

FEDERAL DEPOSIT INSURANCE CORPORATION

Washington, DC 20429-9900

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): April 22, 2010

USA Bank

(Exact name of registrant as specified in its charter)

New York (State or other jurisdiction of incorporation)	58072 (FDIC Certificate No.)	20-0646362 (IRS Employer Identification No.)
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601 North Main Street, Port Chester, New York (Address of principal executive offices)	10573 (Zip Code)
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Registrant's telephone number, including area code: (914) 939-3700

N/A

(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2 below):

Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Section 1 – Registrant’s Business and Operations

Item 1.01 Entry into a Material Definitive Agreement

(a)(1) On April 22, 2010, USA Bank (the “*Bank*”) entered into a Stock Purchase Agreement (the “*Stock Purchase Agreement*”) with Westchester Working Group, LLC (“*WWG*”) providing for a recapitalization of the Bank. Prior to entering into the Stock Purchase Agreement, there had been no material relationship between the Bank and WWG. The Bank anticipates that, upon consummation of the transactions contemplated by the Stock Purchase Agreement, the Bank will qualify as “well capitalized” for regulatory capital adequacy purposes and that, through its ownership of shares of Series A Convertible Preferred Stock (the “*Preferred Stock*”) of the Bank, WWG will control the Bank.

(2) The following summary of the Stock Purchase Agreement is qualified in its entirety by reference to the Stock Purchase Agreement, a copy of which is filed as an exhibit to this Current Report on Form 8-K.

Pursuant to the Stock Purchase Agreement, WWG would purchase between 100,000 and 150,000 shares of Preferred Stock at a purchase price of \$100 per share. The Bank would also conduct a public offering of additional shares of Preferred Stock at an offering price of \$100 per share with an aggregate offering price of not less than \$2,000,000 (20,000 shares) and not more than \$8,000,000 (80,000 shares).

If necessary, WWG will purchase additional shares of Preferred Stock to assure that the aggregate gross proceeds of the sale of Preferred Stock will be not less than \$15 million. If all of the shares to be offered are sold, the gross proceeds to the Bank would be \$23 million and, if the minimum number of shares is sold, the gross proceeds would be \$15 million.

At the option of the holder, the Preferred Stock will be convertible into Common Stock of the Bank at an initial conversion price equal to \$100 divided by \$0.325, subject to adjustment if certain events occur. Annual dividends would be payable on the Preferred Stock to each holder in additional shares of Preferred Stock in an amount equal to 6.961038% of the Preferred Stock held by such holder. The shares of Preferred Stock would automatically convert into shares of Common Stock on the fifth anniversary of the date of issuance at the conversion price then in effect.

The holders of the Preferred Stock as a class would have the right to elect 80% of the directors at any meeting of stockholders at which directors are elected.

Consummation of the transactions contemplated by the Stock Purchase Agreement is subject to the satisfaction of a number of conditions including:

- Approval by the stockholders of the Bank and by the Superintendent of Banks of the State of New York of a Restated Organization Certificate for the Bank that, among other things, would create a new class of preferred stock (*i.e.*, the Preferred Stock) which would be sold to WWG and in the proposed public offering as well as additional shares of Preferred Stock which would be reserved for payment of dividends on the Preferred Stock and for possible issuance

pursuant to a proposed employee stock option and a proposed restricted stock plan for directors;

- The sale by the Bank of additional shares of Preferred Stock having an aggregate purchase price of not less than \$2,000,000 to purchasers other than WWG;
- Receipt of regulatory approvals from the New York State Banking Department, including preliminary and final approval of the Restated Organization Certificate of the Bank, approval of the Bank's revised business plan and non-objection to the directors to be elected by the holders of the Preferred Stock following consummation of the sale of the Preferred Stock;
- Receipt of approvals from the Federal Deposit Insurance Corporation (the "FDIC") of the directors to be selected by the holders of the Preferred Stock and of the Bank's revised business plan;
- Receipt of regulatory approvals of WWG's becoming a bank holding company;
- Receipt by the Bank of an opinion from its financial advisor to the effect that the sale of the shares by the Bank to WWG is fair from a financial perspective to the Bank;

The Stock Purchase Agreement contains a number of customary representations and warranties by the Bank to the Purchaser and by the Purchaser to the Bank.

The Stock Purchase Agreement contains covenants relating to the conduct of the business of the Bank prior to the closing of the transactions contemplated thereby, including continuing to conduct its business prior to closing in the normal course, cooperating with WWG in obtaining required approvals and affording WWG consultation rights with respect to certain business decisions.

If the Bank receives a Superior Proposal (as defined in the Stock Purchase Agreement) and if WWG does not agree to modify its proposal or the new proposal continues to be a Superior Proposal, the Board of Directors would have the right to modify or withdraw its recommendation that the stockholders vote in favor of approving the Restated Organization Certificate. In such event, the Bank would be obligated to pay WWG a break-up fee equal to \$400,000.

The obligations of WWG and the Bank are subject to satisfaction of a number of conditions. In the case of WWG, these conditions include the continuing accuracy of the Bank's representations and warranties, the receipt of stockholder and regulatory approvals, including approval of the director candidates selected by WWG, and the receipt of customary closing documents.

The Stock Purchase Agreement may be terminated on or prior to the date of closing under certain circumstances, including by mutual agreement of WWG and the Bank, by either WWG or the Bank if the other party breaches any representation, warranty, covenant or

agreement contained in the Stock Purchase Agreement, automatically on June 30, 2010 if neither WWG nor the Bank extends the date of closing, by the Bank if the Board withdraws, qualifies or changes its recommendation based on receipt of a superior proposal, by WWG if the Board of the Bank withdraws, qualifies or changes its recommendation in a manner adverse to the WWG or by WWG or the Bank if the Bank is seized by any regulatory authority or if any governmental authority formally advises that it will not grant any required regulatory approval.

A copy of the Stock Purchase Agreement is filed as Exhibit 10.1 hereto and the description herein of the transactions contemplated by the Stock Purchase Agreement is qualified in its entirety by reference thereto.

Section 9 – Financial Statements and Exhibits

Item 9.01 Financial Statements and Exhibits

- (a) Not applicable.
- (b) Not applicable.
- (c) Not applicable.
- (d) Exhibits


3(i) Form of Restated Organization Certificate of USA Bank under Section 8007 of the Banking Law of the State of New York

10.1 Stock Purchase Agreement between the Bank and Westchester Working Group, LLC dated as of April 22, 2010

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

USA Bank

By: 
Paul V. Erwin
Senior Vice President-Chief Financial Officer

Date:

FORM OF
RESTATED ORGANIZATION CERTIFICATE
OF
USA BANK
UNDER SECTION 8007 OF THE BANKING LAW
OF THE STATE OF NEW YORK

Pursuant to Section 8007 of the Banking Law of the State of New York, the Organization Certificate of USA Bank is restated as follows:

- First.** The name by which the corporation is to be known is USA Bank (sometimes referred to hereinafter as the “*Bank*”).
- Second.** The place where its principal office is to be located is 601 North Main Street, Port Chester, New York 10573.
- Third.** The Bank is authorized to issue two classes of stock, designated “*Common Stock*” with par value of \$0.10 per share and “*Preferred Stock*” with par value of \$100 per share. The total number of shares of Common Stock that the Bank is authorized to issue is One Hundred Sixteen Million Five Hundred Nineteen Thousand Two Hundred Thirty-One (116,519,231) shares. The total number of shares of Preferred Stock that the Bank is authorized to issue is Three Hundred Fifty-Three Thousand Five Hundred (353,500) shares.

A. Common Stock

1. Voting Rights: The Common Stock shall be voting stock at all times, and each holder of shares of Common Stock of the Bank shall be entitled to one vote for each share of such stock standing in the name of such holder on the books of the Bank.

2. Shares Reserved For Conversion: One Hundred Eight Million Seven Hundred Sixty-Nine Thousand Two Hundred Thirty-One (108,769,231) shares of Common Stock shall be reserved for issuance solely to effectuate conversion of shares of Series A Convertible Preferred Stock to shares of Common Stock by the holders of Series A Convertible Preferred Stock pursuant to the terms and conditions hereinafter set forth providing for such conversion rights and the exercise thereof.

3. Shares Reserved For Stock Option Plan: Two Million (2,000,000) shares of Common Stock shall be reserved for issuance solely to effectuate an employee stock option and restricted stock plan for directors, officers and employees of the Bank that may hereafter be instituted by the Bank.

B. Preferred Stock

The Preferred Stock may be issued from time to time in one or more series. The first series of Preferred Stock shall be comprised of Three Hundred Fifty-Three Thousand Five

Hundred (353,500) shares and shall be designated “*Series A Convertible Preferred Stock*”, of which (i) Two Thousand Five Hundred (2,500) shares of such Series A Convertible Preferred Stock (the “*Warrant Shares*”) shall be reserved for issuance on exercise of outstanding warrants to purchase shares of Series A Convertible Preferred Stock, (ii) Twenty Thousand (20,000) shares of such Series A Convertible Preferred Stock (the “*Director Compensation Plan Shares*”) shall be reserved for issuance pursuant to a director stock compensation plan that may hereafter be instituted by the Bank; and (iii) One Hundred One Thousand (101,000) shares of such Series A Convertible Preferred Stock shall be reserved for distribution as stock dividends (including without limitation stock dividends payable on account of Warrant Shares and Director Compensation Plan Shares) pursuant to the terms hereof.

The relative rights, preferences, privileges and restrictions granted to or imposed upon the Series A Preferred Stock are as follows:

1. Dividends. The holders of the then outstanding Series A Convertible Preferred Stock shall be entitled to receive stock dividends of shares of Series A Convertible Preferred Stock at the annual rate of 6.961038 percent per annum (the “*Dividend Amount*”) per share of Series A Convertible Preferred Stock, as adjusted for any stock splits, reverse stock splits, stock dividends (including the annual stock dividends provided in this paragraph 1), and similar recapitalization events (each a “*Recapitalization Event*”), payable annually on the first business day of January of each year (a “*Dividend Date*”) by issuance of additional shares of Series A Convertible Preferred Stock having a face amount equal to the Dividend Amount. The stock dividends provided for in this paragraph 1 shall be cumulative and shall accrue stock dividends thereon as of each Dividend Date at the same annual rate of interest provided for the shares of Series A Convertible Preferred Stock on which such stock dividends are payable. In the event that the Bank shall be prohibited under applicable New York banking law from declaring or paying such stock dividends on a Dividend Date, such stock dividends shall be paid be paid within thirty (30) days after the end of the fiscal quarter of the Bank in which the Bank is first legally permitted to pay such dividends. Holders receiving such stock dividends shall be entitled to fractional shares of Series A Convertible Preferred Stock to the extent that the number of shares of Series A Convertible Preferred Stock payable to a holder as a dividend at any one time hereunder is not a whole number, although the Bank may in its discretion withhold issuing share certificates for such fractional shares and maintain such fractional interest on the books of the Bank until such time as any such holder of fractional shares requests a share certificate for such fractional interest.

2. Liquidation.

(a) In the event of the liquidation, dissolution or winding up of the Bank, either voluntary or involuntary, the assets and funds of the Bank available for distribution to stockholders shall be distributed ratably among the holders of Series A Convertible Preferred Stock and holders of the Common Stock, with each share of Series A Convertible Preferred Stock being deemed, for such purpose, to be equal to the number of shares of Common Stock, including fractions of a share, into which such share of Series A Convertible Preferred Stock is convertible immediately prior to the close of business on the business day fixed for such distribution.

(b) A merger or consolidation of the Bank into or with another entity after which the stockholders of the Bank immediately prior to such transaction do not own, immediately following the consummation of the transaction by virtue of their shares in the Bank or securities received in exchange for such shares in connection with the transaction, a majority of the voting power of the surviving entity in proportions substantially similar to those that existed immediately prior to such transaction and with substantially the same rights, preferences, privileges and restrictions as the shares they held immediately prior to the transaction, or the sale, transfer or other disposition (but not including a transfer or disposition by pledge or mortgage to a bona fide lender) of all or substantially all of the assets of the Bank (other than to a wholly-owned subsidiary), shall be deemed to be a liquidation of the Bank as that term is used in this Section 2.

(c) In the event of any liquidation of the Bank involving the distribution of assets other than cash to the stockholders of the Bank, the value of the assets to be distributed shall be determined as follows:

(i) In the case of securities that are not subject to investment letter or other similar restrictions on free tradability,

(A) if traded on a national securities exchange or through the Nasdaq National Market, the value shall be deemed to be the average of the closing prices of the securities over the 10-day period ending three days prior to the closing;

(B) if actively traded over-the-counter, the value shall be deemed to be the average of (i) the average of the last bid and asked prices or (ii) the closing sale prices (whichever is applicable) over the 30-day period ending three days prior to the closing; or

(C) if there is no active public market, the value shall be the fair market value thereof, as determined in good faith by the Board of Directors of the Bank.

(ii) In the case of securities subject to investment letter or other restrictions on free marketability (other than restrictions arising solely by virtue of a stockholder's status as an affiliate or former affiliate), the value shall be based on an appropriate discount from the market value determined as above in Section 2(c)(i) to reflect the approximate fair market value thereof, as determined in good faith by the Board of Directors of the Bank.

(iii) In the case of any other property, the value shall be equal to the property's fair market value, as determined in good faith by the Board of Directors of the Bank.

3. Conversion. The holders of the Series A Convertible Preferred Stock shall have conversion rights as follows:

(a) **Right to Convert.** Each share of Series A Convertible Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share, at the office of the Bank or any transfer agent for the Series A Convertible Preferred Stock, into a number of fully paid and nonassessable shares of Common Stock equal to \$100.00 divided by the Conversion Price for Series A Convertible Preferred Stock in effect at the time of

