

GREEN BANKSHARES, INC.
Form SC 13D
September 15, 2011

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

SCHEDULE 13D

Under the Securities Exchange Act of 1934

Green Bankshares, Inc.

(Name of Issuer)

COMMON STOCK, PAR VALUE \$0.01 PER SHARE

(Title of Class of Securities)

394361208

(CUSIP Number)

Christopher G. Marshall

North American Financial Holdings, Inc.

9350 South Dixie Highway

Miami, Florida 33156

Telephone: (305) 670-0200

Edgar Filing: GREEN BANKSHARES, INC. - Form SC 13D

(Name, Address and Telephone Number of Person Authorized to Receive Notices and Communications)

With a copy to:

David E. Shapiro

Wachtell, Lipton, Rosen & Katz

51 West 52nd Street

New York, New York 10019

September 7, 2011

(Date of Event Which Requires Filing of This Statement)

If the filing person has previously filed a statement on Schedule 13G to report the acquisition that is the subject of this Schedule 13D, and is filing this schedule because of §§ 240.13d-1(e), 240.13d-1(f) or 240.13d-1(g), check the following box: " ☐ .

Note: Schedules filed in paper format shall include a signed original and five copies of the schedule, including all exhibits. *See* § 240.13d-7 for other parties to whom copies are to be sent.

* The remainder of this cover page shall be filled out for a reporting person's initial filing on this form with respect to the subject class of securities, and for any subsequent amendment containing information which would alter disclosures provided in a prior cover page. The information required on the remainder of this cover page shall not be deemed to be filed for the purpose of Section 18 of the Securities Exchange Act of 1934 (" Act ") or otherwise subject to the liabilities of that section of the Act but shall be subject to all other provisions of the Act (however, see the Notes).

1. NAME OF REPORTING PERSON:

North American Financial Holdings, Inc.

2. CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP

(a) ☐ (b) ☒

3. SEC USE ONLY

4. SOURCE OF FUNDS:

WC

5. CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEM 2(d) OR 2(e) ☐

6. CITIZENSHIP OR PLACE OF ORGANIZATION:

Delaware

7. SOLE VOTING POWER:

NUMBER OF 119,900,000 Shares (1)

SHARES

8. SHARED VOTING POWER:

BENEFICIALLY

OWNED BY 0 Shares

9. SOLE DISPOSITIVE POWER:

REPORTING

PERSON

119,900,000 Shares (1)

WITH

10. SHARED DISPOSITIVE POWER:

0 Shares

11. AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

119,900,000 Shares (1)

12. CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES ☐

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13. PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

14. 90.03%
TYPE OF REPORTING PERSON:

CO

(1) The information set forth in Items 3, 4, 5 and 6 is incorporated herein by reference.

ITEM 1. Security and Issuer.

This Schedule 13D (this Statement) relates to the common stock, par value \$0.01 per share (the Common Stock), of Green Bankshares, Inc., a Tennessee corporation (the Company). The Company's principal executive offices are located at 3100 North Main Street, Greeneville, Tennessee 37743-4992.

ITEM 2. Identity and Background.

The name of the person filing this Statement is North American Financial Holdings, Inc. (the Investor), a bank holding company. The Investor is a corporation organized under the laws of the State of Delaware. The Investor's principal business address is 9350 South Dixie Highway, Miami, Florida 33156, Telephone: (305) 670-0200.

The business address of each of the following individuals is c/o North American Financial Holdings, Inc., 9350 South Dixie Highway, Miami, Florida 33156. Each of the following individuals is a citizen of the United States of America.

The Investor's Directors: R. Eugene Taylor (Chairman), Richard M. DeMartini, Peter N. Foss, William A. Hodges, Marc D. Oken and Jeffrey E. Kirt.

The Investor's Executive Officers: R. Eugene Taylor (Chairman and Chief Executive Officer), Christopher G. Marshall (Chief Financial Officer), R. Bruce Singletary (Chief Risk Officer) and Kenneth A. Posner (Chief Investment Analytics and Research).

Neither the Investor nor any of the officers or directors listed above has, during the last five years, (i) been convicted in a criminal proceeding (excluding traffic violations or similar misdemeanors) or (ii) been a party to a civil proceeding of a judicial or administrative body of competent jurisdiction and as a result of such proceeding was or is subject to a judgment, decree or final order enjoining future violations of, or prohibiting or mandating activities subject to, federal or state securities laws or finding any violation with respect to such laws.

Item 3. Source and Amount of Funds or Other Consideration.

As more fully described in Item 6 below, on May 5, 2011, the Investor entered into an investment agreement (the Investment Agreement) with the Company and GreenBank, a Tennessee corporation and wholly owned subsidiary of the Company (the Bank), pursuant to which, on September 7, 2011, the Company completed the issuance and sale to the Investor of 119,900,000 shares of Common Stock (the Securities) for aggregate consideration of \$217,019,000. In connection with the Investment, each existing Company shareholder received one contingent value right (CVR) per share that entitles the holder to receive up to \$0.75 in cash per CVR at the end of a five-year period based on the credit performance of the Bank's loan portfolio as of May 5, 2011. Also in connection with the Investment, pursuant to an agreement among the Investor and the U.S. Department of the Treasury (the Treasury), the Company's Fixed Rate Cumulative Perpetual Preferred Stock, Series A and warrant to purchase shares of common stock issued by the Company to the Treasury in connection with the Treasury's Troubled Asset Relief Program were purchased by the Investor and are no longer outstanding. A copy of each of the Investment Agreement and the CVR agreement is attached hereto as Exhibit 1 and incorporated herein by reference.

The Investor funded the purchase of the Securities from working capital, which funds were originally obtained through one or more private offerings conducted by the Investor.

ITEM 4. Purpose of the Transaction

The information set forth in Items 3 and 6 is incorporated herein by reference.

The Investor acquired the Securities as described in Item 3 pursuant to the Investment Agreement and in connection with the Investor's acquisition of the Common Stock. The Investor currently intends, although it is not required, to maintain its position as the principal shareholder of the Company and play a major role in the strategic direction of the Company.

On September 8, 2011, the board of directors of the Investor adopted a plan of merger (the "Plan of Merger") pursuant to which the Company will merge with and into the Investor, with the Investor as the surviving corporation (the "Merger"). The Plan of Merger was adopted under a provision of Tennessee law that permits holders of at least 90% or more of the stock of a subsidiary to merge with that subsidiary without the approval of the subsidiary's shareholders.

The Plan of Merger provides that each share of Company Common Stock issued and outstanding immediately prior to the completion of the Merger, except for specified shares of Company Common Stock held by the Investor or the Company, will be converted into the right to receive 0.0915 of a share of the Investor's Class A common stock, with cash in lieu of any fractional shares.

A copy of the Plan of Merger is attached hereto as Exhibit 2 and incorporated herein by reference.

Notwithstanding the foregoing, the Investor may determine to change its intent with respect to its ownership interest in the Company at any time in the future. In reaching any conclusion as to its future course of action, the Investor may take into consideration various factors, such as the Company's condition, business, operations, assets, liabilities and prospects, other developments concerning the Company and the industry in which it operates, changes or potential changes in laws and regulations, other business opportunities available to the Investor, developments with respect to the businesses of the Investor, tax considerations, and general economic and equity, fixed income and other market conditions, including, but not limited to, the market price of the Common Stock. The Investor reserves the right, based on all relevant factors, alone or in conjunction with others, including the Company, (a) to acquire additional shares of the Common Stock in the open market, in privately negotiated transactions or in affiliate transactions with or from the Company or the Company's subsidiaries, (b) to dispose of all or a portion of its holdings of the Common Stock or other Securities, (c) to undertake an extraordinary corporate transaction such as a merger, consolidation, other business combination or reorganization involving the Company other than the Merger, or (d) to take any other action similar to those listed above.

Except as set forth above, the Investor does not have any current plans or proposals that relate to or would result in any of the matters set forth in paragraphs (a) through (j), inclusive, of

Item 4 of Schedule 13D. However, the Investor reserves the right to change its intention with respect to any or all of the matters referred to in this Item, which could include, but is not limited to, any of the items enumerated in paragraphs (a) through (j), inclusive, of Item 4 of Schedule 13D.

ITEM 5. Interest in Securities of the Issuer

The information contained on the cover pages to this Schedule 13D and the information set forth or incorporated in Items 2, 3, 4 and 6 is incorporated herein by reference.

As of the date on which this Statement was initially filed, the Investor beneficially owns a total of 119,900,000 shares of Common Stock, which in the aggregate represents 90.03% of the Company's outstanding Common Stock as of September 15, 2011.

Item 6. Contracts, Arrangements, Understandings or Relationships with Respect to Securities of the Issuer.

The information set forth in Items 2, 3, 4 and 5 is incorporated herein by reference.

Investment Agreement

On May 5, 2010, the Investor entered into the Investment Agreement with the Company and Bank, pursuant to which on September 7, 2011, the Investor acquired the Securities in exchange for aggregate consideration of \$217,019,000.

The Investment Agreement includes, among other things, provisions appointing the following individuals to the Board of Directors of the Company: Mr. R. Eugene Taylor, the Investor's Chairman and Chief Executive Officer; Mr. Christopher G. Marshall, the Investor's Chief Financial Officer; and Mr. Bruce R. Singletary, the Investor's Chief Risk Officer. In addition, Mr. Peter N. Foss and Mr. William A. Hodges were appointed to the Board of Directors of the Company. Ms. Martha M. Bachman and Dr. Samuel E. Lynch will remain on the Board of Directors of the Company and the Board of Directors of the Bank. Also on September 7, 2011, the Company and the Bank each entered into customary indemnification agreements with the above directors. The Investment Agreement is attached hereto as Exhibit 3 and incorporated herein by reference.

Registration Rights Agreement

The Company entered into a Registration Rights Agreement with the Investor, dated September 7, 2011, granting the Investor customary registration rights, including shelf registration rights, demand registration rights and piggyback registration rights with respect to the Securities purchased by the Investor under the Investment Agreement. Such Registration Rights Agreement is attached hereto as Exhibit 4 and incorporated herein by reference.

ITEM 7. Material to be Filed as Exhibits

Exhibit	Document
Exhibit 1	Contingent Value Rights Agreement, dated September 7, 2011, by the Company (incorporated herein by reference to Exhibit 10.1 to the Current Report on Form 8-K filed by the Company with the Commission on September 7, 2011)
Exhibit 2	Plan of Merger adopted by the Board of Directors of North American Financial Holdings, Inc. on September 8, 2011 (incorporated by reference to Exhibit 2.2 to the Registration Statement on Form S-4 filed by North American Financial Holdings, Inc. on September 8, 2011 (Commission File Number 333-176725)).
Exhibit 3	Investment Agreement (incorporated herein by reference to Exhibit 10.1 to the Current Report on Form 8-K filed by the Company with the Commission on May 6, 2011)
Exhibit 4	Registration Rights Agreement dated September 7, 2011, by and between the Company and North American Financial Holdings, Inc. (incorporated herein by reference to Exhibit 10.2 to the Current Report on Form 8-K filed by the Company with the Commission on September 7, 2011)

SIGNATURES

After reasonable inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

Dated: September 15, 2011

North American Financial Holdings, Inc.

By: /s/ Christopher G. Marshall

Name: Christopher G. Marshall

Title: Chief Financial Officer

Exhibit Index

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