

TRUSTCO BANK CORP N Y
Form 10-K/A
March 20, 2009

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549
FORM 10-K/A

ý Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934
For the Fiscal Year Ended December 31, 2008

Or

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

For the transition period from _____ to _____

Commission file number 0-10592

TRUSTCO BANK CORP NY
(Exact name of registrant as specified in its charter)

NEW YORK
(State or other jurisdiction of incorporation or
organization)

14-1630287
(I.R.S. Employer Identification No.)

5 SARNOWSKI DRIVE, GLENNVILLE, NEW YORK 12302
(Address of principal executive offices) (Zip Code)

Registrant's telephone number, including area code: (518) 377-3311

Securities registered pursuant to Section 12(b) of the Act:

| | |
|--------------------------------|---------------------------------------|
| Title of each class | Name of exchange on which registered) |
| Common Stock, \$1.00 Par Value | The NASDAQ Stock Market LLC |

Securities registered pursuant to Section 12(g) of the Act: None

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act.
Yes. ý No. ¨

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes. ¨ No. ý

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.
Yes. ý No. ¨

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer", "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act.

Large Accelerated Filer Accelerated Filer Non-Accelerated Filer Smaller reporting company

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

The aggregate market value of the common stock held by non-affiliates as of June 30, 2008 was approximately \$530,200,564 (based upon the closing price of \$7.42 on June 30, 2008, as reported on the NASDAQ Global Select Market).

The number of shares outstanding of the registrant's common stock as of February 20, 2008 was 76,218,339.

Documents Incorporated by Reference: (1) Portions of registrant's Annual Report to Shareholders for the fiscal year ended December 31, 2008 (Part I and Part II) and (2) Portions of registrant's Proxy Statement filed for its Annual Meeting of Shareholders to be held May 18, 2009 (Part III).

EXPLANATORY NOTE

TrustCo Bank Corp NY, or the Company, is filing this Amendment No. 1 to its Annual Report on Form 10-K for the year ended December 31, 2008 for the sole purpose of correcting the inadvertent omission of the signatures of KPMG LLP from the accountant's report and attestation report on internal controls over financial reporting filed within Exhibit 13, Annual Report to Shareholders, to the Form 10-K. Such signatures were contained in the reports actually delivered by KPMG LLP to the Company on February 24, 2009 but were inadvertently omitted from the Company's Form 10-K as originally filed with the Securities and Exchange Commission.

As disclosed by the Company in its Current Report on Form 8-K filed March 6, 2009, the Company's Audit Committee notified KPMG LLP on March 3, 2009 that it had been dismissed as the Company's independent registered public accounting firm effective as of that date.

Except for the correcting change to Items 8 and 9A of Part II and except for restating the exhibits in Item 15 of Part IV (both of which were for the sole purpose of including the KPMG LLP reports with signatures and new certifications in Exhibits 31 and 32 required by Securities and Exchange Commission Rule 12b-15), this amendment does not modify or update the information in the original filing of the Form 10-K.

Part II

Item 8. Financial Statements and Supplementary Data

The consolidated financial statements included in TrustCo's Annual Report to Shareholders for the year ended December 31, 2008, which is filed as Exhibit 13 hereto, are incorporated herein by reference. A copy of the report of KPMG LLP, containing the signature of KPMG LLP, on such consolidated financial statements is contained in Exhibit 99(a).

Item 9A. Controls and Procedures

An evaluation was carried out under the supervision and with the participation of the Company's management, including the Chief Executive Officer and Chief Financial Officer, of the effectiveness of the Company's disclosure controls and procedures as of the end of the period covered by this report. Disclosure controls and procedures are procedures that are designed with the objective of ensuring that information required to be disclosed in the Company's reports filed under the Securities Exchange Act of 1934, such as this Form 10-K, is recorded, processed, summarized and reported within the time periods specified in the Securities and Exchange Commission's rules and forms. Based on that evaluation, the Chief Executive Officer and Chief Financial Officer have concluded that the Company's disclosure controls and procedures are effective to satisfy the objectives for which they are designed.

Management's Report on Internal Control over Financial Reporting, together with the report thereon of KPMG LLP is included in the TrustCo's Annual Report to Shareholders for the year ended December 31, 2008, which is filed as Exhibit 13 hereto, are incorporated herein by reference. A copy of the report of KPMG LLP, containing the signature of KPMG LLP, with respect to Management's Report on Internal Control over Financial Reporting is contained in Exhibit 99(b).

Subsequent to the date of Management's evaluation there were no significant changes in the Company's internal controls, including internal controls over financial reporting, or in other factors that could significantly affect these controls, including any corrective actions with regard to significant deficiencies and material weaknesses.

Part IV

Item 15. Exhibits, Financial Statement Schedules, and Reports on Form 8-K

The following financial statements of TrustCo and its consolidated subsidiaries, and the accountants' report thereon are filed as a part of this report.

Consolidated Statements of Condition -- December 31, 2008 and 2007.

Consolidated Statements of Income -- Years Ended December 31, 2008, 2007, and 2006.

Consolidated Statements of Changes in Shareholders' Equity -- Years Ended December 31, 2008, 2007, and 2006.

Consolidated Statements of Cash Flows -- Years Ended December 31, 2008, 2007, and 2006.

Notes to Consolidated Financial Statements.

Financial Statement Schedules

Not Applicable. All required schedules for TrustCo and its subsidiaries have been included in the consolidated financial statements or related notes thereto.

Supplementary Financial Information

Summary of Unaudited Quarterly Financial Information for the years ended December 31, 2008 and 2007.

| Exhibit No | Description |
|------------|---|
| 3(i) | Amended and Restated Certificate of Incorporation of TrustCo Bank Corp NY, as amended. |
| 3(ii) | Amended and Restated Bylaws of TrustCo Bank Corp NY, dated September 16, 2008 |
| 10(a) | Amended and Restated Trust For Deferred Benefits Provided under Employment Agreements of Trustco Bank, National Association and TrustCo Bank Corp NY, dated September 18, 2001. |
| 10(b) | Amended and Restated Trust Under Non-Qualified Deferred Compensation Plans of Trustco Bank, National Association and TrustCo Bank Corp NY, dated September 18, 2001. |
| 10(c) | Amended and Restated Trustco Bank and TrustCo Bank Corp NY Supplemental Retirement Plan, effective as of January 1, 2008. |
| 10(d) | Second Amended and Restated TrustCo Bank Corp NY Performance Bonus Plan, effective as of January 1, 2008. |
| 10(e) | Second Amended and Restated Trustco Bank Executive Officer Incentive Plan, effective as of January 1, 2008. |
| 10(f) | Form of 2008 Amended and Restated Employment Agreement between Trustco Bank, TrustCo Bank Corp NY and Robert J. McCormick, Robert T. Cushing and Scot R. Salvador, effective as of January 1, 2008. |
| 10(g) | Amended and Restated TrustCo Bank Corp NY 1995 Stock Option Plan, dated September 18, 2001. |
| 10(h) | Amendment No. 1 to Amended and Restated 1995 TrustCo Bank Corp NY Stock Option Plan, dated December 20, 2005. |
| 10(i) | Amendment No. 2 to Amended and Restated 1995 TrustCo Bank Corp NY Stock Option Plan, dated December 28, 2005. |
| 10(j) | Amendment No. 3 to Amended and Restated 1995 TrustCo Bank Corp NY Stock Option Plan, effective January 1, 2008. |
| 10(k) | Amended and Restated TrustCo Bank Corp NY Directors Stock Option Plan, dated September 18, 2001. |
| 10(l) | Amendment No. 1 to Amended and Restated TrustCo Bank Corp NY Directors Stock Option Plan, dated December 28, 2005. |
| 10(m) | Second Amended and Restated TrustCo Bank Corp NY Directors Performance Bonus Plan, effective as of January 1, 2008. |
| 10(n) | Amended and Restated Trustco Bank Deferred Compensation Plan for Directors, effective as of January 1, 2008. |
| 10(o) | Consulting Agreement Between TrustCo Bank Corp NY and Robert A. McCormick, dated October 11, 2002. |
| 10(p) | Service Bureau Processing Agreement by and between Fidelity Information Services, Inc. and TrustCo Bank Corp NY, dated March 3, 2004. |

| Exhibit No | Description |
|------------|---|
| 10(q) | Master Service Agreement by and between Sungard Wealth Management Services, LLC and TrustCo Bank Corp NY dated April 1, 2004 (portions omitted pursuant to a request for confidential treatment). |
| 10(r) | 2004 TrustCo Directors Stock Option Plan (incorporated by reference to Exhibit 4.1 to the Registration Statement on Form S-8 (File No. 333-115689), filed May 20, 2004). |
| 10(s) | Amendment No. 1 to 2004 TrustCo Bank Corp NY Directors Stock Option Plan, dated December 28, 2005. |
| 10(t) | 2004 TrustCo Stock Option Plan (incorporated by reference to Exhibit 4.1 to the Registration Statement on Form S-8 (File No. 333-115674), filed May 20, 2004). |
| 10(u) | Amendment No. 1 to 2004 TrustCo Bank Corp NY Stock Option Plan, dated December 20, 2005. |
| 10(v) | Amendment No. 2 to 2004 TrustCo Bank Corp NY Stock Option Plan, dated December 28, 2005. |
| 10(x) | Amendment No. 3 to Amended and Restated 1995 TrustCo Bank Corp NY Stock Option Plan, effective as of January 1, 2008. |
| 10(y) | Restatement of Trustco Bank Senior Incentive Plan, effective as of January 1, 2008. |
| 11 | Computation of Net Income Per Common Share. |
| 13 | Portions of Annual Report to Security Holders of TrustCo for the year ended December 31, 2008. |
| 21 | List of Subsidiaries of TrustCo. |
| 23 | Consent of Independent Registered Public Accounting Firm. |
| 24 | Power of Attorney. |
| 31(i)(a) | Rule 13a-14(a)/15d-14(a) Certification of Robert J. McCormick, principal executive officer. |
| 31(i)(b) | Rule 13a-14(a)/15d-14(a) Certification of Robert T. Cushing, principal financial officer. |
| 32 | Section 1350 Certifications of Robert J. McCormick, principal executive officer and Robert T. Cushing, principal financial officer. |
| 99(a) | Accountant's report, dated February 24, 2009, of KPMG LLP. |
| 99(b) | Attestation report on internal controls over financial reporting, dated February 24, 2009, of KPMG LLP |

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

Date: March 20, 2009

TrustCo Bank Corp NY

By: /s/ Robert T. Cushing
Robert T. Cushing
Executive Vice President and
Chief Financial Officer

Exhibit Index

| Exhibit No. | Description |
|-------------|---|
| 3(i) | Amended and Restated Certificate of Incorporation of TrustCo Bank Corp NY, as amended, incorporated by reference to, Exhibit 3(i)a to TrustCo Bank Corp NY's Quarterly Report on Form 10-Q, for the quarter ended June 30, 2007. |
| 3(ii) | Amended and Restated Bylaws of TrustCo Bank Corp NY, dated September 16, 2008, incorporated by reference to Exhibit 99(a) to TrustCo Bank Corp NY's Report on Form 8-K, filed September 16, 2008. |
| 10(a) | Amended and Restated Trust For Deferred Benefits Provided under Employment Agreements of Trustco Bank, National Association and TrustCo Bank Corp NY, dated September 18, 2001 incorporated by reference to Exhibit 10(b) to TrustCo Bank Corp NY's Annual Report on Form 10-K, for the year ended December 31, 2001. |
| 10(b) | Amended and Restated Trust Under Non-Qualified Deferred Compensation Plans of Trustco Bank, National Association and TrustCo Bank Corp NY, dated September 18, 2001, incorporated by reference to, Exhibit 10(c) to TrustCo Bank Corp NY's Annual Report on Form 10-K, for the year ended December 31, 2001. |
| 10(c) | Amended and Restated Trustco Bank and TrustCo Bank Corp NY Supplemental Retirement Plan, effective as of January 1, 2008, incorporated by reference to Exhibit 99.6 to TrustCo Bank Corp NY's Current Report on Form 8-K filed December 22, 2008. |
| 10(d) | Second Amended and Restated TrustCo Bank Corp NY Performance Bonus Plan, effective as of January 1, 2008, incorporated by reference to Exhibit 99.5 to TrustCo Bank Corp NY's Current Report on Form 8-K filed December 22, 2008. |
| 10(e) | Second Amended and Restated Trustco Bank Executive Officer Incentive Plan, effective as of January 1, 2008, incorporated by reference to Exhibit 99.7 to TrustCo Bank Corp NY's Current Report on Form 8-K filed December 22, 2008. |
| 10(f) | Form of 2008 Amended and Restated Employment Agreement between Trustco Bank, TrustCo Bank Corp NY and Robert J. McCormick, Robert T. Cushing and Scot R. Salvador, effective as of January 1, 2008, incorporated by reference to Exhibit 99.8 to TrustCo Bank Corp NY's Current Report on Form 8-K filed December 22, 2008. |
| 10(g) | Amended and Restated TrustCo Bank Corp NY 1995 Stock Option Plan, dated September 18, 2001 incorporated by reference to, Exhibit 10(k) to TrustCo Bank Corp NY's Annual Report on Form 10-K, for the year ended December 31, 2001. |
| 10(h) | Amendment No. 1 to Amended and Restated 1995 TrustCo Bank Corp NY Stock Option Plan, dated December 20, 2005, incorporated by reference to Exhibit 10(v) to TrustCo Bank Corp NY's Annual Report on Form 10-K, for the year ended December 31, 2005. |
| 10(i) | Amendment No. 2 to Amended and Restated 1995 TrustCo Bank Corp NY Stock Option Plan, dated December 28, 2005, incorporated by reference to Exhibit 10(w) to TrustCo Bank Corp NY's Annual Report on Form 10-K, for the year ended December 31, 2005. |
| 10(j) | Amendment No. 3 to Amended and Restated 1995 TrustCo Bank Corp NY Stock Option Plan, effective January 1, 2008, incorporated by reference to Exhibit 99.1 to TrustCo Bank Corp NY's Current Report on Form 8-K filed |

December 22, 2008.

10(k) Amended and Restated TrustCo Bank Corp NY Directors Stock Option Plan, dated September 18, 2001 incorporated by reference to, Exhibit 10(l) to TrustCo Bank Corp NY's Annual Report on Form 10-K, for the year ended December 31, 2001.

10(l) Amendment No. 1 to Amended and Restated TrustCo Bank Corp NY Directors Stock Option Plan, dated December 28, 2005, incorporated by reference to Exhibit 10(z) to TrustCo Bank Corp NY's Annual Report on Form 10-K, for the year ended December 31, 2005.

| Exhibit No. | Description |
|-------------|---|
| 10(m) | Second Amended and Restated TrustCo Bank Corp NY Directors Performance Bonus Plan, effective as of January 1, 2008, incorporated by reference to Exhibit 99.4 to TrustCo Bank Corp NY's Current Report on Form 8-K filed December 22, 2008. |
| 10(n) | Amended and Restated Trustco Bank Deferred Compensation Plan for Directors, effective as of January 1, 2008, incorporated by reference to Exhibit 99.3 to TrustCo Bank Corp NY's Current Report on Form 8-K filed December 22, 2008. |
| 10(o) | Consulting Agreement Between TrustCo Bank Corp NY and Robert A. McCormick, dated October 11, 2002 incorporated by reference to Exhibit 10(a) to TrustCo Bank Corp NY's Quarterly Report on Form 10-Q, for the quarter ended September 30, 2002. |
| 10(p) | Service Bureau Processing Agreement by and between Fidelity Information Services, Inc. and TrustCo Bank Corp NY dated March 3, 2004 incorporated by reference to, Exhibit 10(b) to TrustCo Bank Corp NY's Quarterly Report on Form 10-Q, for the quarter ended March 31, 2004. |
| 10(q) | Master Service Agreement by and between Sungard Wealth Management Services, LLC and TrustCo Bank Corp NY dated April 1, 2004 (portions omitted pursuant to a request for confidential treatment) incorporated by reference to Exhibit 10(a) to TrustCo Bank Corp NY's Quarterly Report on Form 10-Q, for the quarter ended June 30, 2004. |
| 10(r) | 2004 TrustCo Directors Stock Option Plan, incorporated by reference to Exhibit 4.1 to the Registration Statement on Form S-8 (File No. 333-115689), filed May 20, 2004. |
| 10(s) | Amendment No. 1 to 2004 TrustCo Bank Corp NY Directors Stock Option Plan, dated December 28, 2005, incorporated by reference to Exhibit 10(aa) to TrustCo Bank Corp NY's Annual Report on Form 10-K, for the year ended December 31, 2005. |
| 10(t) | 2004 TrustCo Stock Option Plan, incorporated by reference to Exhibit 4.1 to the Registration Statement on Form S-8 (File No. 333-115674), filed May 20, 2004. |
| 10(u) | Amendment No. 1 to 2004 TrustCo Bank Corp NY Stock Option Plan, dated December 20, 2005, incorporated by reference to Exhibit 10(x) to TrustCo Bank Corp NY's Annual Report on Form 10-K, for the year ended December 31, 2005. |
| 10(v) | Amendment No. 2 to 2004 TrustCo Bank Corp NY Stock Option Plan, dated December 28, 2005, incorporated by reference to Exhibit 10(y) to TrustCo Bank Corp NY's Annual Report on Form 10-K, for the year ended December 31, 2005. |
| 10(w) | Amendment No. 3 to Amended and Restated 1995 TrustCo Bank Corp NY Stock Option Plan, effective as of January 1, 2008, incorporated by reference to Exhibit 99.2o TrustCo Bank Corp NY's Current Report on Form 8-K filed December 22, 2008. |
| 10(x) | Restatement of Trustco Bank Senior Incentive Plan, effective as of January 1, 2008, incorporated by reference to Exhibit 99.9 to TrustCo Bank Corp NY's Current Report on Form 8-K filed December 22, 2008. |

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Computation of Net Income Per Common Share. Note 13 of TrustCo's Annual Report to Shareholders for the year ended December 31, 2008 is incorporated herein by reference.*

13 Portions of Annual Report to Security Holders of TrustCo for the year ended December 31, 2008.*

21 List of Subsidiaries of TrustCo.*

23 Consent of Independent Registered Public Accounting Firm.*

24 Power of Attorney.*

31(i)(a) Rule 13a-14(a)/15d-14(a) Certification of Robert J. McCormick, principal executive officer, filed herewith.

| Exhibit No. | Description |
|-----------------|---|
| <u>31(i)(b)</u> | Rule 13a-14(a)/15d-14(a) Certification of Robert T. Cushing, principal financial officer, filed herewith. |
| <u>32</u> | Section 1350 Certifications of Robert J. McCormick, principal executive officer and Robert T. Cushing, principal financial officer, filed herewith. |
| <u>99(a)</u> | Accountant's report, dated February 24, 2009, of KPMG LLP. |
| <u>99(b)</u> | Attestation report on internal controls over financial reporting, dated February 24, 2009, of KPMG LLP. |

* Included with the TrustCo Bank Corp NY Annual Report on Form 10-K for the year ended December 31, 2008, filed February 26, 2009.