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FIRST MARINER BANCORP
Form 8-K
October 22, 2004

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) October 19, 2004

FIRST MARINER BANCORP
(Exact name of Registrant as specified in Charter)

Maryland 000-21815 52-1834860
(State or other Jurisdiction (Commission File Number) (IRS Employer Identification
of incorporation) No.)

3301 Boston Street, Baltimore, MD 21224
(Address of Principal Executive Offices/Zip Code)

Registrant's telephone number, including area code: (410) 342-2600

Not Applicable
(Former name or former address of Registrant, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligations of the registrant under any of the following provisions:

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))

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INFORMATION TO BE INCLUDED IN THE REPORT

Item 1.01. Entry into a Material Definitive Agreement

Headquarters Purchase

On October 20, 2004, First Mariner Bancorp (the "Company") entered into a Purchase and Sale Agreement ("Agreement") with Canton Crossing, LLC and Hale Canton, LLC, pursuant to which the Company will purchase the location of its current headquarters located at 3301 Boston Street, Baltimore, Maryland (the "Property").

The Agreement provides that the Company will acquire from Hale Canton, LLC all of the membership interests in Canton Crossing II, LLC, which owns the Property. The purchase price for the Property is \$20,000,000. The purchase price will be paid as follows: (i) the Company will assume the outstanding principal balance of the existing loan on the Property of approximately \$10,000,000, and (ii) the Company will pay the difference between the outstanding principal balance on the loan and the purchase price in cash.

The purchase price was based on two independent appraisals performed on behalf of the Company, and the purchase was approved by the Company's Audit Committee and the independent members of the Board of Directors. The closing of the purchase is contingent upon the Company's successful assumption of the existing \$10,000,000 loan on the Property.

The Company and its subsidiaries occupy approximately 54,800 square feet of office space and a 3,000 square foot retail banking branch. Approximately 21,200 square feet of space is leased to other office and retail tenants. The Property consists of approximately 79,000 square feet of rentable space on approximately two acres of land at the corner of Clinton Street and Boston Street.

A copy of the Agreement is being filed herewith as Exhibit 10.1 and is incorporated herein by reference.

Sale of Debentures and Capital Securities

See the information reported in Item 2.03 of this Current Report on Form 8-K, which is incorporated herein by reference.

Item 2.02 Results of Operations and Financial Condition

On October 19, 2004, the Registrant issued a press release reporting its financial results for the period ended September 30, 2004. A copy of this press release is being furnished as Exhibit 99.1 and is incorporated by reference into Item 2.02.

The information in this Item 2.02 is being furnished and shall not be deemed "filed" for the purposes of Section 18 of the Securities Exchange Act of 1934 (the "Exchange Act"), or otherwise

subject to the liabilities of that Section, nor shall it be deemed incorporated by reference in any filing under the Securities Act of 1933 or the Exchange Act, regardless of any general incorporation language in such filing.

Item 2.03. Creation of a Direct Financial Obligation or an Obligation Under an

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Off-Balance Sheet Arrangement of a Registrant

Introduction

On October 20 and 21, 2004, the Company entered into several agreements providing for the private placement of Capital Securities by its newly formed Delaware trust subsidiary, the Mariner Capital Trust VI (the "Trust") to Bear, Stearns & Co. Inc. (the "Purchaser"). The sale of the Capital Securities to the Purchaser for \$10,000,000 was completed on October 21, 2004. The agreements provide for the Trust to sell \$310,000 of Common Securities to the Company, which was completed on October 21, 2004. The Trust used the proceeds from the sale of the Capital Securities to purchase Junior Subordinated Debentures described below from the Company on October 21, 2004.

The Capital Securities have not been registered under the Securities Act of 1933, as amended, and may not be offered or sold in the United States absent registration or an exemption from the registration requirements. This notice does not constitute an offer to sell or the solicitation of an offer to buy the Capital Securities.

The principal agreements into which the Company has entered in connection with these transactions are briefly described below.

Purchase Agreement

On October 20, 2004, the Company and the Trust entered into a Purchase Agreement (the "Purchase Agreement") with the Purchaser. The Purchase Agreement provides for the sale by the Trust of the Capital Securities to the Purchaser for a purchase price of \$10,000,000.

Indenture

On October 21, 2004, the Company entered into an Indenture (the "Indenture") with Wells Fargo Bank, National Association, as Trustee. The Indenture provides for the issuance by the Company of Junior Subordinated Debentures due 2035 (the "Debentures") aggregating \$10,310,000 in principal amount, which Debentures were issued on October 21, 2004. The Debentures bear

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interest at the three-month LIBOR rate plus 2.05%. Interest is payable on each January 7, April 7, July 7 and October 7. The LIBOR rate, which adjusts every three months, is currently 2.09% per annum.

Under the Indenture, the Company has the option, so long as it is not in default under certain specified provisions of the Indenture, at any time and from time to time, to defer the payment of interest on the Debentures for up to 20 consecutive quarterly interest payment periods.

The Debentures mature on January 7, 2035 and can be redeemed in whole or in part by the Company, at its option, at 100% of their principal amount plus accrued and unpaid interest at any time on or after January 7, 2010 (the fifth anniversary of the first interest payment date). The Company may also redeem the Debentures in full, at its option, at 100% of their principal amount and accrued and unpaid interest upon the occurrence of certain changes in the tax treatment or capital treatment of the Debentures, or a change in the law such that the

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Trust would be considered an investment company.

Amended and Restated Declaration of Trust

On October 21, 2004, the Company, as Sponsor, Wells Fargo Delaware Trust Company, as Delaware Trustee, Wells Fargo Bank, National Association, as Institutional Trustee, and Mark A. Keidel and Eugene A. Friedman, as Administrators, entered into an Amended and Restated Declaration of Trust (the "Trust Agreement"). Each of the Administrators is an officer of the Company.

The Trust Agreement provides for the issuance of Capital Securities and Common Securities ("Common Securities"). The Capital Securities

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have an aggregate liquidation amount of \$10,000,000, and the Common Securities have an aggregate liquidation amount of \$310,000.

On October 21, 2004, the Trust sold \$310,000 of Common Securities to the Company and \$10,000,000 of Capital Securities to the Purchaser. The proceeds were used by the Trust to purchase \$10,310,000 of Debentures from the Company, which were registered in the name of the Institutional Trustee on behalf of the Trust. The sale of the \$10,000,000 of Capital Securities authorized by the Trust Agreement was made to the Purchaser pursuant to the terms of the Purchase Agreement.

Guarantee Agreement

On October 21, 2004, the Company, as Guarantor, entered into a Guarantee Agreement with Wells Fargo Bank, National Association, as Guarantee Trustee, for the benefit of the holders from time to time of the Capital Securities. Pursuant to the Guarantee Agreement, the Company unconditionally agreed to pay the holders of the Capital Securities (to the extent not paid by or on behalf of the Trust, and without duplication), amounts due and payable under the Capital Securities, to the extent that the Trust has funds available for such payment at the time. The Company's obligations under the Guarantee Agreement are subordinate and junior in right of payment to all of the Company's Senior Indebtedness as defined in the Indenture.

Forward-Looking Statements

Items 1.01 and 2.03 of this Current Report contain forward-looking statements that involve risks and uncertainties, such as statements of the Company's plans and expectations regarding efficiencies resulting from new programs and expansion activities, the building acquisition, revenue growth, anticipated expenses, and other unknown outcomes. The Company's actual results could differ materially from management's expectations. Factors that could contribute to those differences include, but are not limited to, changes in regulations applicable to the Company's business, successful implementation of the Company's branch expansion strategy, its concentration in real estate lending, increased competition, changes in technology, particularly internet banking, impact of interest rates, a decline in real estate values, possibility of economic recession or slow down (which could impact credit quality, adequacy of loan loss reserve and loan growth) and control by and dependency on key personnel, particularly Edwin F. Hale, Sr., Chairman of the Board of Directors and CEO of the Company.

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Item 9.01 Financial Statements and Exhibits

(c) Exhibits.

- 4 Indenture.
Pursuant to Regulation S-K Item 601(b) (4) (iii), the Registrant agrees to furnish a copy of the Indenture to the Securities and Exchange Commission upon request.
- 10.1 Purchase and Sale Agreement dated September 20, 2004 (filed herewith)
- 99.1 Press release dated October 19, 2004 (furnished herewith)

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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.

FIRST MARINER BANCORP

Date: October 22, 2004

By: /s/Joseph A. Cicero

Joseph A. Cicero
President and Chief Operating Officer

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EXHIBIT INDEX

Exhibit
Number Description of Exhibit

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