

COMERICA INC /NEW/
Form S-8
July 28, 2011

As filed with the Securities and Exchange Commission on July 28, 2011

Registration No. 333-

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

FORM S-8
REGISTRATION STATEMENT

UNDER
THE SECURITIES ACT OF 1933

COMERICA INCORPORATED

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

1717 Main Street, MC 6404

38-1998421
(I.R.S. Employer
Identification No.)

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Dallas, Texas 75201

(Address of principal executive offices) (Zip Code)

Sterling Bancshares, Inc. Deferred Compensation Plan (as Amended and Restated)

Amended and Restated Sterling Bancshares, Inc. 2003 Stock Incentive and Compensation Plan

(Full title of the Plan)

JON W. BILSTROM

Executive Vice President, Governance, Regulatory

Relations and Legal Affairs, and Secretary

Comerica Incorporated

1717 Main Street, MC 6404

Dallas, Texas 75201

(Name and address of agent for service)

(214) 462-6831

(Telephone number, including area code, of agent for service)

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 definitions of large accelerated filer, accelerated filer and smaller reporting company in Rule 12b-2 of the Exchange Act.

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 securities to be registered | Amount to be registered | Proposed maximum offering price per share | Proposed maximum aggregate offering price | Amount of registration fee |
|---|--------------------------------|--|--|-----------------------------------|
| Deferred Compensation Obligations (1) | \$ 12,000,000 | N/A | \$ 12,000,000 | \$ 1,393.20 |
| Common Stock \$5.00 par value | 500,000(2) | \$ 32.99(3) | \$ 16,495,000(3) | \$ 1,915.07 |

- (1) The Deferred Compensation Obligations being registered are unsecured obligations of Comerica Incorporated to pay deferred compensation in the future in accordance with the terms and conditions of the Sterling Bancshares, Inc. Deferred Compensation Plan (as Amended and Restated) (the Deferred Compensation Plan), as may be further amended from time to time.
- (2) Pursuant to Rule 416(a) under the Securities Act of 1933 (the Securities Act), this registration statement shall also be deemed to cover any additional securities to be offered or issued in connection with the provisions of the above-referenced plans, which provide for adjustments in the amount of securities to be offered or issued to prevent dilution resulting from stock splits, stock dividends or similar transactions.
- (3) Pursuant to Rule 457(h)(1) under the Securities Act, the per share and aggregate offering price are based upon the average of the high and low sales prices of the shares of common stock as reported on the New York Stock Exchange Composite Tape on July 27, 2011 (\$32.99 per share).

EXPLANATORY NOTE

On July 28, 2011, pursuant to an Agreement and Plan of Merger dated as of January 16, 2011, as amended, by and between Comerica Incorporated, a Delaware corporation (Comerica or the Registrant) and Sterling Bancshares, Inc., a Texas corporation (Sterling), Sterling merged with and into Comerica, with Comerica continuing as the surviving entity (the Merger). This Registration Statement on Form S-8 (the Registration Statement) is filed by Comerica for the purpose of registering (a) shares of common stock of Comerica, par value \$5.00 per share (Common Stock) and Deferred Compensation Obligations (as defined below) issuable pursuant to the Deferred Compensation Plan, which has been assumed by Comerica in connection with the Merger and (b) shares of Common Stock issuable pursuant to the Sterling Bancshares, Inc. 2003 Stock Incentive and Compensation Plan, which has been assumed by Comerica in connection with the Merger.

PART I

INFORMATION REQUIRED IN THE SECTION 10(A) PROSPECTUS

The document(s) containing the information specified in Part I 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 Commission) either as part of this Registration Statement or as prospectuses or prospectus supplements pursuant to Rule 424 of the Securities Act. These documents and the documents incorporated by reference in this Registration Statement pursuant to Item 3 of 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 with the Commission by Comerica are incorporated in this Registration Statement by reference:

1. Comerica s Annual Report on Form 10-K for the fiscal year ended December 31, 2010;
2. Comerica s Quarterly Report on Form 10-Q for the fiscal quarter ended March 31, 2011;
3. Comerica s Current Reports on Form 8-K filed with the Commission on July 27, 2011; July 14, 2011; May 2, 2011 (as amended on July 27, 2011); January 27, 2011; January 21, 2011 and January 18, 2011 (first filing); and
4. The description of Comerica s common stock, par value \$5.00 per share, set forth in Comerica s Registration Statement on Form S-4 filed February 2, 2011 (Commission File Number 333-172211) and any amendments, reports or other filings filed with the Commission for the purpose of updating that description.

To the extent that any information contained in any report on Form 8-K, or any exhibit thereto, was furnished to, rather than filed with, the Commission, such information or exhibit is specifically not incorporated by reference.

All documents subsequently filed by Comerica pursuant to Sections 13(a), 13(c), 14 and 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 hereunder have been sold or which deregisters all of the securities offered then remaining unsold, shall be deemed to be incorporated herein by reference and to be a part hereof from the date of filing of such documents.

ITEM 4. DESCRIPTION OF SECURITIES.

The Common Stock to be offered is registered under Section 12(b) of the Exchange Act.

The deferred compensation obligations being registered under this Registration Statement (the "Deferred Compensation Obligations") are issuable under the terms of the Deferred Compensation Plan, which has been assumed by Comerica in connection with the Merger. The Deferred Compensation Plan is intended to be an unfunded, unsecured plan maintained primarily for the purpose of providing additional income deferral and investment opportunities to a select group of management and other highly compensated employees.

Employee participants may elect to defer between 5% and 90% of base salary and between 5% and 90% of incentive compensation. Prior to the Merger, directors of Sterling could elect to defer between 5% and 100% of their director fees. The Deferred Compensation Plan provides that Comerica may make matching contributions for amounts that would have been made on behalf of an employee participant to Sterling's tax-qualified 401(k) plan, but were otherwise limited by the 401(k) plan or the Internal Revenue Code. In addition, the Deferred Compensation Plan provides that Comerica may make a discretionary contribution on behalf of an employee participant.

A participant is 100% vested in all deferrals made by a participant. The employee participant will be vested in each contribution by Comerica to the same extent as such participant is vested in his non-elective contribution account under Sterling's 401(k) plan. In addition, the contributions made by Comerica on behalf of an employee participant will become fully vested upon a change of control, with the exception of certain enumerated severance accounts with contributions made by Comerica on behalf of employee participants which shall be 100% vested at all times.

Amounts in a participant's account under the Deferred Compensation Plan will be indexed to one or more hypothetical or "deemed" investments individually chosen by the participant from the hypothetical investment funds available under the Deferred Compensation Plan. However, such investment alternatives are merely measurement funds and amounts deferred under the Deferred Compensation Plan are not required to actually be invested in the investment alternatives, although Comerica may choose to do so. Accordingly, the participants may not have an actual investment in these investment alternatives which are used only for the purposes of crediting or debiting the accounts of each participant with deemed acquisitions, dispositions, earnings or losses as if the amounts in a participant's account were actually invested in accordance with the participant's investment elections. Participants may periodically reallocate their cash deferral account balances among available investment funds. There is no trading market for the Deferred Compensation Obligations.

Prior to May 1, 2011, one of the hypothetical investment options under the Deferred Compensation Plan was a fund comprised of Sterling common stock, par value \$1.00 per share (the "Company Stock Fund"). Deferrals of the common stock portion of the directors' fees credited to the director participant's account under the Deferred Compensation Plan were indexed to the Company Stock Fund and may not be reallocated among other available investment funds. Effective May 1, 2011, the Company Stock Fund is not currently being offered as a hypothetical investment option for future deferrals or contributions, nor are participants permitted to reallocate investment funds into the Company Stock Fund; however, dividends earned on existing amounts in the Company Stock Fund will continue to be hypothetically invested in Common Stock.

The portion of a participant's account balance under the Deferred Compensation Plan that is not credited to the Company Stock Fund is payable in cash following a separation from service or certain other specified events permitted in accordance with Internal Revenue Code Section 409A. The portion of a participant's account balance that is credited to the Company Stock Fund is payable only in shares of Common Stock, with fractional shares paid in cash. Payments may be made in a lump sum or in annual installments over a period of up to 20 years, at the election of the participant, or pursuant to the Deferred Compensation Plan, as applicable.

The Deferred Compensation Obligations are Comerica's unsecured and unsubordinated general obligations and rank *pari passu* with Comerica's other unsecured and unsubordinated indebtedness. A participant's or beneficiary's rights to the Deferred Compensation Obligations cannot be sold, transferred, assigned, pledged or otherwise alienated or encumbered except that a participant may make a written designation of a beneficiary to receive such deferred amounts upon his or her death pursuant to the terms of the Deferred Compensation Plan. Any

attempt to sell, transfer, assign, pledge or otherwise alienate or encumber the Deferred Compensation Obligations will be void. The Deferred Compensation Obligations are not convertible into any other security except that account balances treated as invested in the Company Stock Fund are distributed in shares of Common Stock.

In order to assist Comerica in satisfying its future obligations to participants under the Deferred Compensation Plan, Comerica has assumed a non-qualified trust agreement with Charles Schwab Trust Company and may periodically make contributions to the trust. Although the assets of the trust are intended to be used to pay the Deferred Compensation Obligations under the Deferred Compensation Plan, the assets remain subject to the claims of Comerica's general creditors in the event of Comerica's insolvency. Consequently, participants do not have any ownership interest in the assets of the trust and do not have any voting rights with respect to the securities associated with the measuring investment funds to which their accounts are attributed.

Comerica has the ability to amend the Deferred Compensation Plan at any time. It also has the ability to terminate the Deferred Compensation Plan under certain circumstances, including a change of control.

This summary is a brief description of the Deferred Compensation Obligations. The official provisions of the Deferred Compensation Plan are contained in the attached Deferred Compensation Plan document, which is filed as Exhibit 4.5 to this Registration Statement and is controlling in the event of a discrepancy.

ITEM 5. INTERESTS OF NAMED EXPERTS AND COUNSEL.

The validity of the securities offered hereby has been passed upon by Jon W. Bilstrom, Executive Vice President, Governance, Regulatory Relations and Legal Affairs, and Secretary of Comerica. As of July 27, 2011, Mr. Bilstrom beneficially owned less than 1% of the total outstanding shares of Common Stock.

ITEM 6. INDEMNIFICATION OF DIRECTORS AND OFFICERS.

As permitted by Section 102(b)(7) of the Delaware General Corporation Law, or DGCL, Comerica's certificate of incorporation provides that a director of Comerica shall not be personally liable to Comerica or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (a) for any breach of the director's duty of loyalty to us or our stockholders, (b) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (c) pursuant to Section 174 of the DGCL, or (d) for any transaction from which a director derived an improper personal benefit.

In general, Comerica's bylaws provide that Comerica shall indemnify its directors and officers to the fullest extent permitted by law. As permitted by Section 145(a) of DGCL, Comerica's bylaws provide that Comerica shall indemnify each of its directors and officers against expenses (including attorney's fees) incurred in connection with any proceeding (other than an action by or in the right of Comerica) involving such person by reason of having been an officer or director, to the extent such person acted in good faith and in a manner reasonably believed to be in, or not opposed to, the best interest of Comerica and, with respect to any criminal action or proceeding, had no reasonable cause to believe such person's conduct was unlawful. As permitted by Section 145(b) of DGCL, Comerica's bylaws provide that Comerica shall indemnify each of its officers and directors against expenses (including attorney's fees) incurred in connection with any action brought by or in the right of Comerica, to the extent such person acted in good faith and in a manner reasonably believed to be in, or not opposed to, the best interest of Comerica, except that if the director or officer is adjudged to be liable to Comerica, no indemnification shall be made unless and to the extent that the Court of Chancery or any other court shall deem proper, notwithstanding the adjudication of liability.

Unless prohibited by applicable law or regulation, or otherwise required by Section 18(k) of the Federal Deposit Insurance Act, as amended, the determination of whether indemnification of an officer or director is proper under the circumstances (unless ordered by a court) generally shall be made by independent legal counsel chosen by a majority of Comerica's disinterested directors (even if such disinterested directors constitute less than a quorum) in a written opinion to the board of directors. However, as required by Section 145(c) of DGCL, Comerica must indemnify a director or officer who was successful in defense of any suit. As permitted by Section 145(e) of DGCL, Comerica's bylaws provide that Comerica may pay expenses incurred by a director or officer in advance, upon receipt of an undertaking that the advance will be repaid if it is ultimately determined that the director or officer is not entitled to indemnity.

As permitted by Section 145(g) of DGCL, Comerica's bylaws provide that Comerica may purchase insurance on behalf of its directors and officers against any liability asserted against such person and incurred by such person in any such capacity, or arising out of such person's status as such, whether or not Comerica would have the power to indemnify such person against such liability under its bylaws. Comerica maintains such insurance.

The foregoing is only a general summary of certain aspects of Delaware law and Comerica's certificate of incorporation and bylaws dealing with indemnification of directors and officers, and does not purport to be complete. It is qualified in its entirety by reference to the detailed provisions of Section 145 of the DGCL and the certificate of incorporation and the bylaws of Comerica.

ITEM 7. EXEMPTION FROM REGISTRATION CLAIMED.

Not applicable.

ITEM 8. EXHIBITS.

| Exhibit No. | Description |
|--------------------|--|
| 4.1 | Restated Certificate of Incorporation of Comerica Incorporated, as in effect on the date hereof (incorporated by reference to Exhibit 3.2 to Comerica's Current Report on Form 8-K filed August 9, 2010). |
| 4.2 | Certificate of Amendment to Restated Certificate of Incorporation of Comerica Incorporated, as in effect on the date hereof (incorporated by reference to Exhibit 3.2 to Comerica's Quarterly Report on Form 10-Q for the quarter ended March 31, 2011). |
| 4.3 | Amended and Restated Bylaws of Comerica Incorporated, as in effect on the date hereof (amended and restated April 26, 2011) (incorporated by reference to Exhibit 3.3 to Comerica's Quarterly Report on Form 10-Q for the quarter ended March 31, 2011). |
| 4.4 | Sterling Bancshares, Inc. Deferred Compensation Plan (as Amended and Restated).* |
| 4.5 | Amended and Restated Sterling Bancshares, Inc. 2003 Stock Incentive and Compensation Plan (incorporated by reference to Exhibit 10.1 of Sterling Bancshares, Inc.'s Current Report on Form 8-K filed on August 14, 2007). |
| 5.1 | Opinion and Consent of Jon W. Bilstrom as to the legality of the securities being registered.* |
| 23.1 | Consent of Ernst & Young LLP, Independent Registered Public Accounting Firm.* |
| 23.2 | Consent of Jon W. Bilstrom, legal counsel (contained in Exhibit 5.1).* |
| 24.1 | Powers of Attorney.* |

* Filed herewith.

ITEM 9. UNDERTAKINGS.

(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 of 1933;

(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 a 20 percent change in the maximum aggregate offering price set forth in the Calculation of Registration Fee table in the effective registration statement; and

(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 paragraphs (a)(1)(i) and (a)(1)(ii) above do not apply if the registration statement is on Form S-8, and the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Commission by the registrant pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in the registration statement.

(2) That, for the purpose of determining any liability under the Securities Act of 1933, 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 of 1933, each filing of the registrant's annual report pursuant to section 13(a) or section 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to section 15(d) of the Securities Exchange Act of 1934) 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.

(c) Insofar as indemnification for liabilities arising under the Securities Act of 1933 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 Commission such indemnification is against public policy as expressed in the 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 Act and will be governed by the final adjudication of such issue.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, 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 Dallas, State of Texas, on July 28, 2011.

COMERICA INCORPORATED

By: *
Ralph W. Babb, Jr.
Chairman, President and Chief Executive Officer

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities indicated as of July 28, 2011:

*
Ralph W. Babb, Jr.

Chairman, President, Chief Executive Officer and Director

(Principal Executive Officer)

*
Elizabeth S. Acton

Executive Vice President and Chief Financial Officer

(Principal Financial Officer)

*
Muneera S. Carr

Senior Vice President and Chief Accounting Officer

(Principal Accounting Officer)

*
Roger A. Cregg

Director

*
T. Kevin DeNicola

Director

*
Jacqueline P. Kane

Director

*
Richard G. Lindner

Director

*

Alfred A. Piergallini

Director

Robert S. Taubman *

Director

Reginald M. Turner, Jr. *

Director

Nina G. Vaca *

Director

*By: /s/ Jon W. Bilstrom
Jon W. Bilstrom
Attorney-in-Fact

July 28, 2011

EXHIBIT INDEX

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