

FIRST MARINER BANCORP  
Form S-1  
December 08, 2009  
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As filed with the Securities and Exchange Commission on December 8, 2009

Registration No. 333-

**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**

Washington, DC 20549

**FORM S-1**

**REGISTRATION STATEMENT**

**UNDER THE SECURITIES ACT OF 1933**

**FIRST MARINER BANCORP**

(Exact name of registrant as specified in its charter)

**Maryland**  
(State or other jurisdiction of  
incorporation or organization)

**6022**  
(Primary Standard Industrial  
Classification Code Number)

**52-1834860**  
(IRS Employer Identification No.)

**1501 S. Clinton Street**  
**Baltimore, Maryland 21224**

**(410) 342-2600**

(Address, including zip code, and telephone number,

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including area code, of registrant's principal executive offices)

**Edwin F. Hale, Sr.**

**Chairman and Chief Executive Officer**

**1501 S. Clinton Street**

**Baltimore, Maryland 21224**

**(410) 342-2600**

(Name, address, including zip code, and telephone number,

including area code, of agent for service)

**Copies to:**

**Gary R. Bronstein, Esq.**

**Edward G. Olifer, Esq.**

**Joel R. Rappoport, Esq.**

Kilpatrick Stockton LLP

607 14th Street, NW, Suite 900

Washington, DC 20005

(202) 508-5800

**Approximate date of commencement of proposed sale to the public: As soon as practicable after this Registration Statement becomes effective.**

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, check the following box. ☒ x

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐ o

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐ o

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If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

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 Each Class of Securities to be Registered	Amount to be Registered	Proposed Maximum Offering Price Per Share	Proposed Maximum Aggregate Offering Price	Amount of Registration Fee
Common Stock, \$0.05 par value per share	<input type="checkbox"/>	(1)	\$20,000,000(1)	\$1,116.00(1)
Rights to Purchase Shares of Common Stock	<input type="checkbox"/>	(2)	(2)	(2)

(1) Estimated solely for the purpose of calculating the registration fee in accordance with Rule 457 under the Securities Act of 1933, as amended.

(2) Pursuant to Rule 457(g), no separate registration fee is required for the rights.

The Registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the Registrant shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until the Registration Statement shall become effective on such date as the Commission, acting pursuant to Section 8(a), may determine.

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*The information in this preliminary prospectus is not complete and may be changed. We may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This preliminary prospectus is not an offer to sell these securities and it is not soliciting an offer to buy these securities in any jurisdiction where the offer or sale is not permitted.*

*Subject to completion, dated December 8, 2009.*

**PRELIMINARY PROSPECTUS**

**[MAXIMUM] Shares of Common Stock  
Up to [RIGHTS#] Shares of Common Stock**

**Issuable upon the exercise of Subscription Rights at \$[SHARE PRICE] per share**

We are distributing, at no charge to our shareholders, non-transferable subscription rights to purchase up to **[RIGHTS#]** shares of our common stock, par value \$0.05 per share. Subscription rights will be distributed to persons who owned shares of our common stock as of 5:00 p.m. Eastern Time, on **[RECORD DATE]**, the record date of the rights offering.

Each subscription right will entitle you to purchase **[Ratio]** shares of our common stock at the subscription price of **\$[SHARE PRICE]** per share, which we refer to as the basic subscription privilege. If you fully exercise your basic subscription privilege and other shareholders do not fully exercise their basic subscription privileges, you will be entitled to exercise an over-subscription privilege, subject to certain limitations and subject to allotment, to purchase a portion of the unsubscribed shares of our common stock at the same subscription price of **\$[SHARE PRICE]** per share. To the extent you properly exercise your over-subscription privilege for an amount of shares that exceeds the number of the unsubscribed shares available to you, any excess subscription payments received by the subscription agent will be returned to you, without interest, as soon as practicable following the expiration of the rights offering. Funds we receive from subscribers in the rights offering will be held in escrow by the subscription agent until the rights offering is completed or canceled.

The subscription rights will expire if they are not exercised by 5:00 p.m., Eastern Time, on **[EXPIRATION DATE]**. We reserve the right to extend the expiration date one or more times, but in no event will we extend the rights offering beyond **[EXPIRATION #2]**.

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We have separately entered into standby purchase agreements with certain institutional investors and high net worth individuals, pursuant to which these investors and individuals have severally agreed to acquire from us, at the subscription price of \$[**SHARE PRICE**] per share, up to [**STANDBY MAX**] shares of common stock. The number of shares available for sale to standby purchasers will depend on the number of shares subscribed for in the rights offering. However, in no event will we issue fewer than [**STANDBY MINIMUM**] shares to standby purchasers. If [**RIGHTS#**] shares are purchased in the rights offering, then only [**STANDBY MINIMUM**] shares will be sold to the standby purchasers. The maximum number of shares that may be sold in the rights offering and to standby purchasers is [**MAXIMUM**].

We reserve the right to cancel the rights offering at any time. In the event the rights offering is cancelled, all subscription payments received by the subscription agent will be returned, without interest or penalty, as soon as practicable.

You should carefully consider whether to exercise your subscription rights prior to the expiration of the rights offering. All exercises of subscription rights are irrevocable. Our board of directors is making no recommendation regarding your exercise of the subscription rights. The subscription rights may not be sold, transferred or assigned and will not be listed for trading on the Nasdaq Global Market or any other stock exchange or market.

Our common stock is traded on the Nasdaq Global Market under the trading symbol FMAR. The last reported sales price of our shares of common stock on \_\_\_\_\_, \_\_\_\_ was \$\_\_\_\_ per share.

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**OFFERING SUMMARY**

**Price: \$[SHARE PRICE] per share**

	<b>Minimum</b>	<b>Maximum</b>
	<b>[MINIMUM]</b>	<b>[MAXIMUM]</b>
Number of shares		
Gross offering proceeds	\$	\$ 20,000,000
Estimated offering expenses	\$	\$
Net proceeds	\$	\$
Net proceeds per share	\$	\$
	\$	\$
	\$	\$

**This investment involves risks, including the possible loss of principal.**

**Please read Risk Factors beginning on page .**

*These securities are not deposits, savings accounts or other obligations of any bank and are not insured or guaranteed by the Federal Deposit Insurance Corporation or any other government agency. Neither the Securities and Exchange Commission, the Federal Deposit Insurance Corporation, nor any state securities regulator has approved or disapproved of these securities or determined if this prospectus is accurate or complete. Any representation to the contrary is a criminal offense.*

The date of this prospectus is \_\_\_\_\_, 2009.

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**[MAP of First Mariner branch network]**

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You should rely only on the information contained in this prospectus. We have not, and nor has our subscription agent, American Stock Transfer & Trust Company, LLC, or our information agent, Laurel Hill Advisory Group, LLC, authorized anyone to provide you with different information. The information contained in this prospectus is accurate only as of the date of this prospectus regardless of the time of delivery of this prospectus or any exercise of the subscription rights. Our business, financial condition, results of operations and prospects may have changed since those dates. We are not making an offer of these securities in any state or jurisdiction where the offer is not permitted.

No action is being taken in any jurisdiction outside the United States to permit a public offering of the common stock or possession or distribution of this prospectus in that jurisdiction. Persons who come into possession of this prospectus in jurisdictions outside the United States are required to inform themselves about and to observe any restrictions as to this offering and the distribution of this prospectus applicable to those jurisdictions.

Unless the context indicates otherwise, all references in this prospectus to we, our and us refer to First Mariner Bancorp and our subsidiaries, including First Mariner Bank; except that in the discussion of our subscription rights and capital stock and related matters these terms refer solely to First Mariner and not to any of our subsidiaries. In this prospectus, we sometimes refer to First Mariner Bank as the Bank and we will refer to the rights offering and the offering to standby purchasers collectively as the stock offerings.



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**QUESTIONS AND ANSWERS RELATING TO THE RIGHTS OFFERING**

**What is the rights offering?**

We are distributing, at no charge, to holders of our shares of common stock, non-transferable subscription rights to purchase shares of our common stock. You will receive one subscription right for each share of common stock you owned as of 5:00 p.m., Eastern Time, on **[RECORD DATE]**, the record date. Each subscription right entitles the holder to a basic subscription privilege and an over-subscription privilege, which are described below. The shares to be issued in the rights offering, like our existing shares of common stock, will be traded on the Nasdaq Global Market under the symbol **FMAR**.

**What is the offering to the standby purchasers?**

We have entered into separate standby purchase agreements with certain institutional investors and high net worth individuals, pursuant to which we have agreed to sell, and these investors and individuals have severally agreed to purchase from us, up to **[STANDBY MAX]** shares of our common stock. The standby purchase commitments are subject to certain conditions as set forth in the standby purchase agreements. The number of shares available for sale to the standby purchasers will depend on the number of shares subscribed for in the rights offering. The standby purchase agreements assure that in no event will we issue fewer than **[STANDBY MINIMUM]** shares, in the aggregate, to standby purchasers. The price per share paid by the standby purchasers for such common stock will be equal to the subscription price paid by our shareholders in the rights offering.

**What is the basic subscription privilege?**

The basic subscription privilege of each subscription right gives our shareholders the opportunity to purchase **[Ratio]** shares of our common stock at a subscription price of **\$(SHARE PRICE)** per share. We have granted to you, as a shareholder of record as of 5:00 p.m., Eastern Time, on the record date, one subscription right for each share of our common stock you owned at that time. Fractional shares of our common stock resulting from the exercise of the basic subscription privilege will be eliminated by rounding down to the nearest whole share. For example, if you owned 100 shares of our common stock as of 5:00 p.m., Eastern Time, on the record date, you would have received 100 subscription rights and would have the right to purchase \_\_\_\_\_ shares of common stock for **\$(SHARE PRICE)** per share. You may exercise all or a portion of your basic subscription privilege or you may choose not to exercise any subscription rights at all. However, if you exercise less than your full basic subscription privilege, you will not be entitled to purchase any additional shares by using your over-subscription privilege.

If you hold a First Mariner stock certificate, the number of rights you may exercise pursuant to your basic subscription privilege is indicated on the enclosed rights certificate. If you hold your shares in the name of a custodian bank, broker, dealer or other nominee, you will not receive a rights certificate. Instead, the Depository Trust Company (DTC) will issue one subscription right to the nominee record holder for each share of our common stock that you own at the record date. If you are not contacted by your custodian bank, broker, dealer or other nominee, you should contact your nominee as soon as possible.

**What is the over-subscription privilege?**

In the event that you purchase all of the shares of our common stock available to you pursuant to your basic subscription privilege, you may also choose to purchase a portion of any shares of our common stock that are not purchased by our other shareholders through the exercise of their basic subscription privileges. You should indicate on your rights certificate how many additional shares you would like to purchase pursuant to your over-subscription privilege.

If sufficient shares of common stock are available, we will seek to honor your over-subscription request in full. If, however, over-subscription requests exceed the number of shares of common stock available, we will allocate the available shares of common stock among shareholders who over-subscribed by multiplying the number of shares requested by each shareholder through the exercise of their over-subscription privileges by a fraction that equals (x) the number of shares available to be issued through over-subscription privileges divided by (y) the total number of shares requested by all subscribers through the exercise of their over-subscription privileges. As

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described above for the basic subscription privilege, we will not issue fractional shares through the exercise of over-subscription privileges.

In order to properly exercise your over-subscription privilege, you must deliver the subscription payment related to your over-subscription privilege at the time you deliver payment related to your basic subscription privilege. Because we will not know the actual number of unsubscribed shares prior to the expiration of the rights offering, if you wish to maximize the number of shares you purchase pursuant to your over-subscription privilege, you will need to deliver payment in an amount equal to the aggregate subscription price for the maximum number of shares of our common stock that may be available to you. For that calculation, you must assume that no other shareholder, other than you and the standby purchasers, who have agreed to exercise their basic subscription privileges for an aggregate of \_\_\_\_\_ shares, will subscribe for any shares of our common stock pursuant to their basic subscription privilege. See *The Rights Offering The Subscription Rights Over-Subscription Privilege*.

**Why are we conducting the stock offerings?**

We are engaging in the stock offerings to raise equity capital to improve First Mariner Bank's capital position and the Company's consolidated capital position. Our board of directors has chosen to raise capital through a rights offering to give our shareholders the opportunity to limit ownership dilution by buying additional shares of common stock. Our board of directors also considered several alternative capital raising methods prior to concluding that the rights offering was the appropriate option under the current circumstances. We believe that the rights offering will strengthen our financial condition by generating additional cash and increasing our capital position; however, our board of directors is making no recommendation regarding your exercise of the subscription rights. We cannot assure you that we will not need to seek additional financing or engage in additional capital offerings in the future.

**How was the \$[SHARE PRICE] per share subscription price determined?**

In determining the subscription price, our board of directors considered a number of factors, including: the price at which our shareholders might be willing to participate in the rights offering, historical and current trading prices for our common stock, the need for liquidity and capital, negotiations with standby purchasers, and the desire to provide an opportunity to our shareholders to participate in the rights offering on a pro rata basis. In conjunction with its review of these factors, our board of directors also reviewed our history and prospects, including our past and present earnings, our prospects for future earnings, our current financial condition and regulatory status and a range of discounts to market value represented by the subscription prices in various prior rights offerings. To assist its review, our board of directors received an analysis of comparable transactions from Sandler O'Neill & Partners, L.P., our financial advisor. The subscription price is not necessarily related to our book value, net worth or any other established criteria of value and may or may not be considered the fair value of our common stock to be offered in the rights offering. You should not assume or expect that, after the stock offerings, our shares of common stock will trade at or above the \$[SHARE PRICE] purchase price.

**Am I required to exercise all of the subscription rights I receive in the rights offering?**

No. You may exercise any number of your subscription rights, or you may choose not to exercise any subscription rights. If you do not exercise any subscription rights, the number of shares of our common stock you own will not change. However, if you choose not to exercise your basic subscription rights in full, your ownership interest in First Mariner will be diluted as a result of the stock offerings, and even if you fully exercise

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your basic subscription rights, but do not exercise a certain level of over-subscription rights, you will experience dilution as a result of the sale of shares to standby purchasers. In addition, if you do not exercise your basic subscription privilege in full, you will not be entitled to participate in the over-subscription privilege.

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**How soon must I act to exercise my subscription rights?**

If you received a rights certificate and elect to exercise any or all of your subscription rights, the subscription agent must receive your completed and signed rights certificate and payments prior to the expiration of the rights offering, which is [EXPIRATION DATE], at 5:00 p.m., Eastern Time. If you hold your shares in the name of a custodian bank, broker, dealer or other nominee, your nominee may establish a deadline prior to 5:00 p.m. Eastern Time, on [EXPIRATION DATE] by which you must provide it with your instructions to exercise your subscription rights and payment for your shares. Our board of directors may, in its discretion, extend the rights offering one or more times, but in no event will the expiration date be later than [EXPIRATION DATE #2] .. Our board of directors may cancel or amend the rights offering at any time. In the event that the rights offering is cancelled, all subscription payments received will be returned, without interest, as soon as practicable.

Although we will make reasonable attempts to provide this prospectus to holders of subscription rights, the rights offering and all subscription rights will expire at 5:00 p.m., Eastern Time on [EXPIRATION DATE] (unless extended), whether or not we have been able to locate each person entitled to subscription rights.

**May I transfer my subscription rights?**

No. You may not sell, transfer or assign your subscription rights to anyone. Subscription rights will not be listed for trading on the Nasdaq Global Market or any other stock exchange or market. Rights certificates may only be completed by the shareholder who receives the certificate.

**Are we requiring a minimum subscription to complete the stock offerings?**

There is no individual minimum purchase requirement in the rights offering. However, we cannot complete the stock offerings unless we receive aggregate subscriptions of at least \$\_\_\_ million ([MINIMUM] shares) of common stock in the stock offerings. This includes purchases by the standby purchasers of up to [STANDBY MAX] shares of our common stock.

**Is there a limit to how much stock being issued in the stock offerings?**

We will accept subscriptions for up to an aggregate of \$20.0 million of common stock in the offerings.

**Has our board of directors made a recommendation to our shareholders regarding the rights offering?**

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No. Our board of directors is making no recommendation regarding your exercise of the subscription rights. Shareholders who exercise subscription rights risk investment loss on new money invested. We cannot predict the price at which our shares of common stock will trade; therefore, we cannot assure you that the market price for our common stock will be above the subscription price or that anyone purchasing shares at the subscription price will be able to sell those shares in the future at the same price or a higher price. You are urged to make your decision based on your own assessment of our business and the rights offering. Please see *Risk Factors* for a discussion of some of the risks involved in investing in our common stock.

### **Are there any limits on the number of shares I may purchase in the rights offering or own as a result of the rights offering?**

Subject to the discretion of the board of directors, a person, together with certain related persons and associates, may not purchase a number of shares such that upon completion of the stock offerings the person owns in excess of 4.9% of First Mariner's common stock outstanding.

In addition, with the exception of the issuance of shares to certain of our standby purchasers, we will not issue shares of our common stock pursuant to the exercise of basic subscription rights or over-subscription rights, or to any shareholder or standby purchaser who, in our sole opinion, could be required to obtain prior clearance or approval from or submit a notice to any state or federal bank regulatory authority to acquire, own or control such shares if, as of [EXPIRATION DATE], such clearance or approval has not been obtained and/or any applicable waiting period has not expired. If we elect not to issue shares in such a case, the unissued shares will become

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available to satisfy over-subscription by other shareholders pursuant to their subscription rights and will thereafter be available to standby purchasers.

**How do I exercise my subscription rights if I own shares in certificate form?**

If you hold a First Mariner stock certificate and you wish to participate in the rights offering, you must take the following steps:

- deliver a properly completed and signed rights certificate, and related subscription documents, to the subscription agent before 5:00 p.m., Eastern Time, on **[EXPIRATION DATE]**; and
- deliver payment to the subscription agent before 5:00 p.m., Eastern Time, on **[EXPIRATION DATE]**.

In certain cases, you may be required to provide additional documentation or signature guarantees.

Please follow the delivery instructions on the rights certificate. Do not deliver documents to First Mariner. You are solely responsible for completing delivery to the subscription agent of your subscription documents, rights certificate and payment. We urge you to allow sufficient time for delivery of your subscription materials to the subscription agent so that they are received by the subscription agent by 5:00 p.m. Eastern Time, on **[EXPIRATION DATE]**.

If you send a payment that is insufficient to purchase the number of shares you requested, or if the number of shares you requested is not specified in the forms, the payment received will be applied to exercise your subscription rights to the fullest extent possible based on the amount of the payment received, subject to the availability of shares under the over-subscription privilege and the elimination of fractional shares. Any excess subscription payments received by the subscription agent will be returned, without interest, as soon as practicable following the expiration of the rights offering.

**What form of payment is required to purchase the shares of our common stock?**

As described in the instructions accompanying the rights certificate, payments submitted to the subscription agent must be made in full United States currency by:

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- personal check;
- bank check or bank draft payable to American Stock Transfer & Trust Company, LLC, drawn upon a United States bank;
- postal, telegraphic or express money order payable to American Stock Transfer & Trust Company, LLC; or
- wire transfer of immediately available funds to the account maintained by American Stock Transfer & Trust Company, LLC.

### **What should I do if I want to participate in the rights offering, but my shares are held in the name of a custodian bank, broker, dealer or other nominee?**

If you hold your shares of common stock through a custodian bank, broker, dealer or other nominee, then your nominee is the record holder of the shares you own. If you are not contacted by your nominee, you should contact your nominee as soon as possible. Your nominee must exercise the subscription rights on your behalf for the shares of common stock you wish to purchase. You will not receive a rights certificate. Please follow the instructions of your nominee. Your nominee may establish a deadline that may be before the 5:00 p.m., Eastern Time, **[EXPIRATION DATE]** expiration date that we have established for the rights offering.



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**When will I receive my new shares?**

If you purchase stock in the rights offering by submitting a rights certificate and payment, we will mail you a stock certificate as soon as practicable after the expiration date of the rights offering. If your shares as of **[RECORD DATE]** were held by a custodian bank, broker, dealer or other nominee, and you participate in the rights offering, you will not receive stock certificates for your new shares. Your nominee will be credited with the shares of common stock you purchase in the rights offering as soon as practicable after the expiration of the rights offering.

**After I send in my payment and rights certificate, may I cancel my exercise of subscription rights?**

No. All exercises of subscription rights are irrevocable unless the rights offering is terminated, even if you later learn information that you consider to be unfavorable to the exercise of your subscription rights. You should not exercise your subscription rights unless you are certain that you wish to purchase shares of our common stock in the rights offering.

**Are there any conditions to completing the rights offering?**

Yes. We must meet the following conditions to complete the rights offering:

- We must sell the minimum offering amount of at least \$\_\_\_\_\_ million (**[MINIMUM]** shares) of common stock in the stock offerings, which includes the purchases by the standby purchasers of up to **[STANDBY MAX]** shares of our common stock.
- Our shareholders must approve an amendment to our Amended and Restated Articles of Incorporation ( Articles ) to increase the number of authorized shares of common stock to 75,000,000. Our Articles currently authorize us to issue 20,000,000 shares of common stock, which is less than the sum of our current outstanding shares plus the number of shares we are offering for sale in the stock offerings. At a Special Meeting of Shareholders, which is scheduled to be held on \_\_\_\_\_, 2010 (the Special Meeting ), we are submitting a proposal to shareholders to amend the Articles.
- Our shareholders must approve the issuance of shares to standby purchasers. At the Special Meeting, we are submitting a proposal to our shareholders to approve the issuance of shares to the standby purchasers.

**Will our directors and officers participate in the rights offering?**

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We expect our directors and officers, together with their affiliates, will subscribe for, in the aggregate, approximately \$\_\_ million, which represents \_\_\_\_\_ shares of common stock in the rights offering. The purchase price paid by them will be \$[**SHARE PRICE**] per share, the same paid by all other persons who purchase shares of our common stock in the stock offerings. Following the stock offerings, our directors and executive officers, together with their affiliates, are expected to own \_\_\_\_\_ shares of common stock, or \_\_\_\_\_% of our total outstanding shares of common stock if we sell [**MINIMUM**] shares of stock in the stock offerings, including shares they currently own in First Mariner.

### **Are the standby purchasers receiving any compensation for the standby commitments?**

No. The standby purchasers are not receiving compensation for their standby commitments.

### **What agreements do we have with the standby purchasers?**

Each of the standby purchasers executed a non-disclosure agreement and accordingly gained access to certain nonpublic information about us and participated in discussions with our management. In addition, the standby purchasers performed a due diligence review of First Mariner and subsequently negotiated and executed standby purchase agreements.

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**How many shares will the standby purchasers own after the stock offerings?**

After the stock offerings, the standby purchasers will own between \_\_\_\_ shares of our common stock (\_\_\_\_% of our outstanding shares) and \_\_\_\_ shares of our common stock (\_\_\_\_% of our outstanding shares), depending on how many shares of common stock we sell in the stock offerings.

**What effects will the stock offerings have on our outstanding common stock?**

As of [RECORD DATE], we had 6,452,631 shares of our common stock issued and outstanding. Assuming no options are exercised prior to the expiration of the rights offering and assuming all shares are sold in the rights offering and to standby purchasers, we expect approximately \_\_\_\_ shares and \_\_\_\_ shares of our common stock will be outstanding immediately after completion of the stock offerings at the minimum and maximum ends of the offering range, respectively.

The issuance of shares of our common stock in the stock offerings will dilute, and thereby reduce, your proportionate ownership in our shares of common stock unless you fully exercise your basic subscription privilege and a certain level of your over-subscription privilege. In addition, the issuance of shares of our common stock at the subscription price, which is less than the market price of \$\_\_ as of \_\_\_\_, 2009, will likely reduce the price per share of shares held by you prior to the stock offerings.

**How much will we receive in net proceeds from the stock offerings?**

We expect that the aggregate stock offering proceeds, net of expenses, to be between \$\_\_ million and \$\_\_ million, the proceeds of which will be invested in the Bank to improve its regulatory capital position and the Company's consolidated capital position. See *Use of Proceeds*.

**Are there risks in exercising my subscription rights?**

Yes. The exercise of your subscription rights involves risks. Exercising your subscription rights involves the purchase of additional shares of our common stock and should be considered as carefully as you would consider any other equity investment. Among other things, you should carefully consider the risks described under the heading *Risk Factors* in this prospectus.

**If the rights offering is not completed, will my subscription payment be refunded to me?**

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Yes. The subscription agent will hold all funds it receives in a segregated bank account until completion of the rights offering. If the rights offering is not completed, all subscription payments received by the subscription agent will be returned, without interest, as soon as practicable. If your shares are held in the name of a custodian bank, broker, dealer or other nominee, it may take longer for you to receive the refund of your subscription payment because the subscription agent will return payments through the record holder of your shares.

### **What fees or charges apply if I purchase shares of the common stock in the rights offering?**

We are not charging any fee or sales commission to issue subscription rights to you or to issue shares to you if you exercise your subscription rights (other than the subscription price). If you exercise your subscription rights through a custodian bank, broker, dealer or other nominee, you are responsible for paying any fees your nominee may charge you.

### **Who should I contact if I have other questions?**

If you have other questions regarding First Mariner, The Bank or the stock offerings, please contact our information agent, Laurel Hill Advisory Group, LLC, at (866) 888-742-1305 (toll free), Monday through Friday (except bank holidays), between 10:00 a.m. and 4:00 p.m., Eastern Time. Banks and brokers may contact Laurel Hill Advisory Group, LLC at (917) 338-3181.

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If you have other questions regarding First Mariner, the Bank, the stock offerings, a rights certificate or submitting payment in the rights offering, please contact our subscription agent for the rights offering, American Stock Transfer & Trust Company, LLC, at (877) 742-6417 (toll free), Monday through Friday (except bank holidays), between 8:00 a.m. and 6:00 p.m., Eastern Standard Time.

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**SUMMARY**

*The following summary contains basic information about us and the rights offering. Because it is a summary, it may not contain all of the information that is important to you. For additional information before making a decision to invest in our shares of common stock, you should read this prospectus carefully, including the sections entitled *The Rights Offering* and *Risk Factors* and the information incorporated by reference in this prospectus, including our audited consolidated financial statements and the accompanying notes included in our Annual Report on Form 10-K for the year ended December 31, 2008, and our unaudited consolidated financial statements in our Quarterly Report on Form 10-Q for the fiscal quarter ended September 30, 2009.*

**First Mariner Bancorp**

First Mariner Bancorp is the holding company for First Mariner Bank. First Mariner owns and operates the Bank, Mariner Finance, LLC ( Mariner Finance ) and FM Appraisals, LLC ( FM Appraisals ). First Mariner Bank's primary market area for its core banking operations, which consist of traditional commercial and consumer lending, as well as retail and commercial deposit operations, is central Maryland, as well as portions of Maryland's eastern shore. The Bank also has one branch in Pennsylvania. The Bank was formed in 1995 through the merger of several small financial institutions. Our executive offices are located in the Canton area of Baltimore City at 1501 South Clinton Street, Baltimore, Maryland 21224. Our telephone number is (410) 342-2600.

First Mariner Bank has total assets in excess of \$1.2 billion, and is the largest commercial bank headquartered in Baltimore, MD. The Bank is engaged in the general commercial banking business, with particular attention and emphasis on the needs of individuals and small- to mid-sized businesses, and delivers a wide range of financial products and services. Products and services include traditional deposit products, a variety of consumer and commercial loans, residential and commercial mortgage and construction loans, money transfer services, nondeposit investment products, and Internet banking and similar services.

First Mariner Mortgage, a division of the Bank, engages in mortgage-banking activities, providing mortgage loans and associated products to customers and selling most of those mortgage loans into the secondary market. First Mariner Mortgage currently operates offices in Maryland, Virginia, Delaware, Massachusetts, and North Carolina. First Mariner Mortgage originated \$1.149 billion in loans in 2008, and originations have exceeded \$1.2 billion for the first nine months of 2009.

Next Generation Financial Services ( NGFS ), a division of the Bank, engages in the origination of reverse and conventional mortgage loans, providing these products directly through commission based loan officers throughout the United States. NGFS originates reverse mortgage loans for sale and currently sells all of its volume into the secondary market. The Bank does not originate any reverse mortgage loans for its portfolio, but it does retain the servicing rights on reverse mortgage loans sold to Fannie Mae. NGFS is one of the largest originators of reverse mortgage loans in the United States. As further described under *Recent Developments Potential Sale of Next Generational Services* , the Bank has entered into a profit sharing agreement which may result in the acquisition of NGFS.

Mariner Finance engages in traditional consumer finance activities, making small direct cash loans to individuals, purchasing installment loan sales contracts from local merchants and retail dealers of consumer goods, lending to individuals via direct mail solicitations, and making a relatively low volume of mortgage loans. Mariner Finance currently operates branches in Maryland, Virginia, New Jersey, Tennessee,

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Pennsylvania, and Delaware. Mariner Finance had total assets of \$103.9 million as of December 31, 2008. A substantial majority of those assets are comprised of loans to customers in Maryland and Delaware. As further described under *Recent Developments Sale of Finance Subsidiary*, the Bank has entered into an agreement to sell Mariner Finance.

FM Appraisals is a residential real estate appraisal preparation and management company that is headquartered in Baltimore City. FM Appraisals offers appraisal services for residential real estate lenders, including appraisal preparation, the compliance oversight of sub-contracted appraisers, appraisal ordering and administration, and appraisal review services. FM Appraisals provides these services to First Mariner Mortgage, NGFS, and Mariner Finance.

We operate in three business segments commercial and consumer banking; consumer finance; and mortgage-banking.

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At September 30, 2009, we had total consolidated assets of \$1.4 billion, total deposits of \$1.1 billion and total stockholders' equity of \$29.4 million.

**Recent Developments**

***Sale of Finance Subsidiary.*** On October 7, 2009, First Mariner entered into a Contribution and Joint Venture Agreement (the "Contribution Agreement") with MF Holdco, LLC, a newly formed Delaware limited liability company ("Holdco") sponsored by Milestone Partners, a middle market private equity firm, pursuant to which First Mariner will contribute all of its equity interest in Mariner Finance to MF Raven Holdings, Inc., a newly formed Delaware corporation ("JV Corp"), in exchange for 5% of JV Corp's common stock, valued at \$675,000 and \$9.8 million in cash, subject to adjustment based on the net assets of Mariner Finance at the time of closing. Holdco will contribute \$12.8 million to JV Corp in exchange for 95% of JV Corp's common stock.

The initial cash proceeds of approximately \$8.9 million from the sale of Mariner Finance will be downstreamed to the Bank. In addition, First Mariner also anticipates contributing to First Mariner Bank an outstanding note receivable from Mariner Finance. The note has a balance of \$4.0 million and carries an interest rate of 7.0%. Within 90 days of the sale, First Mariner expects to receive an additional \$575,000 and downstream those proceeds to the Bank. These contributions are expected, in aggregate, to provide \$13.5 million of additional capital and increase the regulatory capital ratios of the Bank.

Although First Mariner expects the sale of Mariner Finance to close by December 15, 2009, the closing is subject to various customary closing conditions, including, without limitation, (i) the accuracy of the representations and warranties of each party and the performance by each party of its covenants, (ii) the parties' receipt of all required third-party approvals, including approvals from certain state regulators that license and supervise Mariner Finance and approvals from Mariner Finance's primary lenders, (iii) the absence of any pending or threatened action or proceeding by or before any court or other governmental authority seeking to prohibit the consummation of the transactions, or which might materially effect First Mariner's ability to contribute its interest in Mariner Finance to JV Corp or JV Corp's ability to own such interest, and (iv) the receipt by First Mariner of a tax opinion regarding the intended tax treatment of the contributions by First Mariner and Holdco. Accordingly, there can be no assurance that the parties will consummate the transactions when expected, if at all.

First Mariner's consolidated results of operations for the third quarter of 2009 reflect a loss of approximately \$10.6 million relating to the sale of Mariner Finance. Although the sale is expected to take place in the fourth quarter of 2009, accounting standards required that First Mariner write down its recorded basis in Mariner Finance during the third quarter to the value of the consideration to be received upon the sale. The transaction will not, however, result in any current gain or loss for federal income tax purposes. First Mariner anticipates that any deferred income tax benefit that results from this transaction will be assigned a full valuation allowance.

***Potential Sale of Next Generational Services.*** The Bank has entered into a profit sharing agreement with a private company related to NGFS, which may result in the acquisition of NGFS if certain requirements are satisfied within the next 18 months. The closing of the transaction is subject to numerous conditions, including, without limitation, that the parties obtain consents and approvals from certain lenders and governmental agencies that license and supervise the Bank. Accordingly, there can be no assurance that the closing will occur when expected, if at all. We do not anticipate any benefit that results from the sale to be material.



**Recent Operational Challenges**

**Asset Quality.** 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

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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 loans 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 September 30, 2009. The primary reason for the decrease was the removal of the allowance for loan losses of Mariner Finance, 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 assets increased during this period from 3.72% at December 31, 2007 to 5.16% at December 31, 2008. 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.

**First Mariner Long-Term Debt.** At September 30, 2009, First Mariner had \$73.72 million aggregate amount of outstanding subordinated debentures, consisting of seven issuances of subordinated debentures. The subordinated debentures were issued to seven trust subsidiaries, each of which, in turn, issued and sold trust preferred securities with aggregate liquidation amounts and interest rates at September 30, 2009 as set forth below.

Trust	Liquidation Amount		Interest Rate
First Mariner Capital Trust II	\$	10.3 million	3-month LIBOR rate plus 335 basis points
First Mariner Capital Trust III	\$	14.9 million	3-month LIBOR rate plus 325 basis points
First Mariner Capital Trust IV	\$	12.4 million	3-month LIBOR rate plus 305 basis points
First Mariner Capital Trust V	\$	10.3 million	3-month LIBOR rate plus 310 basis points
First Mariner Capital Trust VI	\$	10.3 million	3-month LIBOR rate plus 205 basis points
First Mariner Capital Trust VII	\$	5.2 million	3-month LIBOR rate plus 195 basis points
First Mariner Capital Trust VIII	\$	10.3 million	fixed 6.26%, then reset on December 30, 2010 to the 3-month LIBOR rate plus 150 basis points.

First Mariner accrued interest expense of \$4.64 million on the trust preferred securities during the year ended December 31, 2008 and \$2.44 million during the nine months ended September 30, 2009. On December 22, 2008, First Mariner announced its election to defer interest payments on the debentures relating to all of the trust preferred securities beginning with the January 7, 2009 payment, and January 8, 2009 with respect to those issued by Mariner Capital Trust V. The deferral of interest payments on the trust preferred securities for up to 20 consecutive quarters does not constitute an event of default under the trust preferred securities governing documents.

***Cease and Desist Orders.*** 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 Office of the Commissioner of Financial Regulation for the State of Maryland (the "Commission") 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.

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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.

Within 10 days of the September Order, the Bank was required to charge-off or collect all loans on its books that, as of March 30, 2009, were classified as Loss. The Bank has complied with the directive to charge off loans identified as Loss. Within 60 days of the September Order, the Bank was directed to adopt a plan to reduce its risk exposure on each asset classified as Substandard as of March 31, 2009. Specifically, these substandard assets must be reduced by 25% within nine months of the September Order and by 50% by the end of 2010. The Bank has adopted and submitted a plan in compliance with this directive and, as of the date of this document, the plan is being reviewed by the FDIC and the Commissioner. The September Order also generally prohibits the Bank from extending further credit to any existing borrower whose credit has been classified as Loss, Doubtful or Substandard and is uncollected. In accordance with this directive, the Bank is no longer extending credit to these prohibited borrowers, unless conditions are met. Further, the Bank must submit an annual budget and profit plan by January 30, 2010 which takes into account, among other things, the Bank's pricing structure, a recommendation for reducing the Bank's cost of funds, and the level of and provision expense for adversely classified loans. While the September Order is in effect, the Bank may not pay dividends or management fees without the FDIC's prior consent and may not accept, renew or roll over any brokered deposits or pay effective yields on deposits that are greater than those generally paid in its markets.

To maintain adequate liquidity, the Bank was directed to adopt a plan intended to reduce its reliance on non-core funding, wholesale funding sources, and high-cost rate-sensitive deposits. The steps required include identifying the source and use of borrowed and/or volatile funds, establishing back-lines of credit to the extent possible, establishing a minimum liquidity ratio, addressing concentrations of borrowed funds and the use of such funds, addressing pricing and collateral requirements with funding channels, and establishing a liquidity contingency plan. The Bank has submitted its liquidity plan to the FDIC and, as of the date of this document, the plan is being reviewed by the FDIC.

Finally, the September Order requires the Bank's board of directors to establish a compliance committee to oversee and insure the Bank's compliance with the September Order, 75% of the members of which must be non-employee directors. Prior to the entry of the September Order, the Bank had established a compliance committee in accordance with this directive, which committee will oversee and monitor compliance with the September Order. A copy of the September Order is included as an Exhibit to the Company's Form 8-K filed on September 21, 2009 and incorporated by reference herein.

On April 22, 2009, the Bank entered into a Stipulation and Consent to the Issuance of an Order to Cease and Desist, Order for Restitution and Order to Pay with the FDIC whereby First Mariner Bank consented to the issuance of an Order to Cease and Desist, Order for Restitution and Order to Pay (the April Orders) promulgated by the FDIC without admitting or denying any violations of law and/or regulations. The April Orders relate to alleged violations of consumer protection regulations relative to First Mariner Bank's fair lending practices. The April Orders are based on findings by the FDIC that the Bank allegedly engaged in acts of discrimination in violation of the Equal Credit Opportunity Act (the ECOA) and the Fair Housing Act (the FHA) in 2005, 2006 and 2007 and in violation of Section 5 of the Federal Trade Commission Act (FTCA) in 2006 and 2007. The alleged violations of the ECOA and the FHA are based on the FDIC's belief that the Bank charged higher prices to certain Hispanic, African American and female borrowers (Affected Borrowers) under residential mortgage loans, in the form of discretionary interest rate and point overages, than it charged to similarly-situated non-minority borrowers. The alleged violations of the FTCA are based on the FDIC's belief that First Mariner Bank's disclosures for its payment-option adjustable-rate mortgage loans contained misleading information regarding the costs of the loans.



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Under the April Orders, the FDIC agreed to take no further action against the Bank in respect of the alleged violations. The April Orders required First Mariner Bank to pay up to \$950,000 in restitution to the Affected Borrowers and imposed a civil money penalty of \$50,000, all amounts for which were fully reserved in the final quarter of 2008. Other than requiring the Bank to cease and desist from violating the ECOA, the FHA and the FTCA, the Bank was required to and developed and implemented policies and procedures to (i) monitor and ensure compliance with fair lending laws and disclosure laws and regulations, (ii) ensure that the costs, terms, features and risks of the loans and services are adequately disclosed to applicants, and (iii) ensure the composition, qualifications, objectivity and independence of the internal auditor, audit staff and Audit Committee. The Bank must also conduct or sponsor quarterly financial literacy and education courses where it provides residential mortgage loans. The Bank is also prohibited from offering payment-option adjustable rate mortgage loans, although it voluntarily ceased offering these loans in 2007.

The September and April Orders will remain in effect until terminated, modified, or suspended in writing by the FDIC and are periodically collectively referred to in this document as the Cease and Desist Orders .

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. The FDIC could also direct us to seek a merger partner or take additional significant actions against the Bank and the Company. We have incurred, and expect to continue to incur, significant additional regulatory compliance expense in connection with the Cease and Desist Orders and the FRB Agreements. For further information, see *Risk Factors We are subject to restrictions and conditions of Cease and Desist Orders issued by the FDIC and the Commissioner and the FRB Agreement with the FRB and expect to be subject to the New FRB Agreement with the FRB. We have incurred and expect to continue to incur significant additional regulatory compliance expense in connection with these enforcement actions. Failure to comply with the Cease and Desist Orders or the FRB Agreements could result in additional enforcement action against us, including the imposition of monetary penalties.*

**Federal Reserve Board Agreement.** 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 Bancorp has 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 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%. A copy of the New FRB Agreement is included as an Exhibit to the Company's Form 8-K filed on November 27, 2009 and incorporated herein by reference.

**Troubled Condition.** The Company and Bank are deemed to be in troubled condition within the meaning of federal statutes and regulations. As a result, the Company and Bank are subject to additional limitations and regulatory restrictions. For further information, see *Risk Factors--The Company and the Bank are deemed to be in troubled condition.*



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### **Our Business Strategy**

In light of the operational challenges we recently have faced, our management team has taken, and will continue to aggressively pursue, a capital plan that is designed to solicit capital investment, reduce the Bank's expenses, improve the Bank's capital ratios and otherwise satisfy the requirements of the Cease and Desist Orders and the FRB Agreements described above. Our capital plan contemplates taking actions that may include the following, the combination of some or all of which we believe will improve our operations in the short-term and position us for long-term future opportunities:

**Manage Our Asset Quality.** We have taken several significant steps to manage our asset quality, including:

- *Risk Management Resources Have Been Increased.* Management has significantly increased resources dedicated to aggressively managing asset quality. These resources include: a dedicated workout group of nine full time employees, assisted by members of the Bank's executive management, accounting, credit administration, and facilities departments. Additionally, strategies have been introduced to slow our origination of new portfolio loans which, in turn, improves loan officer monitoring of existing loan relationship and facilitates the ability of commercial loan officers to manage asset quality through timely loan collection, appropriate loan modification or restructuring and marketing and sales of foreclosed properties.
- *ALT A Loans Exposure Has Been Significantly Reduced.* The vast majority of credit losses experienced by the Company since 2006 are directly attributable to the origination of ALT A loans in 2005 and 2006. ALT A loans gained popularity significantly during the early part of the decade and were generally characterized by higher loan to value and/or lower documentation requirements. As the residential real estate market weakened during the later half of 2006, the Company experienced a significant volume of loans that required repurchase under loan investor agreements due to early payment default. In total, the Company repurchased \$41.0 million in ALT A loans in 2006 and 2007. Additionally, the Company was unable to sell approximately \$16.0 million in originated ALT A loans that were subsequently transferred to the Company's loan portfolio. Credit related losses (charge-offs, write-downs maintenance and sales of foreclosed loans) related to ALT A loans have totaled \$4.7 million, \$15.6 million, and \$11.0 million for 2006, 2007, and 2008, respectively. Losses for the nine months ended September 30, 2009 totaled \$5.1 million. Our remaining exposure to ALT A loans is now \$14.1 million, with \$8.0 million currently in non performing status.
- *Reduce Volume of Classified Assets.* We believe that the commitment of resources dedicated to aggressively managing asset quality and the reduction of our exposure to ALT A loans has stabilized our non performing loans and adversely classified assets. We continue to work through and resolve our remaining portfolio of ALT A residential loans, in that was a source of a considerable level of classified assets and losses. Except for our remaining ALT A loans, our classified loans are all loans made in our primary market area. By actively managing problem assets, we have reduced our classified assets by approximately 14% over the past 10 months from \$114.0 million at December 31, 2008 to \$98.0 million at September 30, 2009. While our level of non-accrual loans and other real estate owned remained elevated, we do not believe that they have increased at the rate of our peer banks. The total of our non accrual loans and other real estate owned as a percentage of total loans and other real estate owned totaled 5.88%, 5.79% and 4.96% at September 30, 2009, December 31, 2008, and December 31, 2007 respectively. Peer banks (as measured in the latest Bank Holding Company Performance Report) reported totals of 4.24%, 2.71%, and 1.15% for the same periods. This places First Mariner in the 68th percentile of the peer group as of September 30, 2009 compared to the 83rd percentile at the end of 2008 and the 96th percentile as of the end of 2007. The peer banks included in this report are all commercial Bank Holding Companies having assets between \$1 billion and \$3 billion. Our other loan portfolios with significant classified assets include residential construction and residential acquisition and development loans. We plan to reduce these portfolios in total and have active and aggressive workout plans in place for each loan. Approximately 31% of our non performing assets consist of other real estate owned that is being actively marketed at levels at or below appraised values. We have experienced accelerated sales levels over recent months as housing



inventories in northern Virginia and

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portions of Maryland have improved considerably. All non-performing assets have been written down to their latest appraised value which appraised values are updated no less than annually.

- **Strengthened Underwriting Standards.** Since 2007, we have significantly curtailed our residential construction and residential acquisition and development lending, and we discontinued Alt A lending in 2006. We have also applied more conservative underwriting practices, including, among other things, requiring more detailed credit information in certain circumstances, increasing the amount of required collateral or equity requirements or reducing loan-to-value ratios. As discussed below, we are in the process of selling our subsidiary, Mariner Finance, which, at September 30, 2009 held \$108.5 million of primarily consumer loans (which loans were reclassified as loans held for sale as of September 30, 2009). Total consumer loans, including second mortgages and loans secured by deposits and other assets, decreased from \$252.3 million at December 31, 2008 to \$149.8 million at September 30, 2009. While we experienced an increase of \$35.6 million in commercial mortgage loans and \$19.1 million in residential mortgage loans, commercial construction, consumer residential construction and commercial loans and lines of credit decreased by \$9.2 million, or 8.4%, \$19.1 million, or 27.5%, and \$5.7 million, or 6.3%, respectively. While we continue to be aggressive in loan origination overall, in the near term, we do not intend to actively pursue loan origination in portfolios that traditionally carry a greater risk of loss than residential mortgage loans.

**Manage Our Balance Sheet.** In order to improve our capital position, we intend to strategically reduce the amount of our assets and liabilities over the course of the upcoming fiscal year. In addition to reducing the amount of loans, particularly commercial real estate and construction loans, we anticipate reducing our reliance on brokered certificates of deposit and expect to eliminate nearly all of our brokered certificates of deposit by the end of 2010. Among other strategies, we may also engage in loan and securities sales and sales of nonperforming assets, and sales of certain branch offices to effectively manage our balance sheet and improve our capital position.

**Improve Our Capital Ratios.** We believe that our efforts to raise additional capital in the stock offerings, in addition to the expected increase in capital from the sale of Mariner Finance and the reduction of assets, will help us to achieve our goals of obtaining termination of the regulatory enforcement actions we are currently under, to mitigate the impact on First Mariner Bank of a worsening economy and manage our capital levels to maintain a capital cushion in excess of our regulatory capital requirement.

**Sale of Mariner Finance.** We have entered into an agreement to sell our subsidiary, Mariner Finance. The sale of Mariner Finance is expected to provide approximately \$13.5 million in additional regulatory capital. Based on assets at September 30, 2009, on a pro forma basis, the sale of Mariner Finance is expected to increase the Bank's tier 1 leverage and total risk-based capital ratios to 6.1% and 9.4%, respectively, and the Company's consolidated tier 1 leverage and total risk-based capital ratios to 2.4% and 5.5%, respectively.

**Maximize Mortgage Banking Opportunities.** At September 30, 2009, approximately 43% of our loans held in portfolio were secured by residential real estate. These loans were comprised of residential mortgages, residential construction loans and residential acquisition and development loans. Approximately 18% of those loans were residential mortgages, which increased from \$138.3 million at December 31, 2008 to \$157.5 million at September 30, 2009. Accordingly, while we expect to reduce level of residential construction loans and residential acquisition and development loans, we intend to maximize our mortgage banking operation to originate residential mortgage loans while limiting the risk to the Bank. We believe that we have the capacity to expand this part of our loan portfolio which traditionally carries less underwriting risk than construction, acquisition and development, commercial and consumer lending. We intend to offer only limited recourse, conforming loans that are readily saleable in the secondary market and expect to generate fee income by selling some of these loans in the secondary market.

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We have experienced a significant improvement in the profitability of our mortgage banking operations as we have created greater cost efficiencies through the use of technology and the consolidation of branches and processing centers. Additionally, we have enjoyed wider spreads on the origination and sales of loans as price competition has eased and there has been a substantial decline in competition from brokers and non bank mortgage companies. This has resulted in higher level of originations and greater fee income from the origination and sale of residential mortgages.

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***Diversify our Commerical Loan Products.*** In order to diversify and minimize our concentration of credit risk, we are conservatively expanding into other lines of lending. We have recently established an asset based lending group that will provide lines of credit against receivables and inventories that are underwritten on prudent advance rates.

***Reduction of Branch Offices.*** We have identified branches that we intend to offer for sale in 2010. The successful completion of this action is expected to reduce overhead costs by approximately \$3.0 million and support our strategy of prudently reducing assets and liabilities. Total aggregate deposits in the branches identified for sale are approximately \$50.0 million. The Bank has not entered into any agreement to sell any branch office and no guarantee can be made that any such agreement will be entered into and if such agreement is entered into, whether such sale will be consummated. The approval of the FDIC and the Commissioner would be required prior to the Bank's selling any branch office. While we anticipate that such approvals will be received, there can be no guarantee that such approvals will be received. If the Bank is unsuccessful in entering into a sale agreement, closures of selected locations would be pursued. The Bank would be required to provide 90 days notice to the FDIC, the Commissioner and to customers prior to closing any branch office. We have provided such a notice of closure regarding our Downtown Baltimore branch and this closure is expected to occur on or about February 15, 2010.

***Expense Control.*** We expect to actively work to reduce unneeded or excess operating expenses. We have made it a priority to identify cost savings opportunities throughout all phases of our operations. In particular, once we are able to successfully manage our asset quality and terminate our regulatory enforcement actions, we expect to reduce significantly fees for consultants and other advisors and expenses related to the management of our nonperforming assets. Additionally, full compliance with the Orders and the New FRB Agreement is expected to reduce future expenses for corporate liability insurance and deposit insurance. Cost related to other real estate owned, legal and professional services, and deposit services currently total 20% of our operating expenses. During the last two years, management has reduced operating expenses of the Bank through the sale and/or closure of bank branches, consolidation of mortgage offices, reductions in staff, subletting of excess office space, and through the renegotiation of large servicing contracts. During this time, the Bank has reduced staffing by over 90 full time salaried positions, has closed its Randallstown, Crofton, and Towson offices, and sold its Ocean City branch. By year end 2010, the Bank will have reduced its branch total by 30% from its January 1, 2007 level of 27.

***Work to Obtain Termination of the Regulatory Enforcement Actions.*** We will seek to demonstrate as soon as possible to the FDIC, the FRB and the Commissioner that we have fully complied with the requirements of each of the regulatory enforcement actions and that they should be terminated. Although the FDIC, the FRB and the Commissioner may, in the future, grant us relief on some provisions in the regulatory enforcement actions, we do not expect the FDIC, the FRB and the Commissioner to terminate the regulatory enforcement actions prior to at least the first quarter of 2011. At such time, we will be able to return to a more typical level of regulatory oversight and redirect management resources from maintaining compliance with the regulatory enforcement actions to the operation of our institution.

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**The Rights Offering**

Securities Offered	We are distributing to you, at no charge, one non-transferable subscription right for each share of our common stock that you owned as of 5:00 p.m., Eastern Time, on <b>[RECORD DATE]</b> , either as a holder of record or, in the case of shares held of record by custodian banks, brokers, dealers or other nominees on your behalf, as a beneficial owner of such shares.
Subscription Price	\$( <b>SHARE PRICE</b> ) per share.
Record Date	5:00 p.m., Eastern Time, on <b>[RECORD DATE]</b> .
Expiration of the Rights Offering	5:00 p.m., Eastern Time, on <b>[EXPIRATION DATE]</b> . We may extend the rights offering without notice to you until <b>[EXPIRATION DATE #2]</b> .
Use of Proceeds	We expect the aggregate net proceeds from the stock offerings to be between \$___ million and \$20.0 million. We intend to use the proceeds of the stock offerings to invest in First Mariner Bank to improve its regulatory capital position and the Company's capital position and for general corporate purposes.
Basic Subscription Privilege	The basic subscription privilege of each subscription right entitles you to purchase <b>[Ratio]</b> shares of our common stock at a subscription price of \$( <b>SHARE PRICE</b> ) per share; however, fractional shares of our common stock resulting from the exercise of the basic subscription privilege will be eliminated by rounding down to the nearest whole share. The number of rights you may exercise appears on your rights certificate.
Over-Subscription Privilege	In the event that you purchase all of the shares of our common stock available to you pursuant to your basic subscription privilege, you may also choose to subscribe for a portion of any shares of our common stock that are not purchased by our shareholders through the exercise of their basic subscription privileges. You may subscribe for shares of common stock pursuant to your over-subscription privilege, subject to the purchase and ownership limitations described below under the heading <i>Limitations on the Purchase of Shares</i> .
Limitations on the Purchase of Shares	Subject to the discretion of the board of directors, a person, together with certain related persons and associates, may not purchase a number of shares such that upon completion of the stock offerings the person owns in excess of 4.9% of First Mariner's common stock outstanding. Except for our issuance to certain of our standby purchasers, we will not issue shares of our common stock pursuant to the exercise of basic subscription rights or over-subscription rights, or to any shareholder or standby purchaser who, in our sole opinion, could be required to obtain prior clearance or approval from or submit a notice to any state or federal bank regulatory authority to acquire, own or control such shares if, as of <b>[EXPIRATION DATE]</b> , such clearance or approval has not been obtained and/or any applicable waiting period has not expired.
Non-Transferability of Rights	The subscription rights may not be sold, transferred or assigned and will not be listed for trading on the Nasdaq Global Market or on any other stock exchange or market.

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No Board Recommendation	Our board of directors is making no recommendation regarding your exercise of your subscription rights. You are urged to make your decision based on your own assessment of our business and the rights offering. Please see <i>Risk Factors</i> for a discussion of some of the risks involved in investing in our common stock.
Standby Purchase Agreements	In connection with the rights offering, we have entered into standby purchase agreements with certain institutional investors and high net worth individuals. Subject to certain conditions, the standby purchase agreements obligate us to sell, and require the standby purchasers to purchase from us, up to <b>[STANDBY MAX]</b> shares of common stock. The number of shares available for sale to the standby purchasers will depend on the number of shares subscribed for in the rights offering. However, in no event will we issue fewer than <b>[STANDBY MINIMUM]</b> shares to the standby purchasers. The price per share paid by the standby purchasers for such common stock will be equal to the subscription price paid by our shareholders in the rights offering.
Revocation	All exercises of subscription rights are irrevocable, even if you later learn of information that you consider to be unfavorable to the exercise of your subscription rights. You should not exercise your subscription rights unless you are certain that you wish to purchase additional shares of our common stock at a subscription price of <b>[\$[SHARE PRICE]</b> per share.
Minimum Offering	The offering is conditioned upon the receipt of minimum offering proceeds of \$_____ million.
Maximum Offering	The offering is subject to a limit of offering proceeds of \$20.0 million. We may waive this limit at our discretion.
Purchase Intentions of Our Directors and Officers	Our directors and executive officers as a group, together with their affiliates, have indicated their intention to exercise rights to purchase, in the aggregate, approximately \$_____ of our common stock in the rights offering.
Material U.S. Federal Income Tax Considerations	For U.S. federal income tax purposes, you should not recognize income or loss upon receipt or exercise of a subscription right. You should consult your own tax advisor as to the tax consequences to you of the receipt, exercise or lapse of the rights in light of your particular circumstances.
Extension and Cancellation	Although we do not presently intend to do so, we have the option to extend the rights offering expiration date, but in no event will we extend the rights offering beyond <b>[EXPIRATION DATE #2]</b> . Our board of directors may cancel the rights offering at any time. In the event that the rights offering is cancelled, all subscription payments received by the subscription agent will be returned, without interest, as soon as practicable.
Information Agent	Laurel Hill Advisory Group, LLC
Subscription Agent	American Stock Transfer & Trust Company, LLC
Shares Outstanding Before the Rights Offering	6,452,631 shares of our common stock were outstanding as of <b>[RECORD DATE]</b> .

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Shares Outstanding After Completion of the Rights Offering	Assuming no options are exercised prior to the expiration of the rights offering and assuming all shares are sold in the rights offering and to standby purchasers, we expect approximately _____ shares and _____ shares of our common stock will be outstanding immediately after completion of the rights offering and the closing of the transactions contemplated by the standby purchase agreements at the minimum and maximum ends of the offering range, respectively.
Nasdaq Global Market Symbol	Shares of our common stock are currently listed for trading on the Nasdaq Global Market under the symbol FMAR.
Risk Factors	Before you exercise your subscription rights to purchase shares of our common stock, you should be aware that there are risks associated with your investment, including the risks described in the section entitled <i>Risk Factors</i> of this prospectus, and the risks that we have highlighted in other sections of this prospectus. You should carefully read and consider these risk factors together with all of the other information included in this prospectus before you decide to exercise your subscription rights to purchase shares of our common stock.

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**RISK FACTORS**

*An investment in our shares of common stock involves a number of risks. You should consider carefully the risks described below in evaluating an investment in the shares of common stock. If any of the events in the following risks actually occurs, or if additional risks and uncertainties not presently known to us or that we believe are immaterial, materialize, then our business, results of operations and financial condition could be materially adversely affected. In addition, the trading price of our shares of common stock could decline due to any of the events described in these risks.*

**Risks Related to Our Business**

**We are subject to restrictions and conditions of Cease and Desist Orders issued by the FDIC and the Commissioner, and the New FRB Agreement. We have incurred and expect to continue to incur significant additional regulatory compliance expense in connection with these enforcement actions. Failure to comply with the September Order or the New FRB Agreement could result in additional enforcement action against us, including the imposition of further operating restrictions and monetary penalties.**

The FDIC and the Commissioner have issued Cease and Desist Orders against First Mariner Bank and the Company has entered into the FRB Agreement and the New FRB Agreement. The September Order contains a number of significant directives, including higher capital requirements, requirements to reduce the level of our classified assets, operating restrictions and restrictions on dividend payments by the Bank. These restrictions may impede our ability to operate our own business. If we fail to comply with the terms and conditions of the Cease and Desist Orders or the New FRB Agreement, the appropriate regulatory authority could take additional enforcement action against us, including the imposition further operating restrictions and monetary penalties. We could also be directed to seek a merger partner. We have incurred and expect to continue to incur significant additional regulatory compliance expense in connection with the enforcement actions, and we will incur ongoing expenses attributable to compliance with the terms of the enforcement actions. Although we do not expect it, it is possible regulatory compliance expenses related to the enforcement actions could have a material adverse impact on us in the future. In addition, our ability to independently make certain changes to our business is restricted by the terms of the September Order and the New FRB Agreement, which could negatively impact the scope and flexibility of our business activities. While we believe that we will be able to take actions that will result in the Cease and Desist Orders and the New FRB Agreement being terminated in the future, we cannot guarantee that such actions will result in the termination of the Cease and Desist Orders and/or the New FRB Agreement. Further, the imposition of the Cease and Desist Orders and the New FRB Agreement may make it more difficult to attract and retain qualified employees. For more information on the Cease and Desist Orders and the New FRB Agreement, see *Summary Recent Operational Challenges Cease and Desist Orders and Federal Reserve Board Agreement*.

**As of September 30, 2009, the Bank's capital levels were not sufficient to achieve compliance with the higher capital requirements we must meet by June 30, 2010, nor were they, on a consolidated basis, sufficient to satisfy the FRB minimum requirements for the Company to be considered adequately capitalized. When combined with the assets and liabilities that we are selling or of which we are otherwise disposing, the amount of capital we are raising may not be sufficient to achieve and maintain compliance with the capital requirements mandated by our regulators. The failure to meet these capital requirements could result in further action by our regulators.**

In the September Order, the FDIC and the Commissioner directed the Bank to raise its tier 1 leverage and total risk-based capital ratios to 6.5% and 10%, respectively, by March 31, 2010 and to 7.5% and 11%, respectively, by June 30, 2010. At September 30, 2009, we did not meet these requirements and would have needed approximately \$27.0 million in additional capital, based on assets at such date, to meet these requirements.



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First Mariner currently does not have any capital available to invest in the Bank and any further increases to our allowance for loan losses and operating losses would negatively impact our capital levels and make it more difficult to achieve the capital levels directed by the FDIC and the Commissioner.

On a pro forma basis, based on assets as of September 30, 2009, following the sale of Mariner Finance and the completion of the stock offerings, the Bank's tier 1 leverage and total risk-based capital ratios are expected to be    % and    %, respectively. While this would satisfy the September Order's higher capital requirements required

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to be achieved by March 31, 2010, it would not satisfy the capital requirements required to be achieved by June 30, 2010. Additionally, the capital plan we submitted to the FDIC and the Commissioner contemplates that we will raise at least \$20.0 million of capital by March 31, 2010. While this requirement would be satisfied if the stock offerings were completed at the maximum of the offering range, it would not be satisfied at the minimum of the offering range. Therefore, if we do not raise at least \$20.0 million by that time, we may need to undertake additional efforts to raise capital, or seek and obtain a waiver from this requirement from the FDIC and the Commissioner. If we cannot meet capital requirements within the proscribed timeframes and we were not granted a waiver of such requirements, the FDIC and the Commissioner could take additional enforcement action against us, including the imposition of monetary penalties, as well as further operating restrictions. The FDIC also could also direct us to seek a merger partner or possibly place the Bank in receivership. If the Bank is placed into receivership, the Company would cease operations and liquidate or seek bankruptcy protection. If the Company were to liquidate or seek bankruptcy protection, we do not believe that there would be assets available to holders of the capital stock of the Company.

Additionally, on November 24, 2009, First Mariner's primary regulatory, the FRB, required the Company to enter into the New FRB Agreement. The New FRB Agreement requires that the Company submit a written plan by January 25, 2010 to maintain sufficient capital at the holding company level, 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. As of September 30, 2009, the Company's consolidated capital ratios did not meet the FRB's requirements to be considered adequately capitalized. If the Company does not satisfy the requirements of the written plan it is preparing for the FRB (once it is approved by the FRB), the FRB could take additional enforcement action against us, including the imposition of monetary penalties, as well as further operating restrictions.

**If the amount of capital we raise in the stock offerings and the other actions we are taking to reduce assets is insufficient to satisfy these capital requirements, we may need to take additional actions to reduce the amounts of our assets and liabilities, or we may need to raise additional capital through a share issuance in the future that would dilu**