

MB FINANCIAL INC /MD
Form S-8 POS
November 19, 2001

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As filed with the Securities and Exchange Commission on November 19, 2001

Registration No. 333-64584

SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

POST-EFFECTIVE AMENDMENT NO. ONE ON FORM S-8 TO FORM S-4

REGISTRATION STATEMENT
UNDER THE SECURITIES ACT OF 1933

MB FINANCIAL, INC.

(Exact name of registrant as specified in its charter)

Maryland

(State or other jurisdiction of
incorporation or organization)

36-4460265

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

801 West Madison Street, Chicago, Illinois

(Address of principal executive offices)

60607

(Zip Code)

**MB FINANCIAL, INC. 1997 OMNIBUS INCENTIVE PLAN
COAL CITY CORPORATION 1995 STOCK OPTION PLAN
AVONDALE FINANCIAL CORP. 1995 STOCK OPTION AND INCENTIVE PLAN**

(Full titles of the Plans)

MITCHELL FEIGER
PRESIDENT AND CHIEF EXECUTIVE OFFICER
MB FINANCIAL, INC.

801 WEST MADISON STREET
CHICAGO, ILLINOIS 60607

(Name and address of agent for service)

(312) 421-7600

(Telephone number, including area code, of agent for service)

Copy of all communications to:

ROBERT L. FREEDMAN, P.C.
CRAIG M. SCHEER, ESQ.

SILVER, FREEDMAN & TAFF, L.L.P.

(A LIMITED LIABILITY PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS)

1100 NEW YORK AVE., N.W.
WASHINGTON, D.C. 20005

CALCULATION OF REGISTRATION FEE

Title of securities to be registered	Amount to be registered(1)	Proposed maximum offering price per share	Proposed maximum aggregate offering price	Amount of registration fee
Common Stock, par value \$.01 per share	1,149,302 shares	N/A	N/A	N/A(2)

(1) Includes 868,214 shares issuable under the MB Financial, Inc. 1997 Omnibus Incentive Plan, 120,826 shares issuable under the Coal City Corporation 1995 Stock Option Plan and 160,262 shares issuable under the Avondale Financial Corp. 1995 Stock Option and Incentive Plan (such plans collectively referred to as the "Plans").

(2) The Registrant previously paid \$97,458 with the original filing on July 3, 2001 to register 18,661,287 shares, including the 1,149,302 shares which may be issued pursuant to the Plans.

PURPOSE OF AMENDMENT

The purpose of this post-effective amendment is to register on Form S-8 shares of the common stock, par value \$.01 per share (the "Common Stock"), of MB Financial, Inc., a Maryland corporation (the "Company"), previously registered on Form S-4 (No. 333-64584) for issuance pursuant to options granted under the MB Financial, Inc. 1997 Omnibus Incentive Plan, Coal City Corporation 1995 Stock Option Plan and Avondale Financial Corp. 1995 Stock Option and Incentive Plan (collectively, the "Plans"). The Plans were assumed by the Company pursuant to the Amended and Restated Agreement and Plan of Merger, dated as of April 19, 2001, by and among the Company, MB Financial, Inc., a Delaware corporation ("MB"), and MidCity Financial Corporation, a Delaware corporation ("MidCity"), upon the merger (the "Merger") of each of MB and MidCity with and into the Company on November 6, 2001.

PART I
INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

The document(s) containing the information specified in Part I of Form S-8 will be sent or given to participants in the Plans 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.

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PART II
INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Certain Documents by Reference.

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The following documents previously filed by the Company with the Commission are hereby incorporated by reference in this Registration Statement and the prospectus to which this Registration Statement relates (the "Prospectus"):

- (a) The joint proxy statement-prospectus relating to the Merger, as filed pursuant to Rule 424(b) under the Securities Act on October 9, 2001;
- (b) MB's Annual Report on Form 10-K for the year ended December 31, 2000, as amended on Form 10-K/A filed on August 31, 2001;
- (c) MB's Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2001, as amended on Form 10-Q/A filed on August 31, 2001;
- (d) MB's Quarterly Report on Form 10-Q for the quarterly period ended June 30, 2001;
- (e) MB's Current Reports on Form 8-K filed on February 9, 2001, April 20, 2001, April 27, 2001 and May 15, 2001;
- (f) MB's proxy statement for its annual meeting of stockholders held on April 24, 2001; and
- (g) the description of the Common Stock of the Company contained in the Company's Registration Statement on Form 8-A (File No. 0-24566-01) filed on October 9, 2001, and all amendments or reports filed for the purpose of updating such description.

This incorporation by reference shall not be deemed to specifically incorporate by reference the information relating to the audit committee report (as permitted under Item 306 of Regulation S-K) or the board compensation committee report on executive compensation and performance graph (as permitted under Item 402(a)(8) of Regulation S-K) contained in MB's 2001 annual meeting proxy statement. Nor shall this incorporation by reference be deemed to specifically incorporate by reference the information provided under Item 9 of the Current Reports on Form 8-K of MB filed on April 20, 2001 and May 15, 2001.

All documents filed by the Company with the Commission pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934, as amended (the Exchange Act"), after the filing of this Registration Statement, and prior to the filing of a post-effective amendment which indicates that all securities offered hereby have been sold or which deregisters all securities then remaining unsold, shall be deemed incorporated by reference into this Registration Statement and the Prospectus and to be a part hereof and thereof from the date of the filing of such documents. Any statement contained in the documents incorporated, or deemed to be incorporated, by reference herein or in the Prospectus shall be deemed to be modified or superseded for purposes of this Registration Statement and the Prospectus to the extent that a statement contained herein or therein or in any other subsequently filed document which also is, or is deemed to be, incorporated by reference herein or therein 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 or the Prospectus.

The Company shall furnish without charge to each person to whom the Prospectus is delivered, on the written or oral request of such person, a copy of any or all of the documents incorporated by reference, other than exhibits to such documents (unless such exhibits are specifically incorporated by reference to the information that is incorporated). Requests should be directed to Doria Koros, Secretary, MB Financial, Inc., 1200 North Ashland Avenue, Chicago, Illinois 60622, telephone number (773) 645-7868.

All information appearing in this Registration Statement and the Prospectus is qualified in its entirety by the detailed information, including financial statements, appearing in the documents incorporated herein or therein by reference.

Item 4. Description of Securities.

Not Applicable.

Item 5. Interests of Named Experts and Counsel.

Not Applicable.

Item 6. Indemnification of Directors and Officers.

Section 2-405.2 of the Maryland General Corporation Law permits a Maryland corporation to include in its charter a provision limiting the liability of its directors and officers to the corporation and its stockholders for monetary damages except: (1) to the extent it is proven that the director or officer actually received an improper benefit or profit, for the amount of the improper benefit or profit; or (2) to the extent a final judgment or adjudication against the director or officer is based on a determination that the director's or officer's act or failure to act was the result of active and deliberate dishonesty and was material to the cause of action against the director or officer. The Company's charter contains such a provision, thereby limiting the liability of its directors and officers to the maximum extent permitted by Maryland law.

Section 2-418 of the Maryland General Corporation Law permits a Maryland corporation to indemnify a director or officer who is made a party to any proceeding by reason of service in that capacity against judgments, penalties, fines, settlements and reasonable expenses actually incurred unless it is proven that: (1) the act or omission of the director or officer was material to the matter giving rise to the proceeding and was committed in bad faith or with active and deliberate dishonesty; (2) the director or officer actually received an improper personal benefit; or (3) in the case of a criminal proceeding, the director or officer had reason to believe that his conduct was unlawful. The Maryland General Corporation Law provides that where a director or officer is a defendant in a proceeding by or in the right of the corporation, the director or officer may not be indemnified if he or she is found liable to the corporation. The Maryland General Corporation Law also provides that a director or officer may not be indemnified in respect of any proceeding alleging improper personal benefit in which he or she was found liable on the grounds that personal benefit was improperly received. A director or officer found liable in a proceeding by or in the right of the corporation or in a proceeding alleging improper personal benefit may petition a court to nevertheless order indemnification if the court determines that the director or officer is fairly and reasonably entitled to indemnification in view of all the relevant circumstances.

Section 2-418 of the Maryland General Corporation Law provides that unless limited by the charter of a Maryland corporation, a director or officer who is successful on the merits or otherwise in defense of any proceeding must be indemnified against reasonable expenses. Section 2-418 also provides that a Maryland corporation may advance reasonable expenses to a director or officer upon the corporation's receipt of (a) a written affirmation by the director or officer of his or her good faith belief that he or she has met the standard of conduct necessary for indemnification by the corporation and (b) a written undertaking by the director or officer or on his or her behalf to repay the amount paid or reimbursed by the corporation if it is ultimately determined that the standard of conduct was not met.

The Company's charter provides for indemnification of directors and officers to the maximum extent permitted by the Maryland General Corporation Law.

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Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits.

See the Index to Exhibits to this Registration Statement.

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:

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(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 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;

(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 periodic reports filed by the Registrant pursuant to Section 13 or Section 15(d) of the Exchange Act of 1934 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 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.

(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 hereby 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 Securities Exchange Act of 1934 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.

(c) 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 of expenses incurred or paid by a director, officer or controlling person 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.

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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 the Registrant has duly caused this Registration Statement to be signed on its behalf by the undersigned, there unto duly authorized in the City of Chicago, State of Illinois, on November 16, 2001.

MB FINANCIAL, INC.

By: /s/ MITCHELL FEIGER

Mitchell Feiger
President and Chief Executive Officer
(Duly Authorized Officer)

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Mitchell Feiger, his true and lawful attorney-in-fact and agent, with full power of substitution and re-substitution, for him and in his name, place and stead, in any

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and all capacities, to sign any and all amendments (including additional post-effective amendments) to this Registration Statement, and to file the same, with all exhibits thereto, and all other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorney-in-fact and agent full power and authority to do and perform each and every act and thing requisite and necessary to be done, as fully to all intents and purposes as he might or could do in person, hereby ratifying and confirming all said attorney-in-fact and agent or his substitutes or substitute may lawfully do or cause to be done by virtue hereof.

SIGNATURES

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

/s/ MITCHELL FEIGER

Date: November 16, 2001

Mitchell Feiger
Director, President and Chief Executive Officer
(Principal Executive Officer)

/s/ JILL E. YORK

Date: November 16, 2001

Jill E. York
Senior Vice President, Treasurer and Chief Financial Officer
(Principal Financial and Accounting Officer)

E.M. Bakwin
Chairman of the Board

/s/ JAMES N. HALLENE

Date: November 16, 2001

James N. Hallene
Director

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/s/ LESLIE S. HINDMAN

Date: November 16, 2001

Leslie S. Hindman
Director

David Husman
Director

/s/ ROBERT S. ENGELMAN, JR.

Date: November 16, 2001

Robert S. Engelman, Jr.
Director

/s/ ALFRED FEIGER

Date: November 16, 2001

Alfred Feiger
Director

/s/ RICHARD I. GILFORD

Date: November 16, 2001

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Richard I. Gilford
Director

Thomas H. Harvey
Director

/s/ RONALD D. SANTO

Date: November 16, 2001

Ronald D. Santo
Director

/s/ EUGENE SAWYER

Date: November 16, 2001

Eugene Sawyer
Director

/s/ BURTON J. FIELD

Date: November 16, 2001

Burton J. Field
Director

/s/ LAWRENCE E. GILFORD

Date: November 16, 2001

Lawrence E. Gilford
Director

/s/ PATRICK HENRY

Date: November 16, 2001

Patrick Henry
Director

/s/ RICHARD J. HOLMSTROM

Date: November 16, 2001

Richard J. Holmstrom
Director

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/s/ CLARENCE MANN

Date: November 16, 2001

Clarence Mann
Director

/s/ KENNETH A. SKOPEC

Date: November 16, 2001

Kenneth A. Skopec
Director

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INDEX TO EXHIBITS

**Exhibit
Number**

Description

Exhibit Number	Description
4.1	Form of Articles of Amendment and Restatement of the Registrant's Charter (included as Exhibit F to the joint proxy statement-prospectus filed by the Company with the Securities and Exchange Commission on October 9, 2001 and incorporated herein by reference).
4.2	Form of the Registrant's Amended and Restated Bylaws (included as Exhibit G to the joint proxy statement-prospectus filed by the Company with the Securities and Exchange Commission on October 9, 2001 and incorporated herein by reference).
4.3	Form of the Registrant's specimen common stock certificate (filed as Exhibit 4.1 to Amendment No. One to the Company's Registration Statement on Form S-4 (Registration Number 333-64584) and incorporated herein by reference).
5	Opinion of Silver, Freedman & Taff, L.L.P.*
23.1	Consent of Silver, Freedman & Taff, L.L.P. (included in Exhibit 5)
23.2	Consent of McGladrey & Pullen, LLP
23.3	Consent of KPMG LLP
24	Power of Attorney (contained on signature page)

*
Previously filed.

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