

BFC FINANCIAL CORP  
Form S-8  
July 02, 2014

As filed with the Securities and Exchange Commission on July 2, 2014

Registration No. 333-

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

FORM S-8  
REGISTRATION STATEMENT  
*UNDER*  
*THE SECURITIES ACT OF 1933*

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

Florida  
(State or other jurisdiction of  
incorporation or organization)

401 East Las Olas Boulevard, Suite 800

Fort Lauderdale, Florida

59-2022148  
(I.R.S. Employer  
Identification No.)

33301

(Address of Principal Executive Offices)

(Zip Code)

**BFC Financial Corporation 2014 Stock Incentive Plan**

(Full title of the plan)

**Alan B. Levan**

**Chairman, Chief Executive Officer and President**

**BFC Financial Corporation**

**401 East Las Olas Boulevard, Suite 800**

**Fort Lauderdale, Florida 33301**

(Name and address of agent for service)

**(954) 940-4900**

(Telephone number, including area code, of agent for service)

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of large accelerated filer, accelerated filer and smaller reporting company in Rule 12b-2 of the Exchange Act.

Large accelerated filer
  Accelerated filer  
 Non-accelerated filer (Do not check if a smaller reporting company)
  Smaller reporting company

**CALCULATION OF REGISTRATION FEE**

Title of securities to be registered	Amount to be registered(1)	Proposed	Proposed	Amount of registration fee(2)
		maximum offering price per share(2)	maximum aggregate offering price(2)	
Class A Common Stock, par value \$0.01 per share(3)(4)	5,000,000	\$3.71	\$18,550,000	\$2,389.24
	4,500,000	\$3.70	\$16,650,000	\$2,144.52

Class B Common Stock, par value \$0.01  
per share(3)

- (1) Pursuant to Rule 416 under the Securities Act of 1933, as amended (the Securities Act ), this Registration Statement shall also cover any additional shares of Class A Common Stock and Class B Common Stock (collectively, Common Stock ) which may become issuable under the BFC Financial Corporation 2014 Stock Incentive Plan by reason of any stock dividend, stock split, recapitalization or any other similar transaction effected without receipt of consideration which results in an increase in the number of outstanding shares of the registrant s Common Stock.
- (2) Estimated solely for purposes of calculating the registration fee pursuant to Rule 457(c) and (h) under the Securities Act on the basis of the average of the high and low prices of the Class A Common Stock or Class B Common Stock, as applicable, in each case on the OTCQB on June 30, 2014.
- (3) Each share of Common Stock registered hereunder includes an associated right to purchase from the registrant one one-hundredth of a share of Series A Junior Participating Preferred Stock for \$8.00. These purchase rights are not exercisable until the occurrence of certain prescribed events, none of which has occurred. These purchase rights are, and until the occurrence of any such prescribed event these purchase rights will be, evidenced by the certificates representing the associated shares of Common Stock, and may be transferred only with such shares of Common Stock. The value attributable to these purchase rights, if any, is reflected in the value of the associated shares of Common Stock.
- (4) Includes 4,500,000 shares of Class A Common Stock reserved for issuance upon the conversion of the shares of Class B Common Stock registered hereunder. Shares of Class B Common Stock are convertible on a share-for-share basis into Class A Common Stock at any time in the holder s discretion.

**Part II**

**INFORMATION REQUIRED IN THE REGISTRATION STATEMENT**

**Item 3. Incorporation of Documents by Reference.**

The following documents previously filed by BFC Financial Corporation (the Company) with the Securities and Exchange Commission (the Commission) are incorporated herein by reference:

- (1) The Company's Annual Report on Form 10-K for the year ended December 31, 2013, filed with the Commission on March 17, 2014.
- (2) The Company's Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2014, filed with the Commission on May 12, 2014.
- (3) The Company's Current Report on Form 8-K, filed with the Commission on April 16, 2014.
- (4) The Company's Current Report on Form 8-K, filed with the Commission on April 30, 2014.
- (5) The Company's Current Report on Form 8-K, filed with the Commission on May 27, 2014.
- (6) The Company's Current Report on Form 8-K, filed with the Commission on June 13, 2014.
- (7) The Company's Current Report on Form 8-K, filed with the Commission on July 2, 2014.
- (8) The portions of the Company's Definitive Proxy Statement on Schedule 14A, filed with the Commission on April 30, 2014, that are deemed filed with the Commission under the Securities Exchange Act of 1934, as amended (the Exchange Act).
- (9) The description of the Company's Class A Common Stock contained in the Company's Registration Statements on Form 8-A, filed with the Commission on October 16, 1997 and June 20, 2006, and any amendments to such Registration Statements filed subsequently thereto and other reports filed for the purpose of updating such description, including the above-referenced Current Report on Form 8-K, filed with the Commission on July 2, 2014.
- (10) The description of the Company's Class B Common Stock contained in the Company's Registration Statement on Form 8-A, filed with the Commission on October 16, 1997, and any amendments to such Registration Statement filed subsequently thereto and other reports filed for the purpose of updating such description, including the above-referenced Current Report on Form 8-K, filed with the Commission on July 2, 2014.

(11) The description of the Company's Preferred Share Purchase Rights contained in the Company's Registration Statement on Form 8-A, filed with the Commission on September 25, 2009, and any amendments to such Registration Statement filed subsequently thereto and other reports filed for the purpose of updating such description.

All documents subsequently filed by the Company 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 securities offered have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference into this Registration Statement and to be a part hereof 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 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 4. Description of Securities.**

Not required.

**Item 5. Interests of Named Experts and Counsel.**

None.

**Item 6. Indemnification of Directors and Officers.**

Section 607.0850 of the Florida Business Corporation Act and the Amended and Restated Articles of Incorporation and Bylaws of the Company provide for indemnification of each of the Company's directors and officers against claims, liabilities, amounts paid in settlement and expenses if such director or officer is or was a party to any proceeding by reason of the fact that such person is or was a director or officer of the Company or is or was serving as a director or officer of another corporation, partnership, joint venture, trust or other enterprise at the request of the Company, which may include liabilities under the Securities Act of 1933, as amended (the Securities Act). In addition, the Company carries insurance permitted by the laws of the State of Florida on behalf of directors, officers, employees or agents which covers alleged or actual error or omission, misstatement, misleading misstatement, neglect or breach of fiduciary duty while acting solely as a director or officer of the Company, which acts may also include liabilities under the Securities Act.

**Item 7. Exemption from Registration Claimed.**

Not applicable.

**Item 8. Exhibits.**

The following exhibits are filed herewith:

Exhibit Number	Description
4.1	Specimen Class A Common Stock Certificate (incorporated by reference to Exhibit 4.1 of the Company's Annual Report on Form 10-K for the year ended December 31, 2012, filed with the Commission on April 1, 2013)
4.2	Specimen Class B Common Stock Certificate (incorporated by reference to Exhibit 4.2 of the Company's Annual Report on Form 10-K for the year ended December 31, 2012, filed with the Commission on April 1, 2013)
4.3	Rights Agreement, dated as of September 21, 2009, by and between the Company and American Stock Transfer & Trust Company, LLC, as Rights Agent (incorporated by reference to Exhibit 4.1 to the Company's Current Report on Form 8-K, filed with the Commission on September 25, 2009)
5.1	Opinion of Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A.
23.1	Consent of PricewaterhouseCoopers LLP
23.2	Consent of Ernst & Young LLP
23.3	Consent of Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A. (included in Exhibit 5.1)
24.1	Power of Attorney (set forth on the signature pages to this Registration Statement)

**Item 9. Undertakings.**

(a) 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;

(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; 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;

Provided however, that paragraphs (a)(1)(i) and (a)(1)(ii) of this section do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Commission by the registrant pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by reference 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 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.

(b) The undersigned registrant hereby undertakes 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 Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Exchange Act) 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 undersigned registrant pursuant to the foregoing provisions, or otherwise, the undersigned registrant has been advised that in the opinion of the 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 undersigned 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 undersigned 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.

**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 Fort Lauderdale, State of Florida, on July 2, 2014.

BFC FINANCIAL CORPORATION

By: /s/ Alan B. Levan  
 Alan B. Levan,  
 Chairman, Chief Executive Officer and  
 President

KNOW ALL MEN BY THESE PRESENTS, that each person whose signature appears below does hereby constitute and appoint Alan B. Levan and John E. Abdo, and each of them acting alone, his true and lawful attorney-in-fact and agent, with full power of substitution, for him and in his name, place and stead, in any and all capacities, to execute any and all amendments, including post-effective amendments, to this Registration Statement, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Commission, granting unto said attorneys-in-fact and agents, full power and authority to do and perform each and every act and thing requisite and necessary to be done, as fully to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or their substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

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.

SIGNATURE	TITLE	DATE
/s/ Alan B. Levan	Chairman, Chief Executive Officer	July 2, 2014
Alan B. Levan	and President	
/s/ John E. Abdo	Vice Chairman	July 2, 2014
John E. Abdo		
/s/ John K. Grelle	Executive Vice President, Chief	July 2, 2014
John K. Grelle	Financial Officer and Chief	
	Accounting Officer	



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SIGNATURE	TITLE	DATE
Darwin Dornbush	Director	
/s/ Oscar Holzmann	Director	July 2, 2014
Oscar Holzmann		
/s/ Jarett Levan	Executive Vice President and Director	July 2, 2014
Jarett Levan		
/s/ Alan Levy	Director	July 2, 2014
Alan Levy		
/s/ Joel Levy	Director	July 2, 2014
Joel Levy		
/s/ William Nicholson	Director	July 2, 2014
William Nicholson		
/s/ Neil Sterling	Director	July 2, 2014
Neil Sterling		
/s/ Seth M. Wise	Executive Vice President and Director	July 2, 2014
Seth M. Wise		

**EXHIBIT INDEX**

Exhibit

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4.1	Specimen Class A Common Stock Certificate (incorporated by reference to Exhibit 4.1 of the Company's Annual Report on Form 10-K for the year ended December 31, 2012, filed with the Commission on April 1, 2013)
4.2	Specimen Class B Common Stock Certificate (incorporated by reference to Exhibit 4.2 of the Company's Annual Report on Form 10-K for the year ended December 31, 2012, filed with the Commission on April 1, 2013)
4.3	Rights Agreement, dated as of September 21, 2009, by and between the Company and American Stock Transfer & Trust Company, LLC, as Rights Agent (incorporated by reference to Exhibit 4.1 to the Company's Current Report on Form 8-K, filed with the Commission on September 25, 2009)
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