

FIRST MARINER BANCORP
Form PRE 14A
December 22, 2009

SCHEDULE 14A INFORMATION

Proxy Statement Pursuant to Section 14(a) of
the Securities Exchange Act of 1934 (Amendment No. __)

Filed by the Registrant X

Filed by a Party other than the Registrant O

Check the appropriate box:

- Preliminary Proxy Statement
 Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))
 Definitive Proxy Statement
 Definitive Additional Materials
 Soliciting Material Pursuant to §240.14a-12

FIRST MARINER BANCORP
(Name of Registrant as Specified In Its Charter)

(Name of Person(s) Filing Proxy Statement, if other than the Registrant)

Payment of Filing Fee (Check the appropriate box):

- No fee required.
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| (1) | Amount Previously Paid: |
| (2) | Form, Schedule or Registration Statement No.: |
| (3) | Filing Party: |
| (4) | Date Filed: |
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_____, 2009

Dear Stockholder:

You are cordially invited to attend a Special Meeting of Stockholders of First Mariner Bancorp (the Company) to be held at the CLARENCE DU BURNS ARENA located at 1301 South Ellwood Avenue, Baltimore, Maryland 21224 on _____, 2010 at _____ .m., local time.

YOUR VOTE IS IMPORTANT. As described in the attached Proxy Statement, First Mariner Bancorp has called this Special Meeting to ask our stockholders to vote on the following proposals: (i) to sell shares of common stock in a non-public offering in an amount in excess of 20% of the Company's current outstanding shares of common stock; (ii) to increase the number of shares of common stock authorized for issuance under our Articles of Incorporation; (iii) to amend our Articles of Incorporation to grant the Board of Directors the authority to affect a reverse stock split; (iv) to increase the number of shares issuable under the Company's 2004 Long Term Incentive Plan; and (v) to grant management the authority to adjourn the Special Meeting to solicit additional proxies if there are insufficient votes to approve proposals (i) through (iv). If stockholders do not approve proposals (i) and (ii), it is unlikely that we will be able to raise sufficient capital as required by regulatory enforcement agreements that we have entered into with the Federal Reserve Board, the Federal Deposit Insurance Corporation and the Office of the Commissioner of Financial Regulation for the State of Maryland, and consequently could face negative regulatory consequences.

ON BEHALF OF THE BOARD OF DIRECTORS, WE URGE YOU TO SIGN, DATE AND RETURN THE ENCLOSED PROXY CARD AS SOON AS POSSIBLE EVEN IF YOU CURRENTLY PLAN TO ATTEND THE SPECIAL MEETING. Your vote is important, regardless of the number of shares you own. This will not prevent you from voting in person but will assure that your vote is counted if you are unable to attend the meeting.

Sincerely,

EDWIN F. HALE, SR.
Chairman of the Board of Directors

FIRST MARINER BANCORP

1501 S. CLINTON STREET

BALTIMORE, MARYLAND 21224

NOTICE OF SPECIAL MEETING OF STOCKHOLDERS

TIME AND DATE _____:00 __ on _____, _____, 2010

PLACE CLARENCE DU BURNS ARENA
1301 South Ellwood Avenue
Baltimore, Maryland 21224

- ITEMS OF BUSINESS**
- (1) The approval of an issuance of shares of common stock in a non-public offering in an amount in excess of 20% of our currently outstanding shares of common stock;
 - (2) The approval of an amendment to the Company's Articles of Incorporation to increase the authorized number of shares of common stock from 20,000,000 to 75,000,000;
 - (3) The approval of an amendment to the Company's Articles of Incorporation to grant the Board of Directors the authority to affect a reverse stock split of the Company's outstanding shares of common stock;
 - (4) The approval of an amendment to the Company's 2004 Long Term Incentive Plan to increase the number of shares of common stock that may be issued under the Plan;
 - (5) To grant management the authority to adjourn the special meeting to solicit additional proxies in the event there are insufficient votes to approve the foregoing proposals; and
 - (6) Such other business as may properly come before the meeting. The Board of Directors is not aware of any other business to come before the meeting.

RECORD DATE In order to vote, you must have been a stockholder at the close of business on _____, 20____.

PROXY VOTING It is important that your shares be represented and voted at the meeting. You can vote your shares by completing and returning the enclosed proxy card sent to you. Voting instructions are printed on your proxy card and included in the accompanying proxy statement. Most holders will be able to vote by phone or internet by following the instructions on their proxy form. If you need help in voting your shares or if you have any questions regarding the proposals, please call our proxy solicitor, Laurel Hill Advisory Group toll-free at 888-742-1305. You can revoke a proxy at any time before its exercise at the meeting by following the instructions in the proxy statement. A copy of the following proxy statement and the enclosed proxy card are also available on the Internet at http://www._____.

BY ORDER OF THE BOARD OF DIRECTORS

EUGENE A. FRIEDMAN
Secretary

Baltimore, Maryland

_____, 2010

NOTE: Whether or not you plan to attend the special meeting, please vote by marking, signing, dating and promptly returning the enclosed proxy card in the self-addressed, stamped envelope.

FIRST MARINER BANCORP

PROXY STATEMENT

GENERAL INFORMATION

This proxy statement is furnished in connection with the solicitation of proxies by the Board of Directors of First Mariner Bancorp to be used at the Special Meeting of Stockholders, which will be held at the CLARENCE DU BURNS ARENA located at 1301 South Ellwood Avenue, Baltimore, Maryland 21224 at _____ .m., local time, on _____, _____, 2010. The accompanying notice of meeting, this proxy statement and proxy card are being first mailed to stockholders on or about _____, 2010. In this proxy statement, we may also refer to First Mariner Bancorp as First Mariner, the Company, we, our or us.

First Mariner is the holding company for First Mariner Bank. In this proxy statement, we may also refer to First Mariner Bank as the Bank.

**IMPORTANT NOTICE REGARDING THE AVAILABILITY OF PROXY MATERIALS FOR THE STOCKHOLDERS MEETING
TO BE HELD ON _____, 2010.**

The proxy statement and proxy card are available on the Internet at http://www._____.

INFORMATION ABOUT VOTING

Who Can Vote at the Meeting

You are entitled to vote your shares of First Mariner common stock, par value, \$0.05 per share, that you owned as of _____, 20__ (the Record Date). As of the close of business on _____, 20__ , there were _____ shares of common stock issued and outstanding. Each share of common stock has one vote.

Ownership of Shares; Attending the Meeting

You may own shares of First Mariner in one or more of the following ways:

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- Directly in your name as the stockholder of record; or

- Indirectly through a broker, bank or other holder of record in street name.

If your shares are registered directly in your name, you are the holder of record of these shares and we are sending these proxy materials directly to you. As the holder of record, you have the right to give your proxy directly to us or to vote in person at the meeting.

If you hold your shares in street name, your broker, bank or other holder of record is sending these proxy materials to you. As the beneficial owner, you have the right to direct your broker, bank or other holder of record how to vote by filling out a proxy card or voting instruction form that accompanies your proxy materials. Your broker, bank or other holder of record may allow you to provide voting instructions by telephone or by the Internet. Please see the instruction form provided by your broker, bank or other holder of record that accompanies this proxy statement. If you hold your shares in street name, you will need proof of ownership to be admitted to the meeting. A recent brokerage statement or letter from a bank or broker are examples of proof of ownership. If you want to vote your shares of First Mariner common stock held in street name in person at the meeting, you must obtain a written proxy in your name from the broker, bank or other holder of record of your shares.

Quorum and Vote Required

Quorum. We will have a quorum and will be able to conduct the business of the meeting if the holders of at least a majority of the total number of shares of common stock outstanding and entitled to vote are present at the meeting, either in person or by proxy.

Routine and Non-Routine Proposals. Although our common stock is listed on the NASDAQ Global Market, the rules of the New York Stock Exchange determine whether proposals presented at stockholder meetings are routine or non-routine. If a proposal is routine, a broker, bank or other entity holding shares for an owner in street name may vote for the proposal without receiving voting instructions from the owner. If a proposal is non-routine, the broker, bank or other entity may vote on the proposal only if the owner has provided voting instructions. A broker non-vote occurs when a broker, bank or other entity holding shares for an owner in street name is unable to vote on a particular proposal because the proposal is non-routine and has not received voting instructions from the beneficial owner. The proposals to be considered at the meeting are non-routine proposals under the rules of the New York Stock Exchange.

How We Count Votes. If you return valid proxy instructions or attend the meeting in person, we will count your shares for purposes of determining whether there is a quorum, even if you abstain from voting. Broker non-votes, if any, also will be counted for purposes of determining the existence of a quorum.

Votes Required for Proposals. In voting on the proposal to approve the issuance of shares of common stock in a non-public offering in an amount in excess of 20% of the Company's currently outstanding shares of common stock, you may vote in favor of the proposal, vote against the proposal or abstain from voting. Approval of this proposal requires the affirmative vote of a majority of the votes cast on the proposal. Abstentions and broker non-votes will have no effect on the outcome of the vote on this proposal.

In voting on the amendment to the Company's Articles of Incorporation to increase the number of authorized shares, you may vote in favor of the proposal, vote against the proposal or abstain from voting. Approval of the amendment requires the affirmative vote of a majority of the votes eligible to be cast at the meeting. Abstentions and broker non-votes will have the effect of voting against this proposal.

In voting on the amendment to the Company's Articles of Incorporation to grant the Board of Directors the authority to affect a reverse stock split of the Company's outstanding shares of common stock, you may vote in favor of the proposal, vote against the proposal or abstain from voting. Approval of the amendment requires the affirmative vote of a majority of the votes eligible to be cast at the meeting. Abstentions and broker non-votes will have the effect of voting against this proposal.

In voting on the amendment to the Company's 2004 Long Term Incentive Plan (the "Plan") to increase the number of shares that may be issued under the Plan, you may vote in favor of the proposal, vote against the proposal or abstain from voting. Approval of the amendment requires the affirmative vote of a majority of the votes cast on the proposal. Abstentions and broker non-votes will have no effect on the outcome of the vote on this proposal.

In voting on the proposal to grant management the authority to adjourn the meeting to solicit additional proxies in the event there are insufficient votes to approve the foregoing proposals, you may vote in favor of the proposal, vote against the proposal or abstain from voting. Approval of

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this proposal requires the affirmative vote of a majority of the votes cast on the proposal. Abstentions and broker non-votes will have no effect on the outcome of the vote on this proposal.

Voting by Proxy

The Company's Board of Directors is sending you this proxy statement for the purpose of requesting that you allow your shares of First Mariner common stock to be represented at the meeting by the persons named in the enclosed proxy card. All shares of Company common stock represented at the meeting by properly executed and dated proxy cards will be voted according to the instructions indicated on the proxy card. If you sign, date and return a proxy card without giving voting instructions, your shares will be voted as recommended by the Company's Board of Directors. **The Board of Directors recommends a vote FOR the proposal to approve the issuance of shares of common stock in a non-public offering in an amount in excess of 20% of the Company's**

currently outstanding shares of common stock, a vote **FOR** the amendments to the Company's Articles of Incorporation to increase the number of authorized shares and to grant the Board the authority to affect a reverse stock split, a vote **FOR** the amendment to the Company's 2004 Long Term Incentive Plan and a vote **FOR** the proposal to grant management the authority to adjourn the meeting to solicit additional proxies in the event there are insufficient votes to approve the foregoing proposals.

If any matters not described in this proxy statement are properly presented at the meeting, the persons named in the proxy card will vote your shares as determined by a majority of the Board of Directors. If the meeting is postponed or adjourned, your First Mariner common stock may be voted by the persons named in the proxy card on the new Special Meeting date as well, unless you have revoked your proxy. The Company does not know of any other matters to be presented at the meeting.

You may revoke your proxy at any time before the vote is taken at the meeting. To revoke your proxy you must either advise the Secretary of the Company in writing before your common stock has been voted at the meeting, deliver a later-dated proxy, or attend the meeting and vote your shares in person. Attendance at the meeting will not in itself constitute revocation of your proxy.

STOCK OWNERSHIP

The following table sets forth, as of December 18, 2009, certain information as to the common stock beneficially owned by each of the Company's directors, and by all executive officers and directors of the Company as a group. Other than those persons listed below, the Company is not aware of any person or group that beneficially owned more than 5% of the common stock as of December 18, 2009.

Name and Address of Beneficial Owner (1)	Amount of Nature of Beneficial Ownership (2)	Percent of Shares of Common Stock Outstanding (3)
Edwin F. Hale, Sr. (4)	1,457,316	21.76%
Barry B. Bondroff (5)	64,842	1.00
John Brown III (6)	7,930	*
Robert Caret (7)	10,890	*
George H. Mantakos (8)	141,323	2.17
John P. McDaniel (9)	40,800	*
John J. Oliver, Jr. (10)	7,300	*
Patricia Schmoke, MD (11)	6,200	*
Hector Torres (12)	4,700	*
Michael R. Watson (13)	13,385	*
Anirban Basu (14)	2,600	*
Gregory A. Devou	700	*
Mark A. Keidel (15)	88,877	1.37
All directors and executive officers as a group (13 persons)(16)	1,846,863	25.38

* Less than 1%.

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(1) All executive officers and directors of the Company have the Company's address: 1501 S. Clinton Street, Baltimore, Maryland 21224.

(2) In accordance with Rule 13d-3 under the Exchange Act, a person is deemed to be the beneficial owner, for purposes of this table, of any shares of common stock if he has or shares voting or investment power with respect to such common stock or has a right to acquire beneficial ownership at any time within 60 days from December 18, 2009. As used herein, voting power is the power to vote or direct the voting of shares and investment power is the power to dispose or direct the disposition of shares. Unless otherwise indicated, the beneficial owner has sole voting and investment power with respect to the listed shares.

(3) Based on 6,452,631 shares outstanding, plus the number of shares of Company common stock which such person or group of persons has the right to acquire within 60 days after December 18, 2009 by the exercise of stock options.

(4) Includes 11,664 shares in his Individual Retirement Account, and options to purchase 245,000 shares. Mr. Hale has pledged 501,610 shares to secure indebtedness at other financial institutions.

(5) Includes 39,242 shares in his Individual Retirement Account, and 10,450 shares held jointly with his wife, and options to purchase 15,150 shares.

(6) Includes options to purchase 6,350 shares.

(7) Includes options to purchase 1,950 shares.

(8) Includes 34,900 shares held in his Individual Retirement Account, 11,650 held jointly with his wife, and options to purchase 72,500 shares.

(9) Includes options to purchase 1,900 shares.

(10) Includes options to purchase 7,150 shares.

(11) Includes options to purchase 6,100 shares.

(12) Includes options to purchase 4,100 shares.

(13) Includes 1,435 shares held jointly with his wife and options to purchase 11,850 shares.

(14) Includes options to purchase 500 shares.

(15) Includes options to purchase 45,000 shares.

(16) Includes options to purchase 698,593 shares.

ITEMS TO BE VOTED UPON BY STOCKHOLDERS

OVERVIEW OF PROPOSALS 1 AND 2

Background

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Like many financial institutions across the United States, our operations have been impacted by the current economic crisis. During our fiscal year ended December 31, 2008 and continuing in 2009, the economic crisis that was initially confined to residential real estate and subprime lending has evolved into a global economic crisis that has negatively impacted not only liquidity and credit quality but also economic indicators such as the labor market, the capital markets and real estate values. As a result of this significant downturn, we have been adversely affected by declines in the residential and commercial real estate market in our market area. The declining home prices, slowing economic conditions and increasing levels of delinquencies and foreclosures have negatively affected the credit performance of our residential real estate, commercial real estate and real estate acquisition and development loans, resulting in an increase in our level of nonperforming assets and loans past due 90 days or more and still accruing and charge-offs of problem loans. At the same time, competition among depository institutions in our markets for deposits and quality loans has increased significantly. These market conditions and the tightening of credit have led to increased deficiencies in our loan portfolio, a decreased interest margin, increased market volatility.

During the nine months ended September 30, 2009, nonperforming assets and loans 90 days or more past due and still accruing interest increased \$7.08 million, or 10.49% to \$74.52 million. Nonperforming assets and loans 90 days or more past due and still accruing interest as a percentage of total assets increased during this period from 5.16% as of December 31, 2008 to 5.28% as of September 30, 2009. Our allowance for loan losses as a percentage of total loans decreased during this period from 1.71% as of December 31, 2008 to 1.23% as of September 30, 2009 and our allowance for loan losses as a percentage of nonperforming assets and loans 90 days or more past due and still accruing interest decreased from 33.68% as of December 31, 2008 to 22.20% as of

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September 30, 2009. The primary reason for the decrease was the removal of the allowance for loan losses of our subsidiary, Mariner Finance, LLC, which maintained an allowance for loan losses in excess of 4.5%.

From December 31, 2007 to December 31, 2008, nonperforming assets and loans past due 90 days or more and still accruing interest increased \$21.05 million, or 45.34%, to \$67.44 million. Nonperforming assets and loans 90 days past due or more and still accruing interest as a percentage of total loans increased during this period from 3.72% at December 31, 2007 to 5.16% at December 31, 2008. In addition, our allowance for loan losses as a percentage of total loans increased during this period from 1.50% to 1.71% and our allowance for loan losses as a percentage of nonperforming loans and loans 90 days or more past due and still accruing interest increased from 44.66% to 33.68%.

We recorded provisions for loan losses of \$2.10 million and \$8.36 million during the three and nine months ended September 30, 2009, respectively, and \$14.78 million during the year ended December 31, 2008, which had a significant negative impact on our earnings.

On September 18, 2009, First Mariner Bank entered into a Stipulation and Consent to the Issuance of an Order to Cease and Desist with the Federal Deposit Insurance Corporation (the "FDIC") and the Commissioner of Financial Regulation for the State of Maryland (the "Commissioner") whereby the Bank consented to the issuance of an Order to Cease and Desist (the "September Order") promulgated by the FDIC and the Commissioner without admitting or denying the alleged charges of unsafe or unsound banking practices.

The September Order requires the Bank to adopt a plan to achieve and maintain a tier 1 leverage capital ratio of at least 7.5% of the Bank's total average assets and a total risk-based capital ratio of at least 11% of its total risk-weighted assets by June 30, 2010. The September Order also requires the Bank to adopt a plan to achieve and maintain its tier 1 leverage and total risk-based capital ratios at 6.5% and 10%, respectively, beginning on March 31, 2010. First Mariner Bank has presented a capital plan to the FDIC and the Commissioner detailing how it intends to achieve these capital thresholds by the required dates. At September 30, 2009, the Bank reported tier 1 leverage and total risk-based capital ratios of 5.4% and 8.4%, respectively.

On November 24, 2009, First Mariner entered into a written agreement with the Board of Governors of the Federal Reserve System (the "FRB") which replaced the Company's existing Memorandum of Understanding with the Federal Reserve Bank of Richmond (the "FRB Agreement"). The original FRB Agreement required First Mariner to: (i) develop and implement a strategic business plan that includes (a) actions that will be taken to improve our operating performance and reduce the level of parent company leverage, (b) a comprehensive budget and an expanded budget review process, (c) a description of the operating assumptions that form the basis for major projected income and expense components and provisions needed to maintain an adequate loan loss reserve and (d) a capital plan incorporating all capital needs, risks and regulatory guidelines; and (ii) submit plans to improve enterprise-wide risk management and effectiveness of internal audit programs. First Mariner also agreed to provide the Federal Reserve Bank of Richmond with advance notice of any significant capital transactions. The new FRB Agreement (the "New FRB Agreement") prohibits First Mariner and the Bank from taking any of the following actions without the FRB's prior written approval: (i) declaring or paying any dividends; (ii) taking dividends from the Bank; (iii) making any distributions of interest, principal or other sums on First Mariner's subordinated debentures or trust preferred securities; (iv) incurring, increasing or guaranteeing any debt; or (v) repurchasing, redeeming any shares of its stock. Under the New FRB Agreement, First Mariner must submit a written plan to the FRB by January 23, 2010 to maintain sufficient capital, on a consolidated basis, such that First Mariner satisfies the FRB's requirements to be considered adequately capitalized. To be considered adequately capitalized, First Mariner's consolidated tier 1 capital to total assets, tier 1 capital to risk-weighted assets and total capital to risk-weighted assets ratios at September 30, 2009 must be at least 4.0%, 4.0% and 8.0%, respectively. At September 30, 2009, those capital ratios were 2.4%, 2.7% and 5.4%.

The failure to comply with the Cease and Desist Orders or the New FRB Agreement could result in the initiation of further enforcement action by the FDIC, the Commissioner or the FRB, including the imposition of civil monetary penalties, as well as the imposition of further operating restrictions. Our regulators also could direct us to seek a merger partner or possibly place the Bank in receivership.

To address these challenges, the Company intends to raise capital by offering shares of common stock in a public offering and a non-public offering. In the public offering, we expect to give priority subscription rights to the

Company's stockholders (the Rights Offering). Concurrently with the Rights Offering, the Company anticipates that it will sell shares of common stock in a non-public offering in an amount in excess of 20% of the Company's currently outstanding shares of common stock (the Non-Public Offering). The Rights Offering and the Non-Public Offering are referred to collectively herein as the Stock Offerings.

On December 8, 2009, the Company filed a Registration Statement on Form S-1 with the Securities and Exchange Commission registering shares of common stock to be sold in the Stock Offerings. This Registration Statement has not yet become effective. These securities may not be sold nor may offers to buy be accepted prior to the time the registration statement becomes effective. You may obtain a written prospectus for the offering meeting the requirements of Section 10 of the Securities Act of 1933, as amended, by writing to the Company, 1501 S. Clinton Street, Baltimore, Maryland 21224, Attention: Eugene A. Friedman, Secretary. This proxy statement is not an offer to sell or the solicitation of an offer to buy shares of our common stock or any other securities, including the rights or any shares of common stock issuable upon exercise of the rights. Offers and sales of common stock and common stock issuable upon exercise of the rights will only be made by means of a prospectus meeting the requirements of the Securities Act of 1933, as amended, and applicable state securities laws, on the terms and subject to the conditions set forth in such prospectus.

In furtherance of this plan, the Company is asking stockholders at the meeting to approve the sale of shares of common stock in the Non-Public Offering in an amount in excess of 20% of the Company's currently outstanding shares of common stock. In addition, in order to complete the Stock Offerings, and to provide additional authorized shares of common stock to meet additional future needs, it is necessary to increase the number of shares of common stock that the Company is authorized to issue as set forth in Proposal 2. These matters to be voted on at this Special Meeting are *critical* components of the Company's capital plan.

The Company believes that the issuance and sale of common stock in the Stock Offerings will constitute substantial progress in addressing the most significant concerns raised by our regulators, although our regulators have offered no assurance that these transactions will be sufficient to address their concerns. The Stock Offerings are critical components of the Company's capital plan, and the Company needs stockholder approval to complete them. In addition, the Company believes that if it is unable to complete the Stock Offerings, it will be substantially more likely to face negative regulatory consequences. Regulatory consequences could, among other things, result in the Bank's being required to seek a merger partner or undergo a voluntary liquidation. Such actions could have a material negative effect on the Company's business and financial condition and the value of its common stock.

Due to the benefits that will result from the Stock Offerings and the adverse consequences the Company will face if these transactions are not completed, **the Board recommends that the stockholders vote FOR Proposals 1 and 2.**

Risk Factors - Risks Relating to Proposals 1 and 2

If Proposals 1 and 2 are not approved, the Stock Offerings will not be completed and the Company would not be able to complete an offering of a sufficient number of shares to enable it to meet our regulatory capital requirements. As a result, our regulators would likely take further action against the Company and the Bank. Any such actions could have a material negative effect on the Company's business and the value