



J. Douglas Cheatham  
**Old Second Bancorp, Inc.**  
37 South River Street, Aurora, IL 60506-4172  
**(b) (6)**

March 9, 2009

Special Inspector General – TARP  
1500 Pennsylvania Avenue, NW, Suite 1064  
Washington, DC 20220  
**Via e-mail to: SIGTARP.response@do.treas.gov**

Dear Mr. Barofsky:

I am writing on behalf of Old Second Bancorp, Inc. (the “Company”) in response to the Office of the Special Inspector General for Troubled Asset Relief Program (the “SIGTARP”) information request dated February 6, 2009 (the “Information Request”). The Company is the sole shareholder of Old Second Bank, an Illinois chartered bank headquartered in Aurora, Illinois (the “Bank”).

**Request for Confidential Treatment**

For the reasons set forth below, I am requesting that this response (the “Response”) to Information Request be accorded confidential treatment. The Response contains proprietary information concerning the business objectives and strategies of the Company and the Bank. Neither the Company nor the Bank is otherwise obligated to disclose any of this information to the general public and this information is being furnished to the SIGTARP in confidence. The Company and the Bank submit that public disclosure of this information would permit its competitors to have access to information that neither the Company nor the Bank would be able to access regarding its competitors.

If the SIGTARP makes a preliminary determination not to accord confidential status to any of the information contained in the Response, I respectfully request that the SIGTARP contact me prior to making a final determination with respect thereto.

**Company Background**

The Company is a diversified bank holding company with total assets of approximately \$2.99 billion as of December 31, 2008. The Company, through its subsidiaries, conducts a full service financial services through its thirty-five banking locations and one commercial loan production office located in Kane, Kendall, DeKalb, DuPage, LaSalle, Will and southwestern Cook counties in Illinois.

The Bank’s full service banking businesses includes the customary consumer and commercial products and services which banks provide. The following services are included: demand, NOW, money market, savings, time deposit, individual retirement and Keogh deposit accounts; commercial, industrial, consumer and real estate lending, including installment loans, student loans, farm loans, lines of credit

and overdraft checking; safe deposit operations; trust services; wealth management services, and an extensive variety of additional services tailored to the needs of individual customers, such as the acquisition of U.S. Treasury notes and bonds, the sale of traveler's checks, money orders, cashier's checks and foreign currency, direct deposit, discount brokerage, debit cards, credit cards, and other special services. The Bank also offers a full complement of electronic banking services such as Internet banking and corporate cash management including remote deposit capture. Commercial and consumer loans are made to corporations, partnerships and individuals, primarily on a secured basis. Commercial lending focuses on business, capital, construction, inventory and real estate lending. Installment lending includes direct and indirect loans to consumers and commercial customers.

### **Capital Purchase Program Participation**

Following the announcement of the Troubled Asset Relief Program Capital Purchase Program (the "CPP") by the United States Department of Treasury (the "U.S. Treasury") in October, 2008, the Company's management and board closely examined the terms of the program and evaluated whether or not the Company could effectively use the funds in an appropriate manner. Considerations included the potential dilutive effect on short term earnings, whether Company could effectively lend using the proceeds, and what the impact would be on the Company's capital position. Without the CPP funds, it is likely that the Company would have reduced lending in order to preserve capital. Because the new capital became available, the Company is proceeding with this plan. Following this determination, the Company formally applied in the CPP on October 28, 2009.

The Company's management was informed of the U.S. Treasury's preliminary approval on December 17, 2008 for an investment of up to approximately \$73.0 million. The Company's management and a special committee of the board revisited the terms of the CPP and again examined whether or not the Company could make proper use of the funds in the event that it elected to participate in the CPP. Following this examination, the Company closed the CPP transaction with the U.S. Treasury on January 16, 2009 for an amount of \$73.0 million.

Given this background information about the Company's participation in the CPP, we have provided specific responses to the Information Request, which are set forth below in the order presented in the Information Request.

### **Use of CPP Funds**

The Company applied for CPP funds on October 28, 2008 while management was involved with the budgeting process for 2009. Based on discussions with attorneys, other bankers, and banking regulators, management anticipated approval under the program and included the funds in our 2009 budget. As such, the budget establishes the framework for the intended use of funds.

It was anticipated that the funds would initially be placed in short term investments until lending opportunities arose. These investments were purchased around the time of the receipt of funds on January 16, 2009, and the securities are held in the Company's securities portfolio. CPP funds are not segregated from other institutional funds. As new loans are made the funding will come from general institutional sources of funds, of which the CPP funds are a part, and not necessarily from the sale or maturity of the securities initially purchased.

The plan anticipates an overall expansion in lending with total amounts exceeding the amount of capital invested in the Company by the U.S. Treasury. The following is a summary of our projected lending (in millions):

	12/31/08 Actual	12/31/09 Budget	Projected Growth
Commercial and industrial	\$ 378,248	(b) (4)	
Commercial - land development	296,833		
Real estate - fixed	866,992		
Real estate - variable	298,122		
Real estate - ARMS	233,222		
Consumer	37,861		
Home equity credit line	149,192		
Other	10,644		
	\$ 2,271,114		

(b) (4)

As enumerated above, (b) (4)

The Company is located in an area that grew rapidly during the past five years. Over that time, most lending was real estate based, whether construction and development, commercial properties, or residential mortgages. In the current environment, the Company is shifting resources to enhance business lending and specific plans were developed throughout most of 2008. (b) (4)

(b) (4)

The Company has had CPP funds for approximately six weeks. During that time, the loan portfolio mix has changed as shown in the following table (in millions):

	1/16/09	2/28/09	Growth
Commercial and industrial	\$ 353,109	\$ 348,167	\$ (4,942)
Commercial - land development	303,668	306,293	2,625
Real estate - fixed	859,741	878,112	18,371
Real estate - variable	316,092	303,900	(12,192)
Real estate - ARMS	231,350	228,916	(2,424)
Consumer	37,225	35,860	(1,365)
Home equity credit line	150,563	154,913	4,350
Other	14,685	7,983	(6,702)
	<u>\$ 2,266,433</u>	<u>2,264,144</u>	<u>(2,289)</u>

Because it is early in the process and the first quarter is a seasonally slow period for lending in our market area, there has been no loan growth in the six weeks since receipt of CPP funds. However, the Company expects lending to increase as the year progresses and the Company believes that the initial plan remains viable.

### **Executive Compensation**

In connection with the receipt of CPP funds on January 16, 2009, the Company required its “senior executive officers” (“SEOs”) to execute waivers and letter agreements (collectively, the “CPP Waivers”) pursuant to which the SEOs agreed to be bound by the original four executive compensation restrictions imposed pursuant to CPP rules. Primarily, the CPP Waivers serve to alert the SEOs to the four applicable restrictions:

1. The Board of Directors Compensation Committee and the Company’s senior risk officer must meet to identify and limit the features of the SEOs’ incentive compensation arrangements that could lead an SEO to take unnecessary and/or excessive risks that could threaten the Company’s value. The Compensation Committee must certify that any meetings have occurred and that incentive compensation programs have been appropriately limited (the “Certification Rule”).
2. The SEOs will be subject to a “clawback” with respect to certain incentive compensation and bonus arrangements (the “Clawback Rule”).
3. The Company is prohibited from making “golden parachute” payments to the SEOs during the period the U.S. Treasury holds a debt or equity position acquired under CPP (the “Golden Parachute Rule”).
4. The Company is prohibited from claiming deductions for compensation paid during any taxable year to an SEO in excess of \$500,000 (the “Deduction Rule”).

With respect to the Clawback Rule and Golden Parachute Rule, the CPP Waivers serve as the SEOs acknowledgment of, and agreement to, such restrictions as a condition to the Company’s participation in CPP.

With respect to the Certification Rule, the senior risk officer of the Company has been working to prepare an internal risk assessment with respect to the Company's incentive bonus plans. The risk assessment will be discussed with the Compensation Committee, in accordance with the Certification Rule, on or before April 18, 2009.

Finally, with respect to the Deduction Rule, the Company will work take steps to ensure compliance with this rule. The Company will monitor the compensation of CEOs during 2009 (and all future years during which the U.S. Treasury holds an equity interest in the Company) and, if necessary, will limit the compensation deduction on its tax return pursuant to the Deduction Rule.

In addition to taking the foregoing steps to comply with the original four executive compensation restrictions, the Company has notified its chief executive officer of his obligation to make certain certifications with respect to the Company's compliance with the executive compensation restrictions pursuant to Interim Final Rules issued by the U.S. Treasury in January 2009 (the "Executive Compensation Interim Final Rules"). The Company's chief executive officer has acknowledged his responsibilities pursuant to the Executive Compensation Interim Final Rules and will undertake to satisfy those responsibilities. The Company is also aware of, and is taking steps to comply with, the Executive Compensation Interim Final Rules requirement to preserve documents related to the various required CPP certifications. The Company is currently compiling copies of supporting documentation and will retain such documentation in accordance with the rules set forth in the Executive Compensation Final Interim Rules

Lastly, the Company is aware of the new executive compensation restrictions included in the American Recovery and Reinvestment Act of 2009. The Company is currently working with legal counsel and other advisors to gain a better understanding of these new restrictions. Once the new restrictions have been fully implemented and explained by the U.S Treasury, Securities and Exchange Commission and other responsible regulators, the Company will take all reasonable steps necessary to be in compliance with any applicable legal requirements. In anticipation of these rules becoming effective, the Company has already taken the step of paying bonuses (earned during 2008) to its CEOs in the form of restricted stock under terms and conditions that are intended to satisfy the exception provided under the new executive compensation restrictions.

I certify that, to my knowledge, all statements, representations, and supporting information contained herein are accurate.

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J. Douglas Cheatham  
Executive Vice President and  
Chief Financial Officer

Enclosures:

Capital analysis  
Press release issued on December 22, 2008  
Press release issued on January 16, 2009

**Old Second Bancorp, Inc.**  
**U.S. Treasury Capital Purchase Program**  
**As of December 11, 2008**  
**(Dollars in Thousands, except per share data)**

**Senior Preferred Shares Calculation**

Risk weighted assets	\$2,445,446
Percent of risk weighted assets	<u>3%</u>
Senior preferred shares issued	\$ 73,363

**Warrant Calculation**

Percentage of warrants issued	<u>15%</u>
Market price of stock underlying warrants	\$ 11,004
Assumed warrant strike price	<u>\$ 14.00</u>
Number of shares issued	786,000
Diluted average shares outstanding	<u>13,832,875</u>
Pro-forma number of diluted shares	14,618,875
Warrants as a % of diluted shares	5.38%

## Zero Leverage

	<u>Actual</u>	<u>Preferred Stock</u>	<u>Pro-Forma w/ Preferred</u>	<u>Warrants Exercised</u>	<u>Pro-Forma w/ Warrants</u>																																																			
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## Zero Leverage

	Actual	Preferred Stock	Pro-Forma	Warrants Exercised	Pro-Forma				
<b>Income Statement Impact</b>									
Estimated 2009 earnings	(b) (4)								
After-tax return on proceeds									
Leverage income									
Net income									
Preferred dividend expense									
Net income to common									
Average diluted shares									
Diluted EPS									
Dilution (Accretion)									
<b>Assuming Warrant Exercise</b>									
Net income to common, ex. warrants	(b) (4)								
After-tax return on warrant proceeds									
Net income to common									
Average diluted shares						13,832,875	(b) (4)		
Additional shares for warrants									
Pro-forma diluted average shares									
Diluted EPS									
Dilution (Accretion)									
<b>Assumptions</b>									
Marginal tax rate	(b) (4)								
Pre-tax return on proceeds									
Pre-tax Spread on leverage									



## Leverage to Eliminate Dilution Caused by Preferred Stock

	<u>Actual</u>	<u>Preferred Stock</u>	<u>Pro-Forma w/ Preferred</u>	<u>Warrants Exercised</u>	<u>Pro-Forma w/ Warrants</u>
<b>Capital</b>					
Preferred stock	(b) (4)				
First year earnings impact					
Total stockholders' equity					
Unrealized securities (gains) losses					
Trust preferred					
Disallowed intangible assets					
Disallowed servicing rights					
Tier 1 capital					
Allowance, up to 1.25% of RWA					
Tier 2 portion of trust preferred					
Subordinated debt					
Deduction					
Total risk-based capital					
<b>Assets</b>					
Leverage assets	(b) (4)				
Risk weight					
Total assets					
Risk-weighted assets					
Adjusted average assets					
	<u>Actual</u>	<u>Pro-Forma with Preferred</u>	<u>Pro-Forma with Warrants</u>		
<b>Capital Ratios</b>	<u>OSBC</u>	<u>OSNB</u>	<u>OSBC</u>	<u>OSNB</u>	<u>OSBC</u> <u>OSNB</u>
Tangible capital to tangible assets	(b) (4)				
Tier 1 capital to average assets					
Tier 1 capital to risk-weighted assets					
Total capital to risk-weighted assets					
<b>Regulatory Requirements</b>					
Tier 1 capital to leverage capital Cushion	(b) (4)				
Tier 1 capital to risk-weighted assets Cushion					
Total capital to risk-weighted assets Cushion					
Pre-tax cushion					

## Leverage to Eliminate Dilution Caused by Preferred Stock

	<u>Actual</u>	<u>Preferred Stock</u>	<u>Pro-Forma</u>	<u>Warrants Exercised</u>	<u>Pro-Forma</u>
<b>Income Statement Impact</b>					
Estimated 2009 earnings	(b) (4)				
After-tax return on proceeds					
Leverage income					
Net income					
Preferred dividend expense					
Net income to common					
Average diluted shares	<u>13,832,875</u>		<u>13,832,875</u>		
Diluted EPS	(b) (4)				
Dilution (Accretion)					
<b>Assuming Warrant Exercise</b>					
Net income to common, ex. warrants	(b) (4)				
After-tax return on warrant proceeds					
Net income to common					
Average diluted shares	(b) (4)				
Additional shares for warrants					
Pro-forma diluted average shares					
Diluted EPS					
Dilution (Accretion)					
<b>Assumptions</b>					
Marginal tax rate	(b) (4)				
Pre-tax return on proceeds					
Spread on leverage					

## Leverage to Eliminate Dilution Caused by Preferred Stock and Warrants

	<u>Actual</u>	<u>Preferred Stock</u>	<u>Pro-Forma w/ Preferred</u>	<u>Warrants Exercised</u>	<u>Pro-Forma w/ Warrants</u>					
<b>Capital</b>										
Preferred stock	(b) (4)									
First year earnings impact										
Total stockholders' equity										
Unrealized securities (gains) losses										
Trust preferred										
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Allowance, up to 1.25% of RWA										
Tier 2 portion of trust preferred										
Subordinated debt										
Deduction										
Total risk-based capital										
<b>Assets</b>										
Leverage assets						(b) (4)				
Risk weight										
Total assets										
Risk-weighted assets										
Adjusted average assets										
<b>Capital Ratios</b>	<u>Actual</u>	<u>Pro-Forma with Preferred</u>	<u>Pro-Forma with Warrants</u>							
	<u>OSBC</u>	<u>OSNB</u>	<u>OSBC</u>	<u>OSNB</u>	<u>OSBC</u>	<u>OSNB</u>				
Tangible capital to tangible assets	(b) (4)									
Tier 1 capital to average assets	(b) (4)									
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Total capital to risk-weighted assets Cushion										
Pre-tax cushion										

## Leverage to Eliminate Dilution Caused by Preferred Stock and Warrants

	<u>Actual</u>	<u>Preferred Stock</u>	<u>Pro-Forma</u>	<u>Warrants Exercised</u>	<u>Pro-Forma</u>
<b>Income Statement Impact</b>					
Estimated 2009 earnings	(b) (4)				
After-tax return on proceeds	(b) (4)				
Leverage income	(b) (4)				
Net income	(b) (4)				
Preferred dividend expense	(b) (4)				
Net income to common	(b) (4)				
Average diluted shares	<u>13,832,875</u>				
Diluted EPS	(b) (4)				
Dilution (Accretion)	(b) (4)				
<b>Assuming Warrant Exercise</b>					
Net income to common, ex. warrants			(b) (4)		
After-tax return on warrant proceeds			(b) (4)		
Net income to common			(b) (4)		
Average diluted shares			13,832,875		
Additional shares for warrants				(b) (4)	
Pro-forma diluted average shares				(b) (4)	
Diluted EPS				(b) (4)	
Dilution (Accretion)				(b) (4)	
<b>Assumptions</b>					
Marginal tax rate	(b) (4)				
Pre-tax return on proceeds	(b) (4)				
Spread on leverage	(b) (4)				

**Old Second Bancorp, Inc.  
U.S. Treasury Capital Purchase Program  
Impact Summary  
As of December 11, 2008**

	Without TARP	With TARP Capital		
		Zero Leverage	Offset Preferred	Offset all New Capital
Preferred stock	(b) (4)			
Additional leverage				
Total invested				
<b><u>Preferred Stock Impact</u></b>				
<b>Old Second Bancorp, Inc.</b>				
Dilution (Accretion)				
Tangible capital to tangible assets				
Total capital to risk-weighted assets				
<b>Old Second National Bank</b>				
Tangible capital to tangible assets				
Total capital to risk-weighted assets				
<b><u>Preferred Stock and Warrants Impact</u></b>				
<b>Old Second Bancorp, Inc.</b>				
Dilution (Accretion)				
Tangible capital to tangible assets				
Total capital to risk-weighted assets				
<b>Old Second National Bank</b>				
Tangible capital to tangible assets				
Total capital to risk-weighted assets				

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

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)

**December 22, 2008**  
December 22, 2008

**Old Second Bancorp, Inc.**  
(Exact name of Registrant as specified in its charter)

**Delaware**  
(State or other jurisdiction of incorporation)

**0-10537**  
(Commission File Number)

**36-3143493**  
(I.R.S. Employer Identification Number)

**37 South River Street, Aurora, Illinois**  
(Address of principal executive offices)

**60507**  
(Zip Code)

**(630) 892-0202**  
(Registrant's telephone number, including area code)

**Not Applicable**  
(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))

## **Item 8.01 Other Events**

On December 22, 2008, Old Second Bancorp, Inc announced that it has received preliminary approval from the U.S. Treasury Department to participate in its Capital Purchase Program (CPP), a voluntary initiative designed for U.S. financial institutions to build capital and increase the flow of credit to support the economy. A copy of the related press release is attached as Exhibit 99.1 to the Current Report on Form 8-K and is incorporated herein by reference in its entirety

The information furnished herein, including Exhibit 99.1, shall not be deemed to be “filed” for purposes of Section 18 of the Securities Exchange Act of 1934, nor shall it be deemed incorporated by reference in any filing under the Securities Act of 1933.

## **Item 9.01 Financial Statements and Exhibits**

(d) Exhibits

99.1 Press release dated December 22, 2008

## **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.

**OLD SECOND BANCORP, INC.**

Dated: December 22, 2008

By: /s/J.Douglas Cheatham  
J. Douglas Cheatham  
Executive Vice President  
and Chief Financial Officer



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

**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)**

**January 16, 2009**

**Old Second Bancorp, Inc.**

(Exact name of registrant as specified in its charter)

**Commission File Number: 0-10537**

**Delaware**

(State or other jurisdiction of incorporation)

**36-3143493**

(I.R.S. Employer Identification Number)

**37 South River Street  
Aurora, Illinois 60507**

(Address of principal executive offices, including zip code)

**(630) 892-0202**

(Registrant's telephone number, including area code)

**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):

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

### **Item 1.01. Entry into a Material Definitive Agreement.**

On January 16, 2009, Old Second Bancorp, Inc. (the “Company”), pursuant to the Capital Purchase Program implemented as a component of the Troubled Asset Relief Program, entered into a Letter Agreement, which includes the Securities Purchase Agreement – Standard Terms (collectively, the “Purchase Agreement”) with the United States Department of the Treasury (“Treasury”), pursuant to which the Company issued and sold to Treasury: (i) 73,000 shares of the Company’s Series B Fixed Rate Cumulative Perpetual Preferred Stock (the “Series B Preferred Stock”) and (ii) a warrant (the “Warrant”) to purchase 815,339 shares of the Company’s common stock, par value \$1.00 per share (the “Common Stock”), for an aggregate purchase price of \$73 million in cash. The Purchase Agreement is attached as Exhibit 10.1 hereto and is incorporated herein by reference.

The Series B Preferred Stock will qualify as Tier 1 capital and will pay cumulative dividends at a rate of 5% per annum for the first five years, and 9% per annum thereafter. The Series B Preferred Stock may be redeemed by the Company after three years. Prior to the end of three years, the Series B Preferred Stock may be redeemed by the Company only with the proceeds of the sale of qualifying equity securities of the Company (a “Qualified Equity Offering”). Any redemption of the Series B Preferred Stock will be at the per share liquidation amount of \$1,000 per share, plus any accrued and unpaid dividends. The restrictions on redemption are set forth in the Certificate of Designations described in Item 5.03 below.

Prior to the third anniversary of Treasury’s purchase of the Series B Preferred Stock, unless the Series B Preferred Stock has been redeemed or Treasury has transferred all of the Series B Preferred Stock to third parties, the consent of Treasury will be required for the Company to: (i) increase the dividend paid on its Common Stock; or (ii) repurchase its Common Stock or other equity or capital securities, other than in connection with benefit plans consistent with past practice and certain other circumstances specified in the Purchase Agreement. The Series B Preferred Stock will be non-voting except for class voting rights on matters that would adversely affect the rights of the holders of the Series B Preferred Stock.

The Warrant has a ten-year term and is immediately exercisable upon its issuance, with an exercise price, subject to anti-dilution adjustments, equal to \$13.43 per share of the Common Stock. The Warrant is attached as Exhibit 4.2 hereto and is incorporated herein by reference.

If the Company receives aggregate cash proceeds of not less than \$73 million from one or more Qualified Equity Offerings on or prior to December 31, 2009, the number of shares of Common Stock issuable pursuant to Treasury’s exercise of the Warrant will be reduced by one half of the original number of shares, taking into account all adjustments, underlying the Warrant. Pursuant to the Purchase Agreement, Treasury has agreed not to exercise voting power with respect to any shares of Common Stock issued upon exercise of the Warrant.

The Series B Preferred Stock and the Warrant were issued in a private placement exempt from registration pursuant to Section 4(2) of the Securities Act of 1933, as amended. Upon the request of Treasury at any time, the Company has agreed to promptly enter into a deposit arrangement pursuant to which the Series B Preferred Stock may be deposited and depositary shares (“Depositary Shares”), representing fractional shares of Series B Preferred Stock, may be

issued. The Company has agreed to register the Series B Preferred Stock, the Warrant, the shares of Common Stock underlying the Warrant (the “Warrant Shares”) and Depositary Shares, if any, as soon as practicable after the date hereof. Neither the Series B Preferred Stock nor the Warrant will be subject to any contractual restrictions on transfer, except that Treasury may only transfer or exercise an aggregate one-half of the Warrant Shares prior to the earlier of the date on which the Company receives aggregate cash proceeds of not less than \$73 million from one or more Qualified Equity Offerings and December 31, 2009.

**Item 3.02. Unregistered Sales of Equity Securities.**

The information set forth under “Item 1.01. Entry into a Material Definitive Agreement” is incorporated by reference into this Item 3.02.

**Item 3.03. Material Modification to Rights of Securityholders.**

As a result of the Company’s issuance of the Series B Preferred Stock on January 16, 2009, the ability of the Company to declare or pay dividends or distributions on, or purchase, redeem or otherwise acquire for consideration, shares of its Junior Stock (as defined below) and Parity Stock (as defined below) will be subject to restrictions, including the Company’s restriction against increasing dividends from the last quarterly cash dividend declared on the Common Stock prior to October 14, 2008, which was \$0.16 per share. The redemption, purchase or other acquisition of trust preferred securities of the Company or its affiliates also will be restricted. These restrictions will terminate on the earlier of (a) the third anniversary of the date of issuance of the Series B Preferred Stock and (b) the date on which the Series B Preferred Stock has been redeemed in whole or Treasury has transferred all of the Series B Preferred Stock to third parties. The restrictions described in this paragraph are set forth in the Purchase Agreement.

In addition, pursuant to the Certificate of Designations of the Series B Preferred Stock, the ability of the Company to declare or pay dividends or distributions on, or repurchase, redeem or otherwise acquire for consideration, shares of its Junior Stock and Parity Stock will be subject to restrictions in the event that the Company fails to declare and pay full dividends (or declare and set aside a sum sufficient for payment thereof) on its Series B Preferred Stock. These restrictions are set forth in the Certificate of Designations described in Item 5.03.

“Junior Stock” means the Common Stock and any other class or series of stock of the Company the terms of which expressly provide that it ranks junior to the Series B Preferred Stock as to dividend rights and/or rights on liquidation, dissolution or winding up of the Company. “Parity Stock” means any class or series of stock of the Company the terms of which do not expressly provide that such class or series will rank senior or junior to the Series B Preferred Stock as to dividend rights and/or rights on liquidation, dissolution or winding up of the Company (in each case without regard to whether dividends accrue cumulatively or non-cumulatively).

**Item 5.02. Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensation Arrangements of Certain Officers.**

Pursuant to the Purchase Agreement, the Company has agreed that, until such time as Treasury ceases to own any debt or equity securities of the Company acquired pursuant to the Purchase Agreement or the Warrant, the Company's employee benefit plans and other executive compensation arrangements to its "senior executive officers" must comply in all respects with Section 111(b) of the Emergency Stabilization Act of 2008 (the "EESA"), as implemented by regulations under the EESA issued by Treasury. The Company's "senior executive officers" are initially: William B. Skoglund, Chairman, President and Chief Executive Officer; James J. Eccher, Executive Vice President and Chief Operating Officer; J. Douglas Cheatham, Executive Vice President and Chief Financial Officer; and Rodney L. Sloan, Executive Vice President and Chief Risk Officer. Each of the Company's senior executive officers executed a waiver pursuant to the terms of the Purchase Agreement, a form of which is attached as Exhibit 10.2 hereto and is incorporated herein by reference.

Accordingly, in the Purchase Agreement, the Company has agreed to not adopt any benefit plans or other executive compensation arrangements with respect to, or which covers, its senior executive officers that do not comply with the EESA. In addition, each of the Company's senior executive officers entered into an Omnibus Amendment to Employee Benefit Plans with the Company for the purpose of amending each senior executive officer's benefit plans and other executive compensation arrangements in order to comply with the relevant elements of the EESA and Treasury regulations promulgated thereunder. A form of the Omnibus Amendment is attached as Exhibit 10.3 hereto and incorporated herein by reference.

**Item 5.03. Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year.**

Article IV of the Company's Certificate of Incorporation, as amended, authorizes the Company's board of directors to designate a class or series of preferred stock and to fix the voting powers, designations, preferences and relative, participating, optional or other special rights, and qualifications, limitations or restrictions thereof. On January 14, 2009, the Company filed a Certificate of Designations with the Secretary of State of the State of Delaware for the purpose of amending its Certificate of Incorporation to fix the voting powers, designations, preferences, relative rights, qualifications, limitations and restrictions of the Series B Preferred Stock. The Series B Preferred Stock has a liquidation preference of \$1,000 per share. The Certificate of Designations is attached as Exhibit 3.1 hereto and is incorporated by reference herein.

**Item 8.01. Other Events.**

On January 16, 2009, the Company issued a press release announcing the consummation of the transactions described above under "Item 1.01. Entry into a Material Definitive Agreement." A copy of the press release is attached hereto as Exhibit 99.1 and incorporated by reference herein.

**Item 9.01. Financial Statements and Exhibits.**

(d) *Exhibits.* The following exhibits are filed herewith:

- 3.1 Certificate of Designations of Series B Fixed Rate Cumulative Perpetual Preferred Stock, dated January 14, 2009.
- 4.1 Form of Stock Certificate for Series B Fixed Rate Cumulative Perpetual Preferred Stock.
- 4.2 Warrant to Purchase Shares of Common Stock, dated January 16, 2009.
- 10.1 Letter Agreement, dated January 16, 2009, by and between Old Second Bancorp, Inc., and the United States Department of the Treasury, which includes the Securities Purchase Agreement – Standard Terms attached as Exhibit A thereto, with respect to the issuance and sale of the Series B Preferred Stock and the Warrant.
- 10.2 Form of Waiver, executed by each of the Company’s senior executive officers.
- 10.3 Form of Omnibus Amendment, executed by each of the Company’s senior executive officers.
- 99.1 Press Release, dated January 16, 2009.

## **SIGNATURES**

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

**Old Second Bancorp, Inc.**

Dated: January 16, 2009

By: \_\_\_\_\_  
J. Douglas Cheatham  
Executive Vice President and Chief  
Financial Officer