

CENTURY BANCORP INC

Form S-8

August 13, 2004

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As filed with the Securities and Exchange Commission on August 13, 2004

File No. 333-_____

**SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549**

**FORM S-8
REGISTRATION STATEMENT UNDER
THE SECURITIES ACT OF 1933**

CENTURY BANCORP, INC.

(Exact Name of Registrant as Specified in its Charter)

Massachusetts

*(State or Other Jurisdiction of Incorporation or
Organization)*

04-2498617

*(I.R.S. Employer
Identification No.)*

400 Mystic Avenue, Medford, MA 02155

(Address of Principal Executive Offices) (Zip Code)

CENTURY BANCORP, INC. 2004 STOCK PLAN

(Full Title of the Plan)

Marshall M. Sloane

Chairman, President and Chief Executive Officer

Century Bancorp, Inc.

400 Mystic Avenue

Medford, Massachusetts 02155

(Name and address of Agent for Service)

(781) 391-4000

Telephone Number, Including Area Code, of Agent for Service

Copy to:

Neal J. Curtin, Esq.

Bingham McCutchen LLP

150 Federal Street

Boston, MA 02110-1726

(617) 951-8000

CALCULATION OF REGISTRATION FEE

| Title Of Each Class Of | Amount To Be | Proposed Maximum | Proposed Maximum Aggregate | Amount Of Registration |
|-------------------------------|-------------------------|-----------------------------|-------------------------------------------|-----------------------------------|
|-------------------------------|-------------------------|-----------------------------|-------------------------------------------|-----------------------------------|

| Securities To Be Registered | Registered(1) | Offering Price Per Share(2) | Offering Price(2) | Fee |
|----------------------------------------|----------------------|------------------------------------|--------------------------|------------|
| Class A Common Stock, \$1.00 par value | 150,000 | \$ 30.50 | \$4,575,000 | \$579.66 |

(1) Pursuant to Rule 416 under the Securities Act of 1933, this Registration Statement also covers an indeterminate number of shares as may be required to cover possible adjustments under the Plan by reason of any stock dividend, stock split, share combination, exchange of shares, merger consolidation, separation, reorganization recapitalization, liquidation, or the like, of or by the Registrant. In addition, pursuant to Rule 416(c) under the Securities Act of 1933, this registration statement also covers an indeterminate amount of interests to be offered or sold pursuant to the employee benefit plan described herein.

(2) Calculated in accordance with the provisions of Rule 457(h) based on the average of the bid and listed prices reported on August 11, 2004. It is not known how many shares, if any, will be purchased upon exercise of the election granted under the Plan or at what price such shares will be purchased.

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PART I

INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

The documents containing the information specified in Part I of Form S-8 (plan information and registrant information) 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 Securities and Exchange Commission (the SEC) either as part of this Registration Statement or as prospectuses or prospectus supplements pursuant to Rule 424 of the Securities Act. These documents, which include the statement of availability required by Item 2 of Form S-8, and the documents incorporated by reference in this Registration Statement pursuant to Item 3 of Form S-8 (Part II hereof), taken together, constitute a prospectus that meets the requirements of Section 10(a) of the Securities Act.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The following documents filed by Century Bancorp, Inc. (the Registrant) with the SEC are hereby incorporated by reference in this Registration Statement:

- (a) The Registrant's latest Annual Report filed on Form 10-K for the fiscal year ended December 31, 2003; and
- (b) The description of the Class A Common Stock contained in the Registrant's Registration Statement on Form 8-A, as filed with the SEC under Section 12(g) of the Exchange Act, including any amendment or report filed for the purpose of updating such description.

In addition, all documents subsequently filed by the Registrant 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 hereby have been sold or which deregisters all of such securities then remaining unsold, shall be deemed to be incorporated by reference into this Registration Statement and to be a part hereof from the date of filing of such documents. Any statement contained herein or in a document, all or a portion of which is 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 amended, to constitute a part of this Registration Statement.

Item 4. Description of Securities.

A description of the Registrant's Common Stock to be offered is not provided in this Registration Statement because such class of the Registrant's securities is registered under Section 12 of the Exchange Act.

Item 5. Interests of Named Experts or Counsel.

Neither the Registrant's independent auditors, KPMG LLP, nor the Registrant's counsel, Bingham McCutchen LLP, nor any individual employed by or associated with such firm or individual in a professional capacity, was employed by the Registrant in connection with matters described in this registration statement on a contingent basis or has, or is to receive in connection with this offering, a substantial interest, direct or indirect, in the Registrant or was connected with the Registrant as a promoter, managing underwriter (or any principal underwriter, if there are no managing underwriters), voting trustee, director, officer or employee.

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Item 6. *Indemnification of Directors and Officers*

Subdivision E of Chapter 156D of the Massachusetts General Laws provides a statutory framework covering indemnification of directors and officers against liabilities and expenses arising out of legal proceedings brought against them by reason of their status or service as directors or officers. In addition, the Registrant's Articles of Organization provide for indemnification of officers and directors, subject to certain limitations. The Registrant also maintains director and officer insurance.

Item 7. *Exemption from Registration Claimed.*

Not applicable.

Item 8. *Exhibits.*

The following exhibits are filed as part of this Registration Statement:

- 4.3 2004 Stock Plan.
- 5 Opinion of Bingham McCutchen LLP as to the legality of the securities being registered.
- 23.1 Consent of Bingham McCutchen LLP (included in Exhibit 5).
- 23.2 Consent of KPMG LLP.
- 24 Power of Attorney (included in signature page to Registration Statement).

Item 9. *Undertakings*

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, as amended ("Securities Act"); (ii) to reflect in the prospectus any facts or events arising after the effective date of the 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 Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than 20 percent change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective 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 (i) and (ii) do not apply if the registration statement is on Form S-3 or Form S-8, and the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed by the Corporation pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by reference in the registration statement.;

(2) That, for the purpose of determining any liability under the Securities Act, 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;

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(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;

(4) That, for purposes of determining any liability under the Securities Act each filing of the Registrant's annual report pursuant to Section 13(a) or 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Exchange Act) 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; and

(5) Insofar as indemnification for liabilities arising under the Securities Act 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 SEC such indemnification is against public policy as expressed in the Securities Act 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 and will be governed by the final adjudication of such issue.

[Remainder of page intentionally left blank]

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Pursuant to the requirements of the Securities Act of 1933, as amended, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing 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 Medford, Commonwealth of Massachusetts, on this 13 day of July, 2004.

CENTURY BANCORP, INC.

By: /s/ Marshall M. Sloane
 Marshall M. Sloane, *Chairman,*
President and
Chief Executive Officer

POWER OF ATTORNEY

We, the undersigned Officers and Directors of Century Bancorp, Inc., hereby severally constitute and appoint Marshall M. Sloane, Jonathan G. Sloane, Barry R. Sloane and Paul V. Cusick, Jr. 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, the Registration Statement on Form S-8 filed herewith and any and all pre-effective and post-effective amendments to said Registration Statement, and generally to do all such things in our names and on our behalf in our capacities as Officers and Directors to enable Century Bancorp, Inc. to comply with the provisions of the Securities Act, 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, this Registration Statement has been signed by the following persons in the capacities and on the date indicated.

| Signature | Title | Date |
|--------------------------------|--------------|----------------|
| <u>/s/ George R. Baldwin</u> | Director | July 13, 2004 |
| George R. Baldwin | | |
| <u>/s/ Roger S. Berkowitz</u> | Director | July 13, 2004 |
| Roger S. Berkowitz | | |
| <u>_____</u> | Director | _____, 2004 |
| Karl E. Case, Ph.D. | | |
| <u>/s/ Henry L. Foster</u> | Director | July 13, 2004 |
| Henry L. Foster, D.V.M. | | |
| <u>/s/ Marshall I. Goldman</u> | Director | July 13, 2004 |

Marshall I. Goldman

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| Signature | Title | Date |
|----------------------------------------------------------------|----------------------------------------------------|----------------|
| <u>/s/ Russell B. Higley</u> Russell B. Higley, Esq. | Director | July 13, 2004 |
| <u>/s/ Jonathan B. Kay</u> Jonathan B. Kay | Director | July 13, 2004 |
| <u>/s/ Fraser Lemley</u> Fraser Lemley | Director | July 13, 2004 |
| <u>Joseph P. Mercurio</u> | Director | _____, 2004 |
| <u>/s/ Joseph J. Senna</u> Joseph J. Senna, Esq. | Director | July 13, 2004 |
| <u>/s/ Barry R. Sloane</u> Barry R. Sloane | Director and Executive Vice President | July 13, 2004 |
| <u>/s/ Jonathan G. Sloane</u> Jonathan G. Sloane | Director and Executive Vice President | July 13, 2004 |
| <u>/s/ Marshall M. Sloane</u> Marshall M. Sloane | Chairman, President and Chief Executive Officer | July 13, 2004 |
| <u>/s/ Stephanie Sonnabend</u> Stephanie Sonnabend | Director | July 13, 2004 |
| <u>/s/ George F. Swansburg</u> George F. Swansburg | Director | July 13, 2004 |
| <u>/s/ Jon Westling</u> Jon Westling | Director | July 13, 2004 |

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| | | |
|----------------------------------------------------------------|-----------------------------------------------------------------------------------------|---------------|
| <u>/s/ Paul V. Cusick, Jr.</u> Paul V. Cusick, Jr. | Vice President and Treasurer Principal Financial Officer | July 13, 2004 |
| <u>/s/ Kenneth A. Samuelian</u> Kenneth A. Samuelian | Vice President and Controller Century Bank and Trust Principal Accounting Officer | July 13, 2004 |

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INDEX TO EXHIBITS

| <u>Exhibit Number</u> | <u>Description</u> |
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