

FIRST UNITED CORP/MD/
Form S-3
February 27, 2009

As filed with the Office of the Securities and Exchange Commission on February 27, 2009
Registration No. 333-_____

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM S-3
REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

FIRST UNITED CORPORATION
(Exact Name of Registrant as Specified in Its Charter)

Maryland 52-1380770
(State or Other Jurisdiction of Incorporation or Organization) (I.R.S. Employer Identification Number)

19 South Second Street, Oakland, Maryland 21550
(Address of Principal Executive Offices)

William B. Grant, Esquire
Chairman and Chief Executive Officer
First United Corporation
19 South Second Street, Oakland, Maryland 21550
(888) 692-2654
(Name, Address and Telephone Number of Agent for Service)

Copies to:
Andrew D. Bulgin, Esquire
Gordon, Feinblatt, Rothman, Hoffberger & Hollander, LLC
The Garrett Building
233 East Redwood Street
Baltimore, Maryland 21202
(410) 576-4280

Approximate date of commencement of proposed sale to the public: As soon as practicable after the effective date of this Registration Statement.

If the only securities being registered on this Form are being offered pursuant to dividend or interest reinvestment plans, please check the following box.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, other than securities offered only in connection with dividend or interest reinvestment plans, check the following box.

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. _____

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. _____

If this Form is a registration statement pursuant to General Instruction I.D. or a post-effective amendment thereto that shall become effective upon filing with the Commission pursuant to Rule 462(e) under the Securities Act, check the following box.

If this Form is a post-effective amendment to a registration statement filed pursuant to General Instruction I.D. filed to register additional securities or additional classes of securities pursuant to Rule 413(b) under the Securities Act, check the following box.

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 definition 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 (Do not check if a smaller reporting company) Smaller reporting company

CALCULATION OF REGISTRATION FEE

Title of each class of securities to be registered	Amount to be registered	Proposed maximum offering price per share	Proposed maximum aggregate offering price	Amount of registration fee
Fixed Rate Cumulative Perpetual Preferred Stock, Series A, having no par value	30,000	\$ 1,000 ⁽¹⁾	\$ 30,000,000.00	\$ 1,179.00
Warrant to Purchase Common Stock, par value \$.01 per share, and underlying shares of Common Stock (2)	326,323	\$ 13.79 ⁽³⁾	\$ 4,499,994.17	\$ 176.85
TOTAL			\$ 34,499,994.17	\$ 1,355.85

(1) Calculated in accordance with Rule 457(a) under the Securities Act of 1933 (the “Securities Act”) and, pursuant to Rule 416 under the Securities Act, includes such additional number of shares of Fixed Rate Cumulative Perpetual Preferred Stock, Series A, of a currently indeterminable amount, as may from time to time become issuable by reason of stock splits, stock dividends or similar transactions.

(2) In addition to the Fixed Rate Cumulative Perpetual Preferred Stock, Series A, there are being registered hereunder (a) a warrant for the purchase of 326,323 shares of common stock with an initial exercise price of \$13.79 per share, (b) the 326,323 shares of Common Stock issuable upon exercise of such warrant and (c) such additional number of shares of Common Stock of a currently indeterminable amount as may from time to time become issuable by reason of stock splits, stock dividends and certain anti-dilution provisions set forth in such warrant, which shares of Common Stock are registered hereunder pursuant to Rule 416.

(3) Calculated in accordance with Rule 457(i) with respect to the per share exercise price of \$13.79 for the Common Stock underlying the warrant.

The Registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the Registrant shall file a further amendment that specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933, as amended, or until this Registration Statement shall become effective on such date as the Commission, acting pursuant to Section 8(a), may determine.

The information contained in this Prospectus is not complete and may be changed. Our selling security holders may not sell these securities until the Registration Statement filed with the Securities and Exchange Commission becomes effective. This prospectus is not an offer to sell these securities and it is not soliciting an offer to buy these securities in any state where the offer or sale is not permitted.

Subject to completion, dated February 27, 2009

Prospectus

30,000 SHARES OF FIXED RATE CUMULATIVE PERPETUAL PREFERRED STOCK, SERIES A
WARRANT TO PURCHASE 326,323 SHARES OF COMMON STOCK
326,323 SHARES OF COMMON STOCK

This prospectus relates to the potential resale from time to time by selling security holders of some or all of the shares of our Fixed Rate Cumulative Perpetual Preferred Stock, Series A, or the Series A Preferred Stock, a warrant to purchase 326,323 shares of common stock, or the warrant, and any shares of common stock issuable from time to time upon exercise of the warrant. In this prospectus, we refer to the shares of Series A Preferred Stock, the warrant and the shares of common stock issuable upon exercise of the warrant, collectively, as the securities. The Series A Preferred Stock and the warrant were originally issued by us pursuant to a Letter Agreement dated January 30, 2009, and the related Securities Purchase Agreement – Standard Terms, between us and the United States Department of the Treasury, which we refer to as the initial selling security holder, in a transaction exempt from the registration requirements of the Securities Act of 1933, as amended, or the Securities Act.

The initial selling security holder and its successors, including transferees, which we collectively refer to as the selling security holders, may offer the securities from time to time directly or through underwriters, broker-dealers or agents and in one or more public or private transactions and at fixed prices, prevailing market prices, at prices related to prevailing market prices or at negotiated prices. If these securities are sold through underwriters, broker-dealer or agents, the selling security holders will be responsible for underwriting discounts or commissions or agents' commissions.

We will not receive any proceeds from the sale of the securities by the selling security holders.

The Series A Preferred Stock is not listed on an exchange and, unless requested by the initial selling security holder, we do not intend to list the Series A Preferred Stock on any exchange. The warrant is not listed on an exchange and we do not intend to list the warrant on any exchange.

Our common stock is listed on the NASDAQ Global Select Market under the symbol "FUNC". On February 26, 2009, the closing price of our common stock on the NASDAQ Global Select Market was \$9.82 per share. You are urged to obtain current market quotations of our common stock.

Investing in our securities involves certain risks. See "RISK FACTORS" beginning on page 5 of this prospectus.

NEITHER THE SECURITIES AND EXCHANGE COMMISSION NOR ANY STATE SECURITIES COMMISSION HAS APPROVED OR DISAPPROVED OF THESE SECURITIES OR PASSED UPON THE ACCURACY OR ADEQUACY OF THIS PROSPECTUS. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

THE SECURITIES OFFERED HEREBY ARE NOT DEPOSIT OR SAVINGS ACCOUNTS OR OTHER OBLIGATIONS OF ANY BANK OR NON-BANK SUBSIDIARY OF FIRST UNITED CORPORATION, AND

THEY ARE NOT INSURED BY THE FEDERAL DEPOSIT INSURANCE CORPORATION OR ANY OTHER GOVERNMENT AGENCY OR INSTRUMENTALITY.

Our principal executive offices are located at 19 South Second Street, Oakland, Maryland 21550 and our telephone number is (888) 692-2654.

The date of this Prospectus is _____, 2009

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ABOUT THIS PROSPECTUS

This prospectus is part of a registration statement on Form S-3 that we filed with the Securities and Exchange Commission, or SEC, using a “shelf” registration process. Under this shelf registration process, the selling security holders may, from time to time, offer and sell, in one or more offerings, the securities described in this prospectus.

We may provide a prospectus supplement containing specific information about the terms of a particular offering by the selling security holders. The prospectus supplement may also add to, update or change information contained in this prospectus. If the information in this prospectus is inconsistent with a prospectus supplement, you should rely on the information in that prospectus supplement. You should read both this prospectus and, if applicable, any prospectus supplement. See “WHERE YOU CAN FIND MORE INFORMATION” below for more information.

We have not authorized anyone to provide you with information different from that contained or incorporated by reference in this prospectus. The information contained in this prospectus is accurate only as of the date of this prospectus, regardless of the time of delivery of this prospectus or any sale of the securities. We are not making an offer to sell these securities in any jurisdiction where the offer or sale is not permitted.

You should carefully read this entire prospectus, especially the section entitled “RISK FACTORS” beginning on page 5, before making a decision to invest in any of the securities. You should also carefully read the additional information described below under the headings “INCORPORATION OF CERTAIN INFORMATION BY REFERENCE” and “WHERE YOU CAN FIND MORE INFORMATION” before buying any of the securities.

Unless otherwise mentioned or unless the context requires otherwise, all references in this prospectus to “First United”, “the Company”, “we”, “us”, “our” and similar terms refer to First United Corporation.

INCORPORATION OF CERTAIN INFORMATION BY REFERENCE

The SEC’s rules allow us to incorporate by reference information into this prospectus. This means that we can disclose important information to you by referring you to another document. Any information referred to in this way is considered part of this prospectus from the date we file the document. Any reports filed by us with the SEC after the date of this prospectus and before the date that the offering of the securities by means of this prospectus is terminated will automatically update and, where applicable, supersede any information contained in this prospectus or incorporated by reference in this prospectus.

We incorporate by reference into this prospectus the following documents and information filed with the SEC (other than, in each case, documents or information deemed to have been furnished and not filed in accordance with SEC rules):

- (i) Annual Report on Form 10-K for the year ended December 31, 2007 filed on March 12, 2008;
- (ii) Quarterly Reports on Form 10-Q for the three-month periods ended March 31, 2008, June 30, 2008 and September 30, 2008;
- (v) Current Reports on Form 8-K filed on June 23, 2008, October 16, 2008 (except for the information contained in Items 2.02 and 7.01 thereof), November 24, 2008, February 2, 2009 and February 9, 2009; and
- (viii) Description of our common stock which appears in our Registration Statement on Form 8-A filed on February 19, 1986, or any description of the common stock that appears in any prospectus forming a part of any subsequent registration statement of the Corporation or in any registration statement filed pursuant to Section 12 of the

Exchange Act, including any amendments or reports filed for the purpose of updating such description.

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In addition, all documents that we file pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act after the date of the registration statement to which this prospectus relates and prior to the termination of the offering of the securities to which this prospectus relates will automatically be deemed to be incorporated by reference into this prospectus. In no event, however, will any of the information that we “furnish” to the SEC in any Current Report on Form 8-K from time to time be incorporated by reference into, or otherwise be included in, this prospectus. Any statement contained in a document incorporated or deemed to be incorporated by reference in this prospectus shall be deemed to be modified or superseded to the extent that a statement contained in this prospectus or in a document subsequently filed modifies or supersedes such statement. Any statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this prospectus.

We will promptly provide without charge to each person to whom this prospectus is delivered a copy of any or all information that has been incorporated herein by reference (not including exhibits to the information that is incorporated by reference unless such exhibits are specifically incorporated by reference into such information) upon the written or oral request of such person. Written requests should be directed to: First United Corporation, Corporate Secretary, 19 South Second Street, Oakland, Maryland 21550. Telephone requests should be directed to the Corporate Secretary at (888) 692-2654.

A WARNING ABOUT FORWARD-LOOKING STATEMENTS

Some of the statements contained, or incorporated by reference, in this prospectus may include projections, predictions, expectations or statements as to beliefs or future events or results or refer to other matters that are not historical facts. Such statements constitute “forward-looking information” within the meaning of Section 21E of the Exchange Act, and the Private Securities Litigation Reform Act of 1995. Those statements are subject to known and unknown risks, uncertainties and other factors that could cause the actual results to differ materially from those contemplated by the statements. The forward-looking statements are based on various factors and were derived using numerous assumptions. In some cases, you can identify these forward-looking statements by words like “may”, “will”, “should”, “expect”, “plan”, “anticipate”, intend”, “believe”, “estimate”, “predict”, “potential”, or “continue” or the negative of and other comparable words. You should be aware that those statements reflect only our predictions. If known or unknown risks or uncertainties should materialize, or if underlying assumptions should prove inaccurate, actual results could differ materially from past results and those anticipated, estimated or projected. You should bear this in mind in reading this prospectus. Factors that might cause such differences include, but are not limited to:

- general business and economic conditions in the markets we serve may be less favorable than anticipated which could decrease the demand for loan, deposit and other financial services and increase loan delinquencies and defaults;
- changes in market rates and prices may adversely impact the value of securities, loans, deposits and other financial instruments and the interest rate sensitivity of our balance sheet;
 - our liquidity requirements could be adversely affected by changes in our assets and liabilities;
- the effect of legislative or regulatory developments, including changes in laws concerning taxes, banking, securities, insurance and other aspects of the financial services industry;
- competitive factors among financial services organizations, including product and pricing pressures and our ability to attract, develop and retain qualified banking professionals;
- the effect of changes in accounting policies and practices, as may be adopted by the Financial Accounting Standards Board, the SEC, the Public Company Accounting Oversight Board and other regulatory agencies; and

- the effect of fiscal and governmental policies of the United States federal government.

We undertake no obligation to publicly update forward-looking statements, whether as a result of new information, future events or otherwise. You are advised, however, to consult any further disclosures we make on related subjects in our periodic and current reports that we file with the SEC. Also note that we provide cautionary discussion of risks, uncertainties and possibly inaccurate assumptions relevant to our businesses in our periodic and current reports to the SEC incorporated by reference herein and in prospectus supplements and other offering materials. These are factors that, individually or in the aggregate, management believes could cause our actual results to differ materially from expected and historical results.

We note these factors for investors as permitted by the Private Securities Litigation Reform Act of 1995. You should understand that it is not possible to predict or identify all such factors. Consequently, you should not consider such disclosures to be a complete discussion of all potential risks or uncertainties.

RISK FACTORS

An investment in our securities involves certain risks. You should carefully consider the risks described below and the risk factors incorporated in this prospectus by reference, as well as the other information included or incorporated by reference in this prospectus, before making an investment decision. Certain risks related to us, our business and our common stock are described under the heading “Risk Factors” in our Annual Report on Form 10-K for the year ended December 31, 2007 and in our Quarterly Report on Form 10-Q for the quarter ended September 30, 2008. Our business, financial condition and/or results of operations could be materially adversely affected by any of these risks. The trading price of our common stock and the market values of the Series A Preferred Stock and the warrant could decline due to any of these risks, and you may lose all or part of your investment. This prospectus also contains forward-looking statements that involve risks and uncertainties. Our actual results could differ materially from those anticipated in these forward-looking statements as a result of certain factors, including the risks faced by us described below and elsewhere in this prospectus and the documents incorporated by reference herein.

The shares of Series A Preferred Stock, the warrant, and the shares of common stock underlying the warrant are not insured.

The shares of the Series A Preferred Stock, the warrant, and the shares of common stock for which the warrant may be exercised are not deposits and are not insured against loss by the Federal Deposit Insurance Corporation or any other governmental or private agency.

There is no market for the Series A Preferred Stock or the warrant; our common stock is not heavily traded.

There is no established trading market for the shares of the Series A Preferred Stock or the warrant. We do not intend to apply for listing of the Series A Preferred Stock on any securities exchange or for inclusion of the Series A Preferred Stock in any automated quotation system unless requested by the initial selling shareholder. Our common stock is listed on the NASDAQ Global Select Market but shares of our common stock are not heavily traded. Securities that are not heavily traded can be more volatile than stock trading in an active public market. Factors such as our financial results, the introduction of new products and services by us or our competitors, and various factors affecting the banking industry generally may have a significant impact on the market price of the shares our common stock. Management cannot predict the extent to which an active public market for any of our securities will develop or be sustained in the future. Accordingly, purchasers of the Series A Preferred Stock, the warrant and/or the shares of common stock for which the warrant may be exercised may not be able to sell such securities at the volumes, prices, or times that they desire.

Because of our participation in the Troubled Asset Relief Program, we are subject to several restrictions relating to shares of our capital stock, including restrictions on our ability to declare or pay dividends on and repurchase our shares, as well as restrictions on compensation paid to our executives.

On January 30, 2009, pursuant to the Securities Purchase Agreement – Standard Terms, or Purchase Agreement, we issued the following securities to the initial selling security holder for an aggregate consideration of \$30,000,000: (i) 30,000 shares of the Series A Preferred Stock, having no par per share; and (ii) the warrant to purchase 326,323 shares of our common stock, par value \$.01 per share. Pursuant to the terms of the Purchase Agreement, our ability to declare or pay dividends on shares of our capital stock is limited. Specifically, we are unable to declare dividends on common stock, other stock ranking junior to the Series A Preferred Stock, or junior stock, or preferred stock ranking on a parity with the Series A Preferred Stock, or parity stock, if we are in arrears on the dividends on the Series A Preferred Stock. Further, we are not permitted to increase dividends on our common stock above the amount of the last quarterly cash dividend per share declared prior to October 14, 2008 without the initial selling security holder's approval until January 30, 2012 unless all of the Series A Preferred Stock has been redeemed or transferred. In addition, our ability to repurchase our capital stock is restricted. The initial selling security holder's consent generally is required for us to make any stock repurchase until January 30, 2012 unless all of the Series A Preferred Stock has been redeemed or transferred. Further, shares of common, junior or parity stock may not be repurchased if we are in arrears on the Series A Preferred Stock dividends.

In addition, pursuant to the terms of the Purchase Agreement, we adopted the initial selling security holder's standards for executive compensation and corporate governance for the period during which the initial selling security holder holds the equity issued pursuant to the Purchase Agreement, including the common stock which may be issued pursuant to the warrant. On February 17, 2009, the American Recovery and Reinvestment Act of 2009, or the Recovery Act, was signed into law. The Recovery Act imposes additional compensation and corporate governance standards on us for so long as the initial selling security holder holds any of the Series A Preferred Stock. Each of our "senior executive officers", which term includes our Chairman and Chief Executive Officer, our Chief Financial Officer and the three next most highly compensated executive officers, and, in some cases, additional employees are subject to these standards. The standards include: (i) ensuring that incentive compensation for senior executive officers does not encourage unnecessary and excessive risks that threaten the value of the financial institution; (ii) required clawback of any bonus, retention award or incentive compensation paid to a senior executive officer and certain other employees based on statements of earnings, gains or other criteria that are later proven to be materially inaccurate; (iii) prohibition on making certain "golden parachute payments" to senior executive officers or the next five highest paid employees; (iv) prohibition on paying or accruing any bonus, retention award, or incentive compensation to our five most highly compensated employees except for long-term restricted stock that meets certain conditions; and (v) agreement not to deduct for tax purposes executive compensation in excess of \$500,000 for each senior executive officer. These restrictions, coupled with the competition we face from other institutions, may make it more difficult for us to attract and/or retain exceptional senior executive officers and other key employees. Moreover, the change to the deductibility limit on executive compensation could increase the overall cost of our compensation programs in future periods. The Recovery Act requires the initial selling security holder to adopt regulations to implement these standards and restrictions, and these regulations may impose additional restrictions on us and our compensation practices.

Our ability to pay dividends is also subject to the terms of our outstanding debentures.

In March 2004, we issued approximately \$30.9 million of junior subordinated debentures to First United Statutory Trust I and First United Statutory Trust II, or the Trusts. The Trusts are Connecticut statutory business trusts, with all outstanding common stock owned by us, that issued mandatorily redeemable preferred capital securities to third party investors. In December 2004, we issued an additional \$5.0 million of debentures. The terms of the debentures require us to make quarterly payments of interest to the holders of the debentures, although we have the ability to defer

payments of interest for up to 20 consecutive quarterly periods. Should we make such a deferral election, however, we would be prohibited from paying dividends or distributions on, or from repurchasing, redeeming or otherwise acquiring any shares of our capital stock, including the common stock and the Series A Preferred Stock. Although we have no present intention of deferring payments of interest on our debentures, there can be no assurance that we will not elect to do so in the future.

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ABOUT FIRST UNITED CORPORATION

First United Corporation is a Maryland corporation that was incorporated in 1985 and is a registered financial holding company under the federal Bank Holding Company Act of 1956, as amended. Our primary business activity is acting as the parent company of First United Bank & Trust, a Maryland trust company, OakFirst Loan Center, Inc., a West Virginia finance company, OakFirst Loan Center, LLC, a Maryland finance company, the Trusts, and First United Insurance Group, LLC, a full service insurance provider organized under Maryland law. OakFirst Loan Center, Inc. has one subsidiary, First United Insurance Agency, Inc., which is a Maryland insurance agency. First United Bank & Trust provides a complete range of retail and commercial banking services to a customer base serviced by a network of 26 offices and 32 automated teller machines in Allegany County, Frederick County, Garrett County, and Washington County in Maryland, and in Berkeley County, Mineral County, and Monongalia County in West Virginia. A detailed discussion of our business is contained in Item 1 of Part I of our Annual Report on Form 10-K for the year ended December 31, 2007, and any subsequent reports that we file with the SEC, which are incorporated by reference in this prospectus. See “WHERE YOU CAN FIND MORE INFORMATION” below for information on how to obtain a copy of our annual report and any subsequent reports.

Our principal executive offices are located at 19 South Second Street, Oakland, Maryland 21550 and our telephone number is (888) 692-2654. We maintain an Internet site at <http://www.mybankfirstunited.com> on which we make available free of charge our Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K, and all amendments to the foregoing as soon as reasonably practicable after these reports are electronically filed with, or furnished to, the SEC.

At September 30, 2008, we had consolidated total assets of approximately \$1.63 billion, total loans (net of the allowance for credit losses) of approximately \$1.09 billion, total deposits of approximately \$1.14 billion, and shareholders' equity of approximately \$89.87 million.

SUPERVISION AND REGULATION

We are a financial holding company registered under the federal Bank Holding Company Act of 1956, as amended. We and First United Bank & Trust are extensively regulated under federal and state laws. The regulation of financial holding companies and banks is intended primarily for the protection of depositors and the deposit insurance fund and not for the benefit of security holders. For a discussion of the material elements of the extensive regulatory framework applicable to us and First United Bank & Trust, please refer to Item 1 of Part I of our Annual Report on Form 10-K for the year ended December 31, 2007 under the heading “Supervision and Regulation” and any subsequent reports that we file with the SEC, which are incorporated by reference in this prospectus. See “WHERE YOU CAN FINE MORE INFORMATION” below for information on how to obtain a copy of our Form 10-K and any subsequent reports.

USE OF PROCEEDS

We will not receive any proceeds from any sale of the securities by the selling security holders.

RATIO OF EARNINGS TO FIXED CHARGES

	Nine Months Ended September 30, 2008	2007	Year Ended December 31,			
			2006	2005	2004	2003
Ratio of Earnings to Combined Fixed Charges						
Including interest on deposits	1.41	1.38	1.47	1.64	1.45	1.65
Excluding interest on deposits	2.44	2.60	2.53	2.81	1.87	2.41

DESCRIPTION OF CAPITAL STOCK AND SECURITIES

The following is a summary of the general terms of our capital stock and the securities being registered in the registration statement that contains this prospectus. The full terms of our capital stock and the securities being registered are set forth in Exhibit 3.1(i) through Exhibit 4.4 to the registration statement that contains this prospectus and incorporated by reference herein. The following summary does not give effect to provisions of applicable statutory or common law.

Capital Stock

We are authorized by our Amended and Restated Articles of Incorporation, or Charter, to issue up to 27,000,000 shares of capital stock. Of these shares, 25,000,000 shares are classified as common stock, par value \$.01 per share, and 2,000,000 shares are classified as preferred stock, having no par value per share, which may be issued in one or more series having such voting powers, designations, preferences and other rights, qualifications, limitations and restrictions as may be fixed by the Board from time to time. The Board of Directors has designated 30,000 shares of our preferred stock as Fixed Rate Cumulative Perpetual Preferred Stock, Series A.

In addition to the power to issue shares