

GERMAN AMERICAN BANCORP, INC.
Form S-4/A
December 07, 2015

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As filed with the Securities and Exchange Commission on December 7, 2015

Registration No. 333-208176

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**
Washington, D.C. 20549

AMENDMENT NO. 1

TO

FORM S-4

REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

GERMAN AMERICAN BANCORP, INC.

(Exact Name of Registrant as Specified in Its Charter)

Indiana
(State or Other Jurisdiction of
Incorporation or Organization)

6022
(Primary Standard Industrial
Classification Code Number)
711 Main Street, Box 810
Jasper, Indiana 47547-0810
(812) 482-1314

35-1547518
(IRS Employer
Identification Number)

(Address, Including Zip Code, and Telephone Number, Including Area Code, of Registrant's Principal Executive Offices)

Mark A. Schroeder
Chairman and Chief Executive Officer
German American Bancorp, Inc.
711 Main Street, Box 810
Jasper, Indiana 47547-0810
(812) 482-1314

(Name, Address, Including Zip Code, and Telephone Number, Including Area Code, of Agent For Service)

With copies to:

Jeremy E. Hill, Esq.
Bingham Greenebaum Doll LLP
2700 Market Tower
10 W. Market Street
Indianapolis, Indiana 46204
(317) 635-8900

Claudia V. Swhier, Esq.
Barnes & Thornburg LLP
11 South Meridian Street
Indianapolis, Indiana 46204
(317) 236-1313

Approximate date of commencement of proposed sale to the public:
From time to time after the effective date of this registration statement.

If the securities being registered on this Form are being offered in connection with the formation of a holding company and there is compliance with General Instruction G, check the following box.

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

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If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

Indicate by check mark whether the registrant is (check one):

Large accelerated filer Accelerated filer Non-accelerated filer Smaller reporting company
 If applicable, place an X in the box to designate the appropriate rule provision relied upon in conducting this transaction:

Exchange Act Rule 13e-4(i) (Cross-Border Issuer Tender Offer) Exchange Act Rule 14d-1(d) (Cross-Border Third-Party Tender Offer)

CALCULATION OF REGISTRATION FEE

| Title of Each Class of Securities to be Registered | Amount to be Registered(1) | Proposed Maximum Offering Price Per Unit | Proposed Maximum Aggregate Offering Price(2) | Amount of Registration Fee(3)(4) |
|--|----------------------------|--|--|----------------------------------|
| Common Shares, no par value | Up to 1,965,627 shares | N/A | \$63,750,442 | \$6,420 |

- (1) Represents the maximum number of common shares of German American Bancorp, Inc. (NASDAQ: GABC) ("German American") estimated to be issuable upon the completion of the merger of River Valley Bancorp (NASDAQ: RIVR) ("River Valley") with and into German American as of November 20, 2015, based on the product of multiplying (A) 2,552,762 shares of River Valley, representing the sum of the number of such shares then outstanding plus the number of unissued River Valley shares then reserved for issuance upon the exercise of outstanding stock options, by (B) 0.770 shares, representing the fixed exchange ratio specified by the merger agreement. Pursuant to Rule 416 under the Securities Act, this registration statement also covers any additional securities that may be offered or issued in connection with any stock split, stock dividend or similar transaction.
- (2) Pursuant to Rule 457(c) and 457(f) under the Securities Act of 1933, as amended, and solely for the purpose of calculating the registration fee, based upon \$34.94 per share, the average of the high and low prices of a share of River Valley common stock as reported on the NASDAQ Capital Market on November 18, 2015 (which date is within five business days prior to the date of the filing of this registration statement), multiplied by 2,552,762 shares of River Valley common stock that may be received by German American and/or cancelled upon consummation of the merger, less \$25,443,062, which is the estimated aggregate amount of cash expected to be paid by German American in exchange for shares of River Valley common stock.
- (3) Calculated in accordance with Section 6(b) of the Securities Act and SEC Fee Advisory #1 for Fiscal Year 2016 (at a rate equal to 0.0001007 multiplied by the proposed maximum aggregate offering price).
- (4) Previously paid in connection with the initial filing of this registration statement on November 23, 2015.

The Registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the Registrant files a further amendment which specifically states that this registration statement is to become effective in accordance with Section 8(a) of the Securities Act or until the registration statement becomes effective on the date the Commission, acting under Section 8(a), determines.

EXPLANATORY NOTE

German American Bancorp, Inc. is filing this Amendment No. 1 (this "Amendment") to its registration statement on Form S-4 (the "Registration Statement") as an exhibit-only filing to file Exhibits 5.1, 8.1, 23.3 and 23.4. Accordingly, this Amendment consists only of the cover page, this explanatory note, Part II of the Registration Statement, the signature pages to this Amendment and Exhibits 5.1, 8.1, 23.3 and 23.4. The proxy statement/prospectus contained in the Registration Statement is unchanged and has been omitted.

PART II
INFORMATION NOT REQUIRED IN PROSPECTUS

ITEM 20. INDEMNIFICATION OF OFFICERS AND DIRECTORS.

The Indiana Business Corporation Law ("IBCL"), the provisions of which govern German American, empowers an Indiana corporation to indemnify present and former directors, officers, employees or agents or any person who may have served at the request of the corporation as a director, officer, employee or agent of another corporation ("Eligible Persons") against liability incurred in any proceeding, civil or criminal, in which the Eligible Person is made a party by reason of being or having been in any such capacity or arising out of his status as such, if the individual acted in good faith and reasonably believed that (a) the individual was acting in the best interests of the corporation, (b) if the challenged action was taken other than in the individual's official capacity as an officer, director, employee or agent, the individual's conduct was at least not opposed to the corporation's best interests, or (c) if a criminal proceeding, either the individual had reasonable cause to believe his or her conduct was lawful or no reasonable cause to believe his or her conduct was unlawful.

The IBCL further empowers a corporation to pay or reimburse the reasonable expenses incurred by an Eligible Person in connection with the defense of any such claim including counsel fees, and, unless limited by its Articles of Incorporation, the corporation is required to indemnify an Eligible Person against reasonable expenses if he or she is wholly successful in any such proceeding, on the merits or otherwise. Under certain circumstances, a corporation may pay or reimburse an Eligible Person for reasonable expenses prior to final disposition of the matter. Unless a corporation's Articles of Incorporation otherwise provide, an Eligible Person may apply for indemnification to a court which may order indemnification upon a determination that the Eligible Person is entitled to indemnification in view of all the relevant circumstances without regard to whether his or her actions satisfied the appropriate standard of conduct.

Before a corporation may indemnify any Eligible Person against liability or reasonable expenses under the IBCL, a quorum consisting of directors who are not parties to the proceeding must (1) determine that indemnification is permissible in the specific circumstances because an Eligible Person met the requisite standard of conduct, (2) authorize the corporation to indemnify the Eligible Person and (3) if appropriate, evaluate the reasonableness of expenses for which indemnification is sought. If it is not possible to obtain a quorum of uninvolved directors, the foregoing action may be taken by a committee of two or more directors who are not parties to the proceeding, special legal counsel selected by the board of directors or such a committee, or by the shareholders of the corporation.

In addition to the foregoing, the IBCL states that the indemnification it provides shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any provision of the Articles of Incorporation, bylaws, resolution or other authorization adopted, after notice by a majority vote of all the voting shares then issued and outstanding. The IBCL also empowers an Indiana corporation to purchase and maintain insurance on behalf of any Eligible Person against any liability asserted against or incurred by him or her in any capacity as such, or arising out of his or her status as such, whether or not the corporation would have had the power to indemnify him or her against such liability.

The Restated Bylaws of German American contain provisions pursuant to which the officers and directors of German American are entitled to indemnification as a matter of right against expenses and liabilities incurred by them by reason of their having acted in such capacities if such person has been wholly successful in the defense of such claims or acted in good faith in what he or she reasonably believed to be in or not opposed to the best interests of German American. Such rights are not

exclusive of any other rights of indemnification to which such persons may be entitled by contract or a matter of law.

German American maintains directors' and officers' liability insurance, the effect of which is to indemnify the directors and officers of German American and its subsidiaries against certain losses caused by errors, misleading statements, wrongful acts, omissions, neglect or breach of duty by them of any matter claimed against them in their capacities as directors or officers.

Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers or persons controlling German American pursuant to the foregoing provisions, German American has been informed that in the opinion of the SEC such indemnification is against public policy as expressed in such Act and is therefore unenforceable.

The merger agreement filed as Exhibit 2.1 to this Registration Statement provides for indemnification of the past and present officers and directors of River Valley and its subsidiaries, for acts or omissions occurring at or prior to the completion of the merger, to the same extent as these individuals had rights of indemnification prior to the completion of the merger.

ITEM 21. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES.

(a)
Exhibits:

A list of the exhibits included as part of this registration statement is set forth on the index of exhibits immediately preceding such exhibits and is incorporated herein by reference.

(b)
Financial Statement Schedules:

All schedules for which provision is made in the applicable accounting regulations of the Securities and Exchange Commission have been omitted because they are not required, amounts which would otherwise be required to be shown with respect to any item are not material, are inapplicable or the required information has already been provided elsewhere or incorporated by reference in the registration statement.

ITEM 22. UNDERTAKINGS.

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 (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 end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Securities and Exchange 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 (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.

(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

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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.

(4) 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.

(5) That prior to any public reoffering of the securities registered hereunder through use of a prospectus which is a part of this registration statement, by any person or party who is deemed to be an underwriter within the meaning of Rule 145(c), the issuer undertakes that such reoffering prospectus will contain the information called for by the applicable registration form with respect to reofferings by persons who may be deemed underwriters, in addition to the information called for by the other items of the applicable form.

(6) That every prospectus (i) that is filed pursuant to paragraph (5), or (ii) that purports to meet the requirements of Section 10(a)(3) of the Securities Act and is used in connection with an offering of securities subject to Rule 415, will be filed as a part of an amendment to the registration statement and will not be used until such amendment is effective, and that, for purposes of determining any liability under the 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.

(7) 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 Securities and Exchange 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 Securities Act and will be governed by the final adjudication of such issue.

(8) To respond to requests for information that is incorporated by reference into the prospectus pursuant to Items 4, 10(b), 11 or 13 of this Form, within one (1) business day of receipt of such request, and to send the incorporated documents by first class mail or other equally prompt means. This includes information contained in documents filed subsequent to the effective date of the registration statement through the date of responding to the request.

(9) To supply by means of a post-effective amendment all information concerning a transaction, and the company being acquired involved therein, that was not the subject of and included in this registration statement when it became effective.

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Pursuant to the requirements of the Securities Act of 1933, this Amendment No. 1 to Registration Statement has been signed by the following persons in the capacities indicated below in the City of Jasper, State of Indiana, on December 7, 2015.

| Name | Capacity | Signature |
|--------------------|--|-----------------------|
| Mark A. Schroeder | Principal Executive Officer; Director | /s/ MARK A. SCHROEDER |
| Bradley M. Rust | Principal Financial and Accounting Officer | /s/ BRADLEY M. RUST |
| Douglas A. Bawel | Director | * |
| Christina M. Ernst | Director | * |
| Marc D. Fine | Director | * |
| U. Butch Klem | Director | * |
| J. David Lett | Director | * |
| Chris A. Ramsey | Director | * |
| M. Darren Root | Director | * |
| Thomas W. Seger | Director | * |
| Raymond W. Snowden | Director | * |
| Michael J. Voyles | Director | * |

*By: /s/ MARK A. SCHROEDER

Mark A. Schroeder
Attorney-in-Fact
December 7, 2015

Index to Exhibits

| Number | Description |
|---------------|--|
| 2.1 | Agreement and Plan of Reorganization by and among the Registrant, River Valley Bancorp, River Valley Financial Bank, and German American Bancorp, dated October 26, 2015, is included as Annex A to the proxy statement/prospectus included in this registration statement. |
| 3.1 | Restatement of the Articles of Incorporation of the Registrant is incorporated by reference from Exhibit 3.1 to the Registrant's Current Report on 8-K filed July 1, 2011. |
| 3.2 | Restated Bylaws of the Registrant, as amended and restated July 27, 2009, are incorporated by reference from Exhibit 3 to the Registrant's Current Report on Form 8-K filed July 31, 2009. |
| 4.1 | Specimen Certificate of the Registrant's Common Shares is incorporated by reference from Exhibit 99.1 to the Registrant's Current Report on Form 8-K filed October 21, 2010. |
| 4.2 | Terms of Common Shares and Preferred Shares of the Registrant (included in Restatement of Articles of Incorporation) are incorporated by reference from Exhibit 3 to the Registrant's Current Report on 8-K filed July 1, 2011. |
| 4.3 | No long-term debt instrument issued by the Registrant exceeds 10% of consolidated total assets or is registered. In accordance with paragraph 4 (iii) of Item 601(b) of Regulation S-K, the Registrant will furnish the Securities and Exchange Commission copies of long-term debt instruments and related agreements upon request. |
| 5.1 | Opinion of Bingham Greenebaum Doll LLP regarding the validity of the securities registered hereunder. |
| 8.1 | Opinion of Bingham Greenebaum Doll LLP regarding certain tax matters. |
| 10.1 | Voting Agreement is incorporated by reference from Exhibit 10.1 of the Registrant's Current Report on Form 8-K filed October 26, 2015 |
| 21.1 | Subsidiaries of the Registrant is incorporated by reference from Exhibit 21 to the Registrant's Annual Report on Form 10-K for its year ended December 31, 2014. |
| 23.1 | Consent of Crowe Horwath LLP (with respect to German American). |
| 23.2 | Consent of BKD, LLP (with respect to River Valley). |
| 23.3 | Consent of Bingham Greenebaum Doll LLP (validity) (included in Exhibit 5.1). |
| 23.4 | Consent of Bingham Greenebaum Doll LLP (tax matters) (included in Exhibit 8.1). |
| 24.1 | Power of Attorney to file future amendments. |
| 99.1 | Form of River Valley Bancorp proxy card. |
| 99.2 | Consent of Keefe, Bruyette & Woods, Inc. |

Previously filed.

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