

SUSSEX BANCORP
Form PRER14A
January 06, 2009

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

SCHEDULE 14A INFORMATION

INFORMATION REQUIRED IN PROXY STATEMENT
SCHEDULE 14A

Proxy Statement Pursuant to Section 14(a) of the
Securities Exchange Act of 1934
(Amendment No. 2)

Filed by the Registrant
Filed by a Party other than the Registrant
Check the appropriate box:

- Preliminary Proxy Statement
 Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))
 Definitive Proxy Statement
 Definitive Additional Materials
 Soliciting Material Pursuant to Rule 14a-11(c) or Rule 14a-12

SUSSEX BANCORP

(Name of Registrant as Specified in its Charter)
(Name of Person(s) Filing Proxy Statement, if other than the Registrant)

Payment of Filing Fee (Check the appropriate box):

- No fee required
 Fee Computed on table below per Exchange Act Rules 14a-6(i)(1) and 0-11

(1) Title of each class of securities to which transaction applies:

(2) Aggregate number of securities to which transaction applies:

(3) Per unit price or other underlying value of transaction computed pursuant to
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- Fee paid previously with preliminary materials.
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(1) Amount Previously Paid:

(2) Form, Schedule or Registration Statement No.:

(3) Filing Party:

(4) Date Filed:

SUSSEX BANCORP

200 Munsonhurst Road
Franklin, New Jersey, 07416

NOTICE OF SPECIAL MEETING OF STOCKHOLDERS
To Be Held on January __, 2009

NOTICE IS HEREBY GIVEN that the Special Meeting (the "Special Meeting") of the holders of shares of common stock of Sussex Bancorp (the "Company") will be held at the main offices of the Company at 200 Munsonhurst Road, Franklin, New Jersey, on January __, 2009 at 10:00 a.m. for the purpose of considering and voting upon the following matters, all of which are more completely set forth in the accompanying Proxy Statement:

1. An Amendment to the Company's Certificate of Incorporation to provide for 1,000,000 shares of series preferred stock, the terms, conditions and designations of which are discussed in the accompanying Proxy Statement; and
2. Such other business as shall properly come before the Special Meeting.

Holders of shares of common stock of record at the close of business on December 9, 2008 will be entitled to vote at the Special Meeting or any postponement or adjournment.

You are requested to fill in, sign, date and return the enclosed proxy promptly, regardless of whether you expect to attend the Special Meeting. A postage-paid return envelope is enclosed for your convenience.

If you are present at the Meeting, you may vote in person even if you have already returned your proxy.

BY ORDER OF THE BOARD OF
DIRECTORS

Donald L. Kovach
Chairman of the Board

Franklin, New Jersey
January __, 2009

IMPORTANT-PLEASE MAIL YOUR PROXY PROMPTLY

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You are urged to sign and return the enclosed Proxy to the Company promptly in the envelope provided so that there may be sufficient representation at the Special Meeting.

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SUSSEX BANCORP

PROXY STATEMENT FOR
SPECIAL MEETING OF STOCKHOLDERS
TO BE HELD ON JANUARY __, 2009

This Proxy Statement is being furnished to shareholders of Sussex Bancorp (the "Company") in connection with the solicitation by the Board of Directors of proxies to be used at the Special Meeting of stockholders to be held on January __, 2009 at 10:00 a.m., at the main offices of the Company, 200 Munsonhurst Road, Franklin, New Jersey.

About the Special Meeting

Why have I received these materials?

The accompanying proxy, being mailed to shareholders on or about January __, 2009, is solicited by the Board of Directors of Sussex Bancorp (referred to throughout this Proxy Statement as the "Company" or "we"), the holding company for Sussex Bank (the "Bank") in connection with a Special Meeting of Shareholders that will take place on January __, 2009. You are cordially invited to attend the Special Meeting and are requested to vote on the proposal described in this Proxy Statement.

Who is entitled to vote at the Special Meeting?

Holders of common stock of the Company as of the close of business on December 9, 2008 will be entitled to vote at the Special Meeting. On December 9, 2008, there were outstanding and entitled to vote 3,261,362 shares of common stock, each of which is entitled to one vote with respect to each matter to be voted on at the Special Meeting.

How do I vote my shares at the Special Meeting?

If you are a "record" shareholder of common stock (that is, if you hold common stock in your own name in the Company's stock records maintained by our transfer agent, American Stock Transfer and Trust Company), you may complete and sign the accompanying proxy card and return it to the Company or deliver it in person.

"Street name" shareholders of common stock (that is, shareholders who hold common stock through a broker or other nominee) who wish to vote at the Special Meeting will need to obtain a proxy form from the institution that holds their shares and to follow the voting instructions on such form.

Can I change my vote after I return my proxy card?

Yes. After you have submitted a proxy, you may change your vote at any time before the proxy is exercised by submitting a notice of revocation or a proxy bearing a later date. You may change your vote either by submitting a proxy card prior to the date of the Special Meeting or if you are a "record" holder of the common stock by voting in person at the Special Meeting.

What constitutes a quorum for purposes of the Special Meeting?

The presence at the Special Meeting in person or by proxy of the holders of a majority of the voting power of all outstanding shares of common stock entitled to vote shall constitute a quorum for the transaction of business. Proxies marked as abstaining (including proxies containing broker non-votes) on any matter to be acted upon by shareholders will be treated as present at the meeting for purposes of determining a quorum but will not be counted as votes cast on such matters.

What vote is required to adopt the proposal at the Special Meeting?

The affirmative vote of a majority of the votes cast at the Special Meeting is required to adopt the amendment to the Company's certificate of incorporation.

How does the Board recommend that I vote my shares?

Unless you give other instructions on your proxy card, the persons named as proxies on the card will vote in accordance with the recommendations of the Board of Directors. The Board's recommendation is set forth together with the description of each item in this Proxy Statement. The Board recommends a vote FOR the amendment to the Company's certificate of incorporation.

With respect to any other matter that properly comes before the Special Meeting, the proxy holders will vote as recommended by the Board of Directors or, if no recommendation is given, in their own discretion in the best interest of the Company. At the date this Proxy Statement went to press, the Board of Directors had no knowledge of any business other than that described in this proxy statement that would be presented for consideration at the Special Meeting.

Who will bear the expense of soliciting proxies?

The Company will bear the cost of soliciting proxies. In addition to the solicitation by mail, proxies may be solicited personally or by telephone, facsimile or electronic transmission by our employees. We may reimburse brokers holding common stock in their names or in the names of their nominees for their expenses in sending proxy materials to the beneficial owners of such common stock.

About the Proposed Amendment to Our Certificate of Incorporation

Why is the Company seeking to amend its certificate of incorporation?

On October 8, the Emergency Economic Stabilization Act (the "EESA") was signed into law. Under the terms of the EESA, the United States Department of the Treasury (the "Treasury") adopted the Capital Purchase Program (the "CPP"), under which the Treasury will invest \$250 billion into United States financial institutions. The investment is to be in the form of non-voting preferred stock and common stock purchase warrants. In order to participate in the CPP, a bank or bank holding company must be authorized to issue preferred stock. We are not currently authorized to issue preferred stock under our certificate of incorporation.

Why does the company want to participate in the CPP?

Although the Company is well capitalized under all of the regulatory capital measurements applicable to it and has sufficient liquidity to continue to execute its business plan, the additional capital available through the CPP will help the Company continue to grow, to increase its loan portfolio, its largest earning asset, and provide an additional capital cushion in the event the economy continues to slow. The Company also believes that the terms of the CPP are beneficial to the Company's shareholders.

How much capital is the Company seeking from the Treasury?

Under the rules of the CPP, the Company can seek an investment from the Treasury ranging from one percent (1%) to three percent (3%) of its risk weighted assets. Accordingly, the minimum investment which the Company may seek is

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\$3,329,750 and the maximum is \$9,989,000. The Company has applied for the maximum investment of \$9,989,000 from the Treasury. On December 12, 2008, we received preliminary approval of our application to participate in the CPP for the maximum investment of \$9,989,000 from the Treasury. However, we can offer you no assurance that we will be able to close upon this investment and receive such proceeds from the Treasury.

How many preferred shares will the Company sell to the Treasury? Why is the Company seeking authority to issue additional preferred shares?

Under the rules of the CPP, the preferred stock will have a value of \$1,000 per share. Therefore, if the Company receives the amount for which it has been preliminarily approved, it will issue 9,989 shares of preferred stock to the Treasury. Beyond its participation in the CPP, for the reasons set forth later in this proxy statement (see p. 6) the Company believes as a general matter that it is in the best interests of the Company's shareholders that the Company be authorized to issue preferred stock at times and on terms determined by the Board of Directors. The Company is therefore proposing in the amendment to the certificate of incorporation that the Company be authorized to issue up to 1,000,000 shares of preferred stock on the terms and conditions set by the Board at the time of issuance. Other than under the CPP, the Company has no current plans or agreements to issue preferred stock.

Will this proposal or the Company's participation in the CPP affect the rights of the holders of the Company's common stock?

Our participation in the CPP may affect the rights of the holders of our common stock in several ways. As discussed in more detail below, in order to participate in the CPP, we must agree to restrictions on: (i) our ability to pay cash dividends to holders of our common shares, (ii) our ability to make stock repurchases, and (iii) executive compensation levels for certain senior executives, as well as the terms of compensation plans and arrangements in which our senior executive officers may participate. However, with respect to executive compensation restrictions, the Company believes that it is already in compliance with such restrictions and accordingly no modifications to any existing agreements with our executives will be necessary. In addition, if dividends payable on the shares of preferred stock issued to the Treasury in the CPP have not been paid for an aggregate of six quarterly dividend periods or more, whether or not consecutive, the holders of the shares of Preferred Stock could elect two representatives to our Board of Directors. Such Directors would be in addition to the Directors elected by the holders of common stock.

Participation in the CPP could dilute both the ownership interests of our common shareholders and the per share book value of our common stock. In order to participate in the CPP, we are required to issue to the Treasury warrants to purchase shares of our common stock. The exercise price per share, as well as the number of shares purchasable upon the exercise of the warrants, will depend upon the market value of our common stock at the time we are notified that we are eligible to participate in the CPP. Based upon the documentation we received in connection with our preliminary approval to participate in the CPP, and our current market price, we expect to issue warrants to purchase 277,987 at an exercise price of \$5.39 per share. Exercise of these warrants will dilute the ownership percentage of our common holders. In addition, to the extent the exercise price at the time of exercise is less than our book value per share, exercise of the warrants will dilute our book value per share.

Finally, by participating in the CPP, the Company will be issuing preferred shares which would be senior to our common stock in terms of dividend payments or distributions upon a liquidation of the Company. The preferred stock will pay cumulative dividends at a rate of 5% per annum until the fifth anniversary of the date of issuance and thereafter at a rate of 9% per annum. Undertaking this obligation to pay dividends on the preferred shares may result in a decrease in the availability of revenues to pay cash dividends to our holders of common stock. See "Pro Forma Financial Information."

In addition to the shares of preferred stock the Company intends to issue pursuant to the CPP, the Company is asking shareholders to approve the authorization of additional preferred shares, and to grant the Board the right to set the terms and conditions of the preferred stock at the time the shares are issued, without further shareholder approval. Any issuance of preferred stock could adversely affect the rights of holders of common stock and the value of such common stock. Although our Board of Directors is required to make any determination to issue such stock based upon its judgment as to the best interests of our stockholders, our Board of Directors could, for example, act in a manner

which would discourage an acquisition attempt or other transaction which some, or a majority, of the stockholders might believe to be in their best interests or in which stockholders might receive a premium for their stock over the then market price of such stock. Any shares of preferred stock issued under this authority may also be senior to the common stock in terms of dividend payments, rights to assets upon a liquidation or voting rights.

PROPOSAL 1 — APPROVAL OF AMENDMENT TO
CERTIFICATE OF INCORPORATION
TO CREATE PREFERRED STOCK

Background of the Amendment

The Board of Directors has unanimously approved and recommended that the shareholders of the Company approve a proposed amendment to the Company's Certificate of Incorporation creating a new class of 1,000,000 authorized shares of Series Preferred Stock. The Board of Directors will have the authority to set the specific terms, rate of dividends, preferences and conditions of any series of preferred stock upon its issuance, without further shareholder approval, providing the Board with greater flexibility in raising capital.

The Board is proposing the amendment to permit the Company to participate in the CPP. Under the CPP, the Treasury will invest in financial institutions through the purchase of non-voting preferred stock. The Company is not currently authorized to issue preferred stock, and so will not be eligible to participate in the CPP unless the amendment is approved by the Company's shareholders. The form of the amendment is attached as Exhibit A hereto.

Although the purpose of the amendment is to permit the Company to participate in the CPP, the Board of Directors also believes as a general matter that having so-called "blank check" preferred stock authorized in the Company's Certificate of Incorporation will provide the Board with greater flexibility in raising capital for the Company, permitting the Company to take advantage of business expansion opportunities or changes in the market that may arise from time to time. The Company is therefore asking shareholders to approve more authorized preferred shares than are necessary for participation in the CPP, and to grant the Board the right to set the terms and conditions of the preferred stock at the time the shares are issued, without further shareholder approval. The use of preferred stock may permit the Company to raise capital without diluting the voting interests or ownership interests of current holders of the common stock. Permitting the Board to set the terms, rates, conditions and preferences of any issuance of any series of preferred stock at the time the stock is issued, without further shareholder approval, will permit the Board the maximum flexibility and allow the Board to react to potentially changing market conditions or business opportunities which require capital. However, in certain situations, issuance of a series of preferred stock could hinder the ability of a third-party to take control of the Company, even if some shareholders believed that such a change in control would be in their best interests.

The CPP

The Board believes that participation in the CPP is in the best interests of the Company. Although the Company is well capitalized under all regulatory capital measures applicable to it, the Treasury's investment under the CPP will strengthen the Company's capital position, increase its ability to make credit available to its customers and provide a cushion should the economy continue to slow. Set forth below is a summary of the material terms of Treasury's investment under the CPP. The Company has received preliminary approval for an investment of \$9,989,000 from the Treasury. Although we believe that we will close upon this investment with the Treasury, there is no guarantee we will receive any proceeds from the Treasury. However, we do not believe that any failure to receive an investment from the Treasury under the CPP would have a material adverse effect upon our liquidity, capital resources, or results of operations.

An investment by the Treasury under the CPP will have the following terms:

Liquidation Preferences, Dividends, and Redemption Rights.

Should the shareholders approve the amendment, the Company and its Board of Directors determine to proceed with participation in the CPP, and the Treasury finalize its approval to invest \$9,989,000, the Board of Directors would authorize the Company to issue and sell to the Treasury shares of preferred stock (the "Preferred Stock"). Such Preferred Stock would have dividend and liquidation preferences senior to the Company's common stock. All shares of Preferred Stock would pay cumulative dividends at a rate of 5% per annum for the first five years and 9% per annum thereafter, payable quarterly. Shares of the Preferred Stock would be redeemable after three years at its issue price, plus accrued and unpaid dividends. Prior to the third anniversary of the Treasury's investment, shares of the Preferred Stock could only be redeemed using the proceeds of an offering of other securities of the Company which would qualify as Tier I capital under federal reserve regulations and would provide the Company with proceeds of at least 25% of the issue price of the shares of the Preferred Stock. Any such redemption must be approved by the Company's primary federal bank regulator, currently the Board of Governors of the Federal Reserve System. The Treasury would be permitted to transfer the Preferred Stock to a third party at any time.

Voting Rights; Election of Preferred Directors.

Generally, the Preferred Stock does not have voting rights, except as explained in this subsection and the following subsection. The standard terms required by the Treasury for the Preferred Stock include that whenever dividends payable on the shares of Preferred Stock have not been paid for an aggregate of six quarterly dividend periods or more, whether or not consecutive, the authorized number of directors of the Company will be increased by two and the holders of the Preferred Stock shall have the right to elect two directors (hereinafter the "Preferred Directors" and each a "Preferred Director") to fill the newly created directorships at the Company. The Preferred Directors are in addition to the Directors elected by the holders of the Company's common stock. Holders of the Preferred Stock will not be entitled to vote on Directors elected by the holders of the common stock, and vice versa.

Additional Limited Class Voting Rights.

In addition any voting rights provided under New Jersey law, under the CPP, the holder of the Preferred Stock would also have the right to vote on (i) any authorization or issuance of shares ranking senior to the Preferred Stock; (ii) any amendment to the rights of the Preferred Stock, or (iii) any merger, exchange or similar transaction which would adversely affect the rights of the Preferred Stock.

Restrictions on Dividends and Stock Repurchases.

As long as the Preferred Stock are outstanding, the Company would not be able to pay dividends on its common stock or any preferred shares ranking pari passu with the Preferred Stock, unless all dividends on the Preferred Stock have been paid in full.

Furthermore, until the earlier of the third anniversary of the Treasury's investment or the date the Treasury ceases to hold any Preferred Stock or the Preferred Stock is redeemed in full, the Company may not, without the consent of the Treasury, increase the dividend on its common stock or repurchase its common stock or any trust preferred securities, unless the redemption of trust preferred securities was undertaken in connection with the refinancing of an outstanding series of trust preferred securities.

Issuance of Warrants to Purchase Common Stock.

In conjunction with the sale of the Preferred Stock, the Treasury will receive warrants to purchase common shares with an aggregate market price equal to 15% of the investment in the Preferred Stock. The exercise price of the warrants, and the market price for determining the number of shares of common stock subject to the warrants, is the average closing price of a share of the Company's common stock for the 20 trading days ending one day prior to the date on which the Treasury preliminarily approved the Company for participation in the CPP, or December 12, 2008. The average closing price of a share of the Company's common stock for the 20 trading days ending one day prior to December 12, 2008 is \$5.39. The warrants will have a term of 10 years. The Treasury will agree not to exercise voting power with respect to any shares of common stock that it acquires upon exercise of the warrants.

Based upon the Company's preliminary approval for the maximum investment under the CPP from the Treasury, or \$9,989,000, the Company would issue warrants with an aggregate market price equal to \$1,498,350. The number of shares to be subject to the Warrants if we receive the maximum investment is 277,987 at an exercise each share with an exercise price of \$5.39, which, if exercised simultaneously, would represent approximately 8.52% of the 3,261,362 currently issued and outstanding shares.

Exercise of the warrants will dilute the current ownership percentage of our common shareholders. In addition, in the event the book value of our common stock at the time of the exercise of a warrant is in excess of the warrants exercise

price, the exercise of the warrants will also dilute the per share book value of our common stock.

The number of shares purchasable upon exercise of the warrants may be reduced by 50% if we undertake a capital offering which qualifies as Tier I capital and raise 100% of the amount invested by Treasury by December 31, 2009.

Limitations on Executive Compensation.

If the Company participates in the CPP, the Company will also be required to adopt and adhere to the standards for executive compensation and corporate governance established under Section 111 of the EESA, for the period during which the Treasury holds the Preferred Stock. These standards would generally apply to the Company's chief executive officer, chief financial officer and the next three most highly compensated executive officers.

The Company and the affected senior executives believe that they are already in compliance with the Section 111 of the EESA; accordingly the Company does not anticipate any modification to any employment or compensation arrangement will be necessary.

Registration and Piggyback Rights

Upon the request of the Treasury, the Company will be required to register for resale the Preferred Stock, the Warrant and the underlying common shares purchasable upon exercise of the Warrant. In addition, if the Company determines to register any of its equity securities, then the Company has agreed to include in such registration the Preferred Stock, and the Warrant and the underlying common shares purchasable upon exercise of the Warrant. Undertaking such a registration may result in additional expense for the Company.

Certain Pro Forma Financial Information

The unaudited pro form condensed consolidated financial data set forth below have been derived from our historical financial statements for the year ended December 31, 2007 and the nine months ended September 30, 2008. The unaudited pro forma consolidated financial data give effect to the transactions described therein as if they had occurred at the beginning of the period presented therein, i.e. at January 1, 2007 for the pro forma financial statements for the year ended December 31, 2007 and at January 1, 2008 financial statements for the nine months ended September 30, 2008. In the pro forma presentations that follow, we have presented an investment by the Treasury of \$9,989,000, the amount for which we have been preliminarily approved under the CPP. Our actual performance may differ materially from these pro formas based upon many factors, including the actual amount of the investment (if any) made by the Treasury, the utilization of the proceeds, and the market price of our common stock. This pro forma information should be read in conjunction with our audited financial statements and the related noted filed as part of our Annual Report on form 10-K for the year ended December 31, 2007 and our unaudited consolidated financial statements and the related noted thereto filed as part of our Quarterly Report on Form 10-Q for the quarter ended September 30, 2008.

Our future results are subject to prevailing economic and industry conditions and financial, business and other known and unknown risks and contingencies, many of which are beyond our control. These factors include those described herein and those described under Item 1A of our Annual Report on Form 10-K as updated by our Quarterly Reports on Form 10-Q and our other reports filed with the SEC.

Sussex Bancorp
Pro Forma Consolidated Balance Sheet
(in thousands, except per share data)

Balance Sheet Data:	Historical 9 Months Ended 09/30/08 (Unaudited)	Pro Forma Adjustments (Unaudited)	As Adjusted (Unaudited)
ASSETS			
Cash and due from banks	\$ 26,007	\$ 0	\$ 26,007
Securities and other interest earning assets(1)	78,106	9,989	88,095
Loans, net of unearned	307,250	0	307,250
Other Assets	27,716	0	27,716
TOTAL ASSETS	\$ 439,079	\$ 9,989	\$ 449,068
LIABILITIES			
Total deposits	\$ 356,661	\$ 0	\$ 356,661
Borrowings	36,160	0	36,160
Junior Subordinated Debentures	12,887	0	12,887
Other Liabilities	2,572	0	2,572
TOTAL LIABILITIES	408,280	0	408,280