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IRWIN FINANCIAL CORP

Form S-8 POS

June 26, 2009

As filed with the Securities and Exchange Commission on June 26, 2009.

Registration No. 333-159825

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SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

POST-EFFECTIVE AMENDMENT NO. 1 TO

FORM S-8

REGISTRATION STATEMENT UNDER

THE SECURITIES ACT OF 1933

IRWIN FINANCIAL CORPORATION

(Exact name of registrant as specified in its charter)

Indiana
(State or Other Jurisdiction of
Incorporation or Organization)
500 Washington Street

35-1286807
(IRS Employer
Identification No.)

Columbus, Indiana 47201

(Address of Principal Executive Offices) (Zip Code)

Irwin Financial Corporation Employees Savings Plan

(Full title of the plan)

Ellen Z. Mufson, Esq.

Irwin Financial Corporation

500 Washington Street

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Columbus, Indiana 47201

(812) 376-1909

(Name, Address and Telephone Number,
Including Area Code, of Agent For Service)

with copies to:

David A. Cifrino, P.C.

McDermott Will & Emery LLP

28 State Street

Boston, Massachusetts 02109

(617) 535-4000

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. (Check one):

Large accelerated filer

Accelerated filer

Non-accelerated filer

Smaller reporting company

Purpose of Post-Effective Amendment

This Post Effective Amendment No. 1 to the Registration Statement on Form S-8 , File No. 333-159825 (the Registration Statement) amends and restates Part II of the Registration Statement in its entirety for the sole purpose of effecting amendments to Item 3 of Part II and the Exhibit Index below and the filing of an additional consent of Ernst & Young LLP as Exhibit 23.2 to the Registration Statement.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Except for Items 3, 8 and 9 of this Part II, which are hereby amended and restated in their entirety as set forth below, the contents of the Registrant s previously filed Registration Statement on Form S-8 (No. 333-115565) relating to shares issuable under the Plan are hereby incorporated by reference.

Item 3. Incorporation of Documents by Reference.

The following documents filed by the Registrant and the Plan with the Securities and Exchange Commission (the Commission) are incorporated by reference herein and shall be deemed as part hereof:

- (a) the Registrant s Annual Report on Form 10-K for the fiscal year ended December 31, 2008, as filed with the Commission on March 31, 2009;
- (b) the Plan s Annual Report on Form 11-K for the fiscal year ended December 31, 2008;
- (c) the Registrant s Quarterly Report on Form 10-Q for the quarter ended March 31, 2009, and filed with the Commission on May 11, 2009;
- (d) the Registrant s Current Reports on Form 8-K, as filed with the Commission on April 1, 2009; May 7, 2009 and June 3, 2009; and

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- (e) the description of the Registrant's Common Shares and associated Preferred Share purchase Rights included in the Registrant's Registration Statement on Form S-1 (Registration No. 333-68586) as filed with the Securities and Exchange Commission on September 18, 2001, including any amendment or report filed for the purpose of updating the description of the Registrant's Common Shares or associated Rights.

All documents filed by the Registrant for itself or the Plan or by the Plan pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act after the date of this Registration Statement and prior to the filing of a post-effective amendment indicating that all of the securities offered hereby have been sold or deregistering all such 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 of 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 of this Registration Statement to the extent that a statement contained herein or in any other subsequently filed document which also is or is deemed to be incorporated by reference herein 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 of this Registration Statement.

Item 8. Exhibits.

See the Exhibit Index immediately following the signature pages, which is incorporated herein by reference.

The Registrant has received a favorable IRS Determination letter dated September 18, 2008 for the Plan from the Internal Revenue Service ("IRS"). The Registrant hereby undertakes to submit any future amendments to the IRS in a timely manner and has made or will make any changes required by the IRS in order to qualify the Plan.

Item 9. Undertakings.

- (a) The undersigned Registrant 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;
 - (ii) To reflect in the prospectus any facts or events arising after the effective date of this registration statement (or the 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. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to

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Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20 percent change in the maximum aggregate offering price set forth in the Calculation of Registration Fee table 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) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed with or furnished to the Commission by the Registrant pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in this registration statement.
 - (2) That, for the purpose of determining any liability under the Securities Act of 1933, each such 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 undersigned Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the Registrant'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 Registrant pursuant to the foregoing provisions, or otherwise, the Registrant 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 Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant 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 Registrant 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 post-effective amendment to registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Columbus, State of Indiana, on June 26, 2009.

IRWIN FINANCIAL CORPORATION

By: /s/ William I. Miller
William I. Miller,
Chief Executive Officer, Chairman and
President

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Pursuant to the requirements of the Securities Act of 1933, this post-effective amendment to registration statement has been signed by the following persons on the dates and in the capacities indicated:

| <u>Signature</u> | <u>Title</u> | <u>Date</u> |
|------------------------------------|--|---------------|
| * _____ Sally A. Dean | Director | June 26, 2009 |
| * _____ David W. Goodrich | Director | June 26, 2009 |
| * _____ R. David Hoover | Director | June 26, 2009 |
| * _____ William H. Kling | Director | June 26, 2009 |
| * _____ Brenda J. Lauderback | Director | June 26, 2009 |
| * _____ John C. McGinty, Jr. | Director | June 26, 2009 |
| * _____ William I. Miller | Director, Chief Executive Officer, Chairman and President (<i>principal executive officer</i>) | June 26, 2009 |

*

Dayton H. Moldendorp

Director

June 26, 2009

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* _____ Director June 26, 2009
Lance R. Odden

* _____ Director June 26, 2009
Marita Zuraitis

* _____ Chief Financial Officer (*principal financial officer*) June 26, 2009
Gregory F. Ehlinger

* _____ First Vice President and Controller (*principal accounting officer*) June 26, 2009
Jody A. Littrell

* By /s/ Matt Souza
Matt Souza, Attorney-in-Fact

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The Plan. Pursuant to the requirements of the Securities Act of 1933, as amended, the administrator of the Plan, Irwin Financial Corporation, has duly caused this post-effective amendment to registration statement be signed on its behalf by the undersigned hereunto duly authorized, in the City of Columbus, State of Indiana on the 26th day of June, 2009.

IRWIN FINANCIAL CORPORATION
EMPLOYEES SAVINGS PLAN

By: /s/ Carrie K. Houston
Name: Carrie K. Houston
Title: First Vice President-Human
Resources & Development,
Irwin Financial Corporation

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EXHIBIT INDEX

| <u>Exhibit No.</u> | <u>Description of Exhibit</u> |
|--------------------|---|
| 4.1 | Rights Agreement, dated as of March 1, 2001, between Irwin Financial Corporation and Irwin Union Bank and Trust. (Incorporated by reference to Exhibit 4.1 to Form 8-A filed March 2, 2001, File No. 000-06835.) |
| 4.2 | Appointment of Successor Rights Agent dated as of May 11, 2001 between Irwin Financial Corporation and National City Bank. (Incorporated by reference to Exhibit 4.5 to Form S-8 filed on September 7, 2001, File No. 333-69156.) |
| 4.3 | Irwin Financial Corporation Employees Savings Plan, together with amendments thereto. |
| 23.1 | Consent of Ernst & Young LLP (previously filed). |
| 23.2 | Consent of Ernst & Young LLP (filed herewith). |
| 24.1 | Power of Attorney (previously included as part of the signature page to the initial filing of this registration statement). |