

BFC FINANCIAL CORP  
Form 8-K  
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**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**  
**Washington, D.C. 20549**

**FORM 8-K**

**CURRENT REPORT**

**Pursuant to Section 13 or 15(d)**

**of The Securities Exchange Act of 1934**

**Date of Report (Date of earliest event reported): July 2, 2014**

**BFC FINANCIAL CORPORATION**  
**(Exact name of registrant as specified in its charter)**

<b>Florida</b> (State or other jurisdiction of incorporation)	<b>001-09071</b> (Commission File Number)	<b>59-2022148</b> (IRS Employer Identification No.)
<b>401 East Las Olas Boulevard, Suite 800, Fort Lauderdale, Florida</b> (Address of principal executive offices)		<b>33301</b> (Zip Code)
<b>Registrant's telephone number, including area code: 954-940-4900</b>		

**Not applicable**

**(Former name or former address, if changed since last report.)**

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

## Item 8.01 Other Events.

As previously disclosed, the shareholders of BFC Financial Corporation ( BFC ) approved the BFC Financial Corporation 2014 Stock Incentive Plan (the Plan ) at BFC s 2014 Annual Meeting of Shareholders held on June 12, 2014. In connection with such approval and the effectiveness of the Plan, BFC will be filing a Registration Statement on Form S-8 (the S-8 ) to register the shares of its Class A Common Stock and Class B Common Stock (and related preferred share purchase rights) issuable pursuant to restricted stock awards and stock options granted under the Plan. In accordance with the rules and regulations of the Securities and Exchange Commission (the SEC ), BFC is filing this Current Report on Form 8-K, which will be incorporated by reference into the S-8, solely for the purpose of updating the description of BFC s capital stock contained in previously-filed Registration Statements on Form 8-A.

### DESCRIPTION OF BFC S CAPITAL STOCK

The following summary of BFC s capital stock is subject in all respects to applicable Florida law, including the Florida Business Corporation Act (the FBCA ), the relevant provisions of BFC s Amended and Restated Articles of Incorporation and Bylaws, in each case as amended, and the Rights Agreement (as hereinafter defined). BFC s Amended and Restated Articles of Incorporation and Bylaws, including each amendment thereto, and the Rights Agreement are filed as exhibits to BFC s Annual Report on Form 10-K for the year ended December 31, 2013, filed with the SEC on March 17, 2014.

#### Shares Authorized and Outstanding

BFC s authorized capital stock currently consists of (i) 150,000,000 shares of Class A Common Stock, par value \$0.01 per share, (ii) 20,000,000 shares of Class B Common Stock, par value \$0.01 per share, and (iii) 10,000,000 shares of Preferred Stock, par value \$0.01 per share, of which 15,000 shares have been designated 5% Cumulative Preferred Stock and 2,000,000 shares have been designated Series A Junior Participating Preferred Stock. As of June 18, 2014, 71,640,890 shares of BFC s Class A Common Stock, 7,510,894 shares of BFC s Class B Common Stock, and 15,000 shares of BFC s 5% Cumulative Preferred Stock were issued and outstanding, and BFC had not issued any shares of its Series A Junior Participating Preferred Stock.

#### Voting Rights

Except as provided by the FBCA or as specifically provided in BFC s Amended and Restated Articles of Incorporation, holders of BFC s Class A Common Stock and Class B Common Stock vote as a single group on matters presented to them for a shareholder vote. Each share of BFC s Class A Common Stock is entitled to one vote and BFC s Class A Common Stock represents in the aggregate 22% of the total voting power of BFC s Class A Common Stock and Class B Common Stock. Each share of BFC s Class B Common Stock is entitled to the number of votes per share necessary to cause BFC s Class B Common Stock to represent in the aggregate 78% of the total voting power of BFC s Class A Common Stock and Class B Common Stock. These fixed voting percentages will remain in effect until the total number of outstanding shares of BFC s Class B Common Stock falls below 1,800,000 shares. If the total number of outstanding

shares of BFC's Class B Common Stock is less than 1,800,000 shares but greater than 1,400,000 shares, then BFC's Class A Common Stock will represent in the aggregate a voting percentage equal to 40% and BFC's Class B Common Stock will represent in the aggregate a voting percentage equal to the remaining 60%. If the total number of outstanding shares of BFC's Class B Common Stock is less than 1,400,000 shares but greater than 500,000 shares, then BFC's Class A Common Stock will represent in the aggregate a voting percentage equal to 53% and BFC's Class B Common Stock will represent in the aggregate a voting percentage equal to the remaining 47%. If the total number of outstanding shares of BFC's Class B Common Stock is less than 500,000 shares, then each share of BFC's Class A Common Stock and Class B Common Stock will be entitled to one vote. Each of the above-described share thresholds is subject to ratable adjustment in connection with any stock split, reverse stock split, recapitalization or other similar transaction affecting BFC's Class B Common Stock.

If issued, each one one-hundredth of a share of BFC's Series A Junior Participating Preferred Stock will have the same voting power as one share of BFC's Class A Common Stock (with all outstanding shares of BFC's Class A Common Stock and Series A Junior Participating Preferred Stock representing, in the aggregate, 22% of the general voting power of BFC, subject to adjustment in accordance with BFC's Amended and Restated Articles of Incorporation, as described above). Except as provided in the FBCA, holders of BFC's 5% Cumulative Preferred Stock have no voting rights with respect to such stock.

Under the FBCA, holders of BFC's Class A Common Stock are entitled to vote as a separate voting group on amendments to BFC's Amended and Restated Articles of Incorporation which require the approval of BFC's shareholders under the FBCA and would:

effect an exchange or reclassification of all or part of the shares of BFC's Class A Common Stock into shares of another class;

effect an exchange or reclassification, or create a right of exchange, of all or part of the shares of another class into shares of BFC's Class A Common Stock;

change the designation, rights, preferences, or limitations of all or part of the shares of BFC's Class A Common Stock;

change all or part of the shares of BFC's Class A Common Stock into a different number of shares of Class A Common Stock;

create a new class of shares which have rights or preferences with respect to distributions or to dissolution that are prior or superior to BFC's Class A Common Stock;

increase the rights, preferences or number of authorized shares of any class that, after giving effect to the amendment, have rights or preferences with respect to distributions or to dissolution that are prior or superior to BFC's Class A Common Stock;

limit or deny an existing preemptive right of all or part of the shares of BFC's Class A Common Stock; or

cancel or otherwise affect rights to distributions or dividends that have accumulated but have not yet been declared on all or part of the shares of BFC's Class A Common Stock.

However, if a proposed amendment that would otherwise entitle the holders of BFC's Class A Common Stock to vote as a separate voting group as a result of the amendment having one of the effects described above would affect the holders of BFC's Class B Common Stock or any of

BFC's other securities in the same or substantially similar way, then the holders of BFC's Class A Common Stock will not be entitled to vote as a separate voting group on the proposed amendment but instead will vote together with the other similarly affected shareholders as a single voting group on the amendment.

Under the FBCA, holders of BFC's Class B Common Stock and 5% Cumulative Preferred Stock are each entitled to vote as a separate voting group, and, if issued, holders of BFC's Series A Junior Participating Preferred Stock would be entitled to vote as a separate voting group, on any amendment to BFC's Amended and Restated Articles of Incorporation which require the approval of BFC's shareholders under the FBCA and would affect the rights of the holders of BFC's Class B Common Stock, 5% Cumulative Preferred Stock or Series A Junior Participating Preferred Stock, as the case may be, in substantially the same manner as described above with respect to BFC's Class A Common Stock. Holders of BFC's Class A Common Stock, Class B Common Stock, 5% Cumulative Preferred Stock and Series A Junior Participating Preferred Stock are each also entitled to vote as a separate voting group on any plan of merger or plan of share exchange that requires the approval of BFC's shareholders under the FBCA and contains a provision which, if included in a proposed amendment to BFC's Amended and Restated Articles of Incorporation, would require their vote as a separate voting group.

In addition to the rights afforded to BFC's shareholders under the FBCA, BFC's Amended and Restated Articles of Incorporation provide that the approval of the holders of BFC's Class B Common Stock, voting as a separate voting group, will be required before any of the following actions may be taken:

the issuance of any additional shares of BFC's Class B Common Stock, subject to certain limited exceptions;

a reduction in the number of outstanding shares of BFC's Class B Common Stock, except any reduction by virtue of a conversion of shares of BFC's Class B Common Stock into shares of BFC's Class A Common Stock or a voluntary disposition to BFC; or

any amendments of the voting rights provisions of BFC's Amended and Restated Articles of Incorporation. BFC's Amended and Restated Articles of Incorporation do not provide for cumulative voting on the election of directors.

### **Ownership Restrictions**

Other than as described below with respect to BFC's Rights Agreement, there currently are no limitations on the amount of shares of BFC's Class A Common Stock or Class B Common Stock that a shareholder may own.

### **Convertibility of Class B Common Stock**

Holders of BFC's Class B Common Stock possess the right, at any time, to convert any or all of their shares of Class B Common Stock into shares of BFC's Class A Common Stock on a share-for-share basis.

### **Dividends and Other Distributions; Liquidation Rights**

Holders of BFC's 5% Cumulative Preferred Stock are entitled to receive, when and as declared by BFC's board of directors, cumulative quarterly cash dividends on each such share at a rate per annum of 5% of the stated value of \$1,000 per share from the date of issuance. No dividend or other distribution (other than a dividend or distribution payable solely in BFC's Class A Common Stock or Class B Common Stock) shall be paid on or set apart for payment on BFC's Class A Common Stock or Class B Common Stock until such time as all accrued and unpaid dividends on BFC's 5% Cumulative Preferred Stock have been or contemporaneously are declared or paid and a sum is set apart sufficient for payment of such accrued and unpaid dividends.

Subject to the foregoing, holders of BFC's Class A Common Stock and Class B Common Stock are entitled to receive cash dividends, when and as declared by BFC's board of directors out of legally available assets. Any distribution per share with respect to BFC's Class A Common Stock will be identical to the distribution per share with respect to BFC's Class B Common Stock, except that a stock dividend or other non-cash distribution to holders of BFC's Class A Common Stock may be declared and issued only in the form of Class A Common Stock while a dividend or other non-cash distribution to holders of BFC's Class B Common Stock may be declared and issued in the form of either Class A Common Stock or Class B Common Stock at the discretion of BFC's board of directors, provided that the number of any shares so issued or any non-cash distribution is the same on a per share basis.

The 5% Cumulative Preferred Stock liquidation preference in the event of BFC's voluntary liquidation or winding up is equal to its stated value of \$1,000 per share plus any accumulated and unpaid dividends or an amount equal to the redemption price described below under Preemptive or Payment Rights; Redemption of 5% Cumulative Preferred Stock. Upon any liquidation, the assets legally available for distribution to BFC's shareholders after payment of the 5% Cumulative Preferred Stock liquidation preference will be distributed ratably among the holders of BFC's Class A Common Stock and Class B Common Stock.

See Provisions of BFC's Series A Junior Participating Preferred Stock below for a discussion of the dividend rate applicable to, and liquidation preference of, BFC's Series A Junior Participating Preferred Stock.

### **Preemptive or Payment Rights; Redemption of 5% Cumulative Preferred Stock**

BFC's shareholders have no preemptive rights, and there are no sinking fund provisions or, except with respect to BFC's 5% Cumulative Preferred Stock and preferred share purchase rights issued under BFC's Rights Agreement, redemption provisions relating to any shares of BFC's capital stock. In addition, except as it relates to BFC's Rights Agreement, BFC's shareholders in general do not have any subscription or other similar rights to purchase shares of any class of BFC's capital stock.

BFC's 5% Cumulative Preferred Stock may be redeemed at BFC's option at any time and from time to time at a redemption price of \$1,005 per share if the redemption occurs during the twelve-month period ending April 29, 2015, and thereafter at a redemption price of \$1,000 per share. In addition, BFC is required to redeem 5,000 shares of its 5% Cumulative Preferred Stock for an aggregate redemption price of \$5,000,000 (\$1,000 per share) during each of the years ending December 31, 2018, 2019 and 2020, to the extent not previously redeemed pursuant to the optional redemption right. As of the date of this Current Report on Form 8-K, BFC has not redeemed any shares of its 5% Cumulative Preferred Stock.

### **Provisions of BFC's Series A Junior Participating Preferred Stock**

The value of one one-hundredth of a share of BFC's Series A Junior Participating Preferred Stock is intended to approximate the value of one share of BFC's Class A Common Stock. Each one one-hundredth of a share of BFC's Series A Junior Participating Preferred Stock, if issued:

will not be redeemable;

will rank, with respect to the payment of dividends and other distributions, senior to BFC's Class A Common Stock and Class B Common Stock and junior to each series of Preferred Stock, including BFC's 5% Cumulative Preferred Stock, unless the terms of such series of Preferred Stock provide otherwise;

will entitle the holder thereof to, when, as and if declared by BFC's board of directors, dividend payments of \$0.01, or an amount equal to the dividend paid on one share of BFC's Class A Common Stock, whichever is greater;

will entitle the holder thereof, upon the liquidation of BFC, either to receive \$1.00 or an amount equal to the payment made on one share BFC's Class A Common Stock, whichever is greater;

will have the same voting power as one share of BFC's Class A Common Stock (with all outstanding shares of BFC's Class A Common Stock and Series A Junior Participating Preferred Stock representing, in the aggregate, 22% of the general voting power of BFC, subject to adjustment in accordance with BFC's Amended and Restated Articles of Incorporation, as described above); and

will entitle the holder thereof to a payment equal to the payment made on one share of BFC's Class A Common Stock if shares of Class A Common Stock are exchanged via merger, consolidation or a similar transaction.

### **Authority of BFC's Board of Directors with Respect to Additional Series of Preferred Stock**

Under BFC's Amended and Restated Articles of Incorporation and as permitted by the FBCA, BFC's board of directors has the authority to provide for the issuance of shares of Preferred Stock in one or more series, in addition to those currently designated, and to fix the preferences, powers and relative, participating, optional or other special rights, qualifications, limitations and restrictions thereof, including the dividend rate, conversion rights, voting rights, redemption rights and liquidation preference, and to fix the number of shares to be included in any such series



without any further vote or action by BFC's shareholders (unless approval of the holders of BFC's Class B Common Stock is required, as described above, or shareholder approval is necessary to increase the number of authorized shares of Preferred Stock). Any series of Preferred Stock so issued may rank senior to BFC's Class A Common Stock and Class B Common Stock with respect to the payment of dividends or amounts upon liquidation, dissolution or winding up, or both. The issuance of Preferred Stock, including in a series with voting and/or conversion rights, may have the effect of delaying, deferring or preventing a change in control of BFC without further action by BFC's shareholders and may adversely affect the voting and other rights of the holders of BFC's Class A Common Stock and Class B Common Stock.

### **Rights Agreement**

On September 21, 2009, BFC entered into a Rights Agreement with American Stock Transfer & Trust Company, LLC, as rights agent (the Rights Agreement). Under the terms and conditions of the Rights Agreement, a dividend of one preferred share purchase right was paid with respect to each outstanding share of BFC's Class A Common Stock and Class B Common Stock. The Rights Agreement attempts to protect BFC's ability to use available net operating losses to offset future taxable income by providing a deterrent to shareholders (subject to certain exceptions) from acquiring a 5% or greater ownership interest in BFC's Class A Common Stock and Class B Common Stock without the prior approval of BFC's board of directors, after which time and the expiration of a limited interim period, the purchase rights would become exercisable. If the purchase rights become exercisable, all holders of the rights, except the acquiring person or group and its or their affiliates and transferees, may, for \$8.00 per right, purchase shares of BFC's Class A Common Stock having a market value of \$16.00 (or, at the option of BFC, the number of one-one hundredths of a share of Series A Junior Participating Preferred Stock equal to the number of shares of BFC's Class A Common Stock having a market value of \$16.00). Prior to exercise, the preferred share purchase rights do not give their holders any dividend, voting or liquidation rights. The Rights Agreement was not adopted in response to any effort to acquire control of BFC. However, the Rights Agreement may have an anti-takeover effect and will be an impediment to a proposed takeover which is not approved by BFC's board of directors.

### **Certain Anti-Takeover Effects**

In addition to the Rights Agreement, the terms of BFC's Class A Common Stock and Class B Common Stock make the sale or transfer of control of BFC or the removal of BFC's incumbent directors unlikely without the concurrence of the holders of BFC's Class B Common Stock. BFC's Amended and Restated Articles of Incorporation and Bylaws also contain other provisions which could have anti-takeover effects. These provisions include, without limitation, the previously described authority of BFC's board of directors to provide for the issuance of additional shares in one or more series of Preferred Stock and to fix the relative rights and preferences of the Preferred Stock without the need for any shareholder vote or approval, subject to certain limited exceptions, and advance notice procedures to be complied with by BFC's shareholders in order to make shareholder proposals or nominate directors.

### **State Anti-Takeover Statutes**

The FBCA provides that the voting rights to be accorded control shares (as defined below) of a Florida corporation that has (i) 100 or more shareholders, (ii) its principal place of business, its principal office or substantial assets in Florida and (iii) either more than 10% of its shareholders residing in Florida, more than 10% of its shares owned by Florida residents or 1,000 shareholders residing in Florida, must be approved by a majority of each class of voting securities of the corporation, excluding those shares held by interested persons, (as defined below) before the control shares will be granted any voting rights. Control shares are defined in the FBCA as shares acquired by a person, either directly or indirectly, that when added to all other shares of the issuing corporation owned by that person, would entitle that person to exercise, either directly or indirectly, voting power within any of the following ranges: (i) 20% or more but less than 33% of all voting power of the corporation's voting securities; (ii) 33% or more but less than a majority of all voting power of the corporation's voting securities; or (iii) a majority or more of all voting power of the corporation's voting securities. These provisions do not apply to shares acquired under, among other things, an agreement or plan of merger or share exchange effected in compliance with the relevant provisions of the FBCA and to which the corporation is a party, or an acquisition of shares previously approved by the board of directors of the corporation.

The FBCA also provides that, if any person who, together with such person's affiliates and associates, beneficially owns 10% or more of any voting stock of a corporation (referred to as an interested person), is a party to any merger, consolidation, disposition of all or a substantial part of the assets of the corporation or a subsidiary of the corporation or other business combination requiring shareholder approval under the FBCA, such transaction requires approval by the affirmative vote of the holders of two-thirds of the voting shares other than the shares beneficially owned by the interested person; provided, that such approval is not required if (i) a majority of the disinterested directors has approved the interested person transaction; (ii) the corporation has not had more than 300 shareholders of record at any time during the three years preceding the date of the transaction's announcement; (iii) the interested person has been the beneficial owner of at least 80% of the corporation's outstanding voting securities for at least five years preceding the date of the transaction's announcement; (iv) the interested person is the beneficial owner of at least 90% of the outstanding voting securities of the corporation, exclusive of shares acquired directly from the corporation in a transaction not approved by a majority of the disinterested directors; (v) the corporation is an investment company registered under the Investment Company Act of 1940; or (vi) the consideration that the corporation's shareholders will receive in the transaction meets certain minimum levels determined by a formula under Section 607.0901(4)(f) of the FBCA.

### **Limitation on Liability and Indemnification of Directors and Officers**

The FBCA generally provides that a director of a Florida corporation is not personally liable for monetary damages to the corporation or any other person for any statement, vote, decision or failure to act regarding corporate management or policy, unless the director breached or failed to perform his or her duties as a director and the director's breach or failure to perform those duties constitutes; (i) a violation of criminal law, unless the director had reasonable cause to believe his or her conduct was lawful or had no reasonable cause to believe his or her conduct was unlawful; (ii) a transaction from which the director derived an improper personal benefit, either

directly or indirectly; (iii) an unlawful distribution; (iv) in a proceeding by or in the right of the corporation or in the right of a shareholder, conscious disregard for the best interests of the corporation or willful misconduct; or (v) in a proceeding by or in the right of someone other than the corporation or a shareholder, recklessness or an act or omission which was committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety or property.

In addition, the FBCA provides that a Florida corporation has the power to indemnify any person who was or is a party to any proceeding (other than an action by, or in the right of, the corporation), because he or she was a director, officer, employee or agent of the corporation or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against liability incurred in connection with such proceeding, including any appeal thereof, if he or she acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of the corporation and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful.

The FBCA further provides that a Florida corporation has the power to indemnify any person who was or is a party to any proceeding by or in the right of the corporation to procure a judgment in its favor because that person is or was a director, officer, employee or agent of the corporation or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, or other enterprise, against expenses and amounts paid in settlement not exceeding, in the judgment of the board of directors of the corporation, the estimated expense of litigating the proceeding to conclusion, actually and reasonably incurred in connection with the defense or settlement of such proceeding, including any appeal thereof. Such indemnification is authorized if such person acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of the corporation, except that no indemnification with regard to a proceeding by or in the right of the corporation is to be made in respect of any claim, issue or matter as to which such person has been found liable unless, and only to the extent that, the court in which the proceeding was brought, or any other court of competent jurisdiction, determines upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper.

Under the FBCA, to the extent that a director, officer, employee or agent of a Florida corporation has been successful on the merits or otherwise in defense of any proceeding referred to in the preceding two paragraphs, or in defense of any claim, issue or matter therein, he or she shall be indemnified against expenses actually and reasonably incurred by him or her in connection therewith.

BFC's Amended and Restated Articles of Incorporation and Bylaws contain indemnification provisions substantially similar to the above-described provisions of the FBCA relating to indemnification. In addition, BFC carries insurance permitted by the laws of the State of Florida for its directors, officers, employees and agents which covers alleged or actual error or omission, misstatement, misleading misstatement, neglect or breach of fiduciary duty while acting in such capacities on behalf of BFC, which acts may include liabilities under the Securities Act.

**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

BFC FINANCIAL CORPORATION

Date: July 2, 2014

By: /s/ John K. Grelle  
John K. Grelle,  
Executive Vice President and

Chief Financial Officer