

FLAG FINANCIAL CORP
Form S-8
December 16, 2004

As filed with the Securities and Exchange Commission on December 16, 2004

Registration No. 333-_____

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM S-8

REGISTRATION STATEMENT UNDER
THE SECURITIES ACT OF 1933

FLAG FINANCIAL CORPORATION

(Exact name of Registrant as specified in its charter)

Georgia

(State or other jurisdiction of
incorporation or organization)

58-2094179

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

3475 Piedmont Road, Suite 550, Atlanta, Georgia 30305

(Address of principal executive offices and zip code)

FLAG FINANCIAL CORPORATION 2004 EQUITY INCENTIVE PLAN

(Full Title of the Plan)

**Joseph W. Evans
Chairman, President and
Chief Executive Officer
Flag Financial Corporation
3475 Piedmont Road**

Suite 550

Atlanta, Georgia 30305

(Name and address of agent for service)

(404) 760-7700

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

CALCULATION OF REGISTRATION FEE

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| 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 |
|--------------------------------------|-------------------------------|---|---|----------------------------|
| Common Stock, \$1.00 par value | 543,000 ⁽¹⁾ Shares | \$14.72 ⁽²⁾ | \$7,992,960 ⁽³⁾ | \$940.77 |

- (1) This Registration Statement also covers such indeterminable number of additional shares as may become issuable to prevent dilution in the event of a stock split, stock dividend, reclassification or other similar transaction pursuant to the terms of the Plan.
- (2) The average of the high and low prices of the Registrant's Common Stock as reported by the Nasdaq Stock Market for December 15, 2004.
- (3) The aggregate offering price is calculated solely for the purpose of determining the registration fee pursuant to Rule 457(h)(1) under the Securities Act of 1933, as amended.
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PART I

INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

The documents containing the information specified in Part I of the Instructions to the Registration Statement on Form S-8 will be sent or given to participants in the Plan as required by Rule 428(b)(1) promulgated under the Securities Act of 1933, as amended (the "Securities Act").

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The following documents filed with the Securities and Exchange Commission (the "Commission") are incorporated herein by reference:

- (1) The Registrant's Annual Report on Form 10-K for the fiscal year ended December 31, 2003;
- (2) The Registrant's Quarterly Reports on Form 10-Q for the quarters ended March 31, 2004, June 30, 2004 and September 30, 2004;
- (3) The Registrant's Current Reports on Form 8-K filed on March 23, 2004, March 30, 2004 and December 8, 2004; and
- (4) The description of the Registrant's Common Stock contained in the Registrant's Registration Statement on Form 8-A as declared effective by the Securities and Exchange Commission on March 1, 1994.

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 that indicates that all securities offered hereby have been sold or that deregisters all such securities then remaining unsold, shall be deemed to be incorporated by reference in this Registration Statement and to be a part hereof from the date of filing of such documents.

Item 6. Indemnification of Directors and Officers.

The Registrant's Articles of Incorporation and Bylaws generally provide that any director who is deemed eligible will be indemnified against liability and other expenses incurred in a proceeding in which the director was made a party by reason of the fact he is or was a director, to the fullest extent authorized by the Georgia Business Corporation Code; provided, however, that the Registrant will not indemnify any director for any liability or expenses incurred by such director (i) for any appropriation, in violation of his duties, of any business opportunity of the Registrant; (ii) for any acts or omissions which involve intentional misconduct or a knowing violation of law; (iii) for the types of liability set forth in Section 14-2-832 of the Georgia Business Corporation Code or successor provisions; or (iv) for any transaction from which the director derives an improper personal benefit. The Registrant's Articles of Incorporation and Bylaws provide for the advancement of expenses to its directors at the outset of a proceeding, upon the receipt from such director of the written affirmation and repayment promise required by Section 14-2-856 of the Georgia Business Corporation Code, the purchase of insurance by the Registrant against any liability of the director arising

from his duties and actions as a director, the survival of such indemnification to the director's heirs, executors and administrators, and the limitation of the directors' liability to the corporation (except under the four situations described above). The indemnification provisions are non-exclusive, and shall not impair any other rights to which those seeking indemnification or advancement of expenses may be entitled. The Bylaws also provide for similar indemnification for the officers of the Registrant. Under the Bylaws, shareholders are entitled to notification of any indemnification paid to the directors.

The Registrant maintains an insurance policy insuring the Registrant and directors and officers of the Registrant against certain liabilities, including liabilities under the Securities Act of 1933.

Item 8. Exhibits.

The following exhibits are filed with or incorporated by reference into this Registration Statement pursuant to Item 601 of Regulation S-K:

Exhibit

| <u>No.</u> | <u>Description</u> |
|------------|--|
| 5.1 | Opinion of Powell, Goldstein, Frazer & Murphy LLP with respect to the securities being registered, including consent. |
| 23.1 | Consent of counsel (included in Exhibit 5.1). |
| 23.2 | Consent of Porter Keadle Moore LLP, independent accountants. |
| 24.1 | Power of Attorney (see signature pages to this Registration Statement). |
| 99.1 | Flag Financial Corporation 2004 Equity Incentive Plan (incorporated by reference from Appendix B to Flag Financial Corporation's Proxy Statement filed on Schedule 14A on March 11, 2004). |

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;

(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 and 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 paragraphs (a)(1)(i) and (a)(1)(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 Registrant 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.

(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 Section 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.

(c) 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 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 Atlanta, State of Georgia, on this the 16th day of December, 2004.

FLAG FINANCIAL CORPORATION

By: /s/ J. Daniel Speight
J. Daniel Speight
Vice Chairman and Chief Financial Officer

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints each of Joseph W. Evans and J. Daniel Speight as his true and lawful attorney-in-fact and agent, with full power 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 Securities and Exchange Commission, granting unto each of said attorneys-in-fact and agents, full power and authority to do and perform each and every act and thing required or 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 each of said attorneys-in-fact and agents, or their substitutes, could 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 indicated and on the dates indicated.

| <u>Signature</u> | <u>Title</u> | <u>Date</u> |
|---|--|-------------------|
| <u>/s/ William H. Anderson, II</u> William H. Anderson, II | Director | December 16, 2004 |
| <u>/s/ H. Speer Burdette, III</u> H. Speer Burdette, III | Director | December 16, 2004 |
| <u>/s/ Stephen W. Doughty</u> Stephen W. Doughty | Vice Chairman and Chief Risk Management Officer | December 16, 2004 |
| <u>/s/ Joseph W. Evans</u> Joseph W. Evans | Chairman, President and Chief Executive Officer | December 16, 2004 |

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/s/ Quill O. Healey Director December 16, 2004
Quill O. Healey

/s/ John D. Houser Director December 16, 2004
John D. Houser

/s/ James W. Johnson Director December 16, 2004
James W. Johnson

/s/ J. Daniel Speight Vice Chairman and Chief December 16, 2004
J. Daniel Speight Financial Officer

/s/ J. Thomas Wiley, Jr. Vice Chairman and Chief December 16, 2004
J. Thomas Wiley, Jr. Banking Officer

EXHIBIT INDEX

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