

SUSSEX BANCORP
Form 8-K
December 05, 2017

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 5, 2017

SUSSEX BANCORP

(Exact name of registrant as specified in its charter)

New Jersey
(State or other jurisdiction
of incorporation or organization)

001-12569
(Commission
File Number)
100 Enterprise Dr.

22-3475473
(I.R.S. Employer
Identification Number)

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Rockaway, New Jersey 07866

(Address of principal executive offices, zip code)

Registrant's telephone number, including area code: (844) 256-7328

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:

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))
Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (17 CFR §230.405) or Rule 12b-2 of the Securities Exchange Act of 1934 (17 CFR §240.12b-2).

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Item 8.01. Other Events.

On October 27, 2017, Sussex Bancorp (Sussex) filed with the Securities and Exchange Commission (the SEC) a definitive joint proxy statement/prospectus with respect to (A) the special meeting of Sussex s shareholders scheduled to be held on December 15, 2017 at which Sussex shareholders will be asked to, among other things, vote on a proposal to approve the agreement and plan of merger by and among Sussex, Sussex Bank, a New Jersey-chartered bank and wholly owned subsidiary of Sussex, and Community Bank of Bergen County, NJ, a New Jersey-chartered bank (Community), dated as of April 10, 2017, pursuant to which Community will merge with and into Sussex Bank with Sussex Bank surviving the merger, and (B) the special meeting of Community s shareholders scheduled to be held on December 15, 2017 at which Community shareholders will be asked to vote on the same.

A purported securities class action lawsuit has been filed against Sussex, Community and each of the members of the board of directors of Community in the Superior Court of New Jersey Chancery Division, Bergen County. Captioned Parshall v. Community Bank of Bergen County, NJ, et al., (No. C-222-17), the case was filed on August 17, 2017, purports to have been brought on behalf of all public shareholders of Community, and seeks to enjoin the defendants from proceeding with the shareholder vote on the proposed merger transaction at the special meetings or consummating the proposed merger unless and until Sussex and Community disclose allegedly omitted information, in addition to paying damages allegedly suffered by the plaintiffs as a result of the asserted omissions, as well as attorneys fees and expenses.

Sussex and Community believe that all allegations in the complaint are without merit, and further believe that no supplemental disclosure is required under applicable laws; however, Sussex and Community wish to make certain supplemental disclosures related to the merger transaction solely for the purpose of mooted the allegations contained in the complaint and avoiding the expense and burden of litigation. Nothing in the supplemental disclosures shall be deemed an admission of the legal necessity or materiality under applicable law of any of the supplemental disclosures.

Important information concerning the merger transaction is set forth in the joint proxy statement/prospectus. The joint proxy statement/prospectus is amended and supplemented by, and should be read as part of, and in conjunction with, the information set forth in this Current Report on Form 8-K.

SUPPLEMENT TO JOINT PROXY STATEMENT/PROSPECTUS

Sussex and Community have agreed to make the following amended and supplemental disclosures to the joint proxy statement/prospectus. This supplemental information should be read in conjunction with the joint proxy statement/prospectus, which should be read in its entirety. Page references in the below disclosures are to the joint proxy statement/prospectus, and certain terms used but not defined herein have the meanings set forth in the joint proxy statement/prospectus. Without admitting in any way that the disclosures below are material or otherwise required by law, Sussex and Community make the following amended and supplemental disclosures:

The section of the joint proxy statement/prospectus entitled *The Merger Background of the Merger* is amended and supplemented as follows:

*The third, fourth and fifth sentences of the first paragraph under the subsection *Background of the Merger* on page 80 of the joint proxy statement/prospectus are replaced, in their entirety, with the following:*

After discussing this analysis with FinPro, in January 2017, Mr. Michelotti contacted Mr. Labozzetta, and they met to discuss the possibility and relative merits of a business combination between the two institutions. They also discussed, among other things, Mr. Michelotti s possible position with the combined organization as a senior executive in order to retain Mr. Michelotti s expertise and market presence, but no terms of such position were discussed. After their discussion, it was decided that a follow-up meeting was warranted.

The ninth paragraph under the subsection Background of the Merger on page 81 of the joint proxy statement/prospectus is replaced, in its entirety, with the following:

Thereafter, Sussex offered to Community in a non-binding indication of interest dated February 7, 2017, a price between \$22.00 and \$23.00 per share, resulting in an aggregate deal value between \$42.4 million and \$44.4 million (including the cash out of options). Sussex Bank would merge with Community in a 100% stock transaction in which Sussex Bank would be the surviving institution. The non-binding indication of interest also invited three current Community directors (to be selected by Sussex after consultation with Community) to join the board of directors of the combined entity and requested a 45-day exclusivity period to continue confidential discussions. It also stated that Sussex looked forward to discussing an ongoing senior executive role with Mr. Michelotti to ensure that Sussex retained his expertise and market presence, and that Sussex would enter into a new employment contract with Mr. Michelotti after paying the change in control payments set forth in his current contract with Community. Sussex also stated that it would consider hiring certain of Community's existing executive officers based on needs identified in the pro forma company.

The following supplemental disclosure is added after the last sentence of the eighteenth paragraph under the subsection Background of the Merger on page 82 of the joint proxy statement/prospectus :

During such time, Sussex determined that Mr. Michelotti would be appointed to one of the three board seats being offered to Community directors, and that determination was reflected in the press release announcing the merger. Also Sussex and Mr. Michelotti negotiated the terms of his employment agreement with Sussex. In order to ensure the continued employment of Community's key officers, Sussex and Community also agreed to an amendment to the employment contracts of Mr. Michelotti, Ms. James and Mr. Fantacone requested by such officers providing for the automatic payment of their change in control payments at the closing of the merger without regard to any termination of employment.

The second sentence of the nineteenth paragraph under the subsection Background of the Merger on page 82 of the joint proxy statement/prospectus is replaced, in its entirety, with the following:

Representatives of FinPro and Stevens & Lee participated in the meeting. Representatives of Stevens & Lee reviewed in detail the terms of the merger agreement, the separate bank merger agreement, the voting agreements to be entered into by the directors and senior management, the amendments to the employment agreements of Mr. Michelotti, Ms. James and Mr. Fantacone, and Mr. Michelotti's employment agreement with Sussex. Stevens & Lee also summarized the directors' fiduciary duties, specifically in the context of a change of control.

The section of the joint proxy statement/prospectus entitled **The Merger Opinion of FinPro Capital Advisors, Inc., Financial Advisor to Community** is amended and supplemented as follows:

The following supplemental disclosure is added before the last paragraph on page 89 of the joint proxy statement/prospectus under the subheading *Comparable Regional Group*.

Below is the full table and financial multiples and metrics that are shown above utilizing the 25th percentile, median and 75th percentile for the Regional Comparable Transactions:

Company Name	Target City	Target State	Announcement Date	Transaction Pricing At Announcement				Total Assets (\$000s)	Target's Financials at Announcement				
				Deal Value (\$mil)	LTM Earnings (x)	Price/Book Value (%)	Franchise Premium/Core Deposits (%)		Tang. Assets (%)	NPAs/Assets (%)	ALLL/NPLs (%)	LTM ROA (%)	LTM ROAE (%)
/	Scottsdale	PA	3/29/2017	59.1	NM	130.0	6.4	\$ 263,308	17.3	0.3	128.0	0.2	1.2
/ DCB	Damascus	MD	2/1/2017	40.7	37.2	160.8	7.3	310,225	8.2	1.3	75.6	0.4	4.4
New	New Windsor	MD	11/22/2016	32.8	20.5	143.3	3.9	311,064	7.4	0.8	NA	0.5	7.1
/ Valley	Pittsburgh	PA	8/29/2016	53.4	15.0	123.5	3.5	434,990	10.1	1.3	67.3	0.8	7.1
Monument	Rockville	MD	5/3/2016	65.1	20.3	161.5	7.3	513,820	9.0	1.2	63.9	0.7	7.3
Financial /	Philadelphia	PA	4/4/2016	49.0	21.2	154.9	11.5	310,742	9.8	0.5	248.7	0.8	7.7
Financial	Walton	NY	3/10/2016	15.2	25.7	114.5	0.7	371,689	3.6	0.5	NA	0.3	3.0
/	Jackson	NJ	2/18/2016	31.7	20.5	125.4	3.4	295,091	9.4	1.1	95.8	0.6	5.7
kins	Baltimore	MD	12/18/2015	23.2	NM	106.9	0.9	239,659	14.3	2.3	34.1	0.0	0.0
BlueRidge	Frederick	MD	10/19/2015	20.1	38.8	121.1	2.7	205,096	8.1		NA	0.3	3.2
/	Pennington	NJ	8/26/2015	55.3	22.4	147.8	5.2	495,016	9.4	1.4	69.7	0.5	5.3
/ Pascack	Waldwick	NJ	8/4/2015	41.9	18.8	130.0	3.9	353,929	9.1	0.7	NA	0.7	7.8
First	Fredericksburg	PA	6/30/2015	22.9	NM	144.3	3.4	238,080	6.7	2.1	24.9	0.1	1.9
ck Valley	Naugatuck	CT	6/4/2015	77.8	35.5	125.9	5.3	507,032	12.1	1.5	81.0	0.4	3.5
Financial /	Broomall	PA	3/3/2015	93.4	35.5	135.5	9.3	420,829	15.8	2.2	54.9	0.6	3.8
ancorp,	Dundalk	MD	3/3/2015	10.1	6.1	100.6	NA	226,396	7.2	2.0	81.1	1.0	15.4
osco													
entile:				23.1	20.3	122.9	3.4	257,396	7.9	0.6	61.6	0.3	3.1
				41.3	21.2	130.0	3.9	310,903	9.2	1.2	72.6	0.5	4.9
entile:				56.3	35.5	145.2	6.8	424,369	10.6	1.6	84.8	0.7	7.2

ity Bank
County,

45.4 27.0 157.2 6.2 \$ 340,500 8.4 2.4 46.7 0.5 5.7

The following supplemental disclosure is added before the last paragraph on page 90 of the joint proxy statement/prospectus under the subheading *Comparable National Group*.

Below is a table and financial multiples and metrics that are shown above utilizing the 25th percentile, median and 75th percentile for the National Comparable Transactions:

Transaction Name	Target City	Target State	Announce Date	Transaction Pricing At Announcement					Target's Financials at Announcement					
				Deal Value (\$mil)	LTM Earnings (x)	Price/Book (%)	Franchise Premium/Deposits (%)	Total Assets (\$000s)	Tang. Assets (%)	NPAs/Assets (%)	ALLL/NPLs (%)	LTM ROA (%)	LTM ROAE (%)	Assets Growth (%)
... / DCB	Damascus	MD	2/1/2017	40.7	37.2	160.8	7.3	\$ 310,225	8.2	1.3	75.6	0.4	4.4	...
New	New													
...	Windsor	MD	11/22/2016	32.8	20.5	143.3	3.9	311,064	7.4	0.8	NA	0.5	7.1	...
... / TFB	Yuma	AZ	11/15/2016	63.6	17.5	171.8	10.2	315,589	11.9	1.6	64.9	1.2	9.0	...
...	Tampa	FL	11/4/2016	52.6	39.9	145.3	6.5	331,179	10.8	0.7	120.8	0.5	4.1	10...
... /	Petersburg	VA	11/3/2016	29.6	12.5	84.2	(2.8)	323,617	11.0	1.8	124.3	0.8	7.4	(...
Community	Alton	IL	9/30/2016	36.0	25.7	115.7	2.0	328,216	10.6	1.6	39.4	0.5	4.1	...
... /	Kingsport	TN	9/21/2016	31.8	19.5	123.6	3.1	353,756	9.3	0.8	169.7	0.5	5.0	...
Community	North													
Legacy	Canton	OH	9/8/2016	40.2	31.5	139.5	6.4	320,356	9.0	1.0	87.2	0.4	4.6	(...
Community	Springfield	IL	6/8/2016	30.9	37.8	138.2	NA	340,744	6.6	NA	NA	0.2	3.4	0...
... / FBC	Orlando	FL	5/10/2016	39.2	17.1	133.1	3.8	302,200	9.9	0.4	255.2	0.8	7.6	...
... /	Philadelphia	PA	4/4/2016	49.0	21.2	154.9	11.5	310,742	9.8	0.5	248.7	0.8	7.7	14...
Percentile:				32.3	18.5	128.4	3.3	310,903	8.6	0.7	75.6	0.4	4.3	...
Median:				39.2	21.2	139.5	5.2	320,356	9.8	0.9	120.8	0.5	5.0	...
Percentile:				44.8	34.4	150.1	7.1	329,698	10.7	1.5	169.7	0.8	7.5	...
City Bank														
... en County,				45.4	27.0	157.2	6.2	\$ 340,500	8.4	2.4	46.7	0.5	5.7	...

The following supplemental disclosure is added immediately after the table titled *Market Pricing and Valuation as of April 7, 2017* on page 92 of the joint proxy statement/prospectus under the subheading *Sussex Financial Condition, Performance and Comparable Company Analysis*.

Below is trading information for the Comparable Trading Group:

Market Pricing and Valuation								
Tangible LTM								
	Price/	Price/	Premium/Dividend				Avg	Avg
Company Name	Market	MRQ	Tangible	Core	Payout	Dividend	Daily	Daily
	Cap.	EPS	Book	Deposits	Ratio	Yield	Volume	Volume
	(\$mil)	(x)(1)	(%)	(%)	(%)	(%)	(Three	(One
							Month)	Year)
1 1st Constitution Bancorp	148.9	18.0	161.3	7.7	13.2	1.1	28,701	15,475
2 ACNB Corporation	180.4	15.2	159.6	7.7	44.4	2.7	9,401	12,285
3 CB Financial Services, Inc.	113.2	13.9	140.3	5.3	47.3	3.2	5,632	4,109
4 Citizens & Northern Corporation	275.7	16.4	158.0	11.0	80.0	4.6	32,205	24,189
5 Evans Bancorp, Inc.	178.6	17.9	183.0	10.4	41.1	2.1	13,617	7,378
6 First Bank	140.2	21.1	157.8	8.4	3.3	0.7	35,646	17,414
7 Howard Bancorp, Inc.	184.0	31.1	158.9	16.2	NM	NA	19,159	8,075
8 Malvern Bancorp, Inc.	143.3	30.3	149.7	9.9	NM	0.0	8,574	8,374
9 Two River Bancorp	148.8	14.8	179.6	9.5	14.6	0.9	25,271	12,770
10 Unity Bancorp, Inc.	175.8	13.8	167.5	8.4	13.2	1.2	16,722	21,195
25% Percentile:	144.7	14.9	157.8	7.9	13.2	0.9	10,455	8,150
Median:	162.4	17.1	159.2	8.9	27.8	1.2	17,941	12,528
75% Percentile:	180.0	20.3	166.0	10.3	45.2	2.7	27,844	16,929

The following disclosure supplements the second paragraph on page 94 of the joint proxy statement/prospectus under the subheading *Miscellaneous* :

FinPro's parent organization, provided consulting partnership services to Community over the prior two years for which it received fees totaling \$140,000. Such consulting services included, among other things, strategic planning, capital planning, asset liability management modeling, interest rate risk and balance sheet strategies, enterprise risk management, and regulatory consulting. FinPro's parent organization providing consulting services to Sussex over the prior two years related to loan stress testing for which it received fees totaling \$34,000.

The section of the joint proxy statement/prospectus entitled *The Merger Opinion of Keefe, Bruyette & Woods, Inc., Financial Advisor to Sussex* is amended and supplemented as follows:

The following supplemental disclosure is added after the last sentence of the paragraph on page 103 of the joint proxy statement/prospectus under the subheading *Community Bank of Bergen County Selected Companies Analysis* :

The bottom quartile, average, median and top quartile LTM earnings per share multiples indicated in the selected companies analysis of Community excluded the impact of the LTM EPS multiples for the following five of the selected companies, which multiples were considered to be not meaningful: Berkshire Bancorp Inc., Carver Bancorp, Inc., ES Bancshares, Inc., Gold Coast Bank and MSB Financial Corp.

The following disclosure supplements the subheading captioned Sussex Selected Companies Analysis on page 105 of the joint proxy statement/prospectus:

The bottom quartile, average, median and top quartile LTM earnings per share multiples indicated in the selected companies analysis of Sussex excluded the impact of the LTM EPS multiples for the following two selected companies, which multiples were considered to be not meaningful: Clifton Bancorp Inc. and MSB Financial Corp. The bottom quartile, average, median and top quartile 2017 and 2018 estimated earnings per share multiples indicated in the selected companies analysis of Sussex excluded the impact of the 2017 and 2018 estimated earnings per share multiples for the selected company, Clifton Bancorp Inc., which multiples were considered to be not meaningful. Clifton Bancorp Inc. was one of the four selected companies for which consensus street estimates were publicly available. The other three selected companies were 1st Constitutional Bancorp, First Bank and Two River Bancorp.

The following disclosure supplements the subheading captioned Selected Transactions Analysis Nationwide on page 107 of the joint proxy statement/prospectus:

The bottom quartile, average, median and top quartile LTM earnings per share multiples indicated in the selected transactions analysis excluded the impact of the LTM EPS multiple for the Mid Penn Bancorp, Inc./Scottsdale Bank & Trust Company transaction, which multiple was considered to be not meaningful.

The following disclosure supplements the subheading captioned Selected Transactions Analysis Mid-Atlantic on page 108 of the joint proxy statement/prospectus:

The bottom quartile, average, median and top quartile LTM earnings per share multiples indicated in the selected transactions analysis excluded the impact of the LTM EPS multiples for the following eight selected transactions, which multiples were considered to be not meaningful: Mid Penn Bancorp, Inc./Scottsdale Bank & Trust Company, Prudential Bancorp, Inc./Polonia Bancorp, Inc., Bay Bancorp, Inc./Hopkins Bancorp, Inc., Hamilton Bancorp, Inc./Fraternity Community Bancorp, Inc., ESSA Bancorp, Inc./Eagle National Bancorp, Inc., Citizens Financial Services, Inc./First National Bank of Fredericksburg, Cape Bancorp, Inc./Colonial Financial Services, Inc. and F.N.B. Corporation/OBA Financial Services, Inc.

The following supplemental disclosure is added after the last sentence of the last paragraph on page 110 of the joint proxy statement/prospectus under the subheading Discounted Cash Flow Analysis.

Estimated excess cash flows discounted to present value in KBW's discounted cash flow analysis were calculated generally as any portion of estimated earnings in excess of the assumed retained amount of estimated earnings sufficient to maintain a tangible common equity to tangible assets ratio of 8.00%.

Additional Information and Where to Find It

This communication does not constitute an offer to sell or a solicitation of an offer to buy any securities or a solicitation of any vote or approval. This communication is being made in respect of the proposed transaction involving Sussex and Community. The proposed transaction will be submitted to the shareholders of Sussex and Community for their consideration. In connection with the proposed transaction, Sussex has filed with the SEC a definitive joint proxy statement/prospectus, which was first mailed to security holders of Sussex and Community on or about November 7, 2017. **SHAREHOLDERS OF SUSSEX AND COMMUNITY ARE URGED TO READ THE JOINT PROXY STATEMENT/PROSPECTUS REGARDING THE PROPOSED TRANSACTION AND ANY OTHER RELEVANT DOCUMENTS CAREFULLY AND IN THEIR ENTIRETY BECAUSE THEY CONTAIN IMPORTANT INFORMATION ABOUT THE PROPOSED TRANSACTION.** You may obtain copies of all documents filed with the SEC concerning the proposed transaction, free of charge, at the SEC's website at www.sec.gov. In addition, shareholders may obtain free copies of the documents filed with the SEC by Sussex by

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going to the Investors tab of Sussex's website at www.sussexbank.com or by directing a written request to: Sussex Bancorp, 100 Enterprise Drive, Suite 700, Rockaway, New Jersey, 07866, Attention: Linda Kuipers.

Sussex and certain of its directors and executive officers may, under the rules of the SEC, be deemed to be participants in the solicitation of proxies from shareholders of Sussex in connection with the proposed merger. Information concerning the interests of the persons who may be considered participants in the solicitation is set forth in the joint proxy statement/prospectus. Information concerning Sussex's directors and executive officers, including their ownership of Sussex's common stock, is set forth in its proxy statement previously filed with the SEC on March 23, 2017. Additional information regarding the interests of such potential participants was included in the joint proxy statement/prospectus and may be included in other relevant documents filed with the SEC if and when they become available. You may obtain free copies of these documents from Sussex using the sources indicated above.

Forward-Looking Statements

The forward-looking statements contained in this Current Report on Form 8-K, including supplemental disclosure to the joint proxy statement/prospectus, may contain forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. These forward-looking statements include, but are not limited to, statements about the benefits of the merger between Sussex and Community, including future financial and operating results and performance; statements about Sussex's and Community's plans, objectives, expectations and intentions with respect to future operations, products and services; and other statements identified by words such as expects, anticipates, intends, plans, believes, seeks, estimates, will, should, may or words of similar meaning. These forward-looking statements are based on the current beliefs and expectations of Sussex's and Community's management and are inherently subject to significant business, economic and competitive uncertainties and contingencies, many of which are difficult to predict and generally beyond the control of Sussex and Community. In addition, these forward-looking statements are subject to assumptions with respect to future business strategies and decisions that are subject to change. Actual results may differ materially from the anticipated results discussed in these forward-looking statements. Additional factors that could cause Sussex's and Community's results to differ materially from those described in the forward-looking statements can be found in the section of the joint proxy statement/prospectus entitled "Risk Factors" beginning on page 30, and Sussex's filings with the SEC, including Sussex's Annual Reports on Form 10-K, as amended, for the fiscal year ended December 31, 2016. You are cautioned not to place undue reliance on forward-looking statements, which speak only as of the date of the joint proxy statement/prospectus or the date of any document incorporated by reference into this joint proxy statement/prospectus. All subsequent written and oral forward-looking statements concerning the merger or other matters addressed in this Form 8-K and attributable to Sussex or Community or any person acting on their behalf are expressly qualified in their entirety by the cautionary statements contained or referred to in this section. Except to the extent required by applicable law or regulation, Sussex and Community undertake no obligation to update these forward-looking statements to reflect events or circumstances after the date of this Form 8-K or to reflect the occurrence of unanticipated events.

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.

SUSSEX BANCORP

Date: December 5, 2017

By: /s/ Steven M. Fusco
Steven M. Fusco
Senior Executive Vice President and
Chief Financial Officer