

ORRSTOWN FINANCIAL SERVICES INC

Form S-8

May 24, 2018

As filed with the Securities and Exchange Commission on May 24, 2018

Registration No. 333-_____

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, DC 20549

FORM S-8

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

ORRSTOWN FINANCIAL SERVICES, INC.

(Exact name of registrant as specified in its charter)

Pennsylvania

23-2530374

(State or other jurisdiction of incorporation or organization) (I.R.S. Employer Identification No.)

77 East King Street, Shippensburg, PA 17257

(Address of principal executive offices) (Zip code)

Amended and Restated 2011 Orrstown Financial Services, Inc. Stock Incentive Plan

(Full title of the plan)

Thomas R. Quinn, Jr., President and CEO

Orrstown Financial Services, Inc.

77 East King Street

Shippensburg, PA 17257

(Name and address of agent for service)

(717) 532-6114

(Telephone number, including area code, of agent for service)

Copies to:

Kenneth J. Rollins, Esquire

Pillar Aught LLC

4201 E. Park Circle

Harrisburg, Pennsylvania 17111

(717) 308-9910

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

Large accelerated filer ☐

Accelerated filer

☒ x

Non-accelerated filer ☐ (Do not check if a smaller reporting company) Smaller reporting company ☐

Emerging growth company o

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 o provided pursuant to Section 13(a) of the Exchange Act.

CALCULATION OF REGISTRATION FEE

Title of Securities Registration to be Registered	Amount to be Registered (1)	Proposed Maximum Offering Price Per Share(2)	Proposed Maximum Aggregate Offering Price (2)	Amount of Registration Fee
Common Stock no par value	500,000 shares	\$26.05	\$13,025,000	\$1,622

(1) Represents the number of shares of common stock, no par value ("Common Stock"), of Orrstown Financial Services, Inc. (the "Company") that may be issued under the Amended and Restated 2011 Orrstown Financial Services, Inc. Stock Incentive Plan (the "Plan"), together with an indeterminate number of shares of the Company's common stock that may be necessary to adjust the number of shares reserved for issuance pursuant to the Plan as a result of a stock split, stock dividend or similar adjustment of the outstanding shares of the Company's Common Stock. In accordance with Rule 416(a) under the Securities Act of 1933, as amended (the "Securities Act"), such indeterminable number of additional shares as may be issuable as a result of such adjustments are also registered hereby.

(2) Estimated solely for purposes of determining the registration fee. The proposed maximum aggregate offering price per share has been computed pursuant to Rules 457(c) and 457(h) based upon the average of the high and low prices of the Registrant's common stock as of May 21, 2018, as reported on the NASDAQ stock market.

EXPLANATORY NOTE

This Registration Statement on Form S-8 (this “Registration Statement”) is being filed in accordance with General Instruction E to Form S-8 to register an additional 500,000 shares of Common Stock issuable pursuant to awards that may be granted under the Amended and Restated 2011 Orrstown Financial Services, Inc. Stock Incentive Plan (the “Plan”), which was approved at the Company’s 2018 Annual Meeting of Shareholders (the “Annual Meeting”). The Company’s shareholders authorized the amendment and restatement of the Plan at the Annual Meeting to, among other things, increase the share reserve under the Plan to a maximum of 881,920 shares of Common Stock issuable pursuant to awards that may be granted thereunder. The Company previously filed with the Securities and Exchange Commission (the “SEC”) a Registration Statement on Form S-8 on June 3, 2011 (File No. 333-174720) to register 381,920 shares of Common Stock authorized under the Plan (the “Original Registration Statement”). Accordingly, this Registration Statement is required to register the additional shares authorized for issuance under the Plan. Except as supplemented by the information set forth below, the contents of the Original Registration Statement are incorporated herein by reference.

PART I

INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

Item 1. Plan Information.

The documents containing the information specified in this Part I of Form S-8 will be sent or given to employees as specified by Rule 428(b)(1) of the Securities Act. Such documents need not be filed with the SEC either as part of this Registration Statement or as prospectuses or prospectus supplements pursuant to Rule 424. These documents and the documents incorporated by reference in this Registration Statement pursuant to Item 3 of Part II of this Form S-8, taken together, constitute a prospectus that meets the requirements of Section 10(a) of the Securities Act.

Item 2. Registrant Information and Employee Plan Annual Information.

The Company will furnish, without charge, to each person to whom the prospectus is delivered, upon the written or oral request of such person, a copy of any and all of the documents incorporated by reference in Item 3 of Part II of this Registration Statement. The Company will also furnish without charge to each person to whom the prospectus is delivered, upon the written or oral request of such person, a copy of other documents required to be delivered to employees of the Company under Rule 428(b). Requests should be directed to: Orrstown Financial Services, Inc., 77 East King Street, Shippensburg, Pennsylvania 17257; Attention: David P. Boyle, Executive Vice President and Chief Financial Officer; telephone number (717) 532-6114.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The following documents filed with the SEC by the Company are incorporated into this Registration Statement by reference:

- (a) The Company's Annual Report on Form 10-K for the year ended December 31, 2017, filed with the SEC on March 9, 2018.
- (b) The Company's Quarterly Report on Form 10-Q for the quarter ended March 31, 2018, filed with the SEC on May 8, 2018.
- (c) The Company's Current Reports on Form 8-K filed with the SEC on January 16, 2018, January 24, 2018, January 30, 2018, March 15, 2018, April 18, 2018, May 1, 2018, May 3, 2018 and May 9, 2018.
- (d) The description of the Company's common stock set forth in its registration statement on Form 8-A/A filed with the SEC on January 28, 2010 (File No. 001-34292), pursuant to the Securities Exchange Act of 1934, as amended ("Exchange Act"), including any amendment or reports filed under the Exchange Act for the purpose of updating such description.

All documents subsequently filed by the Company pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act, prior to the filing of a post-effective amendment which indicates that all securities offered have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference in this

Registration Statement and to be a part hereof from the date of filing such documents.

Any statement contained in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for purposes hereof to the extent that a statement contained herein or in any other subsequently filed incorporated document modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part hereof.

Item 4. Description of Securities.

Not applicable.

Item 5. Interest of Named Experts and Counsel

Not applicable.

Item 6. Indemnification of Officers and Directors.

Sections 1741-1743 of the Pennsylvania Business Corporation Law of 1988, as amended (the “BCL”), provide that a business corporation may indemnify directors and officers against liabilities they may incur in such capacities provided certain standards are met, including good faith and the belief that the particular action is in the best interests of the corporation. In general, this power to indemnify does not exist in the case of actions against a director or officer by or in the right of the corporation if the person entitled to indemnification shall have been adjudged to be liable to the corporation unless and only to the extent a court determines that the person is fairly and reasonably entitled to indemnification. A corporation is required to indemnify directors and officers against expenses they may incur in defending actions against them in such capacities if they are successful on the merits or otherwise in the defense of such actions. Section 1746 of the BCL provides that the foregoing provisions shall not be deemed exclusive of any other rights to which a person seeking indemnification may be entitled under, among other things, any by-law provision, provided that no indemnification may be made in any case where the act or failure to act giving rise to the claim for indemnification is determined by a court to have constituted willful misconduct or recklessness. Section 1747 of the BCL authorizes a corporation to purchase insurance for directors and other representatives. The foregoing statement is subject to the detailed provisions of Section 1741-1850 of the BCL.

The Company’s bylaws provide for indemnification of directors and officers to the extent provided in the BCL. In accordance with Section 1713 of the BCL, the bylaws of the Company also include a provision that the directors of the Company shall not be personally liable for monetary damages such for any action taken, or failure to take any action, unless: (1) the director has breached or failed to perform the duties of his office in good faith, in a manner he reasonably believes to be in the best interests of the Company and with such care, including reasonably inquiry, skill and diligence, as a person of ordinary prudence would use under similar circumstances; and (2) the breach or failure to perform constitute self-dealing, willful misconduct or recklessness. Pursuant to Section 1713 of the BCL, this limitation of personal liability does not apply to (i) the responsibility or liability of a director pursuant to any criminal statute or (ii) the liability of a director for the payment of taxes pursuant to federal state or local law.

Further, the Company may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee, or agent of the Company or is or was serving at the request of the Company as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him and incurred by him in any such capacity or arising out of his status as such, whether or not the Company would have the power to indemnify him against such liability under the provisions of the Articles of Incorporation.

Notwithstanding the foregoing, indemnification payments may only be made to directors and officers to the extent such payments are not inconsistent with applicable banking regulation.

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits.

For a list of all exhibits filed or included as part of this Registration Statement, see “Index to Exhibits” at the end of this Registration Statement.

Item 9. Undertakings.

(a) The Company hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this Registration Statement:

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act of 1933;

To reflect in the prospectus any facts or events arising after the effective date of the Registration Statement (or the (ii) most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the Registration Statement;

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the Registration Statement or any material change to such information in the Registration Statement;

provided, however, that paragraphs (a)(1)(i) and (a)(1)(ii) shall not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed by the registrant with the commission pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in the registration statement.

(2) That, for the purpose of determining any liability under the Securities Act of 1933, each post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(b) The Company hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the Company's annual report pursuant to Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934, and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934 that is incorporated by reference in the Registration Statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(c) Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the Company pursuant to the foregoing provisions, or otherwise, the Company has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act of 1933 and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities, other than the payment by the Company of expenses incurred or paid by a director, officer or controlling person of the Company in the successful defense of any action suit or proceeding, is asserted by such director, officer or controlling person in connection with the securities being registered, the Company will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act of 1933 and will be governed by the final adjudication of such issue.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Shippensburg, Commonwealth of Pennsylvania, on May 24, 2018.

ORRSTOWN FINANCIAL SERVICES,
INC.

(Registrant)

By: /s/ Thomas R. Quinn, Jr.

Thomas R. Quinn, Jr.

President and Chief Executive Officer

POWER OF ATTORNEY

KNOWN ALL MEN BY THESE PRESENTS, that each of the undersigned directors and officers of Orrstown Financial Services, Inc., a Pennsylvania corporation (the "Company"), constitutes and appoints Thomas R. Quinn, Jr., and David P. Boyle, with full power of each of them to act alone, as the true and lawful attorneys-in-fact and agents of the undersigned, with full power of substitution and resubstitution for him and in his name, place and stead, in any and all capacities, to sign any and all amendments (including pre-effective and post-effective amendments) to this Registration Statement and to sign any registration statement (and any post-effective amendments thereto) effective upon filing pursuant to Rule 462(b) under the Securities Act of 1933, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorney-in-fact and agent full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises, as fully to all intents and purposed as he might or could do in person, hereby ratifying and confirming that said attorney-in-fact, agent or his substitutes may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, as amended, this Registration Statement has been signed by the following persons in the capacities indicated on May 24, 2018.

Signature	Capacity
/s/ Thomas R. Quinn, Jr. Thomas R. Quinn, Jr.	President and Chief Executive Officer & Director (Principal Executive Officer)
/s/ David P. Boyle David P. Boyle	Executive Vice President and Chief Financial Officer (Principal Financial and Accounting Officer)
/s/ Joel R. Zullinger Joel R. Zullinger	Chairman of the Board and Director
/s/ Dr. Anthony F. Ceddia Dr. Anthony F. Ceddia	Director
/s/ Cindy J. Joiner Cindy J. Joiner	Director
/s/ Mark K. Keller Mark K. Keller	Director
/s/ Thomas D. Longenecker Thomas D. Longenecker	Director
/s/ Andrea Pugh Andrea Pugh	Director
/s/ Gregory A. Rosenberry Gregory A. Rosenberry	Director
/s/ Eric A. Segal	Director

Eric A. Segal

/s/ Glenn W. Snoke Director
Glenn W. Snoke

/s/ Floyd E. Stoner Director
Floyd E. Stoner

INDEX TO EXHIBITS

Exhibit Description

5.1 Opinion of Pillar Aught LLC.

10.1 Amended and Restated 2011 Orrstown Financial Services, Inc. Stock Incentive Plan.

23.1 Consent of Pillar Aught LLC (included as part of Exhibit 5.1).

23.2 Consent of Crowe Horwath LLP.

24.1 Power of Attorney (included as part of signature page).