II hereof) a prospectus that meets the requirements of Section 10(a) of the Securities Act.

**PART II**

**INFORMATION REQUIRED IN THE REGISTRATION STATEMENT**

Item 3. Incorporation of Documents by Reference.

The following documents are incorporated by reference in this registration statement. All documents subsequently filed by the registrant pursuant to sections 13(a), 13(c), 14 and 15(d) of the Securities Exchange Act of 1934 (the Exchange Act) prior to the filing of a post-effective amendment which indicates that all securities offered have been sold or which deregisters all securities remaining unsold, shall be deemed to be incorporated by reference in this registration statement and to be a part hereof from the date of filing of such documents. Any statement contained herein or in a document, all or a portion of which is incorporated or deemed to be incorporated by reference herein, shall be deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement contained in any subsequently filed document which also is or is deemed to be incorporated by reference herein modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement.

(a) The registrant's latest annual report filed pursuant to Section 13(a) or 15(d) of the Exchange Act that contains audited financial statements for the registrant's latest fiscal year for which such statements have been filed, i.e., the Annual Report on Form 10-K for the fiscal year ending December 31, 2006; and

(b) All other reports filed pursuant to Section 13(a) or 15(d) of the Exchange Act since the end of the fiscal year covered by the registrant's documents referred to in (a); and

(c) The registrant's registration statement on Form 8-A dated November 22, 1994, effective February 22, 1995, containing a description of BancGroup Common Stock.

Item 4. Description of Securities.

Not applicable.

Item 5. Interests of Named Experts and Counsel.

Certain legal issues respecting the shares of Common Stock of the registrant to be issued are being passed upon by the law firm of Miller, Hamilton, Snider & Odom, L.L.C., Post Office Box 46, Mobile, Alabama 36601. John C. H. Miller, Jr., a member of such firm, is a director of the registrant. Mr. Miller's firm performs legal services for the registrant. Mr. Miller currently has beneficial ownership of 41,791 shares of registrant's Common Stock. Other attorneys in such firm own shares of BancGroup Common Stock, but such shares are immaterial in amount.

Item 6. Indemnification of Directors and Officers.

Pursuant to Section 145 of the Delaware General Corporation Law, officers, directors, employees and agents of the registrant are entitled to indemnification against liabilities incurred while acting in such capacities on behalf of the registrant, including reimbursement of certain expenses. In addition, the registrant maintains an officers and directors insurance policy and separate indemnification agreements (the Indemnification Agreements) pursuant to which officers and directors of the registrant would be entitled to indemnification against certain liabilities, including reimbursement of certain expenses.

The Indemnification Agreements are intended to provide additional indemnification to directors and officers of BancGroup beyond the specific provisions of the Delaware General Corporation Law. Under the Delaware General Corporation Law, a company may indemnify its directors and officers in circumstances other than those under which indemnification and the advance of expenses are expressly permitted by applicable statutory provisions.

Under the Delaware General Corporation Law, a director, officer, employee or agent of a corporation (i) must be indemnified by the corporation for all expenses incurred by him (including attorneys' fees) when he is successful on the merits or otherwise in defense of any action, suit or proceeding brought by reason of the fact that he is or was a director, officer, employee or agent of the corporation, (ii) may be indemnified by the corporation against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement of any such proceeding (other than a proceeding by or in the right of the corporation) even if he is not successful on the merits if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interest of the corporation (and, in the case of a criminal proceeding, had no reasonable cause to believe his conduct was unlawful), and (iii) may be indemnified by the corporation for expenses (including attorneys' fees) incurred by him in the defense or settlement of a proceeding brought by or in the right of the corporation, if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation; provided that no indemnification may be made under the circumstances described in clause (iii) if the director, officer, employee or agent is adjudged liable to the corporation, unless a court determines that, despite the adjudication of liability but in view of all of the circumstances, he is fairly and reasonably entitled to indemnification for the expenses which the court shall deem proper. The indemnification described in clauses (ii) and (iii) above (unless ordered by a court) may be made only as authorized in a specific case upon determination by (i) a majority of a quorum of disinterested directors, (ii) independent legal counsel in a written opinion, or (iii) the stock holders, that indemnification is proper in the circumstances because the applicable standard of conduct has been met. Expenses (including attorneys' fees) incurred by an officer or director in defending a proceeding may be advanced by the corporation prior to the final disposition of the proceeding upon receipt of an undertaking by or on behalf of the director or officer to repay the advance if it is ultimately determined that he is not entitled to be indemnified by the corporation. Expenses (including attorneys' fees) incurred by other employees and agents may be advanced by the corporation upon terms and conditions deemed appropriate by the board of directors.

The indemnification provided by the Delaware General Corporation Law has at least two limitations that are addressed by the Indemnification Agreements: (i) BancGroup is under no obligation to advance expenses to a director or officer, and (ii) except in the case of a proceeding in which a director or officer is successful on the merits or otherwise, indemnification of a director or officer is discretionary rather than mandatory.

The Indemnification Agreements, therefore, cover any and all expenses (including attorneys' fees and all other charges paid or payable in connection therewith) incurred in connection with investigating, defending, being a witness or participating in (including an appeal), or preparing to defend, be a witness in or participate in, any threatened, pending or completed action, suit or proceeding, or any inquiry or investigation, whether civil, criminal, administrative or otherwise, related to the fact that such director or officer is or was a director, officer, employee or agent of BancGroup or is or was serving at the request of BancGroup as a director, officer, employee, agent, partner, committee member or fiduciary of another corporation, partnership, joint venture, employee benefit plan, trust or other enterprise, or by reason of anything done or not done by such director or officer in any such capacity.

The Indemnification Agreements also provide for the prompt advancement of all expenses incurred in connection with any proceeding and obligate the director or officer to reimburse BancGroup for all amounts so advanced if it is subsequently determined, as provided in the Indemnification Agreements, that the director or officer is not entitled to indemnification.

The Indemnification Agreements further provide that the director or officer is entitled to indemnification for, and advancement of, all expenses (including attorneys' fees) incurred in any proceeding seeking to collect from BancGroup an indemnity claim or advancement of expenses under the Indemnification Agreements, BancGroup's Certificate of Incorporation, or the Delaware General Corporation Law, regardless of whether the director or officer is successful in such proceeding.

The Indemnification Agreements impose upon BancGroup the burden of proving that the director or officer is not entitled to indemnification in any particular case, and the Indemnification Agreements negate certain presumptions which might otherwise be drawn against a director or officer in certain circumstances. Further, the Indemnification Agreements provide that if BancGroup pays a director or officer pursuant to an Indemnification Agreement, BancGroup will be subrogated to such director's or officer's rights to recover from third parties.

The Indemnification Agreements stipulate that a director's or officer's rights under such contracts are not exclusive of any other indemnity rights a director or officer may have; however, the Indemnification Agreements prevent double payment. The Indemnification Agreements require the maintenance of directors' and officers' liability insurance if such insurance can be maintained on terms, including rates, satisfactory to BancGroup.

The benefits of the Indemnification Agreements would not be available if (i) the action with respect to which indemnification is sought was initiated or brought voluntarily by the officer or director (other than an action to enforce the right to indemnification under the Indemnification Agreements); (ii) the officer or director is paid for such expense or liability under an insurance policy; (iii) the proceeding is for an accounting of profits pursuant to Section 16(b) of the Securities Exchange Act of 1934, as amended; (iv) the conduct of the officer or director is adjudged as constituting an unlawful personal benefit, or active or deliberate dishonesty or willful fraud or illegality; or (v) a court determines that indemnification or advancement of expenses is unlawful under the circumstances.

The Indemnification Agreements would provide indemnification for liabilities arising under the Securities Act of 1933, as amended. BancGroup has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in such act and is, therefore, unenforceable.

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits.

| <b>Exhibit No.</b> | <b>Description</b>   |
|--------------------|--|
| 4.1                | The Colonial BancGroup, Inc. 2007 Directors Stock Plan   |
| 5.1                | Opinion of Miller, Hamilton, Snider & Odom, L.L.C. as to certain issues regarding the securities being registered. |
| 23.1               | Consent of PricewaterhouseCoopers LLP  |
| 23.2               | Consent of Miller, Hamilton, Snider & Odom, L.L.C.   |
| 24                 | Power of attorney.   |

Item 9. Undertakings.

(a) The undersigned Registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:

- (i) To include any prospectus required by section 10(a)(3) of the Securities Act of 1933;
- (ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or in the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement; and
- (iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement;

Provided, however, that paragraphs, (a)(1)(i) and (a)(1)(ii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the SEC by the registrant pursuant to section 13 or section 15(d) of the Exchange Act that are incorporated by reference in the registration statement.



(2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(b) The undersigned registrant undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the registrant's annual report pursuant to section 13(a) or section 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to section 15(d) of the Exchange Act) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(h) Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, the Registrant certifies that it has reasonable grounds to believe that it meets all the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Montgomery, state of Alabama, on the 23rd day of May, 2007.

**THE COLONIAL BANCGROUP, INC.**

By: */s/ ROBERT E. LOWDER*  
**Robert E. Lowder**  
*Its Chairman of the Board of Directors,*  
  
*Chief Executive Officer and President*

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed below by the following persons in the capacities and on the dates indicated.

| Signatures   | Title   | Date |
|--|---|------|
| <i>/s/ ROBERT E. LOWDER</i><br><b>Robert E. Lowder</b> | Chairman of the Board of Directors, Chief Executive Officer and President (Principal Executive Officer) | **   |
| <i>/s/ SARAH H. MOORE</i><br><b>Sarah H. Moore</b>     | Chief Financial Officer and Senior Executive Vice President (Principal Financial Officer)               | **   |
| <i>/s/ T. BRENT HICKS</i><br><b>T. Brent Hicks</b>     | Chief Accounting Officer and Senior Vice President (Principal Accounting Officer)                       | **   |
| *  | Director  | **   |

**Lewis E. Beville**

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| <b>Signatures</b>                | <b>Title</b> | <b>Date</b> |
|----------------------------------|--------------|-------------|
| *                                | Director     | **          |
| <b>Augustus K. Clements, III</b> |              |             |
| *                                | Director     | **          |
| <b>Robert S. Craft</b>           |              |             |
| *                                | Director     | **          |
| <b>Patrick F. Dye</b>            |              |             |
| *                                | Director     | **          |
| <b>Hubert L. Harris, Jr.</b>     |              |             |
| *                                | Director     | **          |
| <b>Clinton O. Holdbrooks</b>     |              |             |
| *                                | Director     | **          |
| <b>Deborah L. Linden</b>         |              |             |
| *                                | Director     | **          |
| <b>John Ed Mathison</b>          |              |             |
| *                                | Director     | **          |
| <b>Milton E. McGregor</b>        |              |             |
| *                                | Director     | **          |
| <b>John C. H. Miller, Jr.</b>    |              |             |
| *                                | Director     | **          |
| <b>Joe D. Mussafer</b>           |              |             |
| *                                | Director     | **          |
| <b>William E. Powell, III</b>    |              |             |
| *                                | Director     | **          |
| <b>James W. Rane</b>             |              |             |
| *                                | Director     | **          |
| <b>Simuel Sippial</b>            |              |             |
| *                                | Director     | **          |

**Edward V. Welch**

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\* The undersigned, acting pursuant to a power of attorney, has signed this Registration Statement on Form S-8 for and on behalf of the persons indicated above as such persons true and lawful attorney-in-fact and in their names, places and stead, in the capacities indicated above and on the date indicated below.

/s/ SARAH H. MOORE  
**Sarah H. Moore**  
*Attorney-in-Fact*

\*\* Dated: May 23, 2007

**EXHIBIT INDEX**

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