

NEW CENTURY FINANCIAL CORP
Form S-8
August 27, 2004

As filed with the Securities and Exchange Commission on August 27, 2004

Registration No.

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

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

NEW CENTURY FINANCIAL CORPORATION

(Exact Name of Registrant as Specified in Its Charter)

Delaware
(State or Other Jurisdiction of
Incorporation or Organization)

33-0683629
(I.R.S. Employer
Identification No.)

18400 Von Karman Avenue, Suite 1000

Irvine, California 92612

(Address, Including Zip Code, of Principal Executive Offices)

New Century Financial Corporation
Directors Deferred Compensation Plan

(Full Title of the Plan)

Brad A. Morrice

Vice Chairman, President and Chief Operating Officer

New Century Financial Corporation

18400 Von Karman Avenue, Suite 1000

Irvine, California 92612

(949) 440-7030

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

COPY TO:

David A. Krinsky, Esq.

O Melveny & Myers LLP

610 Newport Center Drive, Suite 1700

Newport Beach, California 92660

CALCULATION OF REGISTRATION FEE

Title Of Securities	Amount	Proposed	Proposed	Amount Of
To Be Registered	To Be	Maximum	Maximum	Registration
	Registered	Offering Price	Aggregate	Fee

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		Per Unit	Offering Price	
Common Stock, par value \$0.01 per share	50,000 ⁽¹⁾ shares	\$52.29 ⁽²⁾	\$2,614,500 ⁽²⁾	\$331.26 ⁽²⁾

- (1) This Registration Statement covers, in addition to the number of shares of New Century Financial Corporation, a Delaware corporation (the Company), common stock, par value \$0.01 per share (the Common Stock), stated above, other rights to purchase or acquire the shares of Common Stock covered by the Prospectus and, pursuant to Rule 416(c) under the Securities Act of 1933, as amended (the Securities Act), an additional indeterminate number of shares and rights which by reason of certain events specified in the New Century Financial Corporation Directors Deferred Compensation Plan (the Plan) may become subject to the Plan.
- (2) Pursuant to Rule 457(h), the maximum offering price, per share and in the aggregate, and the registration fee were calculated based upon the average of the high and low prices of the Common Stock on August 24, 2004, as quoted on the Nasdaq National Market.

The Exhibit Index for this Registration Statement is at page 8.

PART I

INFORMATION REQUIRED IN THE

SECTION 10(a) PROSPECTUS

The document(s) 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 Securities Act Rule 428(b)(1). Such documents need not be filed with the Securities and Exchange Commission (the Commission) either as part of this Registration Statement or as prospectuses or prospectus supplements pursuant to Securities Act Rule 424. 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 Certain Documents by Reference

The following documents of the Company filed with the Commission are incorporated herein by reference:

- (a) The Company's Annual Report on Form 10-K/A for its fiscal year ended December 31, 2003, filed with the Commission on April 13, 2004 (Commission File No. 000-22633);
- (b) The Company's Quarterly Report on Form 10-Q for its fiscal quarter ended March 31, 2004, filed with the Commission on May 10, 2004 (Commission File No. 000-22633);
- (c) The Company's Quarterly Report on Form 10-Q for its fiscal quarter ended June 30, 2004, filed with the Commission on August 9, 2004 (Commission File No. 000-22633);
- (c) The Company's Current Reports on Form 8-K filed with the Commission on August 17, 2004, August 2, 2004, July 22, 2004, July 20, 2004, July 13, 2004, July 7, 2004, July 2, 2004, June 28, 2004, June 17, 2004, June 1, 2004, May 20, 2004, April 7, 2004 and January 14, 2004 (Commission File No. 000-22633); and
- (d) The description of the Common Stock contained in the Company's Registration Statement on Form 8-A filed with the Commission on June 2, 1997 (Commission File No. 000-22633), and any amendment or report filed for the purpose of updating such description.

All documents subsequently filed by the Company pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934, as amended (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 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

Not applicable.

Item 5. Interests of Named Experts and Counsel

The validity of the original issuance of the Common Stock registered hereby is passed on for the Company by Stergios Theologides, Esq. Mr. Theologides is the Executive Vice President Corporate Affairs, General Counsel and Secretary of the Company, is compensated by the Company as an employee, and is the holder of options to acquire shares of Common Stock.

Item 6. Indemnification of Directors and Officers

The Company's Certificate of Incorporation provides that to the fullest extent permitted by applicable law a director of the Company shall not be liable to the Company or its stockholders for monetary damages for breach of fiduciary duty as a director. Under the Delaware General Corporation Law, liability of a director may not be limited (i) for any breach of the director's duty of loyalty to the Company or its stockholders, (ii) for acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law, (iii) in respect of certain unlawful dividend payments or stock redemptions or repurchases, and (iv) for any transaction from which the director derives an improper personal benefit. The effect of the provisions of the Company's Certificate of Incorporation is to eliminate the rights of the Company and its stockholders (through stockholders' derivative suits on behalf of the Company) to recover monetary damages against a director for breach of the fiduciary duty of care as a director (including breaches resulting from negligent or grossly negligent behavior), except as provided in the situations described in clauses (i) through (iv) above. This provision does not limit or eliminate the rights of the Company or any stockholder to seek nonmonetary relief such as an injunction or rescission in the event of a breach of a director's duty of care.

The Bylaws of the Company provide that the Company will indemnify its directors and officers to the fullest extent permitted by the Delaware General Corporation Law. In addition, the Company has entered into agreements with each of the directors and officers of the Company pursuant to which the Company has agreed to indemnify, subject to certain limitations, such director or officer from claims, liabilities, damages, expenses, losses, costs, penalties or amounts paid in settlement incurred by such director or officer in or arising out of his capacity as a director, officer, employee and/or agent of the Company or any other corporation of which such person is a director or officer at the request of the Company to the maximum extent provided by applicable law. In addition, such director or officer is entitled to an advance of expenses to the maximum extent authorized or permitted by law.

Item 7. Exemption from Registration Claimed

Not applicable.

Item 8. Exhibits

See the attached Exhibit Index on page 8, which is incorporated herein by reference.

Item 9. Undertakings

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(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;

(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 this Registration Statement; and

(iii) To include any material information with respect to the plan of distribution not previously disclosed in this Registration Statement or any material change to such information in this 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 15(d) of the Exchange Act that are incorporated by reference in this 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.

(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, 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 this 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.

(h) Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, executive officers and controlling persons of the registrant pursuant to the provisions described in Item 6 above, or otherwise, the registrant has been advised that in the opinion of the Commission 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.

SIGNATURES

Pursuant to the requirements of the Securities Act, 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 Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Irvine, State of California, on the 27th day of August, 2004.

By: */s/* **ROBERT K. COLE**
Robert K. Cole

Chairman and Chief Executive Officer

POWER OF ATTORNEY

Each person whose signature appears below constitutes and appoints Robert K. Cole and Brad A. Morrice, or either of them individually, his true and lawful attorney-in-fact and agent, with full powers of substitution and resubstitution, for him and in his name, place and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) to this Registration Statement, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Commission, granting unto said attorneys-in-fact and agents, full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises, as fully to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or either of them individually, or his substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act, this Registration Statement has been signed below by the following persons in the capacities and on the dates indicated.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<i>/s/</i> ROBERT K. COLE <hr/> Robert K. Cole	Chairman of the Board and Chief Executive Officer (Principal Executive Officer)	August 27, 2004
<i>/s/</i> PATTI M. DODGE <hr/> Patti M. Dodge	Chief Financial Officer (Principal Financial and Accounting Officer)	August 27, 2004
<i>/s/</i> BRAD A. MORRICE <hr/> Brad A. Morrice	Vice Chairman, President and Chief Operating Officer and Director	August 27, 2004
<i>/s/</i> EDWARD F. GOTSCHALL <hr/> Edward F. Gotschall	Vice Chairman Finance and Director	August 27, 2004

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<u>Signature</u>	<u>Title</u>	<u>Date</u>
<i>/s/</i> HAROLD A. BLACK		
Harold A. Black	Director	August 27, 2004
<i>/s/</i> FREDRIC J. FORSTER		
Fredric J. Forster	Director	August 27, 2004
<i>/s/</i> DONALD E. LANGE		
Donald E. Lange	Director	August 27, 2004
<i>/s/</i> WILLIAM J. POPEJOY		
William J. Popejoy	Director	August 27, 2004
<i>/s/</i> MICHAEL M. SACHS		
Michael M. Sachs	Director	August 27, 2004
<i>/s/</i> TERRENCE P. SANDVIK		
Terrence P. Sandvik	Director	August 27, 2004
<i>/s/</i> RICHARD A. ZONA		
Richard A. Zona	Director	August 27, 2004

EXHIBIT INDEX

Exhibit Number	Description of Exhibit
4.1*	New Century Financial Corporation Directors Deferred Compensation Plan.
5.1	Opinion of Counsel (opinion re legality).
23.1	Consent of KPMG LLP (Consent of Independent Registered Public Accounting Firm).
23.2	Consent of Counsel (included in Exhibit 5.1).
24.1	Power of Attorney (included in this Registration Statement under Signatures).

* Incorporated by reference from New Century Financial Corporation's Annual Report on Form 10-K as filed with the Securities and Exchange Commission on March 15, 2004.