

FIRST MARINER BANCORP
Form 10-K
March 24, 2010

Use these links to rapidly review the document

[TABLE OF CONTENTS](#)

[Table of Contents](#)

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

FORM 10-K

(Mark One)

ANNUAL REPORT UNDER SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934.

For the fiscal year ended December 31, 2009.

or

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from
Commission file number 0-21815

FIRST MARINER BANCORP

(Exact name of registrant as specified in its charter)

Maryland
(State of incorporation)

52-1834860
(IRS Employer Identification Number)

1501 S. Clinton Street, Baltimore, MD
(Address of principal executive offices)

21224
(zip code)

410-342-2600
(Telephone number)

Securities registered under Section 12(b) of the Exchange Act:

Title of Each Class	Name of Each Exchange on which registered
Common Stock, par value \$0.05 per share	The Nasdaq Stock Market LLC
Securities registered under Section 12 (g) of the Exchange Act:	
	None

Edgar Filing: FIRST MARINER BANCORP - Form 10-K

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes No

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports, and (2) has been subject to such filing requirements for the past 90 days. Yes No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes No

Indicate by check mark if disclosure of delinquent filers in response to Item 405 of Regulation S-K is not contained herein and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

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. (Check one):

Large accelerated filer Accelerated filer Non-accelerated filer Smaller reporting company

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act). Yes No

The aggregate market value of the voting stock held by non-affiliates of the registrant as of the last business day of the registrant's most recently completed second fiscal quarter was approximately \$7.234 million.

The number of shares of common stock outstanding as of March 19, 2010 was 6,452,631 shares.

Documents incorporated by reference:

Proxy Statement Part III

Table of Contents

FIRST MARINER BANCORP

**Annual Report on Form 10-K
December 31, 2009**

TABLE OF CONTENTS

	Page
<u>PART I</u>	
<u>Item 1</u>	<u>4</u>
<u>Item 1A</u>	<u>18</u>
<u>Item 2</u>	<u>33</u>
<u>Item 3</u>	<u>35</u>
<u>Item 4</u>	<u>35</u>
<u>PART II</u>	
<u>Item 5</u>	<u>36</u>
<u>Item 6</u>	<u>38</u>
<u>Item 7</u>	<u>39</u>
<u>Item 7A</u>	<u>76</u>
<u>Item 8</u>	<u>77</u>
<u>Item 9</u>	<u>127</u>
<u>Item 9A</u>	<u>127</u>
<u>Item 9B</u>	<u>129</u>
<u>PART III</u>	
<u>Item 10</u>	<u>130</u>
<u>Item 11</u>	<u>130</u>
<u>Item 12</u>	<u>130</u>
<u>Item 13</u>	<u>130</u>
<u>Item 14</u>	<u>130</u>
<u>PART IV</u>	
<u>Item 15</u>	<u>131</u>

Table of Contents

CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

Some of our statements contained in, or incorporated by reference into, this Annual Report on Form 10-K are "forward-looking statements" within the meaning of the Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934. We intend such forward-looking statements to be covered by the safe harbor provisions for forward-looking statements contained in the Private Securities Litigation Reform Act of 1995 and are including this statement for purposes of invoking these safe harbor provisions. Forward-looking statements are not guarantees of performance or results. When we use words like "may," "plan," "contemplate," "anticipate," "believe," "intend," "continue," "expect," "project," "predict," "estimate," "target," "could," "is likely," "should," "would," "will," and similar expressions, you should consider them as identifying forward-looking statements, although we may use other phrasing. These forward-looking statements involve risks and uncertainties and are based on our beliefs and assumptions and on the information available to us at the time that these disclosures were prepared. These forward-looking statements involve risks and uncertainties and may not be realized due to a variety of factors, including, but not limited to, the following:

the unfavorable effects of future economic conditions, including inflation, recession, or a continuing decrease in real estate values;

the failure of assumptions underlying the establishment of our allowance for loan losses, that may prove to be materially incorrect or may not be borne out by subsequent events;

the success and timing of our business strategies and our ability to effectively carry out our business plan;

our inability to realize the benefits from our cost saving initiatives, branch sales, and/or branch closings;

our inability to continue to operate as a going concern;

increased loan delinquencies;

an escalation in problem assets and foreclosures;

a decline in demand for our products and services;

a reduction in the value of the collateral for loans made by us, especially real estate, which, in turn would likely reduce our customers' borrowing power and the value of assets and collateral associated with our existing loans;

a reduction in the value of certain assets held by us;

an inability to meet our liquidity needs;

an inability to raise sufficient capital to comply with the requirements of our regulators and for continued support of operations;

Edgar Filing: FIRST MARINER BANCORP - Form 10-K

adverse changes in the securities' markets;

changes in governmental monetary and fiscal policies, as well as legislative and regulatory changes;

the risks of changes in interest rates on the level and composition of deposits, loan demand and the values of loan collateral, securities, and interest sensitive assets and liabilities;

the imposition of additional enforcement action by bank regulatory authorities upon First Mariner Bank or First Mariner;

governmental action as a result of our inability to comply with regulatory orders and agreements;

the effects of terrorism and efforts to combat it;

Table of Contents

our ability to effectively manage market risk, credit risk, and operational risk;

the effects of competition from other commercial banks, thrifts, mortgage banking firms, consumer finance companies, credit unions, securities brokerage firms, insurance companies, money market and other mutual funds, and other financial institutions operating in our market area and elsewhere, including institutions operating regionally, nationally, and internationally, together with competitors offering banking products and services by mail, telephone, and the Internet;

our ability to successfully implement our capital plan;

our ability to successfully implement our plan to reduce the Bank's risk exposure on each asset classified as "Substandard";

our ability to successfully implement our liquidity contingency plan;

the effect of an impairment charge on our deferred tax assets;

the effect of any mergers, acquisitions, or other transactions to which we or our subsidiaries may from time to time be a party, including our ability to successfully integrate any businesses that we acquire; and

the risks described in this Annual Report on Form 10-K.

All written or oral forward-looking statements attributable to us are expressly qualified in their entirety by this Cautionary Note. Our actual results may differ significantly from those we discuss in these forward-looking statements. For other factors, risks, and uncertainties that could cause our actual results to differ materially from estimates and projections contained in these forward-looking statements, please read the "Risk Factors" in Item 1A in this section of this Form 10-K. Any forward-looking statement speaks only as of the date which such statement was made, and, except as required by law, we expressly disclaim any obligation or undertaking to disseminate any updates or revisions to any forward-looking statement to reflect events or circumstances after the date on which such statement is made or to reflect the occurrence of unanticipated events.

Except as expressly provided otherwise, the terms "First Mariner" and "Company" as used in this report refer to First Mariner Bancorp and the terms "we," "us," and "our" refer collectively to First Mariner Bancorp and its consolidated subsidiaries.

PART I

ITEM 1 BUSINESS

General

First Mariner Bancorp is a bank holding company whose business is conducted primarily through its wholly owned operating subsidiaries, First Mariner Bank (the "Bank") and FM Appraisals, LLC ("FM Appraisals"). First Mariner was formed in 1995 and has total assets in excess of \$1.384 billion as of December 31, 2009. 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.

We maintain the following Internet sites: www.1stmarinerbank.com; www.1stmarinerbancorp.com; www.1stmarinermortgage.com; and www.vamortgage.com. Information on these websites is not part of, and is not incorporated herein by reference to, this annual report. Our annual report on Form 10-K, quarterly reports on Form 10-Q, and current reports on Form 8-K and amendments to these reports are available, free of charge, in the investor relations section of our Internet site at www.1stmarinerbancorp.com as soon as reasonably practicable after we have filed them with the Securities and Exchange Commission (the "SEC").

Edgar Filing: FIRST MARINER BANCORP - Form 10-K

Table of Contents

The Bank is our largest operating subsidiary with assets exceeding \$1.372 billion as of December 31, 2009 and is the largest bank headquartered in Baltimore, Maryland. The Bank was formed in 1995 through the merger of several small financial institutions. The 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. First Mariner Bank is an independent community bank, and its deposits are insured by the Federal Deposit Insurance Corporation ("FDIC").

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 that are offered by many larger competitors. 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. Most importantly, the Bank provides customers with access to local Bank officers who are empowered to act with flexibility to meet customers' needs in an effort to foster and develop long-term loan and deposit relationships.

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, Delaware, Virginia, and North Carolina. First Mariner Mortgage originated \$1.625 billion in loans in 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 to unaffiliated parties (primarily Fannie Mae). The Bank does not originate any reverse mortgage loans for its portfolio, but does retain the servicing rights on reverse mortgage loans originated by NGFS and sold to Fannie Mae. 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 by the end of the first quarter of 2011. 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. The Bank does not anticipate any benefit that results from the sale to be material.

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 subcontracted appraisers, appraisal ordering and administration, and appraisal review services. FM Appraisals provides these services to First Mariner Mortgage and NGFS.

We sold our consumer finance subsidiary, Mariner Finance, LLC, ("Mariner Finance") during 2009. See "Sale of Mariner Finance" in Item 7 of Part II of this Form 10-K for additional information.

We do not conduct any foreign operations.

We operate in two business segments commercial and consumer banking and mortgage-banking. Financial information related to our operations in these segments for each of the three years ended December 31, 2009 is provided in Note 20 to our Consolidated Financial Statements included in Item 8 of Part II of this Form 10-K.

Table of Contents

Our Business Strategy

We are currently focused on improving earnings, liquidity, and capital adequacy and controlling asset growth. In order to achieve our objectives, our strategy is to:

Raise equity capital to strengthen the capital position of the Company and the Bank;

Reduce our long-term debt;

Aggressively improve the quality of assets currently in our portfolio;

Adhere to rigorous credit standards in the origination of new loans;

Reduce our controllable operating expenses to improve our efficiency ratios;

Work towards obtaining termination of Regulatory Enforcement Actions (See discussions in Item 1A of this Part of this Form 10-K);

Review our branch performance to evaluate possible consolidations or relocations that may increase our efficiency;

Cross-sell our products and services to our existing customers to leverage relationships and enhance our profitability;

Capitalize on our personal relationship approach that we believe differentiates us from our larger competitors;

Provide our customers with access to local executives who make key credit and other decisions;

Maximize mortgage-banking opportunities;

Pursue commercial lending opportunities with small to mid-sized businesses that are underserved by our larger competitors;
and

Develop innovative financial products and services to generate additional sources of revenue.

Financial Services We Provide

Commercial Banking

Our commercial loan unit focuses on loan originations from small and mid-sized businesses (generally up to \$20.0 million in annual sales) and such loans are usually accompanied by significant related deposits. Our commercial loan products include commercial mortgage loans for the purchase or refinance of commercial properties; residential and commercial real estate construction and development loans; working capital loans and lines of credit; demand, term, and time loans; and equipment, inventory, and accounts receivable financing. We also offer an array of cash management services and deposit products to our commercial customers. Computerized on-line banking and remote deposit are currently available to our commercial customers.

Retail Banking

Our retail banking activities emphasize consumer deposit and checking accounts. We offer an extensive range of services to meet the varied needs of our customers of all age demographics. In addition to traditional products and services, we offer contemporary products and services, such as debit cards, mutual funds, annuities, insurance products, Internet banking, and electronic bill payment services. Our consumer loan products include home equity lines of credit, fixed rate second mortgages, new and used auto loans, new and used boat loans, overdraft protection, and unsecured personal credit lines.

Table of Contents

Mortgage-Banking

Our mortgage-banking business is structured to provide a source of fee income largely from the process of originating residential mortgage loans for sale on the secondary market, as well as the origination of loans to be held in our loan portfolio. Mortgage-banking products include Federal Housing Administration ("FHA") and the federal Veterans Administration ("VA") loans, conventional and nonconforming first- and second-lien mortgages, reverse mortgages, and construction and permanent financing.

Community Reinvestment Act

We have a strong commitment to our responsibilities under the federal Community Reinvestment Act ("CRA") and actively search for opportunities to meet the development needs of all members of the communities we serve, including persons of low to moderate income in a manner consistent with safe and sound banking practices. We currently fulfill this commitment primarily by participating in loan programs sponsored or guaranteed by the FHA, the VA, the federally funded American Dream Downpayment Initiative, the Maryland Mortgage Program ("CDA"), the U.S. Department of Agriculture Rural Development Loans Program, the Federal Home Loan Bank of Atlanta Closing Cost Assistance Program, the Section 8 to Home-Ownership Program, and the Settlement Expense Loan Program.

Our Lending Activities

Loan Portfolio Composition

At December 31, 2009, our loan portfolio totaled \$890.951 million, representing approximately 64.3% of our total assets of \$1.385 billion. The majority of our lending activity is in the Mid-Atlantic region and our loans are generally secured by residential and commercial real estate. At December 31, 2009 over 88% of our total loans were secured by real estate.

Real Estate Development and Construction Loans

The Bank provides interim real estate acquisition, development, and construction loans to builders, developers, and persons who will ultimately occupy their single-family dwellings. These loans are made within the Federal regulatory guidelines for maximum loan to value ratios. Generally, residential construction loans are made for up to 85% of the appraised value of the property for individuals and 80% of the appraised value of the property for developers. Residential construction loans are made for over 80% of the appraised value of the property with additional credit enhancements, such as additional collateral and/or private mortgage insurance. Commercial real estate construction loans are generally made for 75% or less of the appraised value of the property. Development loans, made to improve raw land into lots on which structures may be built, are generally made for 75% or less of the appraised value of the property. The Bank's real estate development and construction loan funds are disbursed periodically at pre-specified stages of completion. We carefully monitor these loans with on-site inspections and control of disbursements. The Bank's real estate development and construction loans are typical debt obligations of the borrowers and do not provide for our participation in residual profits or losses of the projects or involve equity positions through partnerships, joint ventures, or other similar structures.

Loans to individuals for the construction of their primary residences are typically secured by the property under construction, frequently include additional collateral (such as a second mortgage on the borrower's present home), and commonly have maturities of nine to twelve months.

Loans to residential builders for the construction of residential homes require binding sales contracts on the property and pre-qualification of the prospective buyers for permanent mortgage financing. Development loans are made only to developers with a proven track record. Generally, these

Table of Contents

loans are extended only when the borrower provides evidence that the lots under development will be sold to builders satisfactory to us.

The Bank secures development and construction loans with the properties under development or construction and we typically obtain personal guarantees from the principals. Further, to assure that we do not place reliance solely in the value of the underlying property, we consider the financial condition and reputation of the borrower and any guarantors, the amount of the borrowers' equity in the project, independent appraisals, costs estimates, and preconstruction sales information.

Residential Real Estate Mortgage Loans

The Bank originates adjustable- and fixed-rate residential mortgage loans, including reverse mortgages. These mortgage loans are generally originated under terms, conditions, and documentation acceptable to the secondary mortgage market. With the current exception of reverse mortgages, the Bank will place some of these loans into our portfolio, although the vast majority are ultimately sold to investors.

Commercial Real Estate Mortgage Loans

The Bank originates mortgage loans secured by commercial real estate. These loans are primarily secured by office buildings, retail buildings, warehouses, and general-purpose business space. Although terms may vary, these commercial mortgage loans generally have maturities of 10 years or less. It is our general policy to obtain personal guarantees from the principals of the borrowers and assignments of all leases related to the collateral.

Commercial Loans

The Bank originates a variety of loans for business purposes. The majority of our commercial loans are secured. The Bank makes loans to provide working capital to businesses in the form of lines of credit, which may be secured by real estate, accounts receivable, inventory, equipment, or other assets. The financial condition and cash flow of our commercial borrowers are closely monitored by the submission of corporate financial statements, personal financial statements, and income tax returns. The frequency of submissions of required financial information depends on the size and complexity of the credit and the collateral that secures our loan. It is our general policy to obtain personal guarantees from the principals of our commercial loan borrowers.

Consumer Loans

The Bank offers a variety of consumer loans, typically secured by residential real estate or personal property, including automobiles and boats. Our home equity loans (closed-end and lines of credit) are typically made up to 70% of the appraised value, less the amount of any existing prior liens on the property and generally have maximum terms of 15 years. The interest rates on our closed-end home equity loans are generally fixed, while interest rates on our home equity lines of credit are variable.

See Item 7 of Part II of this Form 10-K for more detailed information concerning our loan portfolio, the individual portfolio types, and their effect on 2009 operations.

Our Credit Administration Process

Our lending activities are subject to written policies approved by the Bank's Board of Directors to ensure proper management of credit risk. We make loans that are subject to a well defined credit process that includes credit evaluation of borrowers, risk-rating of credits, establishment of lending limits and application of lending procedures, including the holding of adequate collateral and the maintenance of compensating balances, as well as procedures for on-going identification and management of credit deterioration. We conduct regular portfolio reviews to identify potential

Table of Contents

underperforming credits, estimate loss exposure, geographic and industry concentrations, and to ascertain compliance with our policies. For significant problem loans, we review and evaluate the financial strengths of our borrower and the guarantor, the related collateral, and the effects of economic conditions.

The loan committee of the Bank's Board of Directors is authorized to approve loans up to the Bank's legal lending limit, which approximates \$13.9 million as of December 31, 2009. We have established an in-house limit of \$5.0 million, which is reviewed periodically by the Board of Directors, but do have loans to a limited number of customers in excess of that amount.

We generally do not make loans to be held in our loan portfolio outside our market area unless the borrower has an established relationship with us and conducts its principal business operations within our market area. Consequently, we, and our borrowers, are affected by the economic conditions prevailing in our market area. Approximately 81% of our residential real estate development and construction loan portfolio consisted of loans to Maryland customers; an additional 18% consisted of loans to customers in the surrounding states and the District of Columbia; and approximately 1% consisted of loans to customers in other states in the country. Approximately 83% of our commercial loan portfolio (commercial, commercial real estate, and commercial construction) consisted of loans to Maryland customers with an additional 11% consisting of loans to customers in the surrounding states and the District of Columbia. Commercial and commercial real estate loans to customers in other states in the country amounted to approximately 6% of our portfolio.

Market

We consider our core market area to be the communities within the Baltimore/Washington corridor, particularly Baltimore City and the Maryland counties of Baltimore, Anne Arundel, Harford, and Howard, as well as the eastern shore of Maryland. Lending activities are broader and include areas outside of our core market area such as other Maryland counties, the District of Columbia and certain markets in contiguous states, as well as certain regional and national markets.

Our Competition

Banking

We operate in a highly competitive environment, competing for deposits and loans with commercial banks, thrifts, credit unions, mortgage companies, finance companies, Internet-based financial companies, and other financial entities. Our principal competitors include other community commercial banks and larger financial institutions with branches in our market area. Numerous mergers and consolidations involving financial entities in our market area have occurred in recent years, requiring us to compete with banks and finance companies with greater resources. Additionally, certain financial institutions have received various amounts of government financial assistance in recent months, in accordance with legislation passed in late 2008, giving those institutions greater resources with which to compete in our market. See "Supervision and Regulation" later in this section for further information on the recent government legislation.

The primary factors we face in competing for deposits are interest rates, personalized service, the quality and range of financial services, convenience of office locations, and office hours. Competition for deposits comes primarily from other commercial banks, savings associations, credit unions, money market funds, Internet based banks, and other investment alternatives. The primary factors in competing for loans are interest rates, loan origination fees, the quality and range of lending services, responsiveness, and personalized service. Competition for loans comes primarily from other commercial banks, savings associations, mortgage-banking firms, credit unions, finance companies, and other financial intermediaries. Many of the financial institutions operating in our market area offer certain services such as trust and international banking, which we do not offer, and have greater financial resources or have substantially higher lending limits.

Table of Contents

To compete with other financial services providers, we principally rely upon local promotional activities, personal relationships established by our officers, directors, and employees with our customers, and specialized services tailored to meet our customers' needs. In those instances where we are unable to accommodate a customer's needs, we will arrange for those services to be provided by other financial institutions with which we have a relationship.

Current banking laws facilitate interstate branching and merger activity among banks. This may result in an even greater degree of competition in the banking industry and we may be brought into competition with institutions with which we do not currently compete. As a result, intense competition in our market area may be expected to continue for the foreseeable future.

Mortgage-banking

Our mortgage-banking division also operates in an extremely competitive environment. In addition to competing with mortgage-banking divisions of other financial institutions, we compete with mortgage-banking firms that are not under the same level of regulation as we are. Without similar regulatory constraints, these lesser-regulated firms can be more responsive to customers. Additionally, competition in the mortgage-banking industry comes from the continuing evolution of the secondary mortgage market, the proliferation of mortgage products, increasing interest rate volatility, compounded by homeowners' increasing tendency to refinance their mortgages as the refinance process becomes more efficient and cost effective. These swings in mortgage origination volume have placed significant operational and financial pressures on mortgage lenders.

To compete effectively in this environment, we maintain a very high level of operational, technological, and managerial expertise, consistently offer a wide selection of mortgage loans through all marketing channels on a regional scale, provide high-quality service, and price our mortgage loans at competitive rates.

Supervision and Regulation

General

First Mariner and the Bank are extensively regulated under federal and state law. As a registered bank holding company, First Mariner is subject to supervision and examination by and reporting to the Federal Reserve Board ("FRB" or "Federal Reserve").

The Bank is a member of the Federal Home Loan Bank System and, with respect to deposit insurance, of the Deposit Insurance Fund managed by the FDIC. The Bank must file reports with the Maryland Commissioner of Financial Regulation ("Commissioner") and the FDIC concerning its activities and financial condition and obtain regulatory approvals prior to entering into certain transactions such as mergers with, or acquisitions of, other banks. The Commissioner and/or the FDIC conduct periodic examinations to test the Bank's safety and soundness and compliance with various regulatory requirements. This regulation and supervision is intended primarily for the protection of the insurance fund and depositors. The regulatory structure also gives the regulatory authorities extensive discretion in connection with their supervisory and enforcement activities and examination policies, including with respect to the classification of assets and the establishment of adequate loan loss reserves for regulatory purposes. Any change in such regulatory requirements and policies, whether by the Commissioner, the FDIC or legislative bodies, could have a material adverse impact on First Mariner, the Bank, and their operations.

Certain regulatory requirements applicable to First Mariner and the Bank are referred to below or elsewhere in this Form 10-K. The summary of statutory provisions and regulations set forth below or elsewhere does not purport to be a complete description of such statutes and regulations and their effects on First Mariner and the Bank and is qualified in its entirety by reference to the actual laws and regulations.

Table of Contents

Regulation of First Mariner

General

First Mariner, as the sole shareholder of the Bank, is a bank holding company and is registered as such with the Federal Reserve. Bank holding companies are subject to comprehensive regulation and examination by the FRB under the Bank Holding Company Act of 1956, as amended (the "BHCA"), and the regulations of the FRB. The Federal Reserve also has extensive enforcement authority over bank holding companies, including, among other things, the ability to assess civil money penalties, issue cease and desist or removal orders, and require that a holding company divest subsidiaries. In general, enforcement actions may be initiated for violations of law and regulations and unsafe or unsound practices. First Mariner has entered into a written agreement with the FRB. See "We are subject to restrictions and conditions of Cease and Desist Orders issued by the FDIC and the Commissioner ("September Order"), and agreements with the FRB ("FRB Agreement" and "New FRB Agreement") and have incurred and expect to continue to incur significant additional regulatory compliance expense in connection with these enforcement actions" in Item 1A later in this Part of this Form 10-K. See also "Capital Resources" in Item 7 of Part II of this Form 10-K.

Under the BHCA, a bank holding company must obtain Federal Reserve approval before: (i) acquiring, directly or indirectly, ownership or control of any voting shares of another bank or bank holding company if, after such acquisition, it would own or control more than 5% of such shares (unless it already owns or controls the majority of such shares); (ii) acquiring all or substantially all of the assets of another bank or bank holding company; or (iii) merging or consolidating with another bank holding company. In evaluating such applications, the Federal Reserve considers a variety of financial, managerial, and competitive factors and the convenience and needs of the communities involved.

The BHCA also prohibits a bank holding company, with certain exceptions, from acquiring direct or indirect ownership or control of more than 5% of the voting shares of any company which is not a bank or bank holding company, or from engaging directly or indirectly in activities other than those of banking, managing, or controlling banks or providing services for its subsidiaries. The principal exceptions to these prohibitions involve certain nonbanking activities which, by statute or by Federal Reserve Board regulation or order, have been identified as activities closely related to the business of banking or managing or controlling banks. The list of activities includes, among others, operating a savings association, mortgage company, finance company, credit card company, or factoring company; performing certain data processing operations; providing certain investment and financial advice; real estate and personal property appraising; providing tax planning and preparation services; and, subject to certain limitations, providing securities brokerage services for customers.

The Gramm-Leach-Bliley Act of 1999 authorized bank holding companies that meet certain management, capital, and other criteria to choose to become a "financial holding company" and thereby engage in a broader array of financial activities including insurance underwriting and investment banking. First Mariner elected to become a financial holding company in 2002, but withdrew that election in 2007.

Dividends

The Federal Reserve has issued a policy statement on the payment of cash dividends by bank holding companies. That expresses the FRB's view that a bank holding company should pay cash dividends only to the extent that the company's net income for the past year is sufficient to cover both the cash dividends and a rate of earning retention that is consistent with the company's capital needs, asset quality, and overall financial condition. The Federal Reserve has indicated that it would be inappropriate for a company experiencing serious financial problems to borrow funds to pay dividends. Furthermore, under the prompt corrective action regulations adopted by the Federal Reserve pursuant to the Federal Deposit Insurance Corporation Improvement Act of 1991 ("FDICIA"), the Federal

Table of Contents

Reserve Board may prohibit a bank holding company from paying any dividends if the holding company's bank subsidiary is classified as "undercapitalized." See "Federal and State Bank Regulation Prompt Corrective Regulatory Action" later in this section.

Capital Requirements

The Federal Reserve has established consolidated capital requirements, for bank holding companies that are structured similarly to the capital requirements for FDIC-insured state banks described below. See "Federal and State Bank Regulation: Capital Requirements" later in this section.

Stock Repurchases

A bank holding company is required to give the FRB prior written notice of any purchase or redemption of its outstanding equity securities if the gross consideration for the purchase or redemption, when combined with the net consideration paid for all such purchases or redemptions during the preceding 12 months, is equal to 10% or more of the company's consolidated net worth. The Federal Reserve may disapprove such a purchase or redemption if it determines that the proposal would violate any law, regulation, Federal Reserve order, directive, or any condition imposed by, or written agreement with, the FRB. This requirement does not apply to bank holding companies that are "well-capitalized," received one of the two highest examination ratings at their last examination, and are not the subject of any unresolved supervisory issues.

Source of Strength

Under Federal Reserve policy, a bank holding company is expected to act as a source of financial strength to its subsidiary banks and to make capital injections into a troubled subsidiary bank, and generally the Federal Reserve may charge the bank holding company with engaging in unsafe and unsound practices for failure to commit resources to a subsidiary bank when required. A required capital injection may be called for at a time when the holding company does not have the resources to provide it. In addition, depository institutions insured by the FDIC can be held liable for any losses incurred by, or reasonably anticipated to be incurred by, the FDIC in connection with the default of, or assistance provided to, a commonly controlled FDIC-insured depository institution. Accordingly, in the event that any insured subsidiary of First Mariner causes a loss to the FDIC, other insured subsidiaries could be required to compensate the FDIC by reimbursing it for the estimated amount of such loss. Such cross guaranty liabilities generally are superior in priority to the obligations of the depository institution to its stockholders due solely to their status as stockholders and obligations to other affiliates.

Acquisitions of Bank Holding Companies and Banks

Under the BHCA, any company must obtain approval of the Federal Reserve prior to acquiring control of First Mariner or the Bank. For purposes of the BHCA, control is defined as ownership of more than 25% of any class of voting securities of First Mariner or the Bank, the ability to control the election of a majority of the directors, or the exercise of a controlling influence over management or policies of First Mariner or the Bank. Any bank holding company must secure Federal Reserve approval prior to acquiring 5% or more of the stock of the Company or the Bank.

The Change in Bank Control Act and the related regulations of the FRB require any person or persons acting in concert (except for companies required to make application under the BHCA), to file a written notice with, and review the nonobjection of, the Federal Reserve before such person or persons may acquire direct or indirect control of First Mariner. The Change in Bank Control Act implementing regulations presume control as the power, directly or indirectly, to vote 10% or more of any voting securities or to direct the management or policies of a bank holding company, such as First Mariner, that has securities registered under the Securities Exchange Act of 1934.

Table of Contents

Maryland Bank Holding Company Regulation

Under Maryland law, acquisitions of 25% or more of the voting stock of a Maryland commercial bank or a Maryland bank holding company and other acquisitions of voting stock of such entities which affect the power to direct or to cause the direction of the management or policy of a commercial bank or a bank holding company must be approved in advance by the Commissioner. Any voting stock acquired without the approval required under the statute may not be voted for a period of five years. Certain acquisitions by bank holding companies of 5% or more of the stock of Maryland banks or Maryland bank holding companies are governed by Maryland's holding company statute and also require prior approval of the Commissioner. Also, a bank holding company and its Maryland chartered bank subsidiary, must generally obtain the prior approval of the Commissioner prior to, directly or indirectly, acquiring nonbanking subsidiaries or affiliates.

Federal and State Bank Regulation

The Bank is a Maryland chartered trust company, with all the powers of a commercial bank, regulated and examined by the Commissioner and the FDIC.

Business Activities

Maryland law and Commissioner regulate the Bank's internal organization as well as deposit, lending, and investment activities. In its lending activities, the maximum legal rate of interest, fees, and charges that may be charged on a particular loan depends on a variety of factors such as the type of borrower, the purpose of the loan, the amount of the loan, and the date the loan is made. Other laws tie the maximum amount that may be loaned to any one customer and related interests to a financial institution's capital levels. Additionally, Maryland law contains a parity statute by which Maryland institutions may, with the approval of the Commissioner, engage in any additional activity, service, or other practice that is permitted for national banks.

The FDIC also regulates many of the areas regulated by the Commissioner and federal law may limit some of the authority provided by Maryland law. Approval of the Commissioner and the FDIC is required for, among other things, business combinations and the establishment of branch offices.

Branching Activities

Any Maryland-chartered bank meeting certain requirements may, with the approval of the Commissioner and the FDIC, establish and operate branches anywhere in the state.

Interstate Branching

Federal law authorizes the responsible federal banking agencies to approve merger transactions between banks located in different states unless the state in which the target is located has opted out. Accordingly, a Maryland bank may acquire branches in a state other than Maryland unless the other state has enacted legislation opting out. Federal law also authorizes *de novo* branching into another state if the host state enacts a law expressly permitting out of state banks to establish such branches within its borders.

Activities and Investments

Since the enactment of FDICIA, all state-chartered FDIC insured banks have generally been limited to activities as principal to those authorized for national banks, notwithstanding any broader authority that may exist in state law. Additionally, FDICIA limits equity investments by state banks to the types and amounts permitted national banks. Certain exceptions exist. For example, the FDIC is authorized to permit banks to engage in state-authorized activities or investments that are impermissible for national banks (other than nonsubsidiary equity investments) if the bank meets all

Table of Contents

applicable capital requirements and it is determined that the activities or investments do not pose a significant risk to the Deposit Insurance Fund.

Capital Requirements

The Bank is subject to the FDIC's regulatory capital requirements. The capital regulations currently require state banks to meet two minimum capital standards: a 4% leverage ratio (3% for institutions receiving the highest rating on the depository institution examination rating system) and an 8% risk-based capital ratio.

The leverage ratio requires a minimum ratio of Tier 1 (or "core") capital to adjusted average assets of 4% (3% for institutions with the highest examination rating). Tier 1 capital is generally defined as common stockholders' equity (including retained earnings), certain noncumulative perpetual preferred stock, and related surplus and minority interests in equity accounts of consolidated subsidiaries, less certain deferred tax assets and intangibles other than certain mortgage servicing rights and credit card relationships.

The risk-based capital standard requires the maintenance of Tier 1 and total capital (which is defined as Tier 1 capital plus Tier 2 (or "supplementary") capital) to risk-weighted assets of at least 4% and 8%, respectively. In determining risk-weighted assets, all assets, including certain off-balance sheet assets, recourse obligations, residual interests, and direct credit substitutes, are multiplied by risk weightings of 0% to 200%, which are assigned by the FDIC capital regulation based on the risks believed inherent in the type of asset. The components of Tier 2 capital currently include cumulative preferred stock, long-term perpetual preferred stock, mandatory convertible securities, subordinated debt and intermediate preferred stock, the allowance for loan and lease losses up to a maximum of 1.25% of risk-weighted assets, and up to 45% of unrealized gains on available-for-sale equity securities with readily determinable fair market values. Overall, the amount of Tier 2 capital included as total capital cannot exceed 100% of Tier 1 capital.

The FDIC also has authority to establish individual minimum capital requirements in appropriate cases upon a determination that an institution's capital level is or may become inadequate in light of the particular circumstances. The FDIC has done so in the case of the Bank. See "We are subject to restrictions and conditions of Cease and Desist Orders issued by the FDIC and the Commissioner ("September Order"), and agreements with the FRB ("FRB Agreement" and "New FRB Agreement") and have incurred and expect to continue to incur significant additional regulatory compliance expense in connection with these enforcement actions" in Item 1A later in this Part of this Form 10-K. See also "Capital Resources" in Item 7 of Part II of this Form 10-K.

Prompt Corrective Regulatory Action

Federal law requires the appropriate federal regulatory agency to take certain supervisory actions against undercapitalized institutions, the severity of which depends upon the institution's degree of undercapitalization. Generally, a bank that has a ratio of total capital to risk weighted assets of less than 8%, a ratio of Tier 1 capital to risk-weighted assets of less than 4% or a ratio of Tier 1 capital to total assets of less than 4% (3% or less for institutions with the highest examination rating) is considered to be "undercapitalized." A bank that has a total risk-based capital ratio of less than 6%, a Tier 1 capital ratio of less than 3% or a leverage ratio that is less than 3% is considered to be "significantly undercapitalized" and a bank that has a tangible capital to assets ratio equal to or less than 2% is deemed to be "critically undercapitalized." Subject to a narrow exception, a receiver or conservator must be appointed within specified time frames for an institution that is "critically undercapitalized." The law also provides that an acceptable restoration plan must be filed within 45 days of the date a bank receives notice that it is "undercapitalized," "significantly undercapitalized," or "critically undercapitalized." Compliance with the plan must be guaranteed by any parent company up to the lesser of 5% of the Bank's total assets when deemed to be undercapitalized or the amount

Table of Contents

necessary to achieve compliance with all applicable capital requirements. In addition, certain mandatory supervisory actions become applicable to any undercapitalized institution including, but not limited to, increased monitoring by regulators and restrictions on growth, capital distributions (including dividends), and expansion. The FDIC could also take additional discretionary supervisory actions, including the issuance of a capital directive, requiring the sale of the institution, and the replacement of senior executive officers and directors.

Safety and Soundness Guidelines

Federal law requires each federal banking agency to establish safety and soundness standards for institutions under its authority. The federal banking agencies, including the FDIC, have released Interagency Guidelines Establishing Standards for Safety and Soundness. The guidelines specify basic standards for matters such as internal controls and information systems, internal audit systems, loan documentation, credit underwriting, interest rate risk exposure and asset growth, asset quality, earnings, and employee compensation. If the appropriate federal banking agency determines that a depository institution is not in compliance with the safety and soundness guidelines, it may require the institution to submit an acceptable plan to achieve compliance with the guidelines. The institution must submit an acceptable compliance plan within 30 days of receipt of a request for such a plan. Failure to submit or implement a compliance plan may result in regulatory sanctions.

Uniform Lending Standards

Under FDIC's regulations, state banks must adopt and maintain written policies that establish appropriate limits and standards for loans that are secured by interests in real estate or are made for the purpose of financing permanent improvements to real estate. The policies must establish loan portfolio diversification standards, prudent underwriting standards, including loan-to-value limits that are clear and measurable, loan administration procedures and documentation, and loan approval and reporting requirements. Such real estate lending policies must reflect the Interagency Guidelines for Real Estate Lending Policies that have been adopted by the federal banking agencies.

Transactions with Related Parties

Transactions between a bank and any affiliate are governed by Sections 23A and 23B of the Federal Reserve Act. An affiliate is any company or entity, which controls, is controlled by or is under common control with the bank. For example, First Mariner is an affiliate of the Bank's for purposes of those laws. Generally, Sections 23A and 23B: (i) limit the extent to which an institution or its subsidiaries may engage in "covered transactions" with any one affiliate to an amount equal to 10% of such institution's capital stock and surplus, and contain an aggregate limit on all such transactions with all affiliates to an amount equal to 20% of such capital stock and surplus, (ii) impose collateral requirements on certain transactions with, including loans to, affiliates, and (iii) require that all such transactions be on terms substantially the same, or at least as favorable, to the institution or subsidiary as those provided to a nonaffiliate. The term "covered transaction" includes loans to, purchases of assets from, and the issuance of guarantees on behalf of an affiliate and certain other transactions.

Table of Contents

Banks also are subject to the federal restrictions on loans to executive officers, directors, and greater than 10% stockholders (collectively, "insiders"). Generally, loans to insiders and certain related interests must be approved in advance by a majority of the board of directors of the institution, with any "interested" director not participating in the voting, if the loan exceeds the greater of \$25,000 or 5% of the bank's capital. Any loan which, combined with prior loans to the insider and their related interest, aggregates \$500,000 or more are subject to the board's approval requirements in all cases. Loans to insiders must be made on terms substantially the same as offered in comparable transactions to outside parties. There is an exception for extensions of credit made to officers and directors as part of a bank-wide compensation or benefit program that does not favor directors or officers over other employees. There are further restrictions on loans that can be made to executive officers.

Additionally, Maryland law imposes restrictions on loans to directors, officers, or employees of Maryland commercial banks. Generally, a director, officer, or employee of a commercial bank may not borrow, directly or indirectly, any money from the bank, unless the loan has been approved by the board of directors, or the executive committee of the bank, if that committee is authorized to approve loans. Commercial loans made to nonemployee directors of a bank and certain consumer loans made to nonofficer and nondirector employees of a bank are exempted.

Dividend Restrictions

A Maryland bank's ability to pay dividends is governed by the Maryland law and the regulations of the FDIC. Under Maryland law, if the surplus of a commercial bank is less than 100% of its capital stock then, until the surplus equals at least 100% of the capital stock, the commercial bank: (i) must transfer to its surplus annually at least 10% of its net earnings and (ii) may not declare or pay any cash dividends that exceed 90% of its net earnings. Maryland law provides for dividends only out of undivided profits or, with the approval of the Commissioner, surplus in excess of 100% of required capital stock. Also, under FDIC regulations, no bank may pay a dividend if it would be "undercapitalized" within the meaning of the prompt corrective action laws, or if it is in default of any deposit insurance assessment. See also "Our ability to pay cash dividends is limited" in Item 1A later in this Part of this Form 10-K.

Enforcement

The Commissioner has extensive enforcement authority over Maryland banks. Such authority includes the ability to issue cease and desist orders and civil money penalties and to remove directors or officers. The Commissioner may also take possession of a Maryland bank whose capital is impaired and seek to have a receiver appointed by a court.

The FDIC has primary federal enforcement responsibility over state banks under its jurisdiction, including the authority to bring enforcement action against all "institution-related parties," including stockholders, and any attorneys, appraisers and accountants who knowingly or recklessly participate in wrongful action likely to have an adverse effect on an institution. Formal enforcement action may range from the issuance of a capital directive or cease and desist order to removal of officers and/or directors, receivership, conservatorship, or termination of deposit insurance. Civil money penalties cover a wide range of violations and actions and range up to \$25,000 per day or even up to \$1 million per day (in the most egregious cases). Criminal penalties for most financial institution crimes include fines of up to \$1 million and imprisonment for up to 30 years.

The Bank has entered into a Consent Order with the FDIC and the Commissioner. See "Capital Resources" in Item 7 of Part II of this Form 10-K.

Table of Contents

Community Reinvestment Act

Under the CRA, as implemented by FDIC regulations, a bank has a continuing and affirmative obligation, consistent with its safe and sound operation, to help meet the credit needs of its entire community, including low and moderate income neighborhoods. The CRA does not establish specific lending requirements or programs for financial institutions, nor does it limit an institution's discretion to develop the types of products and services that it believes are best suited to its particular community. The CRA requires the FDIC, in connection with its examination of a bank, to assess the institution's record of meeting the credit needs of its community and to take the record into account in its evaluation of certain applications by the institution.

Assessments

Maryland banks are required to pay annual assessments to the Commissioner's office to cover the cost of regulating Maryland institutions. The Bank's asset size determines the amount of the assessment.

Insurance of Deposit Accounts

The Bank's deposits are insured up to applicable limits by the Deposit Insurance Fund of the FDIC. The Deposit Insurance Fund is the successor to the Bank Insurance Fund and the Savings Association Insurance Fund, which were merged in 2006.

Under the FDIC's risk-based assessment system, insured institutions are assigned to one of four risk categories based on supervisory evaluations, regulatory capital levels, and certain other factors, with less risky institutions paying lower assessments. An institution's assessment rate depends upon the category to which it is assigned. For calendar 2008, assessments ranged from five to forty-three basis points of each institution's deposit assessment base. Due to losses incurred by the Deposit Insurance Fund ("DIF") in 2008 as a result of failed institutions, and anticipated future losses, the FDIC adopted an across the board seven basis point increase in the assessment range for the first quarter of 2009. The FDIC made further refinements to its risk-based assessment that were effective April 1, 2009 and that effectively made the range 7.0 to 77.5 basis points. The FDIC may adjust rates uniformly from one quarter to the next, except that no adjustment can deviate more than three basis points from the base scale without notice and comment rulemaking. No institution may pay a dividend if in default of the FDIC assessment.

The FDIC imposed on each insured institution a special emergency assessment of five basis points of total assets minus Tier 1 capital, as of June 30, 2009 (capped at ten basis points of an institution's deposit assessment base on the same date) in order to cover losses to the Deposit Insurance Fund. That special assessment was collected on September 30, 2009. The FDIC provided for similar special assessments during the last two fiscal quarters of 2009, if deemed necessary. However, in lieu of further special assessments, the FDIC required insured institutions to prepay estimated quarterly risk-based assessments for the fourth quarter of 2009 through the fourth quarter of 2012. The Bank received an automatic waiver of the prepayment requirement.

Due to the recent difficult economic conditions, deposit insurance per account owner has been raised to \$250,000 for all types of accounts until January 1, 2014. In addition, the FDIC adopted an optional Temporary Liquidity Guarantee Program by which, for a fee, noninterest-bearing transaction accounts would receive unlimited insurance coverage until December 31, 2009, subsequently extended until June 30, 2010. Certain senior unsecured debt issued by institutions and their holding companies between specified time frames could also be guaranteed by the FDIC through June 30, 2012, or in some cases, December 31, 2012. The Bank made a business decision to participate in the unlimited noninterest-bearing transaction account coverage and the Bank and First Mariner opted to participate in the unsecured debt guarantee program.

Table of Contents

The Federal Deposit Insurance Corporation has authority to increase insurance assessments. A significant increase in insurance premiums would likely have an adverse effect on the operating expenses and results of operations of the Company. Management cannot predict what insurance assessment rates will be in the future.

Insurance of deposits may be terminated by the FDIC upon a finding that the institution has engaged in unsafe or unsound practices, is in an unsafe or unsound condition to continue operations, or has violated any applicable law, regulation, rule, order or condition imposed by the FDIC.

Federal Reserve System

Federal Reserve regulations require depository institutions to maintain reserves against their transaction accounts (primarily NOW and regular checking accounts). The regulations currently provide that reserves be maintained against aggregate transaction accounts as follows: a 3% reserve ratio is assessed on net transaction accounts up to and including \$55.2 million; a 10% reserve ratio is applied above \$55.2 million. The first \$10.87 million of otherwise reservable balances are exempted from the reserve requirements. These amounts are adjusted annually.

Federal Securities Laws

The shares of First Mariner common stock are registered with the SEC under Section 12(b) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and listed on the NASDAQ Global Select Market. First Mariner is subject to information reporting requirements, proxy solicitation requirements, insider trading restrictions, and other requirements of the Exchange Act, including the requirements imposed under the federal Sarbanes-Oxley Act of 2002. Among other things, loans to and other transactions with insiders are subject to restrictions and heightened disclosure, directors and certain committees of the Board must satisfy certain independence requirements, and First Mariner is generally required to comply with certain corporate governance requirements.

Economic Monetary Policies and Economic Controls

We are affected by monetary policies of regulatory agencies, including the FRB, which regulates the national money supply in order to mitigate recessionary and inflationary pressures. Among the techniques available to the FRB are: engaging in open market transactions in U.S. Government securities, changing the discount rate on bank borrowings, changing reserve requirements against bank deposits, prohibiting the payment of interest on demand deposits, and imposing conditions on time and savings deposits. These techniques are used in varying combinations to influence the overall growth of bank loans, investments, and deposits. Their use may also affect interest rates charged on loans or paid on deposits. The effect of governmental policies on our earnings cannot be predicted. However, our earnings will be impacted by movement in interest rates, as discussed in Item 7A of Part II of this Form 10-K.

ITEM 1A RISK FACTORS

We are subject to restrictions and conditions of a Cease and Desist Order issued by the FDIC and the Commissioner of the Maryland Division of Financial Regulation (the "Commissioner") ("September Order"), and agreements with the FRB ("FRB Agreement" and "New FRB Agreement") and have incurred and expect to continue to incur significant additional regulatory compliance expense in connection with these enforcement actions.

The FDIC and the Commissioner have issued Cease and Desist Orders against the 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

Table of Contents

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 September Order or the New FRB Agreement, the appropriate regulatory authority could take additional enforcement action against us, including the imposition of 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 September Order and the New FRB Agreement being terminated in the future, we cannot guarantee that such actions will result in the termination of the September Order and/or the New FRB Agreement. Further, the imposition of the September Order and the New FRB Agreement may make it more difficult to attract and retain qualified employees. For more information on the September Order and the New FRB Agreement, see "Capital Resources" in Item 7 of Part II of this Form 10-K.

As of December 31, 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's minimum capital requirements.

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 December 31, 2009, we did not meet these requirements and would have needed approximately \$8.200 million in additional capital, based on assets at such date, to meet both of the March requirements and approximately \$15.000 million in additional capital to meet both of the June requirements. 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. When combined with the assets and liabilities that we are selling or of which we are otherwise disposing, the amount of capital we may raise in any stock offerings (see "Subsequent Events" in Item 7 of Part II of this Form 10-K) 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.

Additionally, on November 24, 2009, First Mariner's primary regulator, the FRB, required the Company to enter into the New FRB Agreement. The New FRB Agreement required the Company to 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 average assets, Tier 1 capital to risk-weighted assets and total capital to risk-weighted assets ratios must be at least 4.0%, 4.0% and 8.0%, respectively. As of December 31, 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 an FRB approved written plan, the FRB could take additional enforcement action against us, including the imposition of monetary penalties, as well as further operating restrictions.

Table of Contents

If the amount of capital we raise in stock offerings and other actions we are taking to reduce assets is insufficient to satisfy 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 could dilute your ownership interest.

Should we in the future need to raise additional capital, we might seek to do so through one or more offerings of our common stock, securities convertible into common stock, or rights to acquire such securities of our common stock. Our ability to raise additional capital, if needed, will depend on conditions in the capital markets at that time and on our financial performance. Our stock price has declined in recent periods and was \$ 0.95 at December 31, 2009. Moreover, the volatility and disruption in the capital and credit markets have reached unprecedented levels, producing downward pressure on stock prices and credit availability for numerous issuers. If current levels of market disruption and volatility continue or worsen, and if our stock price remains at its current level, we may be unable to raise additional capital, or we may be able to raise capital only at prices that would be unfavorable and dilutive to our shareholders. If we cannot raise additional capital when needed, our results of operations and financial condition may be adversely affected, and our banking regulators may subject the Bank and the Company to further regulatory enforcement action.

The issuance of any additional shares of common stock or convertible securities could be substantially dilutive to shareholders of our common stock, particularly those who are not able to or choose not to participate in such additional issuances. Holders of our shares of common stock have no preemptive rights that entitle them to purchase their pro-rata share of any offering of shares of any class or series and, therefore, our shareholders may not be permitted to invest in future issuances of our common stock and as a result will be diluted. See "Subsequent Events" in Item 7 of Part II of this Form 10-K for additional information on shares of our common stock that may be issued in our current rights offering and that are expected to be issued in the Exchange. (See description of the Exchange in "Subsequent Events" in Item 7 of Part II of this Form 10-K.)

We have taken actions, and may take additional actions, to help us meet immediate needs for capital, including reducing our assets and liabilities.

In December, 2009, we completed the sale of our consumer finance company subsidiary, Mariner Finance, for a purchase price of approximately \$10.459 million. We received \$8.734 million in cash at closing and a 5% ownership stake in the new Mariner Finance entity. Under terms of the sale, \$1.1 million was placed in an escrow account to be paid to First Mariner no later than 18 months after the closing, after deducting any indemnification claims. While this transaction provided First Mariner with \$8.734 million in cash to invest in the Bank to increase the Bank's capital, we will realize only 5% of any future income generated by Mariner Finance. During 2009, we realized a net loss of \$9.060 million (including the loss on sale of \$11.110 million) from the operations of Mariner Finance. For the years ended December 31, 2008 and 2007, we earned \$1.721 million and \$1.640 million of net income from our investment in Mariner Finance.

We have also identified certain Bank branches that we intend to close or sell in 2010. The successful completion of these actions 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 and closure are approximately \$50.000 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 will also need to be obtained by any acquirer before buying any of our branch offices. While we anticipate that such approvals would be received, there can be no guarantee that such approvals will be received. While these branch sales, if completed, will reduce our assets and liabilities and thereby increase our Bank capital ratios, we expect

Table of Contents

that our net income in the future will be reduced as a result of the loss of income generated by these branches.

The Company and the Bank are deemed to be in "troubled condition" within the meaning of federal statutes and regulations.

The Company and Bank are deemed to be in "troubled condition" within the meaning of federal statutes and regulations. As a result, certain limitations and regulatory requirements apply to the Company and the Bank with respect to future changes to senior executive management and directors and the payment of, or the agreement to pay, certain severance payments to officers, directors, and employees. The Bank must also comply with specified recordkeeping requirements in connection with transactions involving certain securities contracts, commodities contracts, repurchase agreements, and other "Qualified Financial Contracts."

Liquidity risk could impair our ability to fund operations and jeopardize our financial viability.

Liquidity is essential to our business. An inability to raise funds through deposits, borrowings, the sale of loans, and other sources could have a material adverse effect on our liquidity. Our access to funding sources in amounts adequate to finance our activities could be impaired by factors that affect us specifically or the financial services industry in general. The Federal Home Loan Bank of Atlanta ("FHLB") has reduced our line of credit from \$202.21 million to \$107.00 million, our outstanding balance as of December 31, 2009. The FRB has also notified the Bank that it will permit the Bank to draw on its line of credit with the Federal Reserve Bank only in limited circumstances and for a short duration. Factors that could further detrimentally impact our access to liquidity sources include a decrease in the level of our business activity due to a market downturn or adverse regulatory action against us. As part of the September Order, we are not allowed to purchase brokered deposits without first obtaining a regulatory waiver. We are also required to comply with restrictions on deposit rates that we may offer. These factors could significantly affect our ability to fund normal operations. Our ability to acquire deposits or borrow could also be impaired by factors that are not specific to us, such as a severe disruption of the financial markets or negative views and expectations about the prospects for the financial services industry as a whole as the recent turmoil faced by banking organizations in the domestic and worldwide credit markets deteriorates. At December 31, 2009, management considered the Bank's liquidity level to be sufficient for the purposes of meeting the Bank's cash flow requirements.

We have elected to defer the payment of interest on \$73.724 million in face amount of outstanding trust preferred securities issued by trust subsidiaries of our holding company and expect to continue to defer the payment of interest for the foreseeable future.

Though we have deferred the payment of interest on the subordinated debentures related to the trust preferred securities, we continue to accrue interest expense related to the trust preferred securities. First Mariner recognized interest expense of \$3.127 million and \$4.640 million on the trust preferred securities during the years ended December 31, 2009 and 2008, respectively.

Under the terms of the subordinated debentures, our deferral of interest payments for up to 20 consecutive quarters does not constitute an event of default. During the deferral period, the deferred interest payments continue to accrue. To the extent applicable law permits interest on interest, the deferred interest payments also accrue interest at the rates specified in the corresponding indentures, compounded quarterly. All of the deferred interest and the compound interest are due in full at the end of the applicable deferral period. If we fail to pay the deferred and compound interest at the end of the deferral period, each trustee of the various trusts, or in most cases the holders of 25% of the outstanding principal amount of any issue of trust preferred securities, would have the right, after any applicable grace period, to declare an event of default. The occurrence of an event of default on the

Table of Contents

subordinated debentures would entitle the trustees and holders of the trust preferred securities to exercise various remedies, including demanding immediate payment in full of the entire outstanding principal amount of the subordinated debentures.

Currently we have no cash available at First Mariner to resume the payment of interest on the subordinated debentures, and the September Order prohibits our use of the proceeds from any stock offerings for this purpose. Accordingly, our ability to resume the payment of interest on the subordinated debentures will depend on the Bank's ability to generate earnings and pay dividends to First Mariner. In addition, the terms of the September Order currently prohibits the payment of dividends by the Bank without regulatory approval. As a result, if by January 2014 the September Order is not terminated, or if we do not achieve sufficient profitability for the Bank so that our regulators would grant approval for the Bank to pay dividends, we will be unable to resume the payment of interest on the subordinated debentures. Even if the Bank is able to resume paying dividends, we cannot be assured that the amount of dividends would be sufficient to pay the entire amount of interest due under the subordinated debentures at the end of the deferral period.

See "Subsequent Events" in Item 7 of Part II of this Form 10-K for information regarding the subsequent event related to the Trust Preferred Securities.

We have had losses in recent periods.

We incurred a net loss of \$22.284 million for the year ended December 31, 2009, including a one-time charge of \$11.110 million relating to the sale of Mariner Finance. For the year ended December 31, 2008, we incurred a net loss of \$15.088 million. Our earnings in these periods have been hurt by adverse economic conditions, including falling home prices, increasing foreclosures, and increasing unemployment, in our markets, and our losses for the years ended December 31, 2009 and 2008 included \$11.660 million and \$10.856 million, respectively, of provisions for loan losses. Our ability to return to profitability will depend on whether we are able to reduce credit losses in the future, which will depend, in part, on whether economic conditions in our markets improve. Our management believes that our current business plan will be successful and believes we will be able to limit our losses; however, our business plan is subject to current market conditions and its successful implementation is uncertain. There is no assurance that we will be successful in executing our business plan or that even if we successfully implement our business plan, we will be able to curtail our losses now or in the future. If we continue to incur significant operating losses, our stock price may further decline. Even if we raise enough capital in the current offering (See "Subsequent Events" in Item 7 of Part II of this Form 10-K) to allow us to meet the Bank and consolidated capital levels mandated by our regulators, if we incur further operating losses, we may in the future need to raise additional capital to maintain Bank and consolidated capital levels that meet or exceed the levels mandated by our regulators.

Higher loan losses could require us to increase our allowance for loan losses through a charge to earnings.

When we loan money we incur the risk that our borrowers do not repay their loans. We reserve for loan losses by establishing an allowance through a charge to earnings. The amount of this allowance is based on our assessment of loan losses inherent in our loan portfolio. The process for determining the amount of the allowance is critical to our financial results and condition. It requires subjective and complex judgments about the future, including forecasts of economic or market conditions that might impair the ability of our borrowers to repay their loans. We might underestimate the loan losses inherent in our loan portfolio and have loan losses in excess of the amount reserved. We might increase the allowance because of changing economic conditions. For example, in a rising interest rate environment, borrowers with adjustable-rate loans could see their payments increase. There may be a significant increase in the number of borrowers who are unable or unwilling to repay their loans,

Table of Contents

resulting in our charging off more loans and increasing our allowance. In addition, when real estate values decline, the potential severity of loss on a real estate-secured loan can increase significantly, especially in the case of loans with high combined loan-to-value ratios. The recent decline in the national economy and the local economies of the areas in which the loans are concentrated could result in an increase in loan delinquencies, foreclosures, or repossessions resulting in increased charge-off amounts and the need for additional loan loss allowances in future periods. In addition, our determination as to the amount of our allowance for loan losses is subject to review by regulatory authorities, as part of their examination process, which may result in the establishment of an additional allowance after a review of the information available at the time of their examination. Our allowance for loan losses amounted to \$11.639 million, or 1.31% of total loans outstanding and 17.5% of nonperforming assets (\$57.429 million) and loans past-due 90 days or more and accruing (\$9.224 million), as of December 31, 2009. Our allowance for loan losses at December 31, 2009 may not be sufficient to cover future loan losses. A large loss could deplete the allowance and require increased provisions to replenish the allowance, which would decrease our earnings. As of December 31, 2009, we had outstanding loan balances exceeding \$833.000 million that were performing according to their original terms. However, the deterioration of one or more of these performing loans could result in a significant increase in our nonperforming loans and our provision for loan losses, which would negatively impact our results of operations.

We have a high percentage of commercial real estate and real estate construction loans in relation to our total loans.

At December 31, 2009, we had \$339.794 million in loans secured by commercial real estate and \$146.869 million in real estate construction loans, which included \$47.379 million in residential construction loans and \$99.490 million for the construction of commercial properties. Commercial real estate loans and construction loans represented 38.1% and 16.5%, respectively, of our net loan portfolio. While commercial real estate and construction loans are generally more interest rate sensitive and carry higher yields than do residential mortgage loans, these types of loans generally expose a lender to greater risk of nonpayment and loss than single-family residential mortgage loans because repayment of the loans often depends on the successful operation of the property, the income stream of the borrowers, and, for construction loans, the accuracy of the estimate of the property's value at completion of construction and the estimated cost of construction. Such loans typically involve larger loan balances to single borrowers or groups of related borrowers compared to single-family residential mortgage loans.

Current regulatory guidance suggests that institutions whose commercial real estate loans exceed certain percentages of capital should implement heightened risk management practices appropriate to their concentration risk and may be required to maintain higher capital ratios than institutions with lower concentrations in commercial real estate lending. Based on our commercial real estate concentration as of December 31, 2009, we may be subject to further supervisory analysis during future examinations. Although we continuously evaluate our concentration and risk management strategies, we cannot guarantee that any risk management practices we implement will be effective to prevent losses relating to our commercial real estate portfolio. Management cannot predict the extent to which this guidance will impact our operations or capital requirements.

Mortgage banking activities generate a significant portion of our noninterest income.

A significant portion of our business involves originating residential mortgage loans through our mortgage division, which accounted for approximately 57.0% and 54.6% of our noninterest income for the years ended December 31, 2009 and 2008, respectively. Real estate loan origination activity, including refinancing, is generally greater during periods of low or declining interest rates and favorable economic conditions. Continued adverse changes in market conditions could have an adverse impact on our earnings through lower origination volumes.

Table of Contents

We face interest rate risk on our loans held for sale portfolio.

We are exposed to interest rate risk in both our pipeline of mortgage originations (loans that have yet to close with the borrower) and in our warehouse loans (those loans that have closed with the borrower but have yet to be funded by investors). We have managed this interest rate risk through hedging strategies. We hedge a portion of our mortgage loan pipeline and warehouse utilizing forward sales of mortgage-backed securities. We expect that these derivative financial instruments (forward sales of mortgage-backed securities) will experience changes in fair value opposite to the change in fair value of the derivative loan commitments and our warehouse. However, the process of selling loans and the use of forward sales of mortgage-backed securities to hedge interest rate risk associated with customer interest rate lock commitments involves greater risk than selling loans on an individual basis through best efforts forward delivery commitments. Hedging interest rate risk requires management to estimate the expected "fallout" (rate lock commitments with customers that do not complete the loan process). Additionally, the fair value of the hedge may not correlate precisely with the change in fair value of the rate lock commitments with the customer due to changes in market conditions, such as demand for loan products, or prices paid for differing types of loan products. Variances from management's estimates for customer fallout or market changes making the forward sale of mortgage-backed securities ineffective may result in higher volatility in our profits from selling mortgage loans originated for sale. We engage an experienced third party to assist us in managing our activities in hedging and marketing sales strategy.

We face credit risk related to our residential mortgage production activities.

We face credit risk related to our residential mortgage production activities. Credit risk is the potential for financial loss resulting from the failure of a borrower or an institution to honor its contractual obligations to us. We manage mortgage credit risk principally by selling substantially all of the mortgage loans that we produce, limiting credit recourse to the Bank in those transactions, and by retaining high credit quality mortgages in our loan portfolio. We also limit our risk of loss on mortgage loan sales by establishing limits on activity to any one investor and by entering into contractual relationships with only those financial institutions that are approved by our Secondary Marketing Committee. The period of time between closing on a loan commitment with the borrower and funding by the investor ranges from between 15 and 90 days.

We face risk related to covenants in our loan sales agreements with investors.

Our sales agreements with investors who buy our loans generally contain covenants which may require us to repurchase loans under certain provisions, including delinquencies, or return premiums paid by these investors should the loan be paid off early. Any loans we are required to repurchase may be considered impaired loans, with the potential for charge-offs and/or loss provision charges. The addition of these repurchased loans to our portfolio could adversely affect our earnings and asset quality ratios.

There may be certain loans in our portfolio that were originated for sale, but for various reasons, are unable to be sold. These loans are transferred to our loan portfolio at fair value. Any deterioration in value of the loan during the period held in the portfolio is charged to the allowance.

Declines in asset values may result in impairment charges and adversely impact the value of our investments, financial performance, and capital.

We maintain an investment portfolio that includes, but is not limited to, mortgage-backed securities and pooled trust preferred collateralized debt obligations. The market value of investments may be affected by factors other than the underlying performance of the issuer, such as adverse changes in business climate and lack of liquidity for the resale of certain investment securities. As of

Table of Contents

December 31, 2009, we had \$28.275 million, representing 72.5% of our securities portfolio, classified as available for sale pursuant to Financial Accounting Standards Board ("FASB") guidance. Unrealized gains and losses in the estimated value of the available-for-sale ("AFS") portfolio are "marked to market" and reflected as a separate item in stockholders' equity (net of tax) as accumulated other comprehensive income. The remaining investment securities are classified as trading and are stated at fair value with changes in value reflected in income.

There can be no assurance that future market performance of our securities portfolio will enable us to realize income from sales of securities. Stockholders' equity will continue to reflect the unrealized gains and losses (net of tax) of these securities. There can be no assurance that the market value of our securities portfolio will not decline, causing a corresponding decline in stockholders' equity.

The Bank is a member of the FHLB. A member of the FHLB system is required to purchase stock issued by the relevant FHLB bank based on how much it borrows from the FHLB and the quality of the collateral pledged to secure that borrowing. Included in our investment portfolio as of December 31, 2009 is \$7.869 million in capital stock of the FHLB. The FHLB is experiencing a potential capital shortfall, has suspended its quarterly cash dividend, and could possibly require its members, including First Mariner, to make additional capital investments in the FHLB. There can be no guarantee that the FHLB will declare future dividends. In order to avail itself of correspondent banking services offered by the FHLB, we must remain a member of the FHLB. If the FHLB were to cease operations, or if we were required to write-off our investment in the FHLB, our business, financial condition, liquidity, capital, and results of operations may be materially and adversely affected.

We periodically, but not less than quarterly, evaluate investments and other assets for impairment indicators. We may be required to record additional impairment charges if investments suffer a decline in value that is considered other than temporary. If we determine that a significant impairment has occurred, we would be required to charge against earnings the credit-related portion of the other-than-temporary impairment ("OTTI"), which could have a material adverse effect on results of operations in the period in which the write-off occurs. Accounting guidance indicates that an investor in FHLB stock should recognize impairment if it concludes that it is not probable that it will ultimately recover the par value of its shares. The decision of whether impairment exists is a matter of judgment that should reflect the investor's analysis of the FHLB's long-term performance, which includes factors such as its operating performance, the severity and duration of declines in the market value of its net assets related to its capital stock amount, its commitment to make payments required by law or regulation and the level of such payments in relation to its operating performance, the impact of legislation and regulatory changes on the FHLB, and accordingly, on the members of the FHLB and its liquidity and funding position. After evaluating all of these considerations, we believe the par value of our FHLB stock will be recovered, but future evaluations of the above mentioned factors could result in the Bank recognizing an impairment charge.

Management believes that several factors will affect the market values of our securities portfolio. These include, but are not limited to, changes in interest rates or expectations of changes, the degree of volatility in the securities markets, inflation rates or expectations of inflation, and the slope of the interest rate yield curve (the yield curve refers to the differences between shorter-term and longer-term interest rates; a positively sloped yield curve means shorter-term rates are lower than longer-term rates). Also, the passage of time will affect the market values of our investment securities, in that the closer they are to maturing, the closer the market price should be to par value. These and other factors may impact specific categories of the portfolio differently, and management cannot predict the effect these factors may have on any specific category.

Table of Contents

Negative conditions in the general economy and financial services industry may limit our access to additional funding and adversely impact liquidity.

An inability to raise funds through deposits, borrowings, and other sources could have a substantial negative effect on our liquidity. Our access to funding sources in amounts adequate to finance our activities could be impaired by factors that affect us specifically or the financial services industry in general. Factors that could detrimentally impact our access to liquidity sources include a decrease in the level of our business activity due to a market down turn or adverse regulatory action against it. Our ability to borrow could also be impaired by factors that are nonspecific to us, such as severe disruption of the financial markets or negative news and expectations about the prospects for the financial services industry as a whole as evidenced by recent turmoil in the domestic and worldwide credit markets.

Increased and/or special FDIC assessments will hurt our earnings.

Beginning in late 2008, the economic environment caused higher levels of bank failures, which dramatically increased FDIC resolution costs and led to a significant reduction in the DIF. As a result, the FDIC has significantly increased the initial base assessment rates paid by financial institutions for deposit insurance. The base assessment rate was increased by seven basis points (7 cents for every \$100 of deposits) for the first quarter of 2009. The FDIC made further refinements to its risk-based assessment that were effective April 1, 2009 and that effectively made the range seven to 77.5 basis points. These increases in the base assessment rate have increased our deposit insurance costs and negatively impacted our earnings. In addition, in May 2009, the FDIC imposed a special assessment on all insured institutions due to recent bank and savings association failures. The emergency assessment amounted to 5 basis points on each institution's assets minus Tier one (core) capital as of June 30, 2009, subject to a maximum equal to 10 basis points times the institution's assessment base. Our special assessment, which was reflected in earnings for the quarter ended June 30, 2009, was \$638,000. The FDIC may impose additional emergency special assessments if necessary to maintain public confidence in federal deposit insurance or as a result of deterioration in the deposit insurance fund reserve ratio due to institution failures. Any additional emergency special assessment imposed by the FDIC will negatively impact our earnings.

On November 12, 2009, the FDIC adopted a final rule requiring that all institutions prepay their assessments for the fourth quarter of 2009 and all of 2010, 2011, and 2012. This prepayment was due on December 30, 2009. However, the FDIC may exempt certain institutions from the prepayment requirement if the FDIC determines that the prepayment would adversely affect the safety and soundness of the institution. We have been granted an exemption to this prepayment requirement.

Our ability to pay cash dividends is limited.

Holders of shares of our common stock are entitled to dividends if declared by our board of directors out of funds legally available for that purpose. In general, future dividend policy is subject to the discretion of the board of directors and will depend upon our future earnings, capital requirements, regulatory constraints, and our financial condition, as well as that of the Bank.

Although the board of directors has declared cash dividends in the past, it has discontinued such payments to conserve cash and capital resources and does not intend to declare cash dividends until current earnings are sufficient to generate adequate internal capital to support growth. Our current ability to pay dividends is largely dependent upon the receipt of dividends from the Bank. Both federal and state laws impose restrictions on the ability of the Bank to pay dividends. Federal law prohibits the payment of a dividend by an insured depository institution if the depository institution is considered "undercapitalized" or if the payment of the dividend would make the institution "undercapitalized." For a Maryland commercial bank, dividends may be paid out of undivided profits or, with the prior approval of the Maryland Commissioner, from surplus in excess of 100% of required capital stock. If,

Table of Contents

however, the surplus of a Maryland bank is less than 100% of its required capital stock, then cash dividends may not be paid in excess of 90% of net earnings.

Our ability to pay dividends is further subject to our ability to make payments of interest under junior subordinated debentures due through 2035 held by our statutory trusts Mariner Capital Trust II, III, IV, V, VI, VII, and VIII (collectively, the "Trusts"). These payments are necessary to fund the distributions that the Trusts each must pay to holders of its trust preferred securities (collectively, the "Trust Preferred Securities"). The terms of debentures permit us to defer interest payments for up to 20 quarterly periods. We have elected to defer interest payments on the debentures, beginning with the January 2009 payments. This deferment is permitted by the terms of the debentures and does not constitute an event of default thereunder. Interest on the debentures and dividends on the related Trust Preferred Securities continue to accrue and will have to be paid in full prior to the expiration of the deferral period, which may not exceed 20 consecutive quarters, and prior to the declaration of any dividends.

Finally, First Mariner and the Bank have entered into regulatory agreements with our regulators which, among other things, require us to seek prior regulatory approval before the Bank pays dividends to First Mariner and/or before First Mariner pays dividends on its common stock.

Our funding sources may prove insufficient to replace deposits and support our future growth.

We rely on customer deposits, advances from the FHLB, and lines of credit at other financial institutions to fund our operations. Although we have historically been able to replace maturing deposits and advances if desired, no assurance can be given that we would be able to replace such funds in the future if our financial condition or the financial condition of the FHLB or market conditions were to change. Our financial flexibility will be severely constrained and/or our cost of funds will increase if we are unable to maintain our access to funding or if financing necessary to accommodate future growth is not available at favorable interest rates. Finally, if we are required to rely more heavily on more expensive funding sources to support future growth, our revenues may not increase proportionately to cover our costs. In this case, our profitability would be adversely affected.

We currently hold a significant amount of bank owned life insurance.

We currently hold a significant amount of bank owned life insurance ("BOLI") on key employees and executives that have cash surrender values of \$34.773 million as of December 31, 2009. The eventual repayment of the cash surrender value is subject to the ability of various insurance companies to pay benefits in the event of the death of an insured employee, or return the cash surrender value to us in the event of our need for liquidity. We continuously monitor the financial strength of the various insurance companies with whom we carry policies. However, there is no assurance that one or more of these companies will not experience a decline in financial strength, which could impair its ability to pay benefits or return our cash surrender value. Additionally, should we need to liquidate these policies for liquidity needs, we would be subject to taxation on the increase in cash surrender value as well as penalties for early termination of the insurance contracts. These events would have a negative impact on our earnings.

Fluctuating interest rates can adversely affect our profitability.

Our profitability is dependent to a large extent upon net interest income, which is the difference, or spread, between the interest earned on loans, securities, and other interest-earning assets and the interest paid on deposits, borrowings, and other interest-bearing liabilities. Because of the differences in maturities and repricing characteristics of our interest-earning assets and interest-bearing liabilities, changes in interest rates do not produce equivalent changes in interest income earned on interest-earning assets and interest paid on interest-bearing liabilities. We principally manage interest

Table of Contents

rate risk by managing our volume and mix of our earning assets and funding liabilities. In a rapidly changing interest rate environment, we may not be able to manage this risk effectively. Changes in interest rates also can affect: (1) our ability to originate and/or sell loans; (2) the value of our interest-earning assets, which would negatively impact shareholders' equity, and our ability to realize gains from the sale of such assets; (3) our ability to obtain and retain deposits in competition with other available investment alternatives; and (4) the ability of our borrowers to repay adjustable or variable rate loans. Interest rates are highly sensitive to many factors, including government monetary policies, domestic and international economic and political conditions, and other factors beyond our control. If we are unable to manage interest rate risk effectively, our business, financial condition, and results of operations could be materially adversely affected.

We operate in a highly regulated environment and may be adversely affected by changes in federal and state laws and regulations, including changes that may restrict our ability to foreclose on single-family home loans and offer overdraft protection.

We are subject to extensive regulation, supervision, and examination by federal and state banking authorities. Any change in applicable regulations or laws could have a substantial impact on us and our operations. Additional legislation and regulations that could significantly affect our powers, authority, and operations may be enacted or adopted in the future, which could have a material adverse effect on our financial condition and results of operations. New legislation proposed by Congress may give bankruptcy courts the power to reduce the increasing number of home foreclosures by giving bankruptcy judges the authority to restructure mortgages and reduce a borrower's payments. Property owners would be allowed to keep their property while working out their debts. Other similar bills placing additional temporary moratoriums on foreclosure sales or otherwise modifying foreclosure procedures to the benefit of borrowers and the detriment of lenders may be enacted by either Congress or the State of Maryland in the future. These laws may further restrict our collection efforts on one-to-four single-family mortgage loans. Additional legislation proposed or under consideration in Congress would give current debit and credit card holders the chance to opt out of an overdraft protection program and limit overdraft fees, which could result in additional operational costs and a reduction in our noninterest income.

Further, our regulators have significant discretion and authority to prevent or remedy unsafe or unsound practices or violations of laws by financial institutions and holding companies in the performance of their supervisory and enforcement duties. In this regard, banking regulators are considering additional regulations governing compensation, which may adversely affect our ability to attract and retain employees. On June 17, 2009, the Obama Administration published a comprehensive regulatory reform plan that is intended to modernize and protect the integrity of the United States financial system. The President's plan contains several elements that would have a direct effect on the Company and the Bank. The reform plan proposes the creation of a new federal agency, the Consumer Financial Protection Agency, which would be dedicated to protecting consumers in the financial products and services market. The creation of this agency could result in new regulatory requirements and raise the cost of regulatory compliance. In addition, legislation stemming from the reform plan could require changes in regulatory capital requirements and compensation practices. If implemented, the foregoing regulatory reforms may have a material impact on our operations. However, because the final legislation may differ significantly from the legislation proposed by the Administration, we cannot determine the specific impact of regulatory reform at this time.

We face significant operational risks.

We operate in many different businesses in diverse markets and rely on the ability of our employees and systems to process a high number of transactions. Operational risk is the risk of loss resulting from our operations, including, but not limited to, the risk of fraud by employees or persons

Table of Contents

outside of the Company and the Bank, the execution of unauthorized transactions by employees, errors relating to transaction processing and technology, and catastrophic failures resulting from terrorist acts or natural disasters, breaches of the internal control system, and compliance requirements and business continuation and disaster recovery. This risk of loss also includes the potential legal actions that could arise as a result of an operational deficiency or as a result of noncompliance with applicable regulatory standards, adverse business decisions or their implementation, and customer attrition due to potential negative publicity. We maintain a system of internal controls to mitigate against such occurrences and maintain insurance coverage for such risks that are insurable, but should such an event occur that results in a breakdown in the internal control system, improper operation of systems, or improper employee actions, we could suffer financial loss, face regulatory action, and suffer damage to our reputation.

Additionally, the financial services industry is continually undergoing rapid technological change with frequent introductions of new technology-driven products and services. The effective use of technology increases efficiency and enables financial institutions to better serve customers and to reduce costs. Our future success depends, in part, upon our ability to address the needs of our customers by using technology to provide products and services that will satisfy customer demands, as well as to create additional efficiencies in our operations. Many of our competitors have substantially greater resources to invest in technological improvements. We may not be able to effectively implement new technology-driven products and services or be successful in marketing these products and services to our customers. Failure to successfully keep pace with technological change affecting the financial services industry could have a material adverse impact on our business and, in turn, our financial condition and results of operations.

Severe weather, natural disasters, acts of war or terrorism, and other adverse external events could have a significant impact on our ability to conduct business. Such events could affect the stability of our deposit base, impair the ability of borrowers to repay outstanding loans, impair the value of collateral securing loans, cause significant property damage, result in loss of revenue, and/or cause us to incur additional expenses. Operations in several of our markets could be disrupted by both the evacuation of large portions of the population as well as damage and/or lack of access to our banking and operation facilities. Although we have not experienced such an occurrence to date, severe weather or natural disasters, acts of war or terrorism, or other adverse external events may occur in the future. Although management has established disaster recovery policies and procedures, the occurrence of any such event could have a material adverse effect on our business, which, in turn, could have a material adverse effect on our financial condition and results of operations.

Our management controls a significant percentage of our common stock.

At December 31, 2009, our directors and executive officers beneficially owned approximately 1,844,780 shares of our common stock (amount includes shares that could be acquired pursuant to immediately exercisable stock options), or 26.0% of our outstanding shares of common stock plus exercisable options. Edwin F. Hale, Sr., who is our Chairman, Chief Executive Officer, and largest stockholder, beneficially owns 1,451,483 shares of common stock, including exercisable options to purchase common stock, or 20.4% of our outstanding shares of common stock, including exercisable options to purchase common stock as of December 31, 2009. Because of the large percentage of stock held by our directors and executive officers, these persons could influence the outcome of any matter submitted to a vote of our shareholders.

See "Subsequent Events" in Item 7 of Part II of this Form 10-K for additional information on shares of all common stock that are expected to be issued in the Exchange.

Table of Contents

Contracts with our officers may discourage a takeover or adversely affect our takeover value.

We have entered into change in control agreements with four of our officers. These agreements provide for a payment to each officer of a multiple (ranging from 1 to 2.99) of his or her salary and bonus upon the occurrence of either a change in control that results in the loss of employment or a significant change in his or her employment. Thus, we may be required to make significant payments in the event that the rights under these agreements are triggered by a change in control. As a result, these contracts may discourage a takeover, or adversely affect the consideration payable to stockholders in the event of a takeover. Notwithstanding the foregoing, because the Company and the bank are considered to be in "troubled condition" for regulatory purposes, payments made under any change of control agreement are subject to certain regulatory restrictions and limitations. The Company and the Bank must apply for and receive the approval of the FRB and the FDIC, respectively, in order to make payments under these agreements. See "The Company and the Bank are deemed to be in troubled condition" above.

Our Articles and Bylaws and Maryland law may discourage a corporate takeover.

Our Articles and Amended and Restated Bylaws ("Bylaws") contain certain provisions designed to enhance the ability of the board of directors to deal with attempts to acquire control of the Company. These provisions provide for the classification of our board of directors into three classes; directors of each class serve for staggered three year periods. The Articles also provide for supermajority voting provisions for the approval of certain business combinations.

Maryland law also contains anti-takeover provisions that apply to us. The Maryland Business Combination Act generally prohibits, subject to certain limited exceptions, corporations from being involved in any "business combination" (defined as a variety of transactions, including a merger, consolidation, share exchange, asset transfer, or issuance or reclassification of equity securities) with any "interested shareholder" for a period of five years following the most recent date on which the interested shareholder became an interested shareholder. An interested shareholder is defined generally as a person who is the beneficial owner of 10% or more of the voting power of the outstanding voting stock of the corporation after the date on which the corporation had 100 or more beneficial owners of its stock or who is an affiliate or associate of the corporation and was the beneficial owner, directly or indirectly, of 10% or more of the voting power of the then outstanding stock of the corporation at any time within the two-year period immediately prior to the date in question and after the date on which the corporation had 100 or more beneficial owners of its stock. The Maryland Control Share Acquisition Act applies to acquisitions of "control shares," which, subject to certain exceptions, are shares the acquisition of which entitle the holder, directly or indirectly, to exercise or direct the exercise of the voting power of shares of stock of the corporation in the election of directors within any of the following ranges of voting power: one-tenth or more, but less than one-third of all voting power; one-third or more, but less than a majority of all voting power or a majority or more of all voting power. Control shares have limited voting rights.

Although these provisions do not preclude a takeover, they may have the effect of discouraging a future takeover attempt which would not be approved by our board of directors, but pursuant to which stockholders might receive a substantial premium for their shares over then-current market prices. As a result, stockholders who might desire to participate in such a transaction might not have the opportunity to do so. Such provisions will also render the removal of our board of directors and of management more difficult and, therefore, may serve to perpetuate current management. Further, such provisions could potentially adversely affect the market price of our common stock.

Table of Contents

A continuation of recent turmoil in the financial markets could have an adverse effect on our financial position or results of operations.

Beginning in 2008, United States and global financial markets have experienced severe disruption and volatility, and general economic conditions have declined significantly. Adverse developments in credit quality, asset values, and revenue opportunities throughout the financial services industry, as well as general uncertainty regarding the economic, industry, and regulatory environment, have had a marked negative impact on the industry. Dramatic declines in the U.S. housing market over the past two years, with falling home prices, increasing foreclosures, and increasing unemployment, have negatively affected the credit performance of mortgage loans and resulted in significant write-downs of asset values by many financial institutions. The United States and the governments of other countries have taken steps to try to stabilize the financial system, including investing in financial institutions, and have also been working to design and implement programs to improve general economic conditions. Notwithstanding the actions of the United States and other governments, these efforts may not succeed in restoring industry, economic, or market conditions and may result in adverse unintended consequences. Factors that could continue to pressure financial services companies, including First Mariner, are numerous and include (i) worsening credit quality, leading among other things to increases in loan losses and reserves, (ii) continued or worsening disruption and volatility in financial markets, leading among other things to continuing reductions in asset values, (iii) capital and liquidity concerns regarding financial institutions generally, (iv) limitations resulting from or imposed in connection with governmental actions intended to stabilize or provide additional regulation of the financial system, or (v) recessionary conditions that are deeper or last longer than currently anticipated.

Our financial condition and results of operations are dependant on the economy in the Bank's market area.

First Mariner Bank's primary market area for its core banking operations consists of central Maryland and portions of Maryland's eastern shore. Because of the Bank's concentration of business activities in its market area, our financial condition and results of operations depend upon economic conditions in the Bank's market area. Adverse economic conditions in our market area could reduce our growth rate, affect the ability of our customers to repay their loans and generally affect our financial condition and results of operations. Conditions such as inflation, recession, unemployment, high interest rates, short money supply, scarce natural resources, international disorders, terrorism, and other factors beyond our control may adversely affect our profitability. We are less able than a larger institution to spread the risks of unfavorable local economic conditions across a large number of diversified economies. Any sustained period of increased payment delinquencies, foreclosures, or losses caused by adverse market or economic conditions in the State of Maryland could adversely affect the value of our assets, revenues, results of operations, and financial condition. Moreover, we cannot give any assurance we will benefit from any market growth or favorable economic conditions in our primary market areas if they do occur.

We currently have a significant amount of deferred tax assets.

We had \$28.214 million of deferred tax assets as of December 31, 2009. The analysis of the realization of deferred tax assets requires making various forecasts and assumptions, including future flows of taxable income. Actual results may differ from forecasts and assumptions, which could cause a write-down of our deferred tax assets and have a negative impact on our financial condition and results of operations.

Table of Contents

We could, as a result of a stock offering or future trading activity in our common stock, experience an "ownership change" for tax purposes that could cause us to permanently lose a portion of our U.S. federal deferred tax assets.

The completion of any stock offering could cause us to experience an "ownership change" as defined for U.S. federal income tax purposes. Even if these transactions do not cause us to experience an "ownership change," these transactions materially increase the risk that we could experience an "ownership change" in the future. As a result, issuances or sales of common stock or other securities in the future (including common stock issued in the stock offering), or certain other direct or indirect changes in ownership, could result in an "ownership change" under Section 382 of the Internal Revenue Code of 1986, as amended. In the event an "ownership change" were to occur, we could realize a permanent loss or a portion of our U.S. federal deferred tax assets as a result of limitations on certain built-in losses that have not been recognized for tax purposes, including, for example, losses on existing nonperforming assets. The amount of the permanent loss would depend on the size of the annual limitation (which is in part a function of our market capitalization at the time of an ownership change) and the applicable carryforward period (U.S. federal net operating losses generally may be carried forward for a period of 20 years). Any permanent loss could have a material adverse effect on our results of operations and financial condition.

We have not established a valuation allowance against our U.S. federal deferred tax assets of December 31, 2009, as we believed, based on our analysis as of that date, that it was more likely than not that all of these assets would be realized. Section 382 of the Internal Revenue Code imposes restrictions on the use of a corporation's net operating losses, certain recognized built-in losses, and other carryovers after an "ownership change" occurs. An "ownership change" is generally a greater than 50 percentage point increase by certain "5% shareholders" during the testing period, which is generally the three year-period ending on the transaction date. Upon an "ownership change," a corporation generally is subject to an annual limitation on its prechange losses and certain recognized built-in losses equal to the value of the corporation's market capitalization immediately before the "ownership change" multiplied by the long-term tax-exempt rate (subject to certain adjustments). The annual limitation is increased each year to the extent that there is an unused limitation in a prior year. Since U.S. federal net operating losses generally may be carried forward for up to 20 years, the annual limitation also effectively provides a cap on the cumulative amount of prechange losses and certain recognized built-in losses that may be utilized. Prechange losses and certain recognized built-in losses in excess of the cap are effectively lost.

The relevant calculations under Section 382 of the Internal Revenue Code are technical and highly complex. Any stock offering, combined with other ownership changes, could cause First Mariner to experience an "ownership change." If an "ownership change" were to occur, we believe it could permanently lose the ability to realize a portion of its deferred tax asset, resulting in reduction to total shareholders' equity. This could also decrease the Bank's regulatory capital. We do not believe, however, that any such decrease in regulatory capital would be material because, among other things, only a small portion of the federal deferred tax asset is currently included in the Bank's regulatory capital.

Although publicly traded, our common stock has substantially less liquidity than the average liquidity of stocks listed on the NASDAQ Global Market.

Although our common stock is listed for trading on the Nasdaq Global Market our common stock has substantially less liquidity than the average liquidity for companies listed on the Nasdaq Global Market. A public trading market having the desired characteristics of depth, liquidity, and orderliness depends on the presence in the marketplace of willing buyers and sellers of our common stock at any given time. This marketplace depends on the individual decisions of investors and general economic and market conditions over which we have no control. This limited market may affect your ability to

Table of Contents

sell your shares on short notice and the sale of a large number of shares at one time could temporarily depress the market price of our common stock. For these reasons, our common stock should not be viewed as a short-term investment.

The market price of our common stock may fluctuate in the future and this volatility may be unrelated to our performance. General market price declines or overall market swings in the future could adversely affect the price of our common stock and the current market price may not be indicative of future market prices.

If we are unable to satisfy the continued listing standards of NASDAQ, our stock may be delisted from the NASDAQ Stock Market, which could adversely affect its market price and liquidity.

We are required to meet NASDAQ's continued listing requirements in order to remain listed on The NASDAQ Stock Market. We are listed on The NASDAQ Global Market. On December 10, 2009, the Company received a letter from The NASDAQ Stock Market providing notice that, for 30 consecutive business days, the Company's common stock had not maintained a minimum market value of publicly held shares ("MVPHS") of \$5 million as required for continued inclusion on The NASDAQ Global Market by Listing Rule 5450(b)(1)(c). For NASDAQ purposes, MVPHS is the market value of the Company's publicly held shares, which is calculated by subtracting all shares held by officers, directors or beneficial owners of 10% or more of the total shares outstanding. NASDAQ provided the Company until March 10, 2010 to regain compliance with Listing Rule 5450(b)(1)(c). Also on December 10, 2009, the Company received a letter from The NASDAQ Stock Market providing notice that, for 30 consecutive business days, the Company's common stock had not maintained a minimum bid price of \$1.00 per share as required for continued inclusion on The NASDAQ Global Market by Listing Rule 5450(a)(1). NASDAQ provided the until June 8, 2010 to regain compliance with Listing Rule 5450(a)(1). On February 3, 2010, the NASDAQ provided us with a letter that our common stock had regained compliance with these Listing Rules and both matters were now closed.

In the future, if our common stock were unable to satisfy The NASDAQ Stock Market's listing standards and we were not able to regain compliance with the listing standards, our stock could be delisted from The NASDAQ Stock Market. If our common stock is delisted, it could be more difficult to buy or sell our common stock and to obtain accurate quotations, and the price of our stock could suffer a material decline. Delisting may also impair our ability to raise capital. Furthermore, if our common stock is delisted, we would apply to have our common stock quoted on the OTC Bulletin Board, and our common stock would become subject to the SEC's penny stock regulations. A penny stock, as defined by the Penny Stock Reform Act, is any equity security not traded on a national securities exchange that has a market price of less than \$5.00 per share. The penny stock regulations generally require that a disclosure schedule explaining the penny stock market and the risks associated therewith be delivered to purchasers of penny stocks and impose various sales practice requirements on broker-dealers who sell penny stocks to persons other than established customers and accredited investors. The broker-dealer must make a suitability determination for each purchaser and receive the purchaser's written agreement prior to the sale. In addition, the broker-dealer must make certain mandated disclosures, including the actual sale or purchase price and actual bid offer quotations, as well as the compensation to be received by the broker-dealer and certain associated persons. The regulations applicable to penny stocks may severely affect the market liquidity for our common stock and could limit your ability to sell your securities in the secondary market.

ITEM 2 PROPERTIES

We lease our executive offices located at 1501 South Clinton Street, Baltimore, Maryland. This location also houses our headquarters branch office. We occupy approximately 84,000 square feet at this location, which is adjacent to our former headquarters building.

Edgar Filing: FIRST MARINER BANCORP - Form 10-K

Table of Contents

We own our former headquarters branch office (now a satellite office) located at 3301 Boston Street, Baltimore, Maryland. This location houses drive-up banking and customer parking facilities, as well as other administration offices.

We operate retail bank branches at the following locations:*

Maryland:

Annapolis (2)

161 A Jennifer Road
Annapolis, MD 21401

Arbutus (2)

3720 Washington Blvd., Suite 100
Baltimore, MD 21227

Bel Air (3)

12 A Bel Air South Parkway
Bel Air, MD 21015

Canton Drive-Thru (1) (4)

3301 Boston Street
Baltimore, MD 21224

Canton Tower/Headquarters (2)

1501 South Clinton Street
Baltimore, MD 21224

Carroll Island (2)

176 Carroll Island Road
Baltimore, MD 21220

Cockeysville (3)

9840 York Road
Cockeysville, MD 21030

Columbia (2)

8835 Centre Park Drive, Suite 100
Columbia, MD 21045

Downtown Baltimore (2)(5)

300 N. Charles Street
Baltimore, MD 21201

Dundalk (2)

7860 Wise Avenue
Baltimore, MD 21222

Easton (1)

8662 Alicia Drive
Easton, MD 21601

Ellicott City (3)

10065 Baltimore National Pike
Ellicott City, MD 21042

Glen Burnie (3)

305 South Crain Highway
Glen Burnie, MD 21061

Hickory (3)

1403 Conowingo Road
Belair, MD 21014

Loch Raven (1)

1641 East Joppa Road
Baltimore, MD 21286

Lutherville/Timonium (2)

1738 York Road
Lutherville, MD 21093

Odenton (1)

1600 Annapolis Road
Odenton, MD 21113

Owings Mills (1)

4800 Painters Mill Road
Owings Mills, MD 21117

Perry Hall (1)

8843 Bel Air Road
Perry Hall, MD 21236

Pikesville (1)

1013 Reisterstown Road
Baltimore, MD 21208

Pikesville Drive-Thru (2)(4)

1100 Reisterstown Road
Baltimore, MD 21208

Severna Park (2)

366A Gov Ritchie Highway
Severna Park, MD 21146

Westminster (1)

1010 Baltimore Boulevard
Westminster, MD 21157

White Marsh (1)

10101 Philadelphia Road
White Marsh, MD 21237

Woodlawn (3)

7007 Security Boulevard
Baltimore, MD 21244

Pennsylvania:

Shrewsbury (2)(6)

Market Square Shopping Center
549 South Main Street
Shrewsbury, PA 17361

*

For our branch hours and remote ATM locations, please refer to our website at www.1stmarinerbank.com.

(1)

Company owns branch

(2)

Company leases branch

(3)

Company owns branch, but leases related land

Edgar Filing: FIRST MARINER BANCORP - Form 10-K

- (4) Office is a satellite branch
- (5) Branch closed in February, 2010
- (6) Branch to be closed during the second quarter of 2010

For more information on our lease commitments and costs see Note 6 of the Notes to Consolidated Financial Statements, included in Item 8 of Part II of this Form 10-K.

Table of Contents

We operate mortgage offices at the following locations:

Maryland:

Annapolis (2)

2661 Riva Road
Annapolis, MD 21401

Canton/Former Headquarters (1)

3301 Boston Street
Baltimore, MD 21224

Eldersburg (2)

10065 Baltimore National Pike
Ellicott City, MD 21042

Ellicott City (3)

10065 Baltimore National Pike
Ellicott City, MD 21042

Rockville (2)

15722 Crabbs Branch Way
Rockville, MD 20855

Severna Park (2)

838 Ritchie Highway
Severna Park, MD 21146

Waldorf (2)

3200 Crain Hwy, Units 102 & 103
Waldorf, MD 20603

White Marsh (1)

10101 Philadelphia Road
White Marsh, MD 21237

North Carolina:

VA Mortgage (2)

203 Wolf Creek Professional Center
Havelock, NC 28532

Delaware:

Bethany Beach (2)

35550 Marketplace Unit 3
Bethany Beach, DE 19930

Seaford (2)

604 North Porter Street
Seaford, DE 19973

Virginia:

Ashburn (2)

44081 Pipeline Plaza Ste 215
Ashburn, VA 20147

- (1) Company owns office
- (2) Company leases office
- (3) Company owns office, but leases related land

The Bank's branches range in total size from 2,000 to 4,000 square feet and mortgage offices generally range in size from 1,200 to 2,000 square feet. We believe that all of our locations are suitable and adequate to conduct business and support growth in customer and transaction volume.

ITEM 3 LEGAL PROCEEDINGS

We are party to certain legal actions that are routine and incidental to our business. In management's opinion, the outcome of these matters, individually or in the aggregate, will not have a material effect on our results of operations or financial position.

ITEM 4 [Removed and Reserved]

Table of Contents**PART II****ITEM 5 MARKET FOR THE REGISTRANT'S COMMON EQUITY, RELATED STOCKHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES****Market for Common Stock**

First Mariner's common stock trades on The NASDAQ Global Market under the symbol "FMAR." Currently, there are approximately 2,900 holders of First Mariner common stock. The table below sets forth for the periods indicated the low and high market prices of the common stock as reported on The NASDAQ Global Market. On March 19, 2010, the closing sales price of First Mariner common stock was \$1.24 per share.

	Low	High
2009 Quarter ended:		
Fourth quarter	\$ 0.55	\$ 1.36
Third quarter	1.10	2.20
Second quarter	0.65	4.50
First quarter	0.50	1.30
2008 Quarter ended:		
Fourth quarter	\$ 0.50	\$ 2.50
Third quarter	0.22	3.95
Second quarter	3.11	5.99
First quarter	5.06	8.05

We do not pay cash dividends on our shares of common stock. Currently, we have no plans to resume the payment of cash dividends on our common stock. For a discussion of the limitations on First Mariner's ability to pay dividends, see Item 1 of Part I of this Form 10-K under the heading "Supervision and Regulation."

Equity Compensation Plan Information

The following table sets forth the securities authorized for issuance under the Company's equity compensation plans as of December 31, 2009:

Plan category	(A) Number of securities to be issued upon exercise of outstanding options, warrants and rights	(B) Weighted-average exercise price of outstanding options, warrants and rights	(C) Number of securities remaining available for future issuance under equity compensation plans (excluding securities reflected in column (A))
Equity compensation plans approved by security holders	668,593	\$ 12.20	300,107
Equity compensation plans not approved by security holders			
Total	668,593	\$ 12.20	300,107

See "Subsequent Events" in Item 7 of Part II of this Form 10-K for modifications to our Long-Term Incentive Plan.

Table of Contents**Issuer Purchases of Equity Securities**

None.

Performance Graph

The following graph compares the performance of the Company's Common Stock, with the performance of a broad market index and a nationally-recognized industry standard assuming in each case both an initial \$100 investment on December 31, 2004 and reinvestment of dividends as of the end of the Company's last five fiscal years. The Company has selected the Nasdaq Market Index as the relevant broad market index because prices for the Company's Common Stock are quoted on Nasdaq National Market. Additionally, the Company has selected the Nasdaq Bank Index as the relevant industry standard because such index consists of financial institutions which the Company believes generally possess assets, liabilities, and operations more similar to the Company than other publicly-available indices. However, given the short history of the Company's operations and its rapid growth, the Company believes no truly appropriate comparative index exists.

	Period Ending					
	12/31/2004	12/31/2005	12/31/2006	12/31/2007	12/31/2008	12/31/2009
First Mariner Bancorp	\$ 100	\$ 99.66	\$ 105.64	\$ 32.29	\$ 4.10	\$ 5.41
NASDAQ Bank Index	100	95.67	106.20	82.76	62.96	51.31
NASDAQ Market Index	100	101.37	111.03	121.92	72.49	104.31

37

Table of Contents**ITEM 6 SELECTED FINANCIAL DATA**

	2009	2008	2007	2006	2005
<i>(dollars in thousands, except per share data)</i>					
Consolidated Statement of Operations Data:					
Net interest income	\$ 27,112	\$ 28,440	\$ 32,195	\$ 38,502	\$ 39,261
Provision for loan losses	11,660	10,856	6,700	150	1,575
Noninterest income	28,271	17,227	20,757	20,706	20,488
Noninterest expense	67,834	65,252	67,297	59,874	48,637
Income tax (benefit) expense before discontinued operations	(10,887)	(13,632)	(9,342)	(1,282)	2,681
(Loss) income from discontinued operations (1)	(9,060)	1,721	1,640	1,458	966
Net (loss) income	(22,284)	(15,088)	(10,063)	1,924	7,822
Consolidated Statement of Financial Condition Data:					
Total assets	\$ 1,384,551	\$ 1,307,497	\$ 1,246,822	\$ 1,263,290	\$ 1,362,478
Loans receivable, net	879,312	961,919	842,131	854,060	839,843
Deposits	1,146,504	950,233	904,953	924,938	876,010
Long-term borrowings	95,672	177,868	155,130	132,557	131,000
Junior subordinated deferrable interest debentures	73,724	73,724	73,724	73,724	73,724
Stockholders' equity	26,987	46,015	64,570	78,629	72,375
Per Share Data:					
Number of shares of common stock outstanding at year end	6,452,631	6,452,631	6,351,611	6,427,725	6,262,442
Net (loss) income per common share:					
Basic	\$ (3.45)	\$ (2.36)	\$ (1.57)	\$ 0.30	\$ 1.28
Diluted	(3.45)	(2.36)	(1.57)	0.29	1.20
Cash dividends declared					
Performance and Capital Ratios:					
Return on average assets	(1.69)%	(1.16)%	(0.79)%	0.14%	0.59%
Return on average equity	(53.81)%	(24.37)%	(13.83)%	2.53%	11.44%
Net interest margin	2.43%	2.74%	3.12%	3.22%	3.30%
Average equity to average assets	3.15%	4.78%	5.75%	5.50%	5.09%
Year-end Tier 1 leverage ratio (Bank)	6.2%	5.8%	7.1%	7.3%	6.8%
Tier 1 capital to risk-weighted assets (Bank)	7.9%	6.8%	8.6%	9.6%	9.0%
Total capital to risk-weighted assets (Bank)	9.1%	8.8%	10.4%	11.7%	10.7%
Asset Quality Ratios:					
Nonperforming assets to total assets	4.15%	4.42%	3.48%	0.52%	0.29%
Allowance for loan losses at year-end to:					
Total loans, net of unearned income	1.31%	1.71%	1.50%	1.43%	1.38%
Nonperforming assets and 90 day past-due loans	17.46%	24.88%	27.57%	36.61%	244.14%
Net charge-offs to average total loans, net of unearned income	1.37%	1.35%	1.09%	0.21%	0.15%

(1)

Reflects (loss) income from discontinued operations of Mariner Finance. See "Sale of Mariner Finance" in Item 7 of Part II of this Form 10-K for additional information.

Table of Contents

ITEM 7 MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The Company

The Company is a bank holding company incorporated under the laws of Maryland and registered under the federal Bank Holding Company Act of 1956, as amended. The Company's business is conducted primarily through its wholly owned subsidiaries: First Mariner Bank and FM Appraisals, LLC. The Company had over 1,100 employees (approximately 950 full-time equivalent employees) as of December 31, 2009.

The Bank, which is the largest operating subsidiary of the Company with assets exceeding \$1.372 billion at December 31, 2009 and the largest bank headquartered in Baltimore, Maryland, 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 that are offered by many larger competitors. The 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. Products and services of the Bank 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. Most importantly, the Bank provides customers with access to local Bank officers who are empowered to act with flexibility to meet customers' needs in an effort to foster and develop long-term loan and deposit relationships. The Bank is an independent community bank and its deposits are insured by the FDIC.

First Mariner Mortgage, a division of the Bank, engages in mortgage-banking activities, providing mortgages and associated products to customers and selling most of those mortgages into the secondary market. First Mariner Mortgage has offices in Maryland, Delaware, Virginia, and North Carolina.

NGFS, a division of the Bank, engages in the origination of reverse and conventional mortgages, providing these products directly through commission based loan officers throughout the United States. NGFS originates reverse mortgages for sale to unaffiliated third parties (primarily Fannie Mae). The Bank does not originate any reverse mortgages for its portfolio, but it does retain the servicing rights on reverse mortgages originated by NGFS and sold to Fannie Mae. 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 by the end of the first quarter of 2011. 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. The Bank does not anticipate any benefit that results from the sale to be material.

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 subcontracted appraisers, appraisal ordering and administration, and appraisal review services. FM Appraisals provides these services to First Mariner Mortgage and NGFS.

Sale of Mariner Finance

In December, 2009, we completed the sale of our consumer finance company subsidiary, Mariner Finance, for a purchase price of approximately \$10.459 million. We received \$8.734 million in cash at closing and a 5% ownership stake in the new Mariner Finance entity. Under terms of the sale, \$1.1 million was placed in an escrow account to be paid to First Mariner no later than 18 months after

Table of Contents

the closing, after deducting any indemnification claims. In accordance with FASB guidance, the results of Mariner Finance operations are not included in our consolidated continuing operations, but are shown on the consolidated statement of operations as discontinued operations. We recorded a loss on the sale of Mariner Finance of \$11.110 million during 2009. See additional information on the discontinued operations of Mariner Finance in Note 2 to the Consolidated Financial Statements in Item 8 of Part II of this Form 10-K.

Critical Accounting Policies

The Company's consolidated financial statements are prepared in accordance with accounting principles generally accepted in the United States of America ("GAAP") detailed in the FASB Accounting Codification ("Codification") and follow general practices within the industry in which it operates. Application of these principles requires management to make estimates, assumptions, and judgments that affect the amounts reported in the consolidated financial statements and accompanying notes. These estimates, assumptions, and judgments are based on information available as of the date of the consolidated financial statements; accordingly, as this information changes, the consolidated financial statements could reflect different estimates, assumptions, and judgments. Certain policies inherently have a greater reliance on the use of estimates, assumptions, and judgments and, as such, have a greater possibility of producing results that could be materially different than originally reported. Estimates, assumptions, and judgments are necessary when assets and liabilities are required to be recorded at fair value, when a decline in the value of an asset not carried on the consolidated financial statements at fair value warrants an impairment write-down or valuation reserve to be established, or when an asset or liability needs to be recorded contingent upon a future event. Carrying assets and liabilities at fair value inherently results in more financial statement volatility. When applying accounting policies in such areas that are subjective in nature, management must use its best judgment to arrive at the carrying value of certain assets and liabilities. Below is a discussion of our critical accounting policies.

Allowance for loan losses

A variety of estimates impact the carrying value of the loan portfolio including the calculation of the allowance for loan losses, valuation of underlying collateral, and the timing of loan charge-offs.

The allowance is established and maintained at a level that management believes is adequate to cover losses resulting from the inability of borrowers to make required payments on loans. Estimates for loan losses are arrived at by analyzing risks associated with specific loans and the loan portfolio. Current trends in delinquencies and charge-offs, the views of Bank regulators, changes in the size and composition of the loan portfolio, and peer comparisons are also factors. The analysis also requires consideration of the economic climate and direction and change in the interest rate environment, which may impact a borrower's ability to pay, legislation impacting the banking industry, and environmental and economic conditions specific to the Bank's service areas. Because the calculation of the allowance for loan losses relies on estimates and judgments relating to inherently uncertain events, results may differ from our estimates.

Securities available for sale

Securities available for sale are evaluated periodically to determine whether a decline in their value is other than temporary. The term "other than temporary" is not intended to indicate a permanent decline in value. Rather, it means that the prospects for near term recovery of value are not necessarily favorable, or that there is a lack of evidence to support fair values equal to, or greater than, the carrying value of the security.

Table of Contents

The initial indication of OTTI for both debt and equity securities is a decline in the market value below the amount recorded for an investment, and the severity and duration of the decline. In determining whether an impairment is other than temporary, we consider the length of time and the extent to which the market value has been below cost, recent events specific to the issuer, including investment downgrades by rating agencies and economic conditions of its industry, our intent to sell the investment, and if it is more likely than not that we will be required to sell the security before recovery of its amortized cost basis. For marketable equity securities, we also consider the issuer's financial condition, capital strength, and near-term prospects. For debt securities and for perpetual preferred securities that are treated as debt securities for the purpose of OTTI analysis, we also consider the cause of the price decline (general level of interest rates and industry- and issuer-specific factors), the issuer's financial condition, near-term prospects and current ability to make future payments in a timely manner, the issuer's ability to service debt, and any change in agencies' ratings at evaluation date from acquisition date and any likely imminent action. Once a decline in value is determined to be other than temporary, the security is segmented into credit- and noncredit-related components. Any impairment adjustment due to identified credit-related components is recorded as an adjustment to current period earnings, while noncredit-related fair value adjustments are recorded through other comprehensive income. In situations where we intend to sell or it is more likely than not that we will be required to sell the security, the entire OTTI loss must be recognized in earnings.

Income Taxes

Income taxes are provided based on the liability method of accounting, which includes the recognition of deferred tax assets and liabilities for the temporary differences between carrying amounts and tax bases of assets and liabilities, computed using enacted tax rates. In general, we record deferred tax assets when the event giving rise to the tax benefit has been recognized in the Consolidated Financial Statements.

A valuation allowance is recognized to reduce any deferred tax assets that, based upon available information, it is more likely than not all, or any portion, of the deferred tax asset will not be realized. Assessing the need for, and amount of, a valuation allowance for deferred tax assets requires significant judgment and analysis of evidence regarding realization of the deferred tax assets. In most cases, the realization of deferred tax assets is dependent upon us generating a sufficient level of taxable income in future periods, which can be difficult to predict. Given the nature of our deferred tax assets, management determined no valuation allowances were needed at either December 31, 2009 or 2008.

The calculation of tax liabilities is complex and requires the use of estimates and judgment since it involves the application of complex tax laws that are subject to different interpretations by us and the various tax authorities. These interpretations are subject to challenge by the tax authorities upon audit or to reinterpretation based on management's ongoing assessment of facts and evolving case law.

Periodically and in the ordinary course of business, we are involved in inquiries and reviews by tax authorities that normally require management to provide supplemental information to support certain tax positions we take in our tax returns. Uncertain tax positions are initially recognized in the financial statements when it is more likely than not the position will be sustained upon examination by the tax authorities. Such tax positions are initially and subsequently measured as the largest amount of tax benefit that is greater than 50% likely of being realized upon ultimate settlement with the tax authority assuming full knowledge of the position and all relevant facts. Management believes it has taken appropriate positions on its tax returns, although the ultimate outcome of any tax review cannot be predicted with certainty. Still, no assurance can be given that the final outcome of these matters will not be different than what is reflected in the current and historical financial statements.

Table of Contents

Loan income recognition

Interest income on loans is accrued at the contractual rate based on the principal outstanding. Loan origination fees and certain direct loan origination costs are deferred and amortized as a yield adjustment over the contractual loan terms. Accrual of interest is discontinued when its receipt is in doubt, which typically occurs when a loan becomes impaired. Any interest accrued to income in the year when interest accruals are discontinued is generally reversed. Management may elect to continue the accrual of interest when a loan is in the process of collection and the estimated fair value of the collateral is sufficient to satisfy the principal balance and accrued interest. Loans are returned to accrual status once the doubt concerning collectibility has been removed and the borrower has demonstrated the ability to pay and remain current. Payments on nonaccrual loans are generally applied to principal.

Real estate acquired through foreclosure

We record foreclosed real estate assets at the lower of cost or estimated fair value on the acquisition date and at the lower of such initial amount or estimated fair value less estimated selling costs thereafter. Estimated fair value is based upon many subjective factors, including location and condition of the property and current economic conditions, among other things. Because the calculation of fair value relies on estimates and judgments relating to inherently uncertain events, results may differ from our estimates.

Write-downs at time of transfer are made through the allowance for loan losses. Write-downs subsequent to transfer are included in our noninterest expenses, along with operating income, net of related expenses of such properties and gains or losses realized upon disposition.

Results of Operations and Financial Condition

The following discussion compares our financial condition at December 31, 2009 to the financial condition at December 31, 2008 and results of operations for the years ended December 31, 2009, 2008, and 2007. This discussion should be read in conjunction with our accompanying financial statements and related notes as well as statistical information included elsewhere in this report.

Performance Overview

We recorded a net loss of \$22.284 million for 2009 compared to net loss of \$15.088 million for 2008, with diluted losses per share totaling \$(3.45) for 2009 compared to diluted losses per share of \$(2.36) in 2008. The decrease in net income and earnings per share was primarily a result of a loss on the discontinued operations of Mariner Finance of \$9.060 million in 2009, compared to income from those operations of \$1.721 million in 2008. Our net loss from continuing operations decreased by \$3.585 million, with increased noninterest income that was partially offset by decreased net interest income, increased provision for loan losses, increased noninterest expenses, and a decreased income tax benefits.

Our results for 2009 were significantly impacted by persistent negative trends in both commercial and residential real estate markets. We experienced significant charge offs in those loan types in 2009 (\$4.546 million in residential real estate, \$871,000 in commercial real estate, and \$3.863 million in real estate construction) and a substantial amount of these loans were moved to real estate acquired through foreclosure (\$1.324 million of residential real estate loans, \$2.658 million in commercial real estate loans, and \$9.539 million in real estate construction loans). In addition, as declines in real estate values have continued, we recorded additional write-downs and losses on and expenses related to real estate acquired through foreclosure of \$6.832 million in 2009. The Company provided for additional loan loss reserves throughout 2008 and 2009 for the anticipated loss exposure caused by the depressed real estate market. In addition to these losses, earnings were further impacted by the loss of interest

Table of Contents

income on loans placed on nonaccrual status, the cost of carrying foreclosed properties, and higher legal and collection expenses relating to these loans.

Our largest category of revenue, net interest income, decreased \$1.328 million or 4.7% due to lower yields earned on average earning assets, coupled with a lower level of noninterest-bearing liabilities. Noninterest income increased \$11.044 million or 64.1% due primarily to increased mortgage-banking revenue, decreased OTTI charges, and a recovery in value on our assets and liabilities carried at fair value.

Our increase in total expenses resulted primarily due to increased deposit insurance premiums and increased expenses related to loan collections and foreclosures, including related professional fees. The increase of \$804,000 in the provision for loan losses reflects needed increases in the allowance for loan losses relating to weaknesses in the residential construction and development loan portfolio and to maintain reserve levels and replenish charge-offs of residential mortgage and residential construction and development loans. We recorded a loss on the discontinued operations of Mariner Finance of \$9.060 million in 2009, compared to income from those operations in 2008 of \$1.721 million. We recorded an income tax benefit from continuing operations of \$10.887 million in 2009 compared to \$13.632 million in 2008.

The return on average assets was (1.69)% for 2009 compared to (1.16)% for 2008. The return on average equity for 2009 was (53.81)% compared to (24.37)% for 2008. Average equity to average assets was 3.15% for 2009 compared to 4.78% for 2008. The decrease in the return on average assets reflected the continuing effect of nonperforming assets and loan charge-offs. The decrease in the return on average equity was the result of the higher net loss in 2009.

Our total assets increased by \$77.054 million or 5.9% during 2009, a result of increased deposits, which increased cash and due from Banks. Earning assets decreased \$77.168 million or 6.7% from \$1.144 billion in 2008 to \$1.067 billion in 2009. Deposits increased by \$196.271 million to \$1.147 billion at December 31, 2009 from \$950.233 million at December 31, 2008. Stockholders' equity decreased \$19.028 million or 41.4%, reflecting the 2009 loss, partially offset by a decrease in other comprehensive loss due to the increase in the market value of securities classified as available for sale.

Our asset quality showed improvement at December 31, 2009 compared to December 31, 2008. At December 31, 2009, our allowance for loan losses amounted to \$11.639 million, which totaled 20.3% of nonperforming assets as of December 31, 2009, compared to 29.1% as of December 31, 2008. Our level of nonperforming assets decreased to 4.15% of total assets at December 31, 2009 from 4.42% of total assets at December 31, 2008 and our level of loans 90 days delinquent and still accruing interest decreased to \$9.224 million from \$9.679 million in 2008. Our ratio of net chargeoffs to average total loans was 1.37% in 2009 compared to 1.35% in 2008.

Bank capital adequacy levels (as defined by banking regulation) improved slightly from 2008 to 2009 and the Bank was still considered "adequately capitalized." The ratios for the Bank as of December 31, 2009 for our capital leverage, Tier 1 capital to risk weighted assets, and total capital to risk weighted assets were 6.2%, 7.9%, and 9.1%, respectively, compared to 5.8%, 6.8%, and 8.8%, respectively, at December 31, 2008. Our regulatory capital levels increased due primarily to the sale of Mariner Finance, which provided First Mariner with the ability to infuse additional capital into the Bank. As a result of being below "well-capitalized" levels, the Bank may not place brokered certificates of deposits without the granting of a waiver from its regulators. We are under agreements with regulators to raise our capital levels as described in additional detail later in this Item under "Capital Resources." See also "Subsequent Events" later in this Item for information on our attempts to raise additional capital.

Table of Contents

Results of Operations

Net Interest Income/Margins

Our primary source of earnings is net interest income, which is the difference between the interest income we earn on interest-earning assets, such as loans and investment securities, and the interest expense we pay on interest-bearing sources of funds, such as deposits and borrowings. The level of net interest income we earn is determined mostly by the average balances ("volume") and the rate spreads between our interest-earning assets and our funding sources.

Net interest income for 2009 decreased by \$1.328 million to \$27.112 million compared to \$28.440 million for 2008 due to an increase in volume of interest-bearing liabilities, combined with a decrease in the yield on interest-earning assets from 6.11% in 2008 to 5.36% in 2009 and a decrease in our level of noninterest-bearing deposits. Partially offsetting this decrease was a decline in the rate paid on interest-bearing liabilities from 3.45% in 2008 to 2.84% in 2009.

The net interest margin is the key performance measure for our net interest income. Our net interest margin is affected by our loan pricing, our mix of earning assets, levels of nonperforming assets, and our distribution and pricing of deposits and borrowings. Our net interest margin (net interest income divided by average earning assets) decreased to 2.43% for 2009, compared to 2.74% for 2008. The decrease in the rates paid on interest-bearing sources of funds slightly mitigated the net interest margin decline.

Interest income

Total interest income decreased by \$3.515 million from 2008 to 2009 due primarily to the decreased yield on average earning assets. Yields on earning assets for the year decreased to 5.36% from 6.11%, while average earning assets increased \$80.605 million. We experienced decreased yields on most major earning asset categories, primarily a result of the lower interest rate environment in 2009. Additionally, our interest income was negatively affected by increased interest reversals on and increased average balances of nonaccrual loans. The yields on interest-bearing deposits and restricted stock investments were particularly affected by the low rate environment in 2009. The yield on loans decreased from 6.55% for 2008 to 5.81% for 2009, due to lower rates and higher nonperforming assets.

Average loans outstanding for 2009 increased by \$67.646 million when compared to 2008. We experienced increases in commercial loans and lines of credit (+\$7.889 million), commercial mortgages (+\$38.940 million), residential mortgages (+\$48.113 million), and consumer loans (+\$17.479 million), which were partially offset by decreases in commercial and consumer construction loans (-\$15.442 million and -\$29.333 million, respectively). Average loans held for sale increased \$39.578 million.

The decrease in both commercial and consumer residential construction loans was due primarily to the deterioration of the real estate market, which has led to the reduction of new construction, as well as increased write-downs of nonperforming loans and increased foreclosures in these sectors, which have caused management to strategically reduce lending in these areas. The increases in commercial loans and lines of credit and in commercial mortgages were due to a focus on commercial lending in 2008, which was altered in 2009 away from loan growth towards improved asset quality. The increase in residential mortgage loans was due primarily to increased mortgage lending activity, which reflected management's strategic decision to focus on mortgage lending while stabilizing the asset quality of the commercial loan portfolio. The increased mortgage lending activity was also reflected in the increase in average loans held for sale. Consumer loans increased due to increased demand for consumer products in 2009. Average securities decreased by \$27.227 million, due primarily to normal principal repayments on mortgage-backed securities and deteriorations in value on certain securities due to the current economic conditions.

Table of Contents

Interest expense

Interest expense decreased by \$2.187 million to \$32.698 million for 2009, compared to \$34.885 million for the same period in 2008. We experienced a decrease in the average rate paid on interest-bearing liabilities, from 3.45% for 2008 to 2.84% for 2009, which was partially offset by a higher level of interest-bearing liabilities. The decrease in the rate paid on interest-bearing deposits from 3.06% in 2008 to 2.65% in 2009 was driven primarily by decreases in the rates on money market accounts and time deposits, partially offset by increases in the rates on NOW accounts. Average interest-bearing deposits increased by \$135.822 million primarily due to an increase in the volume of time deposits, including brokered deposits. In addition, during the second quarter of 2009, we began a national certificate of deposit campaign (nonbrokered) which offers certificates of deposit for terms from six months to five years at a maximum of 75 basis points above the national average. This campaign has brought in approximately \$217.542 million in new time deposits. An increase in average borrowings of \$4.916 million was due primarily to increases in our short-term FHLB advances. We experienced a decrease in the costs of borrowed funds from 4.95% for 2008 to 3.67% for 2009 due to the decline in variable-rate trust preferred security costs, as well as lower short-term borrowing costs.

The table below sets forth the average balances, net interest income and expense and average yields and rates for our interest-earning assets and interest-bearing liabilities for 2009, 2008, and 2007.

Edgar Filing: FIRST MARINER BANCORP - Form 10-K

Table of Contents

Comparative Average Balances Yields and Rates

<i>(dollars in thousands)</i>	2009			2008			2007		
	Average Balance (4)	Interest (1)	Yield/ Rate	Average Balance (4)	Interest (1)	Yield/ Rate	Average Balance (4)	Interest (1)	Yield/ Rate
ASSETS									
Loans (2):									
Commercial loans and lines of credit	\$ 87,421	\$ 4,415	5.05%	\$ 79,532	\$ 4,780	6.01%	\$ 78,182	\$ 5,933	7.59%
Commercial construction	102,097	5,352	5.24%	117,539	7,320	6.23%	134,521	10,632	7.90%
Commercial mortgages	337,803	22,743	6.73%	298,863	22,111	7.40%	292,612	21,662	7.40%
Consumer residential construction	58,498	3,352	5.73%	87,831	5,497	6.26%	91,472	7,565	8.27%
Residential mortgages	152,280	8,937	5.87%	104,167	6,165	5.92%	65,917	3,238	4.91%
Consumer	151,246	6,860	4.54%	133,767	7,979	5.96%	119,139	8,867	7.44%
Total loans	889,345	51,659	5.81%	821,699	53,852	6.55%	781,843	57,897	7.41%
Loans held for sale	99,503	5,080	5.11%	59,925	3,447	5.75%	77,580	5,285	6.81%
Securities, trading and available for sale	48,274	2,955	6.12%	75,501	4,486	5.94%	99,121	5,372	5.42%
Interest-bearing deposits	71,963	108	0.15%	72,701	1,303	1.79%	68,694	3,411	4.97%
Restricted stock investments, at cost	7,770	8	0.10%	6,424	237	3.69%	6,123	363	5.93%
Total earning assets	1,116,855	59,810	5.36%	1,036,250	63,325	6.11%	1,033,361	72,328	7.00%
Allowance for loan losses	(11,979)			(10,301)			(8,838)		
Cash and other nonearning assets	211,014			270,303			242,002		
Total assets	\$ 1,315,890	59,810		\$ 1,296,252	63,325		\$ 1,266,525	72,328	
LIABILITIES AND STOCKHOLDERS' EQUITY									
Interest-bearing deposits:									
NOW deposits	\$ 6,784	44	0.65%	\$ 13,249	77	0.58%	\$ 9,858	21	0.21%
Savings deposits	55,122	178	0.32%	54,897	180	0.33%	56,935	178	0.31%
Money market deposits	163,910	1,376	0.84%	210,003	3,085	1.47%	287,837	10,127	3.52%
Time deposits	713,855	23,275	3.26%	525,700	21,242	4.04%	384,157	17,446	4.54%
Total interest-bearing deposits	939,671	24,873	2.65%	803,849	24,584	3.06%	738,787	27,772	3.76%
Borrowings	213,011	7,825	3.67%	208,095	10,301	4.95%	211,205	12,361	5.85%
Total interest-bearing liabilities	1,152,682	32,698	2.84%	1,011,944	34,885	3.45%	949,992	40,133	4.22%
Noninterest-bearing demand deposits	116,508			131,242			163,011		
Other noninterest-bearing liabilities	5,285			91,150			80,750		
Stockholders' equity	41,415			61,916			72,772		
Total liabilities and stockholders' equity	\$ 1,315,890	32,698		\$ 1,296,252	34,885		\$ 1,266,525	40,133	
Net interest income/net interest spread		\$ 27,112	2.52%		\$ 28,440	2.66%		\$ 32,195	2.78%
Net interest margin (3)			2.43%			2.74%			3.12%

(1)

Edgar Filing: FIRST MARINER BANCORP - Form 10-K

There are no tax equivalency adjustments

- (2) The average balances of nonaccrual loans for the years ended December 31, 2009, 2008, and 2007, which are included in the average loan balances for these years, were \$35.308 million, \$30.111 million, and \$18.465 million, respectively.
- (3) Net interest margin is calculated as net interest income divided by average earning assets
- (4) Average assets and liabilities of our discontinued subsidiary, Mariner Finance, are included in other nonearning assets and other noninterest-bearing liabilities

Edgar Filing: FIRST MARINER BANCORP - Form 10-K

Table of Contents

The "Rate/Volume Analysis" below indicates the changes in our net interest income as a result of changes in volume and rates. We maintain an asset and liability management policy designed to provide a proper balance between rate sensitive assets and rate sensitive liabilities to attempt to optimize interest margins while providing adequate liquidity for our anticipated needs.

Rate/Volume Analysis (1)

<i>(dollars in thousands)</i>	2009 Compared to 2008			2008 Compared to 2007		
	Change Due to Rates	Change Due to Volume	Change Due to Variance In Total	Change Due to Rates	Change Due to Volume	Change Due to Variance In Total
INTEREST INCOME						
Loans:						
Commercial loans and lines of credit	\$ (810)	\$ 445	\$ (365)	\$ (1,254)	\$ 101	\$ (1,153)
Commercial construction	(1,075)	(893)	(1,968)	(2,076)	(1,236)	(3,312)
Commercial mortgages	(2,095)	2,727	632	(14)	463	449
Consumer residential construction	(433)	(1,712)	(2,145)	(1,777)	(291)	(2,068)
Residential mortgages	(52)	2,824	2,772	764	2,163	2,927
Consumer	(2,073)	954	(1,119)	(1,894)	1,006	(888)
Total loans	(6,538)	4,345	(2,193)	(6,251)	2,206	(4,045)
Loans held for sale	(425)	2,058	1,633	(746)	(1,092)	(1,838)
Securities, trading and available for sale	125	(1,656)	(1,531)	482	(1,368)	(886)
Interest-bearing deposits	(1,182)	(13)	(1,195)	(2,296)	188	(2,108)
Restricted stock investments, at cost	(270)	41	(229)	(143)	17	(126)
Total interest income	(8,290)	4,775	(3,515)	(8,954)	(49)	(9,003)
INTEREST EXPENSE						
Interest-bearing deposits:						
NOW deposits	8	(41)	(33)	47	9	56
Savings deposits	(3)	1	(2)	8	(6)	2
Money market deposits	(1,130)	(579)	(1,709)	(4,809)	(2,233)	(7,042)
Time deposits	(4,616)	6,649	2,033	(2,087)	5,883	3,796
Total interest-bearing deposits	(5,741)	6,030	289	(6,841)	3,653	(3,188)
Borrowings	(2,712)	236	(2,476)	(1,880)	(180)	(2,060)
Total interest expense	(8,453)	6,266	(2,187)	(8,721)	3,473	(5,248)
Net interest income	\$ 163	\$ (1,491)	\$ (1,328)	\$ (233)	\$ (3,522)	\$ (3,755)

(1)

Changes in interest income and interest expense that result from variances in both volume and rates have been allocated to rate and volume changes in proportion to the absolute dollar amounts of the change in each.

Noninterest Income

We derive noninterest income principally from mortgage-banking activities, service fees on our deposit accounts, ATM fees, commissions on sales of nondeposit investment products ("brokerage fees"), and income from BOLI. Our noninterest income for the year ended December 31, 2009 totaled \$28.271 million, compared to \$17.227 million for the year ended December 31, 2008, an increase of \$11.044 million or 64.1%, due primarily to an increase in mortgage-banking revenue, an insurance recovery of \$850,000, a recovery in value on our assets and liabilities carried

at fair value, and a decrease in net OTTI charges of \$2.669 million.

Edgar Filing: FIRST MARINER BANCORP - Form 10-K

Table of Contents

Mortgage-banking revenue increased from \$9.410 million in 2008 to \$16.112 million in 2009 due to a larger volume of originations of loans and higher margins on loans sold. The volume of loans sold increased from \$1.149 billion in 2008 to \$1.625 billion in 2009 and reflects strong reverse mortgage originations and continued customer refinance activity.

We recognized \$420,000 in gains on sales of securities in 2009, compared to \$229,000 during 2008. During 2009, we also recognized \$2.936 million in net OTTI charges on securities available for sale, compared to \$5.605 million in net OTTI charges recorded in 2008. See "Securities" discussion later in this Item for more information on these OTTI charges and the related securities.

Deposit service charges declined to \$5.261 million in 2009 from \$6.319 million in 2008 due to lower overdraft income and to a decline in the number of accounts. During 2009, we experienced a recovery of value of our trading assets and certain long-term borrowings of \$3.038 million, compared to a loss in value of \$814,000 for 2008.

Other income increased \$27,000 for 2009. Included in this line item for 2009 is an insurance recovery of \$850,000 related to high loan-to-value ratio/low documentation ("ALT A") loans originated in 2006 and 2007. Other income for 2008 included Visa IPO income of \$156,000 and we recorded \$819,000 in gains on the sales of two former branch facilities.

The following table shows the detail of our noninterest income for the years ended December 31:

<i>(dollars in thousands)</i>	2009	2008	2007
Net OTTI charges on securities available for sale	\$ (2,936)	\$ (5,605)	\$
Origination fees and gain on sale of mortgage loans	12,169	6,730	4,430
Other mortgage-banking revenue	3,943	2,680	2,295
ATM fees	3,072	3,188	3,219
Service fees on deposits	5,261	6,319	6,463
Gain (loss) on financial instruments carried at fair value	3,038	(814)	(702)
Gain on sales of securities, net	420	229	943
Gain on sale of branches		819	
Commissions on sales of nondeposit investment products	540	816	1,049
Income from bank-owned life insurance	1,377	1,505	1,439
Other	1,387	1,360	1,621
	\$ 28,271	\$ 17,227	\$ 20,757

Noninterest Expense

Our noninterest expenses increased \$2.582 million, or 3.9%, to \$67.834 million compared to \$65.252 million for the same period of 2008, primarily due to increased costs related to real estate acquired through foreclosure, deposit insurance premiums, loan collections, and professional services.

Write-downs and costs of real estate acquired through foreclosure increased \$1.030 million, as nonperforming commercial, commercial construction, consumer construction, and ALT A loans moved through the foreclosure process. Management regularly updates its values of foreclosed properties and continued declines in the value of residential real estate have required further write-downs in our carrying value. Professional fees increased primarily due to legal fees associated with the sale of Mariner Finance, regulatory issues, and loan workouts. Loan collection expenses, included in other noninterest expenses, increased \$930,000 due to costs associated with loan workouts.

Deposit insurance costs increased due to an increase in our rates assessed by the FDIC, including total special assessments of approximately \$638,000 in 2009. Our regular FDIC rates have increased

Edgar Filing: FIRST MARINER BANCORP - Form 10-K

Table of Contents

due to our capital adequacy levels and financial condition. See "Capital Resources" later in this Item for additional information on capital adequacy.

The following table shows the detail of our noninterest expense for the years ended December 31:

<i>(dollars in thousands)</i>	2009	2008	2007
Salaries and employee benefits	\$ 26,469	\$ 27,901	\$ 28,925
Occupancy	8,974	9,369	8,615
Furniture, fixtures, and equipment	2,941	3,425	3,223
Professional services	3,866	1,669	1,409
Advertising	915	921	1,219
Data processing	1,880	2,149	1,941
ATM expenses	944	1,014	1,030
Write-downs, losses, and costs of real estate acquired through foreclosure	6,832	5,802	4,477
Secondary marketing valuation		355	3,934
FDIC insurance premiums	3,480	887	605
Service and maintenance	2,437	2,216	2,098
Office supplies	504	539	606
Printing	332	437	394
Corporate insurance	1,035	720	560
Consulting fees	1,049	766	789
Marketing/promotion	286	404	717
Postage	763	600	660
Overnight delivery/courier	525	735	788
Security	259	195	258
Dues and subscriptions	490	468	505
Loan collection expenses	1,394	464	618
Regulatory compliance settlement		1,040	
Loan origination expense		254	863
Director fees	276	289	254
Employee education and training	161	193	184
Automobile expense	144	172	163
Travel and entertainment	332	435	502
Other	1,546	1,833	1,960
	\$ 67,834	\$ 65,252	\$ 67,297

Income Tax Expense

We recorded an income tax benefit of \$10.887 million on a net loss before taxes and discontinued operations of \$24.111 million, resulting in an effective tax rate before discontinued operations of (45.2)% for 2009 in comparison to an income tax benefit of \$13.632 million on a net loss before taxes and discontinued operations of \$30.441 million, resulting in an effective tax rate before discontinued operations of (44.8)% for 2008.

The Bank has earned significant state tax incentives totaling \$5.5 million through its participation in the One Maryland Economic Development ("One Maryland") and Job Creation Tax Credit programs. We will realize the benefits of the incentives in our reported earnings as the credits can be utilized, in accordance with accounting standards that govern the recognition of investment tax credits. The amount of the credit that we can utilize will largely be determined by the level of Maryland taxable income for the Bank only, and will be recognized as a reduction in our income tax expense. During 2009 and 2008, we utilized \$591,000 and \$585,000, respectively, in credit related to this

Edgar Filing: FIRST MARINER BANCORP - Form 10-K

Table of Contents

incentive program as a portion of the credits earned are funded regardless of taxable income levels. Any unused One Maryland credits can be carried forward and will expire in 2016. The Job Creation Tax Credit can be carried forward for five years.

At December 31, 2009, we had approximately \$64.000 million in state operating loss carryforwards, representing a deferred income tax asset of \$3.437 million, and approximately \$30.000 million in federal operating loss carryforwards, representing a deferred income tax asset of \$10.635 million. Management has determined that a valuation allowance for deferred tax assets was not required as of December 31, 2009.

Discontinued Operations

In accordance with FASB guidance, the operating results of Mariner Finance, along with the loss recognized on the sale are included in the Consolidated Statement of Operations as discontinued operations. Such discontinued operations are detailed as follows for the years ended December 31:

<i>(dollars in thousands)</i>	2009	2008	2007
Interest income	\$ 24,262	\$ 20,987	\$ 16,574
Interest expense	(3,147)	(3,381)	(4,089)
Net interest income	21,115	17,606	12,485
Provision for loan losses	(4,865)	(3,927)	(2,215)
Noninterest income	4,467	3,959	3,482
Noninterest expenses	(17,332)	(14,796)	(11,080)
Net income before income taxes	3,385	2,842	2,672
Income tax expense	(1,335)	(1,121)	(1,032)
Net income	2,050	1,721	1,640
Loss on write-down of Mariner Finance to fair value	(9,485)		
Write-off of deferred taxes related to Mariner Finance	(1,625)		
Net loss on disposal of Mariner Finance	(11,110)		
Net (loss) income from discontinued operations	\$ (9,060)	\$ 1,721	\$ 1,640

Financial Condition

At December 31, 2009, our total assets were \$1.385 billion compared to \$1.307 billion at December 31, 2008, an increase of 5.9%. Earning assets decreased \$77.168 million or 6.7% to \$1.067 billion at December 31, 2009 from \$1.144 billion at December 31, 2008. We experienced growth in cash and due from banks (+\$145.329 million) and loans held for sale (+\$61.882 million), partially offset by decreases in total securities (-\$13.208 million), net loans receivable (-\$82.607 million), and federal funds sold and interest-bearing deposits (-\$38.965 million). We funded the growth in overall assets with increases in deposits (+\$196.271 million).

Securities

Our investment portfolio at December 31, 2009 is comprised of marketable securities. The maturity structure of our investment portfolio is significantly influenced by the level of prepayment activity on mortgage-backed securities. At December 31, 2009, the average duration of our investment portfolio was 2.68 years, significantly shorter than the average duration of 4.98 years at December 31, 2008, primarily due to the decrease in the projected lives of mortgage-backed securities.

Table of Contents

We utilize the securities portfolio as part of our overall asset/liability management practices to enhance interest revenue while providing necessary liquidity for the funding of loan growth or deposit withdrawals. We continually monitor the credit risk associated with corporate investments and diversify the risk in the corporate portfolio. As of December 31, 2009, we held \$10.749 million in securities classified as trading and \$28.275 million in securities classified as AFS. As of December 31, 2008, we held \$12.566 million in securities classified as trading and \$39.666 million in securities classified as AFS.

Changes in current market conditions, such as interest rates and the economic uncertainties in the mortgage, housing, and banking industries have severely impacted the securities market. The secondary market for various types of securities has been limited and has negatively impacted security values. Quarterly, we review each security in our AFS portfolio to determine the nature of any decline in value and evaluate if any impairment should be classified as OTTI.

Trading Securities

Trading securities decreased \$1.817 million or 14.5% from the December 31, 2008 level of \$12.566 million due to principal repayments. The entire trading portfolio consisted of mortgage-backed securities at December 31, 2009 and 2008.

The estimated fair values and weighted average yields of trading debt securities at December 31, 2009, by contractual maturity, are shown below. Actual maturities may differ from contractual maturities because issuers have the right to call or prepay obligations.

<i>(dollars in thousands)</i>	Estimated Fair Value	Weighted- Average Yield
Mortgage-backed securities		
Due five to ten years	\$ 9,240	4.15%
Due after ten years	1,509	4.30%
	\$ 10,749	4.17%

Mortgage-backed securities are assigned to maturity categories based on their final maturity.

Securities Available for Sale

Securities AFS declined \$11.391 million due to normal principal payments on mortgage-backed securities, scheduled maturities of other securities, \$9.279 million in securities sales, and a decline in market values of certain securities, partially offset by purchases of securities of \$1.749 million during 2009. In addition, we recorded \$2.936 million in net OTTI charges during 2009, most of which was related to pooled trust preferred obligations. At December 31, 2009, our net unrealized loss on securities classified as available for sale totaled \$5.669 million compared to a net unrealized loss of \$8.191 million at December 31, 2008. The increase in value resulted primarily from improved values of our mortgage-backed securities. In addition, in 2009, we recognized credit-related OTTI on our holdings of four pooled trust preferred obligations that are considered impaired and that were in an unrealized loss position in 2008.

Changes in current market conditions, such as interest rates and the economic uncertainties in the mortgage, housing, and banking industries, have severely impacted the securities market. The secondary market for various types of securities has been limited and has negatively impacted securities values. Quarterly, we review each security in our AFS portfolio to determine the nature of any decline in value and evaluate if any impairment should be classified as OTTI.

Edgar Filing: FIRST MARINER BANCORP - Form 10-K

Table of Contents

The trust preferred securities we hold in our securities portfolio were issued by other banks and bank holding companies. Certain of these securities have experienced declines in credit ratings from credit rating firms, which have devalued these specific securities. These declines have occurred primarily over the past two years due to changes in the market which has limited the demand for these securities and reduced their liquidity. While some of these issuers have reported weaker financial performance since acquisition of these securities, in management's opinion, they continue to possess acceptable credit risk. We monitor the actual default rates and interest deferrals for possible losses and contractual shortfalls of interest or principal, which could warrant further recognition of impairment. We recorded net OTTI charges of \$2.602 million during the year ended December 31, 2009 on trust preferred securities.

We recorded net OTTI of \$334,000 on two of our equity securities during the year ended December 31, 2009.

All of the remaining securities that are temporarily impaired are impaired due to declines in fair values resulting from changes in interest rates or increased credit/liquidity spreads compared to the time they were purchased. We have the intent to hold these securities to maturity and it is more likely than not that we will not be required to sell the securities before recovery of value. As such, management considers the impairments to be temporary.

Our total investments in trust preferred securities, corporate obligations, and common equity securities totaled \$15.180 million as of December 31, 2009 compared to \$15.665 million as of December 31, 2008.

Our securities available for sale portfolio composition is as follows as of December 31:

<i>(dollars in thousands)</i>	2009	2008	2007	2006	2005
Mortgage-backed securities	\$ 11,742	\$ 22,248	\$ 18,079	\$ 62,281	\$ 161,112
Trust preferred securities	13,338	12,866	19,034	33,028	34,087
U.S. government agency notes				39,894	68,271
U.S. Treasury securities	1,003	1,003	1,017	998	986
Obligations of state and municipal subdivisions			2,975	2,965	2,969
Corporate obligations	930	2,548	1,915	1,988	1,777
Equity securities Banks	912	251	478	1,395	1,310
Foreign government bonds	350	750	1,500	1,750	1,481
Other investment securities				2,991	4,946
	\$ 28,275	\$ 39,666	\$ 44,998	\$ 147,290	\$ 276,939

The amortized cost, estimated fair values, and weighted average yields of debt securities at December 31, 2009, by contractual maturity, are shown below. Actual maturities may differ from

Edgar Filing: FIRST MARINER BANCORP - Form 10-K

Table of Contents

contractual maturities because issuers have the right to call or prepay obligations. Equity securities are excluded as they have no stated maturity.

<i>(dollars in thousands)</i>	Amortized Cost	Unrealized		Estimated Fair Value	Weighted- Average Yield
		Gains	Losses		
Mortgage-backed securities:					
Due five to ten years	\$ 229	\$ 16	\$	\$ 245	6.00%
Due after ten years	11,043	461	7	11,497	5.45%
Trust preferred securities:					
Due one to five years	2,953	47	28	2,972	7.75%
Due five to ten years	1,031		125	906	8.00%
Due after ten years	15,497		6,037	9,460	5.56%
U.S. Treasury securities:					
Due one to five years	999	4		1,003	0.88%
Corporate obligations:					
Due one to five years	877	53		930	4.63%
Foreign government bonds:					
Due within one year	350			350	4.05%
	\$ 32,979	\$ 581	\$ 6,197	\$ 27,363	5.62%

Weighted yields are based on amortized cost. Mortgage-backed securities are assigned to maturity categories based on their final maturity.

Loans

Our loan portfolio is expected to produce higher yields than investment securities and other interest-earning assets; the absolute volume and mix of loans and the volume and mix of loans as a percentage of total earning assets is an important determinant of our net interest margin.

The following table sets forth the composition of our loan portfolio as of December 31:

<i>(dollars in thousands)</i>	2009	2008	2007	2006	2005
Commercial loans and lines of credit	\$ 77,634	\$ 91,111	\$ 72,590	\$ 79,016	\$ 67,759
Commercial construction	99,490	109,484	129,272	137,155	112,383
Commercial mortgages	339,794	319,143	279,578	317,848	349,430
Consumer residential construction	47,379	69,589	86,621	98,066	126,708
Residential mortgages	176,159	138,323	84,892	56,221	40,817
Consumer	150,495	251,046	201,967	178,153	154,489
Total loans	\$ 890,951	\$ 978,696	\$ 854,920	\$ 866,459	\$ 851,586

Total loans decreased \$87.745 million during 2009. We experienced higher balances in commercial mortgage loans (+\$20.651 million) and residential mortgage loans (+\$37.836 million). Commercial and consumer residential construction balances decreased (-\$9.994 million and -\$22.210 million, respectively), as did commercial loans and lines of credit (-\$13.477 million). The decline in consumer loans is a result of the sale of our consumer finance subsidiary, Mariner Finance. During 2009, we were less aggressive in our loan origination activity, as we focused on improving asset quality in the current poor market environment.

Edgar Filing: FIRST MARINER BANCORP - Form 10-K

Approximately 46.6% of our loans have adjustable rates as of December 31, 2009 compared to approximately 41.3% at December 31, 2008, including adjustable rate first mortgage loans indexed to either U.S. Treasury obligations or LIBOR and variable home equity lines of credit tied to the Prime

Edgar Filing: FIRST MARINER BANCORP - Form 10-K

Table of Contents

interest rate. Our variable rate loans adjust to the current interest rate environment, whereas fixed rates do not allow this flexibility. If interest rates were to increase in the future, our interest earned on the variable rate loans would improve, and if rates were to fall, the interest we earn would decline, thus impacting our interest income. Some variable rate loans have rate floors which may delay changes in interest income in a period of changing rates. See our discussion in "Interest Rate Sensitivity" later in this section for more information on interest rate fluctuations.

The following table sets forth the maturity distribution for our loan portfolio at December 31, 2009. Some of our loans may be renewed or repaid prior to maturity. Therefore, the following table should not be used as a forecast of our future cash collections.

<i>(dollars in thousands)</i>	In one year or less		Maturing After 1 through 5 years		After 5 years		Total
	Fixed	Variable	Fixed	Variable	Fixed	Variable	
Commercial loans and lines of credit	\$ 20,869	\$ 31,780	\$ 13,116	\$ 8,906	\$ 1,124	\$ 1,839	\$ 77,634
Commercial construction	16,202	43,867	20,506	6,693	8,771	3,451	99,490
Commercial mortgages	78,987	24,365	158,353	39,795	14,314	23,980	339,794
Consumer residential construction	44,630		2,309		440		47,379
Residential mortgages	5,569	1,829	2,984	9,272	34,489	122,016	176,159
Consumer	4,573	14,869	9,937	56,023	38,599	26,494	150,495
Total loans	\$ 170,830	\$ 116,710	\$ 207,205	\$ 120,689	\$ 97,737	\$ 177,780	\$ 890,951

Commercial Construction Portfolio

Our commercial construction portfolio consists of construction and development loans for commercial purposes and includes loans made to builders and developers of residential real estate projects. Of the total included above, \$49.451 million represents loans made to borrowers for the development of residential real estate at December 31, 2009. This segment of the portfolio has exhibited greater weakness during 2009 due to overall weakness in the residential housing sector. As of December 31, 2009, \$10.992 million (22%) of these loans are on nonaccrual.

The breakdown of the portion of the commercial construction portfolio made to borrowers for residential real estate is as follows as of December 31:

<i>(dollars in thousands)</i>	2009	2008
Raw residential land	\$ 6,946	\$ 6,630
Residential subdivisions	17,708	23,407
Single residential lots	5,228	4,338
Single family construction	6,940	12,547
Townhome construction	1,785	2,817
Condominium unit construction	956	1,410
Multi-family unit construction	9,888	10,907
	\$ 49,451	\$ 62,056

Credit Risk Management

Edgar Filing: FIRST MARINER BANCORP - Form 10-K

Credit risk is the risk of loss arising from the inability of a borrower to meet its obligations. We manage credit risk by evaluating the risk profile of the borrower, repayment sources, the nature of the underlying collateral, and other support given current events, conditions, and expectations. We attempt

Table of Contents

to manage the risk characteristics of our loan portfolio through various control processes, such as credit evaluation of borrowers, establishment of lending limits, and application of lending procedures, including the holding of adequate collateral and the maintenance of compensating balances. However, we seek to rely primarily on the cash flow of our borrowers as the principal source of repayment. Although credit policies and evaluation processes are designed to minimize our risk, management recognizes that loan losses will occur and the amount of these losses will fluctuate depending on the risk characteristics of our loan portfolio, as well as general and regional economic conditions.

We provide for loan losses through the establishment of an allowance for loan losses by provisions charged against earnings. Our allowance represents an estimated reserve for existing losses in the loan portfolio. We deploy a systematic methodology for determining our allowance that includes a quarterly review process, risk rating, and adjustment to our allowance. We classify our portfolios as either consumer or commercial and monitor credit risk separately as discussed below. We evaluate the adequacy of our allowance continually based on a review of all significant loans, with a particular emphasis on nonaccruing, past due, and other loans that we believe require special attention.

The allowance consists of three elements: (1) specific reserves and valuation allowances for individual credits; (2) general reserves for types or portfolios of loans based on historical loan loss experience, judgmentally adjusted for current conditions and credit risk concentrations; and (3) unallocated reserves. Combined specific reserves and general reserves by loan type are considered allocated reserves. All outstanding loans are considered in evaluating the adequacy of the allowance.

Commercial

Our commercial portfolio includes all secured and unsecured loans to borrowers for commercial purposes, including commercial lines of credit and commercial real estate. Our process for evaluating commercial loans includes performing updates on all loans that we have rated for risk. Our commercial loans are generally reviewed individually, in accordance with the FASB's guidance on accounting for loan impairment, to determine impairment, accrual status, and the need for specific reserves. Our methodology incorporates a variety of risk considerations, both qualitative and quantitative. Quantitative factors include our historical loss experience by loan type, collateral values, financial condition of borrowers, and other factors. Qualitative factors include judgments concerning general economic conditions that may affect credit quality, credit concentrations, the pace of portfolio growth, and delinquency levels; these qualitative factors are evaluated in connection with the unallocated portion of our allowance for loan losses. We periodically engage outside firms and experts to independently assess our methodology and perform various loan review functions.

The process of establishing the allowance with respect to our commercial loan portfolio begins when a loan officer initially assigns each loan a risk rating, using established credit criteria. Approximately 50% of our risk grades are subject to review and validation annually by an independent consulting firm, as well as periodically by our internal credit review function. Our methodology employs management's judgment as to the level of future losses on existing loans based on our internal review of the loan portfolio, including an analysis of the borrowers' current financial position, and the consideration of current and anticipated economic conditions and their potential effects on specific borrowers and/or lines of business. In determining our ability to collect certain loans, we also consider the fair value of any underlying collateral. In addition, we evaluate credit risk concentrations, including trends in large dollar exposures to related borrowers, industry and geographic concentrations, and economic and environmental factors.

A commercial loan is determined to be impaired when, based on current information and events, it is probable that we will be unable to collect all amounts due according to the contractual terms of the loan agreement. In general, impaired loans (both commercial and consumer) include nonaccrual loans and troubled debt restructure ("TDR") loans. Such a loan is not considered impaired during a minimal

Table of Contents

period of delay in payment if we expect to collect all amounts due, including past-due interest. We generally consider a minimal period of delay in payment to include delinquency up to 90 days. Commercial loans we consider impaired at December 31, 2009 and December 31, 2008 totaled \$33.639 million and \$26.695 million, respectively. The reserve for loan losses for commercial impaired loans was \$328,000 at December 31, 2009 and \$1.264 million at December 31, 2008. The average recorded investment in commercial impaired loans was approximately \$25.844 million, \$21.530 million, and \$14.287 million for the years ended December 31, 2009, 2008, and 2007, respectively, and no income has been accrued or collected on the majority of these loans while they have been classified as impaired.

The allowance for impaired loans (both commercial and consumer) represents the fair value deficiencies for those loans for which the estimated fair value of the collateral was less than our carrying amount of the loan as of December 31, 2009. Not all of the loans newly classified as impaired since December 31, 2008 required impairment reserves, as some of the loans' collateral had estimated fair values greater than the carrying amount of the loan or the loan has been written down to its estimated fair value.

Consumer

Our consumer portfolio includes first- and second-lien mortgage loans and other loans to individuals. Generally, consumer loans are segregated into homogeneous pools with similar risk characteristics. Trends and current conditions in consumer and residential mortgage pools are analyzed and historical loss experience is adjusted accordingly. Quantitative and qualitative adjustment factors for the consumer and residential mortgage portfolios are consistent with those for the commercial portfolios. Consumer loans that are greater than 120 days past due are generally charged off.

Consumer loans we consider impaired at December 31, 2009 and December 31, 2008 totaled \$15.208 million and \$20.945 million, respectively. The reserve for loan losses for consumer impaired loans was \$405,000 at December 31, 2009 and \$1.444 million at December 31, 2008. The average recorded investment in consumer impaired loans was approximately \$17.466 million, \$26.214 million, and \$26.071 million for the years ended December 31, 2009, 2008, and 2007, respectively.

Additional information about our nonaccrual loans, including interest income that we would have received had these loans been performing according to their contractual terms, is found in Note 5 to our Consolidated Financial Statements included in Item 8 of Part II of this Form 10-K.

Residential Mortgage Loans

Residential mortgage loans, including ALT A second mortgages, are analyzed as pools with historical loss rates applied. Management generally may modify the historical loss rates based upon prevailing economic conditions or trends in delinquency and loss. Loans delinquent greater than 90 days are individually reviewed and assessed for accrual status and the need for specific reserves.

Repurchased Loans. In accordance with relevant accounting guidance on accounting for loans and debt securities acquired in a transfer, we record repurchased loans at their estimated fair value at the time of repurchase. At December 31, 2009 and 2008, we maintained \$3.894 million and \$6.335 million, respectively, in loans repurchased in accordance with covenants in our sales agreements with investors.

All repurchased loans which were 90 days delinquent as of December 31, 2009 were evaluated individually for impairment, with any estimated loss compared to the carrying amount recorded as a specific reserve. All other repurchased loans were evaluated collectively for impairment.

All repurchased nonaccrual loans are currently in the process of collection and the resolution of many of these loans may be through foreclosure of the property.

Table of Contents

Transferred Loans. In accordance with the FASB's guidance on accounting for certain mortgage- banking activities, any loans which are originally originated for sale into the secondary market and which we subsequently elect to transfer into the Company's loan portfolio are valued at fair value at the time of the transfer with any decline in value recorded as a charge to operating expense.

We maintain \$22.439 million in first-lien mortgage loans and \$1.713 million in second-lien mortgage loans that were transferred from loans held for sale to our mortgage and consumer loan portfolios, respectively at December 31, 2009. We maintained \$11.799 million in transferred first-lien mortgage loans and \$2.811 million in transferred second-lien mortgage loans at December 31, 2008.

In establishing a loan's estimated fair value, management makes significant assumptions concerning the ultimate collectibility of delinquent loans and their ultimate realizable value. While these projections are made with the most current data available to management, actual realized losses could differ due to the changes in the borrowers' willingness or ability to resolve the delinquency status, changes in the actual volume of future repurchases, changes in the real estate market, or changes in market values of those loans which are liquidated. Management updates these assumptions continually as greater experience becomes available.

Unallocated

The unallocated portion of the allowance is intended to provide for losses that are not identified when establishing the specific and general portions of the allowance and is based upon management's evaluation of various conditions that are not directly measured in the determination of the formula and specific allowances. Such conditions include general economic and business conditions affecting key lending areas, credit quality trends (including trends in delinquencies and nonperforming loans expected to result from existing conditions), loan volumes and concentrations, specific industry conditions within portfolio categories, recent loss experience in particular loan categories, duration of the current business cycle, bank regulatory examination results, findings of external loan review examiners, and management's judgment with respect to various other conditions including loan administration and management and the quality of risk identification systems. Executive management reviews these conditions quarterly. We have risk management practices designed to ensure timely identification of changes in loan risk profiles; however, undetected losses may exist inherently within the loan portfolio. The judgmental aspects involved in applying the risk grading criteria, analyzing the quality of individual loans, and assessing collateral values can also contribute to undetected, but probable, losses.

Our total allowance at December 31, 2009 is considered by management to be sufficient to address the credit losses inherent in the current loan portfolio. However, our determination of the appropriate allowance level is based upon a number of assumptions we make about future events, which we believe are reasonable, but which may or may not prove valid. Thus, there can be no assurance that our charge-offs in future periods will not exceed our allowance for loan losses or that we will not need to make additional increases in our allowance for loan losses.

Edgar Filing: FIRST MARINER BANCORP - Form 10-K

Table of Contents

The following table summarizes the activities in our allowance for loan losses for the years ended December 31:

<i>(dollars in thousands)</i>	2009	2008	2007	2006	2005
Allowance for loan losses, beginning of year	\$ 16,777	\$ 12,789	\$ 12,399	\$ 11,743	\$ 9,580
Loans charged off:					
Commercial loans and lines of credit	(517)		(67)		(15)
Commercial construction	(2,370)	(401)	(1,481)		
Commercial mortgages	(871)	(630)	(495)		
Consumer residential construction	(1,493)	(331)		(186)	
Residential mortgages	(4,546)	(4,658)	(1,038)	(99)	
Consumer (1)	(2,650)	(5,446)	(5,908)	(1,740)	(1,492)
Total loans charged off	(12,447)	(11,466)	(8,989)	(2,025)	(1,507)
Recoveries:					
Commercial loans and lines of credit		13			
Commercial construction					
Commercial mortgages	4	3			
Consumer residential construction				22	89
Residential mortgages	46	9	43		
Consumer (2)	231	367	421	344	294
Total recoveries	281	392	464	366	383
Net charge-offs	(12,166)	(11,074)	(8,525)	(1,659)	(1,124)
Allowance for acquired loans (3)					
		279			
Provision for loan losses Bank	11,660	10,856	6,700	150	1,575
Provision for loan losses Mariner Finance		3,927	2,215	2,165	1,712
Mariner Finance allowance for loan losses	(4,632)				
Allowance for loan losses, end of period	\$ 11,639	\$ 16,777	\$ 12,789	\$ 12,399	\$ 11,743
Loans (net of premiums and discounts):					
Period-end balance	\$ 890,951	\$ 978,696	\$ 854,920	\$ 866,459	\$ 851,586
Average balance during period	889,345	821,699	781,843	808,034	764,785
Allowance as a percentage of period-end loan balance	1.31%	1.71%	1.50%	1.43%	1.38%
Percent of average loans:					
Provision for loan losses (4)	1.31%	1.32%	0.86%	0.02%	0.21%
Net charge-offs	1.37%	1.35%	1.09%	0.21%	0.15%

(1)

Edgar Filing: FIRST MARINER BANCORP - Form 10-K

For 2008, 2007, 2006, and 2005, includes charge-offs of \$3.398 million, \$2.160 million, \$1.673 million, and \$1.391 million, respectively, related to Mariner Finance consumer loans. 2009 does not include any activity from the discontinued operations of Mariner Finance.

- (2) For 2008, 2007, 2006, and 2005, includes recoveries of \$298,000, \$387,000, \$312,000, and \$281,000, respectively, related to Mariner Finance consumer loans. 2009 does not include any activity from the discontinued operations of Mariner Finance.
- (3) Allowance acquired by Mariner Finance in a transaction with Loans, USA.
- (4) For 2008, 2007, 2006, and 2005, includes only the provision related to the Bank.

Edgar Filing: FIRST MARINER BANCORP - Form 10-K

Table of Contents

The following table summarizes our allocation of allowance by loan type as of December 31:

<i>(dollars in thousands)</i>	2009			2008			2007		
	Amount	Percent of Total	Percent of Loans to Total Loans	Amount	Percent of Total	Percent of Loans to Total Loans	Amount	Percent of Total	Percent of Loans to Total Loans
Commercial loans and lines of credit	\$ 817	7.0%	8.7%	\$ 824	4.9%	9.3%	\$ 606	4.7%	8.5%
Commercial construction	1,647	14.1%	11.2%	2,702	16.1%	11.2%	1,456	11.4%	15.1%
Commercial mortgages	3,336	28.7%	38.1%	2,985	17.8%	32.6%	2,316	18.1%	32.7%
Consumer residential construction	293	2.5%	5.3%	583	3.5%	7.1%	719	5.6%	10.1%
Residential mortgages	834	7.2%	19.8%	1,576	9.4%	14.1%	1,542	12.1%	10.0%
Consumer	882	7.6%	16.9%	4,683	27.9%	25.7%	4,021	31.4%	23.6%
Unallocated	3,830	32.9%		3,424	20.4%		2,129	16.7%	
Total	\$ 11,639	100.0%	100.0%	\$ 16,777	100.0%	100.0%	\$ 12,789	100.0%	100.0%

<i>(dollars in thousands)</i>	2006			2005		
	Amount	Percent of Total	Percent of Loans to Total Loans	Amount	Percent of Total	Percent of Loans to Total Loans
Commercial loans and lines of credit	\$ 926	7.5%	9.1%	\$ 1,302	11.1%	8.0%
Commercial construction	2,749	22.2%	15.8%	1,031	8.8%	13.2%
Commercial mortgages	3,073	24.8%	36.7%	2,908	24.8%	41.0%
Consumer residential construction	1,068	8.6%	11.3%	1,461	12.4%	14.9%
Residential mortgages	28	0.2%	6.5%	18	0.1%	4.8%
Consumer	2,928	23.6%	20.6%	2,242	19.1%	18.1%
Unallocated	1,627	13.1%		2,781	23.7%	
Total	\$ 12,399	100.0%	100.0%	\$ 11,743	100.0%	100.0%

Based upon management's evaluation, provisions are made to maintain the allowance as a best estimate of inherent losses within the portfolio. The allowance for loan losses totaled \$11.639 million and \$16.777 million as of December 31, 2009 and December 31, 2008, respectively. The changes in the allowance from period to period reflects management's ongoing application of its methodologies to establish the allowance, which, in 2009, included increases in the allowance for commercial mortgage loans which received internal risk rating downgrades during the year, as well as increases to reflect negative market trends and other qualitative factors. The allowance for loan losses may not move in direct proportion to changes in our overall trends in delinquent, nonperforming, or impaired loans. The specific loans that make up those categories change from period to period. Impairment on those loans, which would be reflected in the allowance for loan losses, might or might not exist, depending on the specific circumstances of each loan.

Specific and general reserves for the commercial construction and the residential mortgage portfolios decreased (-\$1.055 million and -\$742,000, respectively) and reflect the movement of delinquent loans through the foreclosure process and the partial charge-offs of certain loans with specific reserves as of December 31, 2008. During 2009, we charged-off \$2.370 million in commercial construction loans and \$4.546 million in residential mortgage loans. The specific and general reserves for commercial mortgages increased as delinquencies increased and collateral values decreased. Specific and general reserves for consumer loans decreased due to the sale of our consumer finance subsidiary, Mariner Finance. Unallocated reserves increased primarily based upon qualitative market area factors, including, among other things, the current poor market environment. In 2009, \$19.809 million in loans were transferred to real estate acquired through foreclosure as they moved through the foreclosure process.

Table of Contents

The provision for loan losses recognized to maintain the allowance was \$11.660 million for 2009 compared to \$14.783 million for 2008 (\$3.927 million of which was attributable to Mariner Finance). We recorded net charge-offs of \$12.166 million during 2009 compared to net charge-offs of \$11.074 million in 2008, primarily due to increases in net charge-offs of construction loans, commercial loans, and commercial mortgages. During 2009, net charge-offs as compared to average loans outstanding increased to 1.37%, compared to 1.35% during 2008.

Our allowance as a percentage of outstanding loans has decreased from 1.71% as of December 31, 2008 to 1.31% as of December 31, 2009, reflecting the changes in our loss estimates and the results of the application of our loss estimate methodology. Charge-offs and transfers to real estate acquired through foreclosure continued to be significant in 2009; however, asset quality began improving at the end of 2009, with fewer loans becoming delinquent and/or impaired. Management believes the allowance for loan losses is adequate as of December 31, 2009.

Although management uses available information to establish the appropriate level of the allowance for loan losses, future additions or reductions to the allowance may be necessary based on estimates that are susceptible to change as a result of changes in economic conditions and other factors. As a result, our allowance for loan losses may not be sufficient to cover actual loan losses, and future provisions for loan losses could materially adversely affect the Company's operating results. In addition, various regulatory agencies, as an integral part of their examination process, periodically review the Company's allowance for loan losses. Such agencies may require the Company to recognize adjustments to the allowance based on their judgments about information available to them at the time of their examination.

Edgar Filing: FIRST MARINER BANCORP - Form 10-K

Table of Contents

Nonperforming Assets

Nonperforming assets, expressed as a percentage of total assets, totaled 4.15% at December 31, 2009 and 4.42% at December 31, 2008. The following tables show the distribution of nonperforming assets and loans greater than 90 days past due and still accruing as of December 31:

<i>(dollars in thousands)</i>	2009	2008	2007	2006	2005
Nonaccruing loans:					
Commercial loans and lines of credit	\$ 535	\$ 603	\$	\$ 1,158	\$ 1,015
Commercial construction	10,992	14,544	5,268		
Commercial mortgages	9,773	4,134	3,926	575	687
Consumer residential construction	3,815	8,222	3,362	539	393
Alt A mortgages (1)	3,114	6,772	9,203	613	
Other residential mortgages	6,219	1,343	823	257	45
Other consumer	1,351	3,145	1,807	1,016	879
	35,799	38,763	24,389	4,158	3,019
Real estate acquired through foreclosure:					
Commercial loans and lines of credit					
Commercial construction	9,347	4,909	3,601		
Commercial mortgages	4,112	2,080	1,101		866
Consumer residential construction	4,203	2,826	2,299	349	65
Alt A mortgages (1)	1,858	9,079	11,980	527	
Other residential mortgages	240			1,564	
Other consumer	1,870	100			
	21,630	18,994	18,981	2,440	931
Total nonperforming assets	\$ 57,429	\$ 57,757	\$ 43,370	\$ 6,598	\$ 3,950
Loans past-due 90 days or more and accruing:					
Commercial loans and lines of credit	\$ 499	\$	\$ 92	\$	\$
Commercial construction		210		14,339	
Commercial mortgages	3,886	1,634	663	1,939	
Consumer residential construction		1,587	219	1,044	531
Alt A mortgages (1)	65	1,519	1,825	9,842	
Other residential mortgages	4,642	1,739			328
Other consumer	132	2,990	220	110	1
	\$ 9,224	\$ 9,679	\$ 3,019	\$ 27,274	\$ 860

(1) Includes both first- and second-lien loans

Nonaccrual loans decreased \$2.964 million between December 31, 2008 and December 31, 2009, as troubled loans moved through the process of charge-off and/or foreclosure. Additionally, the nonaccrual balance at December 31, 2008 included \$2.988 million in Mariner Finance consumer loans. Although total nonaccrual loans decreased, we did experience increases in nonaccrual commercial mortgages and other residential mortgages. The commercial mortgage loan nonaccrual balance consisted of 19 loans, with the largest balance amounting to \$4.209 million. All of these loans were placed on nonaccrual status during 2009. All of the commercial mortgage loans that were on nonaccrual in 2008 were paid off by the borrower, charged-off and/or foreclosed, or otherwise resolved as a performing asset during 2009. The residential mortgage nonaccrual balance consisted of 48 loans, with the largest balance amounting to \$899,000. The majority of these loans were placed on nonaccrual status during 2009.

Table of Contents

Real estate acquired through foreclosure increased \$2.636 million when compared to December 31, 2008 as more loans moved through the foreclosure process. Commercial and consumer construction properties increased due to the addition of 15 properties for \$9.539 million, partially offset by write-downs and disposals of properties. The increase in commercial mortgages was due to the addition of 4 properties in the amount of \$2.658 million, partially offset by write-downs and disposals of properties. Foreclosed consumer properties consisted primarily of two properties, one in the amount of \$1.800 million.

Real estate acquired through foreclosure is carried at estimated fair value, less estimated costs to sell.

Loans 90 days delinquent and accruing, which are loans that are well secured and in the process of collection, decreased from \$9.679 million at December 31, 2008 to \$9.224 million as of December 31, 2009. Included in the decrease are decreases in consumer residential construction loans of \$1.587 million and Alt A residential mortgage loans of \$1.454 million. Increases occurred in the commercial, commercial mortgage, and residential mortgage portfolios. The commercial mortgage total, which increased due to the deterioration of the commercial real estate market, is made up of 5 loans, with the largest balance amounting to \$1.378 million. The other residential mortgage total is made up of 14 loans, with the largest loan totaling \$638,000. The residential real estate market continues to be depressed in our market area. We had one commercial loan in the amount of \$499,000 included in loans 90 days delinquent and accruing.

Troubled Debt Restructures

Troubled debt restructures, which are loans that have been restructured due to the borrower's inability to maintain a current status on the loan, that are not included in the nonaccrual balance above amounted to approximately \$13.048 million for 2009 and \$9.074 million for 2008. Our TDRs are generally reviewed individually, at the time of restructure, to determine impairment, accrual status, and the need for specific reserves. For collateral dependent loans, we utilize the fair value of the collateral in determining impairment. For noncollateral dependent loans, we calculate the present value of expected future cash flows to determine fair value and impairment.

Potential Problem Loans

Potential problem loans consist of loans that are currently performing in accordance with contractual terms; however, management has designated these assets as potential problem loans due to concerns about the ability of the obligor to continue to comply with repayment terms that may result from the obligor's potential operating or financial difficulties. At the end of 2009, loans of this type that are not included in the above table of nonperforming and past-due loans amounted to approximately \$102.460 million, compared to \$74.158 million at the end of 2008. Potential problem commercial loans, including loans secured by real estate, increased \$26.962 million, while consumer residential construction potential problem loans decreased by \$1.660 million. Seventy-nine of the loans (94% of total potential problem loans) are commercial relationships that are secured by commercial real estate and other business assets that are considered sufficient to collect all amounts due in the event of deterioration in the customer's financial condition. The remaining 9 loans (6% of total potential problem loans) are consumer residential construction loans that are secured by property with residential real estate as the highest and best use and have an appraised value in excess of the carrying value of the loan. The average relationship was \$782,141 and the largest relationship outstanding balance was \$6.782 million at December 31, 2009. Depending on changes in the economy and other future events, these loans and others not presently identified as potential problem loans could be reclassified as nonperforming or impaired loans in the future.

Edgar Filing: FIRST MARINER BANCORP - Form 10-K

Table of Contents

Deposits

We use deposits as the primary source of funding of our loans. We offer individuals and businesses a wide variety of deposit accounts. These accounts include checking, savings, money market, and certificates of deposit and are obtained primarily from communities we serve.

Deposits totaled \$1.147 billion as of December 31, 2009, increasing \$196.271 million or 20.7% over the December 31, 2008 balance of \$950.233 million, primarily due to an aggressive time deposit marketing campaign. We took in approximately \$217.542 million in time deposits associated with a newly launched program for acquiring nonbrokered national deposits.

The following table details the average amount and the average rate paid for each category of deposits as of December 31:

<i>(dollars in thousands)</i>	2009		2008		2007	
	Average Balance	Average Rate	Average Balance	Average Rate	Average Balance	Average Rate
NOW accounts	\$ 6,784	0.65%	\$ 13,249	0.58%	\$ 9,858	0.21%
Money market accounts	163,910	0.84%	210,003	1.47%	287,837	3.52%
Savings accounts	55,122	0.32%	54,897	0.33%	56,935	0.31%
Time deposits	713,855	3.26%	525,700	4.04%	384,157	4.54%
Total interest-bearing deposits	939,671	2.65%	803,849	3.06%	738,787	3.76%
Noninterest-bearing demand deposits	116,508		131,242		163,011	
Total deposits	\$ 1,056,179	2.35%	\$ 935,091	2.63%	\$ 901,798	3.08%

The following table provides the maturities of certificates of deposit in amounts of \$100,000 or more at December 31:

<i>(dollars in thousands)</i>	2009	2008
Maturing in:		
3 months or less	\$ 40,999	\$ 27,740
Over 3 months through 6 months	94,940	35,029
Over 6 months through 12 months	134,651	63,940
Over 12 months	127,304	62,181
	\$ 397,894	\$ 188,890

Core deposits represent deposits which we believe will not be affected by changes in interest rates and, therefore, will be retained regardless of the movement of interest rates. We consider our core deposits to be all noninterest-bearing, NOW, money market accounts less than \$100,000, and saving deposits, as well as all time deposits less than \$100,000 that mature in greater than one year. At December 31, 2009, our core deposits were \$426.217 million. The remainder of our deposits could be susceptible to attrition due to interest rate movements.

Borrowings

Our borrowings consist of short-term promissory notes issued to certain qualified investors, short-term and long-term advances from the FHLB, and a mortgage loan at December 31, 2009. At December 31, 2008, our borrowings also included a line of credit to finance consumer receivables held by Mariner Finance. Our short-term promissory notes are in the form of commercial paper, which reprice daily and have maturities of 270 days or less. Our advances from the FHLB may be in the form of short-term or long-term obligations. Short-term advances have maturities for one year or less and

Table of Contents

can be paid without penalty. Long-term borrowings through the FHLB have original maturities up to 15 years and generally contain prepayment penalties.

Long-term borrowings, which totaled \$95.672 million and \$177.868 million at December 31, 2009 and December 31, 2008, respectively, consist of long-term advances from the FHLB and a mortgage loan on our former headquarters building, and, in 2008, Mariner Finance's consumer finance receivable line of credit. The amortized cost of long-term FHLB advances totaled \$85.000 million at December 31, 2009 and December 31, 2008; however, \$60.000 million of the advances are recorded at fair value (\$61.592 million at December 31, 2009 and \$64.073 million at December 31, 2008) in accordance with FASB guidance, making the total carrying amount of long-term FHLB advances \$86.592 million at December 31, 2009 and \$89.073 million at December 31, 2008. As of December 31, 2009 and December 31, 2008, the balance on the mortgage loan was \$9.080 million and \$9.249 million, respectively. The December 31, 2008 balance on the consumer receivable line of credit was \$79.546 million.

Short-term borrowings consist of short-term promissory notes and short-term advances from the FHLB. These borrowings decreased from \$43.128 million at December 31, 2008 to \$26.365 million at December 31, 2009.

In the past, to further our funding and capital needs, we raised capital by issuing Trust Preferred Securities through statutory trusts (the "Trusts"), which are wholly-owned by First Mariner Bancorp. The Trusts used the proceeds from the sales of the Trust Preferred Securities, combined with First Mariner Bancorp's equity investment in these Trusts, to purchase subordinated deferrable interest debentures from First Mariner Bancorp. The debentures are the sole assets of the Trusts. Aggregate debentures as of December 31, 2009 and December 31, 2008 were \$73.724 million.

The Trust Preferred Securities are mandatorily redeemable, in whole or in part, upon repayment of their underlying subordinated debentures at their respective maturities or their earlier redemption. The subordinated debentures are redeemable prior to maturity at First Mariner's option on or after the optional redemption dates. Beginning with January 2009 payments, First Mariner suspended interest payments on the debentures, as permitted under the terms of the debentures. The suspension does not constitute an event of default. The debentures continue to accrue interest, which will have to be fully repaid prior to the expiration of the deferral period. The total deferral period may not exceed 20 consecutive quarters.

First Mariner Bancorp has fully and unconditionally guaranteed all of the obligations of the Trusts.

Under applicable regulatory guidelines, a portion of the Trust Preferred Securities will qualify as Tier I capital, and the remaining portion will qualify as Tier II capital. Under applicable regulatory guidelines, \$10.158 million of the outstanding Trust Preferred Securities qualify as Tier I capital and \$6.854 million of the remaining Trust Preferred Securities qualify as Tier II capital at December 31, 2009. The total amount of our Trust Preferred Securities allowable as part of capital was limited to \$17.012 million as of December 31, 2009.

See Notes 8 and 9 to the Consolidated Financial Statements included in Item 8 of Part II of this Form 10-K for further details about our borrowings and additional borrowing capacity. See "Subsequent Events" later in this section for information regarding the subsequent event related to the Trust Preferred Securities.

Capital Resources

Stockholders' equity decreased \$19.028 million during 2009 to \$26.987 million at December 31, 2009 from \$46.015 million at December 31, 2008. The retained deficit increased by the net loss of \$22.284 million for 2009, partially offset by the cumulative effect of accounting change adjustment related to securities of \$1.148 million.

Edgar Filing: FIRST MARINER BANCORP - Form 10-K

Table of Contents

Common stock and additional paid-in-capital increased by \$30,000 due to the vesting of previously granted stock options during 2009. We did not repurchase any common stock during 2009, nor was any stock issued through the employee stock purchase plan. Accumulated other comprehensive loss, which is derived from the fair value calculations for securities available for sale, decreased by \$2.078 million.

See "Subsequent Events" later in this section for subsequent events related to authorized shares and other capital considerations.

Banking regulatory authorities have implemented strict capital guidelines directly related to the credit risk associated with an institution's assets. Banks and bank holding companies are required to maintain capital levels based on their "risk-adjusted" assets so that categories of assets with higher "defined" credit risks will require more capital support than assets with lower risk. Additionally, capital must be maintained to support certain off-balance sheet instruments.

Capital is classified as Tier 1 capital (common stockholders' equity less certain intangible assets plus a portion of the Trust Preferred Securities) and Total Capital (Tier 1 plus the allowed portion of the allowance for loan losses plus any off-balance sheet reserves and the portion of Trust Preferred Securities not included in Tier 1 capital). Minimum required levels must at least equal 4% for Tier 1 capital and 8% for Total Capital. In addition, institutions must maintain a minimum of 4% leverage capital ratio (Tier 1 capital to average total assets for the previous quarter).

We regularly monitor our capital adequacy ratios and attempt to ensure that we meet our regulatory capital requirements. The regulatory capital ratios are shown below as of December 31:

	December 31,			Minimum Requirements for Capital Adequacy Purposes	To be Well Capitalized Under Prompt Corrective Action Provision
	2009	2008	2007		
Regulatory capital ratios:					
Leverage:					
Consolidated	1.4%	4.3%	6.9%	4.0%	5.0%
Bank	6.2%	5.8%	7.1%	4.0%	5.0%
Tier 1 capital to risk-weighted assets:					
Consolidated	1.8%	5.0%	8.2%	4.0%	6.0%
Bank	7.9%	6.8%	8.6%	4.0%	6.0%
Total capital to risk-weighted assets:					
Consolidated	3.6%	9.9%	14.2%	8.0%	10.0%
Bank	9.1%	8.8%	10.4%	8.0%	10.0%

On September 18, 2009, the Bank entered into an Agreement with the FDIC and the Maryland Division of Financial Regulation (the "Division"), pursuant to which it consented to the entry of an Order to Cease and Desist ("the September Order"), which directs the Bank to (i) increase its capitalization, (ii) improve earnings, (iii) reduce nonperforming loans, (iv) strengthen management policies and practices, and (v) reduce reliance on noncore funding. The September Order replaces the informal agreement that was previously in place among the parties. 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 average total assets and a Total Risk-Based Capital ratio of at least 11% of its Total Risk Weighted Assets by June 30, 2010. The Bank has presented a plan to the FDIC and the Division detailing how it will achieve a Tier 1 Leverage Capital ratio of 6.5% and a Total Risk-Based Capital ratio of 10% by March 31, 2010, and a Tier 1 Leverage Capital ratio of 7.5% and a Total Risk-Based Capital ratio of 11% by June 30, 2010. At December 31, 2009, the Bank reported a Tier 1 Leverage Capital ratio of 6.2% and a Total Risk-Based Capital ratio of 9.1%. Within 30 days after the end of each calendar year, the Bank must submit an annual budget and profit plan and a plan that takes into account the Bank's pricing structure, the Bank's cost of funds and how this can be reduced, and the

Table of Contents

level of provision expense for adversely classified loans. To address reliance on noncore funding, the Bank must adopt and submit a liquidity plan intended to reduce the Bank's reliance on noncore funding, wholesale funding sources, and high-cost rate-sensitive deposits. While the September Order is in effect, the Bank may not pay dividends or management fees without the FDIC's prior consent, the Bank 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. A copy of the September Order was filed as an exhibit to the Company's Form 8-K filed with the SEC on September 21, 2009 and is filed as Exhibit 10.33 hereto.

First Mariner Bancorp is also a party to an agreement with the FRB (the "FRB Agreement"), which requires it 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 FRB with advance notice of any significant capital transactions. The new FRB Agreement ("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 Mariners' 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 had to submit a written plan to the FRB by January 28, 2010 to maintain sufficient capital, on a consolidated basis, such that First Mariner satisfies the FRB's minimum capital requirements. To satisfy the FRB's minimum capital requirements, First Mariner's consolidated Tier 1 capital to average assets, Tier 1 capital to risk-weighted assets, and total capital to risk-weighted assets ratios at each quarter end must be at least 4.0%, 4.0%, and 8.0%, respectively. At December 31, 2009, those capital ratios were 1.4%, 1.8%, and 3.6%, respectively, which were at an "under-capitalized" level under the prompt corrective action regulations of the FRB. A copy of the New FRB Agreement is an exhibit to the Company's Form 8-K filed with the SEC on November 27, 2009 and is filed as Exhibit 10.34 hereto. See discussion later in this section related to a trust preferred exchange subsequent event that is expected to raise our capital level to above adequately capitalized subsequent to December 31, 2009.