TIERONE CORP
Form 8-K
November 10, 2009

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 5, 2009

TierOne Corporation
(Exact name of registrant as specified in its charter)

Wisconsin	000-50015	04-3638672
(State or other jurisdiction of incorporation)	(Commission File Number)	(IRS Employer Identification No.)

1235 “N” Street, Lincoln, Nebraska 68508
(Address of principal executive offices, including zip code)

(402) 475-0521
(Registrant’s telephone number, including area code)

Not Applicable
(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:

o Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

o Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12) o Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

o Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Item 2.06. Material Impairments.

TierOne Corporation (the "Company") is the holding company for TierOne Bank (the "Bank"). On a quarterly basis, the Bank is required to file Thrift Financial Reports ("TFRs") with the Office of Thrift Supervision (the "OTS"). The OTS is the Bank's primary regulator. The TFR requires the Bank to report various information, including financial statement and supplemental data regarding the Bank's performance and financial condition for and as of the quarter covered by the TFR.

On November 5, 2009, the Bank filed its TFR for the quarter ended September 30, 2009. The TFR reflected a loan loss provision of approximately $120.2 million (which includes a total charge-off of $109.8 million) for the three months ended September 30, 2009. The loan loss provision and the charge-offs for the third quarter reflect (i) the results of the ongoing OTS examination of the Bank; (ii) the receipt of recent, updated appraisals which show continued deterioration of property values in selected markets; (iii) aggressive steps undertaken by management to dispose of the Bank's problem assets; and (iv) management's subjective judgment as to continued deterioration in the Bank's loan portfolio resulting from ongoing economic challenges generally and, in particular, challenges in the real estate market.

In a Form 8-K filing dated October 13, 2009, the Company had previously disclosed that it would be restating its financial statements as of and for the three-month and six-month periods ended June 30, 2009. In the Form 8-K filing, the Company reported that it expected an additional loan loss provision of $13.9 million (including a total charge-off of $10.6 million) for the three months ended June 30, 2009. On November 5, 2009, the Bank filed an amended TFR for the quarter ended June 30, 2009 and reported an increase to $17.4 million (including a total charge-off of $14.1 million) in the additional loan loss provision for such quarter. The $3.3 million increase in the additional loan loss provision resulted from the further review of the Bank's loan portfolio that is being undertaken as the Company continues to prepare its restated financial statements for inclusion in an amended Form 10-Q for the quarter ended June 30, 2009.

The Bank is currently subject to a supervisory agreement that it entered into with the OTS on January 15, 2009. Among other things, the supervisory agreement requires the Bank to maintain enhanced minimum capital requirements in excess of those required of an institution deemed to be "well capitalized" by the OTS. As a result of the financial performance reported in the above-referenced TFRs, the Bank's minimum core capital ratio, as of June 30, 2009, was approximately 7.95%, which is below the elevated ratio of 8.50% required by the supervisory agreement (the regulatory core capital ratio normally required to be deemed "well capitalized" is 5.00%). The Bank's total risk-based capital ratio, as of June 30, 2009, was approximately 10.66%, which is below the 11.00% required by the supervisory agreement (the regulatory total risk-based capital ratio normally required to be deemed "well capitalized" is 10.00%). With the additional loan loss provisions discussed above, as of September 30, 2009, the Bank's core capital and total risk-based capital ratios were approximately 4.00% and 6.09%, respectively.

The Bank, as of September 30, 2009, is below both the enhanced capital requirements set forth in the supervisory agreement as well as the ratios normally required to be deemed "well capitalized" by the OTS. The Bank's total risk-based capital ratio of 6.09% as of September 30, 2009 results in the Bank being classified as "undercapitalized." As a result of being undercapitalized as of September 30, 2009, the Bank is required to submit a capital restoration plan and is subject to various additional restrictions provided by the terms of the Prompt Corrective Action regulations. It is possible that the OTS may take additional actions as a result of the Bank's capital status and the ongoing examination of the Bank by the OTS. The Company cannot currently predict what impact it may experience as a result of the actions that may be taken by the OTS.

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As part of the Bank's efforts to increase its capital, as previously disclosed the Company and the Bank entered into a definitive agreement, dated September 3, 2009 (the "Agreement"), to transfer deposits and sell selected loans and other assets associated with 32 of the Bank's branch offices to Great Western Bank, a South Dakota-based subsidiary of National Australia Bank. The increased capital expected to result from the consummation of the transactions contemplated by the Agreement (which Agreement is subject to, among other conditions, the receipt of regulatory approval), combined with a reduction in risk-based assets due to the sale, is expected to result in the Bank being deemed "adequately capitalized," but below the levels required to be "well capitalized" or to be in compliance with the supervisory agreement. In addition, there can be no assurances that the Bank will be at least "adequately capitalized" upon consummation of the transactions contemplated by the Agreement due to unforeseen or intervening events, including possible further regulatory actions as a result of the OTS examination, nor can there be any assurance that the Agreement will receive all necessary regulatory and other approvals in order to be able to consummate the transaction. The Bank is currently seeking to consummate the transactions contemplated by the Agreement in the first quarter of 2010 but there are no assurances that such schedule will be achieved. The closing of the transaction is subject to customary conditions precedent, including regulatory approval, several of which are beyond the Company's ability to control.

In addition, The Worker, Homeownership and Business Assistance Act of 2009, passed into law last week, contains a provision permitting companies to carryback 2008 or 2009 losses for five years and to obtain a refund of taxes previously paid. The Bank intends to carryback losses that are expected to result in a fourth quarter 2009 tax benefit to the Bank of approximately $26.5 million. However, the exact amount of the benefit is subject to adjustment and may be significantly less than this amount.

Item 8.01. Other Events.

As previously reported, the Company is in the process of preparing an amended Form 10-Q for the quarter ended June 30, 2009. The amended Form 10-Q will include restated financial statement as of and for the three-month and six-month periods ended June 30, 2009. The restated financial statements are required because the OTS directed the Bank to establish additional loan loss provisions for the 2009 second quarter. The Company intends to file the amended Form 10-Q as soon as practicable after management has completed its reassessment of the Bank's loan portfolio. The delay in the preparation of the amended second quarter Form 10-Q has also resulted in a delay in filing of the Company's Form 10-Q for the quarter ended September 30, 2009, which filing was due on November 9, 2009. The Company is working diligently to file both the amended second quarter Form 10-Q and the third quarter Form 10-Q as promptly as possible. The Company will not, however, be able to make such filings within the five calendar day grace period potentially available pursuant to Rule 12b-25 under the Securities Exchange Act of 1934, as amended.

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Statements contained in this report which are not historical facts may be forward-looking statements as that term is defined in the Private Securities Litigation Reform Act of 1995. Such forward-looking statements are subject to risks and uncertainties which could cause actual results to differ materially from those currently anticipated due to a number of factors. Factors which could result in material variations include, but are not limited to, issues that may arise relative to loan loss provisions and charge-offs with respect to the Bank's loan portfolio, including actions stemming from the review of such portfolio and provisions by regulators; actions taken by the regulators with respect to the Bank's capital position; any issues that may arise from the ongoing examination of the Bank by the OTS; any issues that could impact management's judgment as to the adequacy of loan loss reserves; any issues related to the restatement of the Company's financial statements for the quarter ended June 30, 2009 and the preparation of the financial statements for the quarter ended September 30, 2009; changes in asset quality and general economic conditions; events related to the supervisory agreement, including compliance therewith, or actions by regulators related thereto or as a result thereof; inability of the Bank and the Company to comply with other provisions of the supervisory agreement; the effects of complying with, or failure to comply with, the restrictions imposed on the Bank under the Prompt Corrective Action regulations; inability to achieve expected results pursuant to the Company's plan to address asset quality, restore long-term profitability and increase capital; further deterioration in the Company's loan portfolio; issues associated with receipt of a tax benefit under The Worker, Homeownership and Business Assistance Act of 2009; and issues associated with the closing of the transactions contemplated by the branch purchase agreement with Great Western Bank. In addition, the Company set forth certain risks in its reports filed with the Securities and Exchange Commission, including its Annual Report on Form 10-K for the fiscal year ended December 31, 2008 and current and periodic reports filed with the Securities and Exchange Commission thereafter, which could cause actual results to differ from those projected. These factors should be considered in evaluating the forward-looking statements and undue reliance should not be placed on such statements. The Company undertakes no obligation to update these forward-looking statements to reflect events or circumstances that occur after the date on which such statements were made.

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.

TIERONE CORPORATION

Date: November 10, 2009	By:	/s/ Gilbert G. Lundstrom Gilbert G. Lundstrom Chairman of the Board and Chief Executive Officer

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