

Section 1: 8-K (LIMESTONE BANCORP, INC. 8-K)

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of the
Securities Exchange Act of 1934

Date of Report (Date of earliest event reported):
November 25, 2019

LIMESTONE BANCORP, INC.

(Exact Name of Registrant as specified in Charter)

Kentucky
(State or other jurisdiction
of incorporation)

001-33033
(Commission
File Number)

61-1142247
(IRS Employer
Identification No.)

2500 Eastpoint Parkway, Louisville, Kentucky
(Address of principal executive offices)

40223
(Zip code)

(502) 499-4800
(Registrant's telephone number, including area code)

N/A
(Former name or former address, if changed since last report.)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
 Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
 Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
 Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, no par value	LMST	The Nasdaq Capital Market

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company

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

ITEM 1.01. Entry into a Material Definitive Agreement.

ITEM 3.03. Material Modification to Rights of Security Holders.

On November 25, 2019, the Board of Directors of Limestone Bancorp, Inc. (the "Company"), approved Amendment No. 3 to the Limestone Bancorp, Inc. Tax Benefits Preservation Plan (the "Plan") between the Company and American Stock Transfer & Trust Company, LLC, as rights agent. The Plan was originally entered into on June 25, 2015, and, as amended by Amendments No. 1 and 2 thereto, is scheduled to expire at the close of business on June 30, 2021.

The purpose of the Plan is to help preserve the value of the Company's deferred tax assets, such as its net operating loss carryforwards ("Tax Benefits"), for U.S. federal income tax purposes. In addition to the Plan, the Company also has in place restrictions on share transfers in Article VIII of its Articles of Incorporation ("Article VIII") to help preserve the deferred tax assets of the Company.

Both the Plan and Article VIII are designed to protect the Company's deferred tax benefits by restricting acquisitions of shares of the Company by persons who are or, with the acquisition, will become a "5 percent shareholder" of the Company, when measured in accordance with Section 382 of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations promulgated thereunder ("Section 382"). If the Company experiences an "ownership change," as defined in Section 382, its ability to use the Tax Benefits could be substantially limited and/or delayed, which would significantly impair the value of the Tax Benefits. Generally, the Company would experience an "ownership change" under Section 382 if one or more "5 percent shareholders" increase their aggregate percentage ownership by more than 50 percentage points over the lowest percentage of stock owned by such stockholders over the preceding three-year period. As a result, the Company has utilized a 5% "trigger" threshold in the Plan that is intended to act as a deterrent to any person or entity seeking to acquire 5% or more of the outstanding Common Stock without the prior approval of the Board. Article VIII similarly uses a 5% threshold for restrictions on transfers and ownership of the Company's Common Stock.

Article VIII allows the Board of Directors to approve (prospectively or retrospectively) and permit a share acquisition by a 5% shareholder, and except it from the restrictions on transfer and ownership contained in Article VIII, while the Plan previously did not specifically allow that flexibility.

The Board of Directors deemed it advisable and in the best interests of the Company and its shareholders to amend the Plan, through Amendment No. 3, in a manner consistent with Article VIII, to allow the Board, in its discretion, to permit share acquisitions that do not adversely affect the Corporation's deferred tax benefits or when determined to be in the best interests of the Corporation notwithstanding the effect on the deferred tax benefits. As amended, the Plan, like Article VIII, allows the Board of Directors, in its sole discretion, to approve an acquisition of Common Stock by a person who is or with the acquisition will become a 5 percent shareholder, and thereby exempt that person from becoming an "acquiring person" under the Plan by virtue of the approved acquisition.

Amendment No. 3 to the Plan, dated November 25, 2019, is filed as Exhibit 4.4 to this Report and is incorporated herein by reference. The foregoing description of the amendment to the Plan and its effect is qualified in its entirety by reference to Exhibit 4.4.

The original Plan is described in and included as Exhibit 4.1 to the Company's Current Report on Form 8-K filed June 29, 2015 and is incorporated herein by reference. Amendment No. 1 to the Tax Preservation Plan is described in and included as Exhibit 4.2 to the Company's Quarterly Report on Form 10-Q filed August 5, 2015 and is incorporated herein by reference. Amendment No. 2 to the Tax Preservation Plan is filed as Exhibit 4 to the Company's Report on Form 8-K dated May 23, 2018 and is incorporated by reference herein.

ITEM 9.01. FINANCIAL STATEMENTS AND EXHIBITS.

Exhibit Index

Exhibit No. Description of Exhibit

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|------------|---|
| <u>4.1</u> | <u>Tax Benefits Preservation Plan, dated as of June 25, 2015, between the Company and American Stock Transfer Company, as Rights Agent. Exhibit 4.1 to Form 8-K filed June 29, 2015 is incorporated by reference.</u> |
| <u>4.2</u> | <u>Amendment No. 1 to the Tax Benefits Preservation Plan, dated August 4, 2015. Exhibit 4.2 to the Quarterly Report on Form 10-Q filed August 5, 2015 is incorporated by reference.</u> |
| <u>4.3</u> | <u>Amendment No. 2 to the Tax Benefits Preservation Plan dated May 23, 2018. Exhibit 4 to the Form 8-K filed May 23, 2018 is incorporated by reference.</u> |
| <u>4.4</u> | <u>Amendment No. 3 to the Limestone Bancorp, Inc. Tax Benefits Preservation Plan*</u> |

* Filed herewith

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Date: November 27, 2019

Limestone Bancorp, Inc.

By: /s/ Phillip W. Barnhouse
Phillip W. Barnhouse
Chief Financial Officer

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Section 2: EX-4.4 (EXHIBIT 4.4)

Exhibit 4.4

**AMENDMENT No. 3
to the
LIMESTONE BANCORP, INC.
TAX BENEFITS PRESERVATION PLAN**

This is Amendment No. 3 to the Limestone Bancorp, Inc. Tax Benefits Preservation Plan (this “**Amendment**”) between Limestone Bancorp, Inc. (formerly known as Porter Bancorp, Inc.), a Kentucky corporation (the “**Company**”), and American Stock Transfer & Trust Company, LLC, as Rights Agent (the “**Rights Agent**”), is dated and effective as of November 25, 2019.

WHEREAS, the Company and the Rights Agent are parties to a Tax Benefits Preservation Plan, originally dated as of June 25, 2015, as amended by Amendment No. 1 thereto dated August 5, 2015, and Amendment No. 2 thereto dated May 23, 2018 (the “**Plan**”),

WHEREAS, the Board of Directors of the Company deems it advisable and in the best interests of the Company to amend certain provisions of the Plan; and

WHEREAS, no Person (as defined in the Plan) has become an Acquiring Person (as defined in the Plan), and no Distribution Date (as defined in the Plan) has occurred; and

WHEREAS, pursuant to and in accordance with Section 22 of the Plan, the Company desires to amend the Plan as set forth below.

NOW, THEREFORE, the Plan is hereby amended as follows:

1. Amendments.

(a) The definition of “Exempt Person” in Section 1 of the Plan is hereby amended to read in its entirety as follows:

“**Exempt Person**” means (i) the Company, any Subsidiary of the Company (in each case including, without limitation, in any fiduciary capacity), any employee benefit plan or compensation arrangement of the Company or any Subsidiary of the Company, or any entity or trustee holding Company Securities to the extent organized, appointed or established by the Company or any Subsidiary of the Company for or pursuant to the terms of any such employee benefit plan or compensation arrangement, and (ii) any Person deemed to be an “Exempt Person” in accordance with Section 25(b).

(b) Section 25 of the Plan is hereby amended to read in its entirety as follows:

Section 25. Determinations and Actions by the Board, etc.: Exemptions.

(a) The Board shall have the exclusive power and authority to administer this Plan and to exercise all rights and powers granted to the Board or to the Company, or as may be necessary or advisable in the administration of this Plan, including the right and power to (i) interpret the provisions of this Plan and (ii) make all determinations deemed necessary or advisable for the administration of this Plan (including a determination to redeem or exchange or not to redeem or exchange the Rights or to amend the Plan). All such actions, calculations, interpretations and determinations which are done or made by the Board in good faith shall be final, conclusive and binding on the Company, the Rights Agent, the holders of the Rights and all other parties.

(b) The Board or a duly authorized committee thereof may, in its sole discretion, approve and exempt an acquisition of Common Stock by a Person who is or upon such acquisition will be a 5% Shareholder in the manner and with the effect as provided in this Section 25(b):

(i) Any approval and exemption granted by the Board under this Section 25(b) must be obtained in writing, may be granted in whole or in part, and may contain and impose such conditions and limitations (including a requirement that any Person whose Percentage Stock Ownership increases as a result of the acquisition approved and exempted by the Board agree that it will not acquire Beneficial Ownership of shares of Common Stock in excess of the maximum number and percentage of shares approved by the Board) as the Board, in its sole discretion, deems reasonable and appropriate in connection with such approval and exemption. The Board may grant its approval and exempt an acquisition of Common Stock hereunder notwithstanding the effect of such approval and exemption on the Tax Benefits if it determines that the approval is in the best interests of the Company.

(ii) A Person who acquires Common Stock in an acquisition approved and exempted by the Board pursuant to this Section 25(b) will not become an Acquiring Person as a result of such acquisition and will be deemed to be an "Exempt Person" unless and until such Person's Percentage Stock Ownership shall be increased by more than one-tenth of one percentage point over such Person's lowest Percentage Stock Ownership upon completion of the acquisition of Common Stock approved and exempted by the Board hereunder or thereafter, other than any increase pursuant to or as a result of (A) the exercise of any option, warrant or convertible instrument to purchase Company Securities that such Person held as of immediately prior to the public announcement of this Plan, (B) a stock dividend, stock split, reverse stock split or similar transaction effected by the Company, (C) any redemption or repurchase of Company Securities by the Company, (D) any transfer to such Person of Company Securities by the Company, if the Board determines, in its sole discretion, that such transfer would not jeopardize or endanger the Company's utilization of the Tax Benefits or is otherwise in the best interests of the Company; or (E) any other acquisition of Common Stock approved and exempted by the Board pursuant to this Section 23(b).

2. Effect of this Amendment; Certification. It is the intent of the parties that this Amendment constitutes an amendment of the Plan as contemplated by Section 23 thereof. Except as expressly provided in this Amendment, the terms of the Plan remain in full force and effect. The officer of the Company executing this Amendment certifies to the Rights Agent that the amendments and supplements to the Plan set forth in this Amendment are in compliance with the terms of the Plan, and the certification contained in this Section 2 shall constitute the certification required by Section 23 of the Plan.

3. Counterparts. This Amendment may be executed and delivered in any number of counterparts and by electronic transmission and each of such counterparts shall for all purposes be deemed to be an original, and all such counterparts shall together constitute one and the same instrument.

4. Governing Law. This Amendment shall be deemed to be a contract made under the laws of the Commonwealth of Kentucky and for all purposes shall be governed by and construed in accordance with the laws of such state applicable to contracts to be made and performed entirely within such state.

5. Severability. If any term, provision, covenant or restriction of this Amendment is held by a court of competent jurisdiction or other authority to be invalid, illegal or unenforceable, the remainder of the terms, provisions, covenants and restrictions of this Amendment shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

6. Descriptive Headings. The captions herein are included for convenience of reference only, do not constitute a part of this Amendment and shall be ignored in the construction and interpretation hereof.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment No. 3 to the Limestone Bancorp, Inc. Tax Benefits Preservation Plan to be duly executed by their respective authorized officers as of the day and year first above written.

LIMESTONE BANCORP, INC.

By: /s/ Phillip W. Barnhouse
Name: Phillip W. Barnhouse
Title: Chief Financial Officer

**American Stock Transfer & Trust Company,
LLC, as Rights Agent**

By: /s/ Michael A. Nespoli
Name: Michael A. Nespoli
Title: Executive Director