

BERKSHIRE HILLS BANCORP INC
Form 425
May 22, 2015

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): **May 21, 2015**

BERKSHIRE HILLS BANCORP, INC.

(Exact Name of Registrant as Specified in its Charter)

Delaware
(State or Other Jurisdiction

of Incorporation)

001-15781
(Commission File No.)

04-3510455
(I.R.S. Employer

Identification No.)

24 North Street, Pittsfield, Massachusetts
(Address of Principal Executive Offices)

01201
(Zip Code)

Registrant's telephone number, including area code: **(413) 443-5601**

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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))
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Item 1.01

Entry into a Material Definitive Agreement

On May 21, 2015, Berkshire Hills Bancorp, Inc. (the Company or Berkshire Hills), Berkshire Bank (the Bank), Jacob Acquisition LLC, a wholly owned subsidiary of the Bank (Merger Sub), and Firestone Financial Corp. (Firestone), a Massachusetts chartered corporation, entered into an Agreement and Plan of Merger (the Merger Agreement) pursuant to which Firestone will become an operating subsidiary of the Bank (the Merger).

The total merger consideration will be based on 130% of Firestone's adjusted tangible book value at the closing of the transaction and is anticipated to be approximately \$53 million. Merger consideration will consist of 75% Company common stock and 25% cash. Based on the \$27.85 average closing price of Berkshire Hills stock for the 20 days prior to the agreement date, the Company expects to issue merger consideration consisting of approximately 1.42 million Company shares and approximately \$13.2 million in cash.

The proposed merger is subject to customary closing conditions, including the receipt of regulatory approvals and approval by the stockholders of Firestone. The merger is expected to be completed in the third quarter of 2015.

Certain executive officers of Firestone have agreed to vote their shares in favor of the approval of the Merger Agreement at the Firestone stockholders meeting to be held to vote on the proposed transaction. If the merger is not consummated under specified circumstances, Firestone or the Company may be obligated to pay a termination fee, which will be equal to \$2 million.

The Merger Agreement also contains usual and customary representations and warranties that the Company, the Bank and Firestone made to each other as of specific dates. The assertions embodied in those representations and warranties were made solely for purposes of the contract between the Company, the Bank and Firestone, and may be subject to important qualifications and limitations agreed to by the parties in connection with negotiating its terms. Moreover, the representations and warranties are subject to a contractual standard of materiality that may be different from what may be viewed as material to stockholders, and the representations and warranties may have been used to allocate risk between the Company, the Bank and Firestone rather than establishing matters as facts.

The Company has filed a copy of the Merger Agreement as Exhibit 2.1 to this Form 8-K. The Company's news release announcing the merger is attached hereto as Exhibit 99.1 and incorporated by reference herein.

Additional Information and Where to Find It

In connection with the proposed merger, Berkshire Hills will file with the Securities and Exchange Commission (SEC) a Registration Statement on Form S-4 that will include a Proxy Statement of Firestone and a Prospectus of Berkshire Hills, as well as other relevant documents concerning the proposed merger. Investors and stockholders are urged to read the Registration Statement and the Proxy Statement/Prospectus regarding the proposed merger when it becomes available and any other relevant documents filed with the SEC, as well as any amendments or supplements to those documents, because they will contain important information. Copies of the Registration Statement and Proxy Statement/Prospectus and the filings that will be incorporated

by reference therein, as well as other filings containing information about Berkshire Hills and Firestone, when they become available, may be obtained at the SEC's Internet site (<http://www.sec.gov>). You will also be able to obtain these documents, free of charge, from Berkshire Hills at www.berkshirebank.com under the tab Investor Relations.

Firestone and Berkshire Hills and certain of their respective directors and executive officers may be deemed to be participants in the solicitation of proxies from the stockholders of Firestone in connection with the proposed merger. Information about the directors and executive officers of Berkshire Hills is set forth in the proxy statement for the Berkshire Hills 2015 annual meeting of stockholders, as filed with the SEC on Schedule 14A on April 1, 2015. Information about the directors and executive officers of Firestone will be included in the Proxy Statement/Prospectus. Additional information regarding the interests of those participants and other persons who may be deemed participants in the transaction and a description of their direct and indirect interests, by security holdings or otherwise, may be obtained by reading the Proxy Statement/Prospectus and other relevant documents regarding the proposed merger to be filed with the SEC when they become available. Free copies of these documents may be obtained as described in the preceding paragraph.

Forward-Looking Statements

Certain statements contained in this Current Report on Form 8-K that are not statements of historical fact constitute forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995 (the Act), notwithstanding that such statements are not specifically identified as such. In addition, certain statements may be contained in our future filings with the SEC, in press releases, and in oral and written statements made by us or with our approval that are not statements of historical fact and constitute forward-looking statements within the meaning of the Act. Examples of forward-looking statements include, but are not limited to: (i) projections of revenues, expenses, income or loss, earnings or loss per share, the payment or nonpayment of dividends, capital structure and other financial items; (ii) statements of our plans, objectives and expectations or those of our management or Board of Directors, including those relating to products or services; (iii) statements of future economic performance; and (iv) statements of assumptions underlying such statements. Words such as believes, anticipates, expects, intends, targeted, continue, remain, will, should, may and other similar expressions are intended to identify forward-looking statements, but are not the exclusive means of identifying such statements.

Forward-looking statements involve risks and uncertainties that may cause actual results to differ materially from those in such statements. Factors that could cause actual results to differ from those discussed in the forward-looking statements include, but are not limited to: local, regional, national and international economic conditions and the impact they may have on us and our customers and our assessment of that impact, changes in the level of non-performing assets and charge-offs; changes in estimates of future reserve requirements based upon the periodic review thereof under relevant regulatory and accounting requirements; the effects of and changes in trade and monetary and fiscal policies and laws, including the interest rate policies of the Federal Reserve Board; inflation, interest rate, securities market and monetary fluctuations; political instability; acts of war or terrorism; the timely development and acceptance of new products and services and perceived overall value of these products and services by users; changes in consumer spending, borrowings and savings habits; changes in the financial performance and/or condition of our borrowers; technological changes; acquisitions and

integration of acquired businesses; the ability to increase market share and control expenses; changes in the competitive environment among financial holding companies and other financial service providers; the quality and composition of our loan or investment portfolio; the effect of changes in laws and regulations (including laws and regulations concerning taxes, banking, securities and insurance) with which we and our subsidiaries must comply; the effect of changes in accounting policies and practices, as may be adopted by the regulatory agencies, as well as the Public Company Accounting Oversight Board, the Financial Accounting Standards Board and other accounting standard setters; changes in our organization, compensation and benefit plans; the costs and effects of legal and regulatory developments, including the resolution of legal proceedings or regulatory or other governmental inquiries and the results of regulatory examinations or reviews; greater than expected costs or difficulties related to the opening of new branch offices or the integration of new products and lines of business, or both; and/or our success at managing the risk involved in the foregoing items.

Item 7.01 **Regulation FD Disclosure**

An Investor Presentation containing additional information regarding the Merger is included in this report as Exhibit 99.2 and is furnished herewith, and shall not be deemed filed for any purpose. Additional supplementary information about Firestone is included below:

Firestone was established in 1965 and has operated under both private ownership and under bank ownership. In 1997, the company became an operating subsidiary of UST Corp., which was acquired by Citizens Financial Group in 2000. In 2001, the Company was purchased from Citizens by a group led by current management.

Firestone originates loans secured by business-essential equipment through over 160 equipment distributors and manufacturers and directly via the end borrower in all fifty states. Firestone has approximately 50 employees with an average tenure over eight years. Nearly all employees are located at its Needham, MA headquarters. With a continuing presence in the equipment markets, Firestone has developed a thorough understanding of the needs and risks of each individual equipment market, enabling it to develop refined lending policies and procedures that have consistently resulted in low delinquencies. Firestone has operated profitably in every year of the last decade.

As of year-end 2014, Firestone estimates that more than 70% of portfolio transactions are with repeat customers. Firestone has processed more than 3,000 credit requests per year in some annual periods. Approximately 65% of portfolio balances are variable rate and 35% are fixed rate.

As of February 28, 2015, accounts past due more than 62 days and modified accounts totaled 0.61% of total loans outstanding. Repossessed equipment measured less than 0.15% of loans outstanding. Firestone provides non-recourse financing and it maintains contact with its distributors and obtains their assistance when appropriate in restructuring the debt, collecting payments from the customer or repossessing and remarketing the equipment.

Berkshire Hills has negotiated certain restrictions on the resale of Berkshire Hills stock consideration, and Firestone's senior management team, including its CEO and CFO, are expected to continue running the business after the close. Compensation of Firestone's sales

staff has been a combination of primarily fixed salary along with variable compensation based on key metrics established on an annual basis including volume, interest rate, and credit metrics.

Firestone has provided audited financial statements to the Bank and the Bank has completed file level due diligence on more than 50% of outstanding loans. Additionally, through the Bank's Asset Based Lending Group, Berkshire Hills participates in a multi-bank secured lending facility which currently provides the senior debt financing for Firestone.

Item 9.01 Financial Statements and Exhibits

(d) Exhibits.

Exhibit 2.1 Agreement and Plan of Merger by and among Berkshire Hills Bancorp, Inc., Berkshire Bank, Jacob Acquisition LLC, and Firestone Financial Corp., dated May 21, 2015

Exhibit 99.1 News Release dated May 22, 2015

Exhibit 99.2 Investor Presentation dated May 22, 2015

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.

Berkshire Hills Bancorp, Inc.

DATE: May 22, 2015

By:

/s/ Michael P. Daly
Michael P. Daly
President and Chief Executive Officer