

MARSHALL & ILSLEY CORP/WI/  
Form S-8  
August 31, 2006

As filed with the Securities and Exchange Commission on August 31, 2006

Registration No. 333-\_\_\_\_\_

**UNITED STATES SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

**FORM S-8**

**REGISTRATION STATEMENT**

**Under**

**The Securities Act of 1933**

**MARSHALL & ILSLEY CORPORATION**

(Exact Name of Registrant as Specified in Charter)

**Wisconsin**  
(State of Incorporation)

**39-0968604**  
(I.R.S. Employer Identification No.)

**770 North Water Street**  
**Milwaukee, Wisconsin**  
(Address of Principal Executive  
Offices)

**53202**  
(Zip Code)

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Missouri State Bank & Trust Retirement Savings Plan

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**Randall J. Erickson**  
**Marshall & Ilsley Corporation**

**770 North Water Street**

**Milwaukee, Wisconsin 53202**

**(414) 765-7801**

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

**With copies to:**

**Larry D. Lieberman**

**Godfrey & Kahn, S.C.**

**780 North Water Street**

**Milwaukee, Wisconsin 53202**

**(414) 273-3500**

**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
Common Stock, \$1.00 par value	250,000 (1)	\$46.35 (2)	\$11,587,500 (2)	\$1,239.86 (2)

(1)

Pursuant to Rule 416(c) under the Securities Act of 1933, as amended (the Securities Act ), this registration statement also covers an indeterminate amount of interests to be offered or sold pursuant to the plan described herein.

(2)

Estimated solely for the purpose of calculating the registration fee in accordance with Rule 457(c) and (h) under the Securities Act based on the average of the high and low price per share of Marshall & Ilsley Corporation common stock on the New York Stock Exchange on August 25, 2006. No original issuance securities will be issued under the plan.

## PART II

### INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

#### Item 3.

##### Incorporation of Documents by Reference

The following documents are incorporated by reference in this Registration Statement (excluding any portions of such documents that have been furnished but not filed for purposes of the Securities Exchange Act of 1934, as amended, which is referred to herein as the Exchange Act ):

(a)

The Registrant's annual report on Form 10-K for the fiscal year ended December 31, 2005.

(b)

The Registrant's quarterly reports on Form 10-Q for the quarterly periods ended March 31, 2006 and June 30, 2006; the Registrant's current reports on Form 8-K filed January 20, 2006, March 7, 2006, March 17, 2006, March 27, 2006, April 3, 2006, April 25, 2006 and May 8, 2006; and the Registrant's current report on Form 8-K/A filed June 19, 2006.

(c)

The description of Marshall & Ilsley common stock set forth on the amended Form 8-A filed August 3, 2006 pursuant to Section 12 of the Securities and Exchange Act, including any amendment or report filed with the SEC for the purpose of updating this description.

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 which indicates that all shares offered have been sold or which deregisters all securities then remaining unsold, shall be deemed incorporated by reference in this Registration Statement and to be part hereof from the date of filing of such documents (excluding any portions of such documents that are furnished but not filed for purposes of the Exchange Act).

#### Item 6.

##### Indemnification of Directors and Officers

Sections 180.0850 to 180.0859 of the Wisconsin Business Corporation Law (the WBCL ) require a corporation to indemnify a director or officer, to the extent that he or she has been successful on the merits or otherwise in the defense of a proceeding, which includes any threatened, pending or completed civil, criminal, administrative or investigative action, suit, arbitration or other proceeding, whether formal or informal, which involves foreign, federal, state or local law and which is brought by or in the right of the corporation or by any other person, for all reasonable expenses incurred in the proceeding if the director or officer was a party because he or she is a director or officer of the corporation. A corporation is obligated to indemnify a director or officer against liability incurred by the director or officer in a proceeding to which the director or officer was a party because he or she is a director or officer of the corporation, which liability includes the obligation to pay a judgment, settlement, penalty, assessment, forfeiture or

fine, including any excise tax assessed with respect to an employee benefit plan, and all reasonable expenses including fees, costs, charges, disbursements, attorney fees and other expenses, unless such liability was incurred as a result of the breach or failure to perform a duty which the director or officer owes to the corporation and the breach or failure to perform constitutes: (i) a willful failure to deal fairly with the corporation or its shareholders in connection with a matter in which the director or officer has a material conflict of interest; (ii) a violation of criminal law, unless the director or officer had reasonable cause to believe that his or her conduct was lawful or no reasonable cause to believe that his or her conduct was unlawful; (iii) a transaction from which the director or officer derived an improper personal profit; or (iv) willful misconduct.

Unless otherwise provided in a corporation's articles of incorporation or by-laws, or by written agreement, the director or officer seeking indemnification is entitled to select one of the following means for determining his or her right to indemnification: (i) by majority vote of a disinterested quorum of the board of directors, or if such quorum of disinterested directors cannot be obtained, by a majority vote of a committee duly appointed by the board of directors of two or more disinterested directors; (ii) by independent legal counsel; (iii) by a panel of three arbitrators; (iv) by affirmative vote of shareholders; (v) by a court; or (vi) with respect to any additional right to indemnification, by any other method permitted in Section 180.0858 of the WBCL.

Reasonable expenses incurred by a director or officer who is a party to a proceeding may be paid or reimbursed by a corporation at such time as the director or officer furnishes to the corporation a written affirmation of his or her good faith belief that he or she has not breached or failed to perform his or her duties to the corporation and a written undertaking to repay any amounts advanced if it is determined that indemnification by the corporation is not required.

The indemnification provisions of Section 180.0850 to 180.0859 of the WBCL are not exclusive. A corporation may expand a director's or officer's rights to indemnification: (i) in its articles of incorporation or by-laws; (ii) by written agreement; (iii) by resolution of its board of directors; or (iv) by resolution that is adopted, after notice, by a majority of all of the corporation's voting shares then issued and outstanding.

As permitted by Section 180.0858 of the WBCL, Marshall & Ilsley has adopted indemnification provisions in its by-laws that closely track the statutory indemnification provisions of the WBCL with certain exceptions. In particular, Section 7.1 of Marshall & Ilsley's by-laws, among other items, provides that (i) an individual shall be indemnified unless it is proven by a final judicial adjudication that indemnification is prohibited and (ii) payment or reimbursement of expenses, subject to certain limitations, will be mandatory rather than permissive. As permitted by Section 180.0857 of the WBCL, Marshall & Ilsley has purchased directors' and officers' liability insurance that insures Marshall & Ilsley's directors and officers against certain liabilities that may arise under the Securities Act.

## **Item 8.**

### **Exhibits**

#### **5.1**

Opinion of counsel regarding the legality of the Common Stock is omitted in accordance with Item 8(a) of Form S-8. No original issuance securities will be issued under the plan.

#### **5.2**

Opinion of counsel regarding ERISA matters is omitted in accordance with Item 8(b) of Form S-8. The Registrant will submit the plan and all amendments thereto to the Internal Revenue Service in a timely manner and will make all changes required by the IRS to qualify the plan.

Consent of Deloitte & Touche LLP

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Powers of Attorney

**Item 9.**

**Undertakings** \*

The undersigned Registrant hereby undertakes:

(a)

(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% 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 information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed with or furnished to the Securities and Exchange Commission by the Registrant pursuant to Section 13 or Section 15(d) of the 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, 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 that remain unsold at the termination of the offering.

(b)

That, for the 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 Exchange Act of 1934 (and, each filing of the Plan's annual report pursuant to Section 15(d) of the 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 provisions described in Item 6 of this Registration Statement, or otherwise, the Registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act of 1933 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 of 1933 and will be governed by the final adjudication of such issue.

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\* Paragraphs correspond to Item 512(a), (b) and (h) of Regulation S-K.

## 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 Milwaukee, State of Wisconsin, on August 31, 2006.

MARSHALL & ILSLEY CORPORATION

By:

/s/ Dennis J. Kuester

Dennis J. Kuester,

Chairman and Chief Executive Officer

(Principal Executive Officer)

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Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the dates indicated:

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Gregory A. Smith</u> Gregory A. Smith	Senior Vice President and Chief Financial Officer (Principal Financial Officer)	August 31, 2006
<u>/s/ Patricia R. Justiliano</u> Patricia R. Justiliano	Senior Vice President and Corporate Controller (Principal Accounting Officer)	August 31, 2006

Directors:

Malcolm M. Aslin, Jon F. Chait, John W. Daniels, Jr., Mark F. Furlong, Ted D. Kellner, Dennis J. Kuester, Katharine C. Lyall, John A. Mellowes, Edward L. Meyer, Jr., San W. Orr, Jr., Peter M. Platten, III, Debra S. Waller, George E. Wardeberg and James B. Wigdale

\*By: /s/ Randall J. Erickson

Date: August 31, 2006

Randall J. Erickson

As Attorney-in-Fact\*

\*Pursuant to authority granted by powers of attorney, copies of which are filed herewith.

Pursuant to the requirements of the Securities Act of 1933, the plan administrator of the Missouri State Bank & Trust Retirement Savings Plan has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Milwaukee, State of Wisconsin, on August 31, 2006.

MISSOURI STATE BANK & TRUST RETIREMENT SAVINGS PLAN

By: /s/ Dennis R. Salentine

Dennis R. Salentine  
Vice President and  
Director of Corporate Benefits  
of Marshall & Ilsley Corporation

## EXHIBIT INDEX

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