

BOSTON PRIVATE FINANCIAL HOLDINGS INC  
Form S-8  
June 02, 2006

As filed with the Securities and Exchange Commission on June 2, 2006

Registration No. 333-\_\_\_\_\_

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# SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

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## FORM S-8

### REGISTRATION STATEMENT

*UNDER*

*THE SECURITIES ACT OF 1933*

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## BOSTON PRIVATE FINANCIAL HOLDINGS, INC.

*(Exact Name of Registrant as Specified in Its Charter)*

Ten Post Office Square

Boston, Massachusetts 02109

Massachusetts (State of Incorporation) (617) 912-1900 (Address of Registrant's principal executive offices) 04-2976299 (I.R.S. Employer Identification No.)  
BOSTON PRIVATE FINANCIAL HOLDINGS, INC. 2001 EMPLOYEE STOCK PURCHASE PLAN

(AS AMENDED AND RESTATED AS OF APRIL 26, 2006)

*(Full Title of the Plan)*

Timothy L. Vaill, Chief Executive Officer

BOSTON PRIVATE FINANCIAL HOLDINGS, INC.

Ten Post Office Square

Boston, Massachusetts 02109

(617) 912-1900

*(Name, address, including zip code, and telephone number, including area code, of agent for service)*

*With copy to:*

**William P. Mayer, Esq.**

**Paul W. Lee, Esq.**

**Goodwin Procter LLP**

**Exchange Place**

**Boston, Massachusetts 02109-2881**

**(617) 570-1000**

**Calculation Of Registration Fee**

<b>Title of Securities</b>	<b>Amount to be</b>	<b>Proposed Maximum</b>	<b>Proposed Maximum</b>	<b>Amount of</b>
	<b>Registered(1)</b>	<b>Offering Price</b>	<b>Aggregate</b>	<b>Registration Fee</b>
<b>to be Registered</b> Common Stock, par value \$1.00 per share	400,000 shares	<b>Per Share(2)</b> \$30.11	<b>Offering Price(2)</b> \$12,044,000	\$1,288.71

(1) This Registration Statement relates to 400,000 shares of Common Stock, par value \$1.00 per share, of Boston Private Financial Holdings, Inc. ( Common Stock ) available for issuance under the Boston Private Financial Holding, Inc. 2001 Employee Stock Purchase Plan (As Amended and Restated as of April 26, 2006) (the Plan ); plus such indeterminate number of additional shares of Common Stock as may be required pursuant to the Plan in the event of a stock dividend, reverse stock split, split-up, recapitalization, forfeiture of stock under the Plan or other similar event.

(2) This estimate is made pursuant to Rule 457(c) and (h) under the Securities Act of 1933, as amended (the Securities Act ), solely for the purpose of determining the amount of the registration fee. The registration fee is based upon the average of the high and low sales prices for a share of Common Stock on May 31, 2006, as reported on the Nasdaq National Market.

REGISTRATION STATEMENT ON FORM S-8

Statement under General Instruction E Registration of Additional Securities

The Company previously filed a Registration Statement on Form S-8 with the Securities and Exchange Commission on November 28, 2001 (SEC File No. 333-74106) (the "Original Filing"). The Original Filing was filed in connection with the Company's 2001 Employee Stock Purchase Plan. This Registration Statement registers additional shares of the Company's Common Shares to be issued pursuant to the Plan. The contents of the Original Filing are incorporated by reference into this Registration Statement pursuant to General Instruction E of Form S-8.

**PART II**

**INFORMATION REQUIRED IN THE REGISTRATION STATEMENT**

**Item 3. Incorporation of Certain Documents by Reference**

The documents listed below, which have previously been filed by Boston Private Financial Holdings, Inc. (the "Company") with the Securities and Exchange Commission (the "Commission") pursuant to the Securities Exchange Act of 1934, as amended (the "Exchange Act"), are the only documents incorporated by reference in this Registration Statement:

- (a) Annual Reports on Forms 10-K for the fiscal year ended December 31, 2005, filed with the Commission on March 10, 2006;
- (b) Quarterly Report on Form 10-Q for the quarter ended March 31, 2006, filed with the Commission on May 10, 2006;
- (c) Current Report on Form 8-K filed with the Commission on May 31, 2006;
- (d) Definitive Proxy Statement on Schedule 14A, filed with the Commission on March 10, 2006; and
- (e) The description of the Company's Common Stock contained in the registration statement on Form S-3, filed with the Commission on March 15, 2005.

In addition, all documents subsequently filed by the Company with the Commission pursuant to Section 13(a), 13(c), 14 or 15(d) of the Exchange Act, on or after the date of this Registration Statement and prior to the filing of a post-effective amendment to this Registration Statement which indicates that all securities offered hereby 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 part thereof 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 incorporated or 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 6. Indemnification of Directors and Officers**

The Company is a Massachusetts corporation. Reference is made to Chapter 156D, Section 2.02 of the Massachusetts Business Corporation Act (the MBCA ), which enables a corporation in its original articles of organization or an amendment thereto to eliminate or limit the personal liability of a director for monetary damages for violations of the director's fiduciary duty, except (i) for any breach of the director's duty of loyalty to the corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) for improper distributions under Section 6.40 of the MBCA, or (iv) for any transaction from which a director derived an improper personal benefit. The Company has adopted such provisions in its articles of organization.

Reference also is made to Chapter 156D, Sections 8.50, 8.51, 8.52 and 8.56 of the MBCA, which provide that the corporation may indemnify an individual who is party to a proceeding because he is a director or officer against liability incurred in a proceeding if (a)(1)(i) he conducted himself in good faith; and (ii) he reasonably believed that his conduct was in the best interest of the corporation or that his conduct was at least not opposed to the best interests of the corporation; and , (iii) in the case of any criminal proceeding, he had no reasonable cause to believe his conduct was unlawful; or, (2) he engaged in conduct for which he shall not be liable under a provision of the articles of organization; (b) a director or officer's conduct with respect to an employee benefit plan for a purpose he reasonably believed to be in the interests of the participants in, and the beneficiaries of, the plan, is conduct that satisfies the requirement that this conduct was at least not opposed to the best interests of the corporation; (c) the termination of a proceeding by judgment, order, settlement, or conviction, or upon a plea of nolo contendere or its equivalent, is not, of itself, determinative that the director did not meet the relevant standard of conduct described in this section; (d) unless ordered by a court under clause (3) of subsection (a) of section 8.54 of the MBCA, a corporation may not indemnify a director or officer under this section if his conduct did not satisfy the standards set forth in subsection (a) or subsection (b). A corporation shall indemnify a director or officer who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which he was a party because he was a director of the corporation against reasonable expenses incurred by him in connection with the proceeding. The Company's articles of organization provide for indemnification to the fullest extent permitted under the MBCA, except that indemnification for compromise payments and any advances of expenses prior to the final disposition of any matter shall only be made if approved by (1) a majority of disinterested directors or, if there are less than two disinterested directors, by a majority of the directors provided they have obtained a legal opinion that the director or officer acted in good faith in the reasonable belief that his action was in the best interests of the corporation, (2) holders of a majority of the shares of stock, or (3) by a court of competent jurisdiction. Advances of expense shall only be made upon receipt of an affidavit of such individual of his good faith belief that he has met the standard of conduct necessary for indemnification and an undertaking by such individual to repay the amounts so paid to the corporation if it is ultimately determined that indemnification for such expenses is not authorized.

The Company and its directors and officers currently carry liability insurance.

**Item 8. Exhibits**

The exhibits listed below represent a complete list of exhibits filed or incorporated by reference as part of this Registration Statement.

- 4.1 Restated Articles of Organization of the Company filed May 23, 1994 (incorporated herein by reference to Exhibit 3.1 to the Company's Quarterly Report on Form 10-Q filed on August 14, 2001).
- 4.2 Articles of Amendment filed on April 22, 1998 (incorporated herein by reference to Exhibit 3.2 to the Company's Quarterly Report on Form 10-Q filed on August 14, 2001).
- 4.3 Articles of Amendment filed on November 20, 2001 (incorporated herein by reference to Exhibit 4.3 to the Company's Registration Statement on Form S-8 filed on November 28, 2001).

- 4.4 By-laws of the Company, as amended (incorporated herein by reference to Exhibit 3.2 to Company's Annual Report on Form 10-K filed on March 6, 2000).
- 4.5 Amendment to the By-laws of the Company, dated April 18, 2002 (incorporated herein by reference to Exhibit 3.5 to the Company's Annual Report on Form 10-K filed on March 7, 2003).
- \*5.1 Legal opinion from Goodwin Procter LLP
- \*23.1 Consent of KPMG LLP, as independent registered public accounting firm
- \*23.2 Consent of Hacker, Johnson & Smith PA, an independent registered public accounting firm
- 23.3 Consent of Goodwin Procter LLP (contained in the opinion filed as Exhibit 5.1 to this Registration Statement)
- 24.1 Power of attorney (included on the signature page to this Registration Statement)
- 99.1 Boston Private Financial Holdings, Inc. 2001 Employee Stock Purchase Plan (As Amended and Restated as of April 26, 2006) (incorporated herein by reference to Exhibit A to the Company's Definitive Proxy Statement on Schedule 14A, filed with the Commission on March 10, 2006)

\* Filed herewith

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, as amended, the Company 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 Boston, The Commonwealth of Massachusetts, on this 2nd day of June, 2006.

BOSTON PRIVATE FINANCIAL  
HOLDINGS, INC.

By: /s/ TIMOTHY L. VAILL  
Timothy L. Vaill  
*Chairman and Chief Executive Officer*

By: /s/ ROBERT J. WHELAN  
Robert J. Whelan  
*Executive Vice President and Chief Financial  
Officer (Principal Financial Officer)*

**POWER OF ATTORNEY**

KNOW ALL MEN BY THESE PRESENTS, that we, the undersigned officers and directors of Boston Private Financial Holdings, Inc., hereby severally constitute Timothy L. Vaill and Robert J. Whelan and each of them singly, our true and lawful attorneys with full power to them, and each of them singly, to sign for us and in our names in the capacities indicated below and in such other capacities as the undersigned may from time to time serve in the future, the Registration Statement filed herewith and any and all amendments to said Registration Statement, and generally to do all such things in our names and in our capacities as officers and directors to enable Boston Private Financial Holdings, Inc. to comply with the provisions of the Securities Act of 1933, as amended, and all requirements of the Securities and Exchange Commission, hereby ratifying and confirming our signatures as they may be signed by our said attorneys, or any of them, to said Registration Statement and any and all amendments thereto.

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 and on the dates indicated.

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Signature	Title	Date
<p>/s/ TIMOTHY L. VAILL Timothy L. Vaill</p>	<p>Director, Chairman and Chief Executive Officer  (Principal Executive Officer)</p>	<p>June 2, 2006</p>
<p>/s/ WALTER M. PRESSEY Walter M. Pressey</p>	<p>Director, President</p>	<p>June 2, 2006</p>
<p>/s/ HERBERT S. ALEXANDER Herbert S. Alexander</p>	<p>Director</p>	<p>June 2, 2006</p>
<p>/s/ WILLIAM J. SHEA William J. Shea</p>	<p>Director</p>	<p>June 2, 2006</p>
<p>/s/ PETER C. BENNETT Peter C. Bennett</p>	<p>Director</p>	<p>June 2, 2006</p>
<p>/s/ EUGENE S. COLANGELO Eugene S. Colangelo</p>	<p>Director</p>	<p>June 2, 2006</p>
<p>/s/ STEPHEN M. WATERS Stephen M. Waters</p>	<p>Director</p>	<p>June 2, 2006</p>
<p>/s/ KATHLEEN M. GRAVELINE Kathleen M. Graveline</p>	<p>Director</p>	<p>June 2, 2006</p>
<p>/s/ LYNN THOMPSON HOFFMAN Lynn Thompson Hoffman</p>	<p>Director</p>	<p>June 2, 2006</p>
<p>/s/ DR. ALLEN L. SINAI Dr. Allen L. Sinai</p>	<p>Director</p>	<p>June 2, 2006</p>
<p>/s/ RICHARD I. MORRIS, JR. Richard I. Morris, Jr.</p>	<p>Director</p>	<p>June 2, 2006</p>
<p>/s/ JOHN A. STRAUSS John A. Straus</p>	<p>Director</p>	<p>June 2, 2006</p>

**EXHIBIT INDEX**

**Exhibit**

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