

BOSTON PRIVATE FINANCIAL HOLDINGS INC
Form S-8
March 05, 2004

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As filed with the Securities and Exchange Commission on March 5, 2004

Registration Statement No. 333-

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

Form S-8

REGISTRATION STATEMENT

Under
The Securities Act of 1933

BOSTON PRIVATE FINANCIAL HOLDINGS, INC.

(Exact name of Registrant as Specified in Its Charter)

Massachusetts
(State of Incorporation)

Ten Post Office Square
Boston, Massachusetts 02109
(617) 912-1900

04-2976299
(I.R.S. Employer Identification No.)

(Address of Registrant's principal executive offices)

FIRST STATE BANK OF CALIFORNIA (FORMERLY KNOWN AS BANK OF GRANADA HILLS) 1994 STOCK OPTION PLAN

(Full Title of the Plan)

Timothy L. Vaill, Chief Executive Officer
BOSTON PRIVATE FINANCIAL HOLDINGS, INC.
Ten Post Office Square
Boston, Massachusetts 02109
(617) 912-1900

(Name, address, including zip code, and telephone number, including area code, of agent for service)

With copy to:
William P. Mayer, Esq.
Goodwin Procter LLP
Exchange Place
Boston, Massachusetts 02109-2881
(617) 570-1000

CALCULATION OF REGISTRATION FEE

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Title of Securities Being Registered	Amounts to be Registered(1)	Proposed Maximum Offering Price Per Share(3)	Proposed Maximum Aggregate Offering Price(3)	Amount of Registration Fee(4)
Common Stock, par value \$1.00 per share	178,626 shares (2)	\$8.92	\$1,593,772.72	\$202.00

- (1) This Registration Statement also relates to such indeterminate number of additional shares of common stock, par value \$1.00 per share, of Boston Private Financial Holdings, Inc. ("Common Stock") as may be required pursuant to the First State Bank of California (formerly known as Bank of Granada Hills) 1994 Stock Option Plan (the "Plan") in the event of a stock dividend, reverse stock split, split-up, recapitalization, forfeiture of stock under the Plan or other similar event.
- (2) This Registration Statement relates to 178,626 shares of Common Stock that may be issued upon the exercise of options granted under the Plan (the "Options") and assumed by Boston Private Financial Holdings, Inc. (the "Company").
- (3) This estimate is made pursuant to Rule 457(h) under the Securities Act of 1933, as amended (the "Securities Act"), solely for the purposes of determining the amount of the registration fee. The price per share and aggregate offering price are based upon the weighted average exercise price of the Options.
- (4) Pursuant to Rule 457(p) under the Securities Act, the full registration fee of \$202.00 is paid by offset of \$202.00 of the filing fee paid with Registration Statement No. 333-109126 initially filed by the Company on September 25, 2003.

PART I

INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

Item 1. Plan Information*

Item 2. Registrant Information and Employee Plan Annual Information*

* Information required by Part I to be contained in the Section 10(a) prospectus is omitted from this Registration Statement in accordance with Rule 428 under the Securities Act of 1933, as amended (the "Securities Act"), and the Introductory Note to Part I of Form S-8.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Certain Documents by Reference

Incorporated by reference in this Registration Statement are the documents listed below, which have previously been filed by Boston Private Financial Holdings, Inc. (the "Company") with the Securities and Exchange Commission (the "Commission") pursuant to the Securities Exchange Act of 1934, as amended (the "Exchange Act"):

- (a) Annual Report on Form 10-K for the fiscal year ended December 31, 2002, filed with the Commission on March 7, 2003;

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- (b) Quarterly Reports on Form 10-Q for the quarters ended March 31, 2003, June 30, 2003 and September 30, 2003;
- (c) Current Reports on Form 8-K filed on May 2, 2003, July 11, 2003, September 30, 2003, December 4, 2003, December 18, 2003, February 3, 2004 and February 18, 2004; and
- (d) The description of the Company's common stock contained in the registration statement on Form SB-2 filed on August 30, 1993 (file no. 033-68054), including all amendments and reports updating such description.

All documents subsequently filed by the Company with the Commission pursuant to Section 13(a), 13(c), 14 or 15(d) of the Exchange Act, prior to the filing of a post-effective amendment which indicates that all securities offered have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference in this Registration Statement and to be part thereof from the date of filing of such documents.

Any statement contained in a document 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 incorporated or 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 superseded, to constitute a part of this Registration Statement.

Item 6. Indemnification of Directors and Officers

The Company is a Massachusetts corporation. Reference is made to Chapter 156B, Section 13 of the Massachusetts Business Corporation Law (the "MBCL"), which enables a corporation in its original articles of organization or an amendment thereto to eliminate or limit the personal liability of a director for monetary damages for violations of the director's fiduciary duty, except (i) for any breach of the director's duty of loyalty to the corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) pursuant to Sections 61 and 62 of Chapter 156B (providing for liability of directors for authorizing illegal distributions and for making loans to directors, officers and certain stockholders) or (iv) for any transaction from which a director derived an improper personal benefit. The Company has adopted such provisions in its articles of organization.

Reference also is made to Chapter 156B, Section 67 of the MBCL, which provides that a corporation may, subject to certain limitations, indemnify directors, officers, employees and other agents and persons who serve at its request as directors, officers, employees or other agents of another organization or who serve at its request in any capacity with respect to any employee benefit plan, to the extent specified or authorized by the articles of organization, a by-law adopted by the stockholders or a vote adopted by the holders of a majority of the shares of stock entitled to vote on the election of directors. Such indemnification may include payment by the corporation of expenses incurred in defending a civil or criminal action or proceeding in advance of the final disposition of such action or proceeding, upon receipt of an undertaking by the person indemnified to repay such payment if he shall be adjudicated to be not entitled to indemnification under Section 67, which undertaking may be accepted without reference to the financial ability of such person to make repayment. Any such indemnification may be provided although the person to be indemnified is no longer an officer, director, employee or agent of the corporation or of such other organization or no longer serves with respect to any such employee benefit plan. No indemnification shall be provided, however, for any person with respect to any matter as to which he shall have been adjudicated in any proceeding not to have acted in good faith in the reasonable belief that his action was in the best interest of the corporation or to the extent that such matter relates to service with respect to any employee benefit plan, in the best interests of the participants or beneficiaries of such employee benefit plan. The Company's articles of organization provide for indemnification to the fullest extent permitted under Section 67, except that indemnification for compromise payments and any advances of expenses prior to the final disposition of any matter shall only be made if approved by (1) a majority of disinterested directors or, if there are less than two disinterested directors, by a majority of the directors provided they have obtained a legal opinion that the director or officer acted in good faith in the reasonable belief that his action was in the best interests of the corporation, (2) holders of a majority of the shares of stock, or (3) by a court of competent jurisdiction. Advances of expense shall only be made upon receipt of an affidavit of such individual of his good faith belief that he has met the standard of conduct necessary for indemnification and an undertaking by such individual to repay the amounts so paid to the corporation if it is ultimately determined that indemnification for such expenses is not authorized.

The Company and its directors and officers currently carry liability insurance.

Item 8. Exhibits

The exhibits listed below represent a complete list of exhibits filed or incorporated by reference as part of this Registration Statement.

- 4.1 Restated Articles of Organization of the Company filed May 23, 1994 (incorporated herein by reference to Exhibit 3.1 to the Company's Quarterly Report on Form 10-Q filed on August 14, 2001).
- 4.2 Articles of Amendment filed on April 22, 1998 (incorporated herein by reference to Exhibit 3.2 to the Company's Quarterly Report on Form 10-Q filed on August 14, 2001).
- 4.3 Articles of Amendment filed on November 20, 2001 (incorporated herein by reference to Exhibit 4.3 to the Company's Registration Statement on Form S-8 filed on November 28, 2001).
- 4.4 By-laws of the Company, as amended, (incorporated herein by reference to Exhibit 3.2 to the Company's Annual Report on Form 10-K filed on March 6, 2000).
- 4.5 Amendment to the By-laws of the Company dated April 18, 2002 (incorporated herein by reference to Company's Annual Report on Form 10-K filed on March 7, 2003).
- *5.1 Legal opinion from Goodwin Procter LLP
- *23.1 Consent of KPMG LLP, as independent auditors
- 23.2 Consent of Goodwin Procter LLP (contained in the opinion filed as Exhibit 5.1 to this Registration Statement)
- 24.1 Power of attorney (included in the signatory page to this Registration Statement)
- *99.1 Bank of Granada Hills 1994 Stock Option Plan, as amended

*

Filed herewith

Item 9. Undertakings

- (a) The undersigned Company hereby undertakes:
- (1) To file, during any period in which offers or sales are being made, a post-effective amendment to the 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 20% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective Registration Statement; and

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KNOW ALL MEN BY THESE PRESENTS, that we, the undersigned officers and directors of Boston Private Financial Holdings, Inc., hereby severally constitute Timothy L. Vaill and Walter M. Pressey and each of them singly, our true and lawful attorneys with full power to them, and each of them singly, to sign for us and in our names in the capacities indicated below and in such other capacities as the undersigned may from time to time serve in the future, the Registration Statement filed herewith and any and all amendments to said Registration Statement, and generally to do all such things in our names and in our capacities as officers and directors to enable Boston Private Financial Holdings, Inc. to comply with the provisions of the Securities Act of 1933, and all requirements of the Securities and Exchange Commission, hereby ratifying and confirming our signatures as they may be signed by our said attorneys, or any of them, to said Registration Statement and any and all amendments thereto.

Pursuant to the requirements of the Securities Act of 1933, as amended, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

Signature	Title	Date
<u>/s/ TIMOTHY L. VAILL</u> Timothy L. Vaill	Director, Chairman and Chief Executive Officer (Principal Executive Officer)	February 27, 2004
<u>/s/ WALTER M. PRESSEY</u> Walter M. Pressey	Director, President and Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer)	February 27, 2004
<u>/s/ HERBERT S. ALEXANDER</u> Herbert S. Alexander	Director	February 27, 2004
<u>/s/ ARTHUR J. BAUERNFEIND</u> Arthur J. Bauernfeind	Director	February 27, 2004
<u>/s/ PETER C. BENNETT</u> Peter C. Bennett	Director	February 27, 2004
<u>/s/ EUGENE S. COLANGELO</u> Eugene S. Colangelo	Director	February 27, 2004
<u>Harold A. Fick</u>	Director	February , 2004
<u>/s/ KATHLEEN M. GRAVELINE</u> Kathleen M. Graveline	Director	February 27, 2004
<u>/s/ LYNN THOMPSON HOFFMAN</u> Lynn Thompson Hoffman	Director	February 27, 2004
<u>/s/ DR. ALLEN L. SINAI</u> Dr. Allen L. Sinai	Director	February 27, 2004

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/s/ RICHARD I. MORRIS, JR.

Richard I. Morris, Jr.

Director

February 27, 2004

Richard N. Thielen

Director

February , 2004

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QuickLinks

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SIGNATURES

POWER OF ATTORNEY

EXHIBIT INDEX