

FIRST DEFIANCE FINANCIAL CORP
Form 10-K/A
November 19, 2009

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

FORM 10-K/A

(Mark One)

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
For the fiscal year Ended December 31, 2008

or

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
Commission File Number 0-26850

FIRST DEFIANCE FINANCIAL CORP.

(Exact name of registrant as specified in its charter)

OHIO

(State or other jurisdiction of incorporation or organization)

34-1803915

(I.R.S. Employer Identification Number)

601 Clinton Street, Defiance, Ohio
(Address of principal executive offices)

43512
(Zip code)

Registrant's telephone number, including area code: **(419) 782-5015**

Securities registered pursuant to Section 12(b) of the Act:

Common Stock, Par Value \$0.01 Per Share
(Title of Class)

The Nasdaq Stock Market
(Name of each exchange on which registered)

Securities registered pursuant to Section 12(g) of the Act:

None

(Title of Class)

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 registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Exchange 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 if disclosure of delinquent filers pursuant 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, or a non-accelerated filer. See definition of accelerated filer and large accelerated filer in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer

Accelerated filer

Non-accelerated filer

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

As of March 13, 2009, there were issued and outstanding 8,117,120 shares of the Registrant's common stock.

The aggregate market value of the voting stock held by non-affiliates of the Registrant computed by reference to the average bid and ask price of such stock as of June 30, 2008 was approximately \$131.0 million.

Documents Incorporated by Reference

Part III of this Form 10-K incorporates by reference certain information from the registrant's definitive Proxy Statement for the 2009 Annual Shareholders Meeting.

EXPLANATORY NOTE

First Defiance Financial Corp. (First Defiance) is filing this Amendment to Form 10-K for the fiscal year ended December 31, 2008 to amend Part II, Item 9B to disclose the execution of a Change of Control and Non-Compete Agreement between First Defiance and Donald P. Hileman on December 29, 2008, and to amend Item 15 to attach the Change of Control Agreement to the Form 10-K/A.

In accordance with the rules of the Securities and Exchange Commission, First Defiance has set forth the text of Part II, Item 9B. In addition, updated certifications pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 have been included as Exhibits 31.1 and 31.2 and updated certifications pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 have been included as Exhibits 32.1 and 32.2 to this Form 10-K/A. Other than the change to Item 9B, the Form 10-K is unchanged. This amendment is limited in scope to the portions of the Form 10-K set forth above and does not amend, update, or change any other items or disclosures contained in the Form 10-K.

This amendment continues to speak as of the date of the original filing of the Form 10-K and we have not updated the disclosures contained therein to reflect any events that occurred at any subsequent date. The filing of this amendment shall not be deemed an admission that the Form 10-K, when filed, included any untrue statement of a material fact or omitted to state a material fact necessary to make a statement therein not misleading.

PART II

Item 9b: Other Information

Pursuant to Form 8-K Item 5.02(e), First Defiance reports that on December 29, 2008, it entered into a Change of Control and Non-Compete Agreement with Donald P. Hileman.

Under the terms of the agreement, Mr. Hileman is entitled to certain payments in the event (1) his employment is terminated by the Company within six months prior to a change of control or within one year after a change of control or (2) Mr. Hileman terminates his employment within twelve months after a change in control because: there is a material and adverse change in his capacity or circumstances, he is required to move more than 35 miles from his then present office location, or the Company materially breaches the agreement. If any of these events occur, the Company will pay Mr. Hileman an amount equal to his annual base salary most recently set prior to the occurrence of the change in control and will pay the premiums to maintain his health insurance until the earlier of one year from the date of his termination or the date on which he is included in another employer's health insurance plan. Generally, pursuant to the agreement, a change of control has the meaning set forth in Section 409(A)(a)(2)(A)(v) of the Internal Revenue Code of 1986, as amended.

The agreement contains a non-compete provision that extends for a period of twelve months if Mr. Hileman terminates his employment.

The agreement has a term of one year and will be automatically renewed at the end of each year for successive one-year periods. The agreement may be terminated at any time for Just Cause, as defined therein.

The foregoing summary is qualified in its entirety by reference to the agreement, a copy of which is attached as Exhibit 10.1 hereto.

PART IV

Item 15: Exhibits, Financial Statement Schedules

The following documents are filed as Item 8 of this Form 10-K.

- (A) Report of Independent Registered Public Accounting Firm on Financial Statements (Crowe Horwath LLP)
- (B) Consolidated and Comprehensive Income-Years December 31, 2008 and 2007
- (C) Consolidated Statements of Earnings-Years ended December 31, 2008, 2007 and 2006
- (D) Consolidated Statements of Stockholders' Equity Balance Sheets-at ended December 31, 2008, 2007 and 2006
- (E) Consolidated Statements of Cash Flows Years ended December 31, 2008, 2007 and 2006
- (F) Notes to Consolidated Financial Statements

- (1) We are not filing separately financial statement schedules because of the absence of conditions under which they are required or because the required information is included in the consolidated financial statements or the related notes.
- (2) The exhibits required by this item are listed in the Exhibit Index of this Form 10-K. The management contracts and compensation plans or arrangements required to be filed as exhibits to this Form 10-K are listed as Exhibits 10.1 through 10.13.

SIGNATURES

Pursuant to the requirements of Sections 13 or 15(d) of the Securities Exchange Act of 1934, the Registrant has duly caused this report on Form 10-K/A to be signed on its behalf by the undersigned, thereunto duly authorized.

FIRST DEFIANCE FINANCIAL CORP.

November 17, 2009

By: /s/ Donald P. Hileman
Donald P. Hileman
Executive Vice President and Chief Financial Officer
(Principal Financial Officer)

Exhibit Index

This report incorporates by reference the documents listed below that we have previously filed with the SEC. The SEC allows us to incorporate by reference information in this document. The information incorporated by reference is considered to be part of this document.

This information may be read and copied at the Public Reference Room of the SEC at 100 F Street, N.E., Washington D.C. 20549. The SEC also maintains an internet web site that contains reports, proxy statements, and other information about issuers, like First Defiance, who file electronically with the SEC. The address of the site is <http://www.sec.gov>. The reports and other information filed by First Defiance with the SEC are also available at the First Defiance Financial Corp. web site. The address of the site is <http://www.fdef.com>. Except as specifically incorporated by reference into this Annual Report on Form 10-K, information on those web sites is not part of this report.

Exhibit Number	Description	
3.1	Articles of Incorporation	(1)
3.2	Code of Regulations	(1)
3.2	Bylaws	(1)
4	Agreement to furnish instruments and agreements defining rights of holders of long-term debt	(4)
10.1	1996 Stock Option Plan	(2)
10.2	Form of Incentive Stock Option Award Agreement	(3)
10.3	Form of Nonqualified Stock Option Award Agreement	(3)
10.4	1996 Management Recognition Plan and Trust	(2)
10.5	2001 Stock Option and Incentive Plan	(5)
10.6	1993 Stock Incentive Plan	(1)
10.7	Employment Agreement with William J. Small	(6)
10.8	Employment Agreement with James L. Rohrs	(7)
10.9	Employment Agreement with John C. Wahl	(8)
10.10	Employment Agreement with Gregory R. Allen	(9)
10.11	Description of Annual Bonus	(4)
10.12	2005 Stock Option and Incentive Plan	(10)
10.13	Change of Control and Non-Compete Agreement with Donald P. Hileman	(11)
13.1	2008 Annual Report to Stockholders	(4)
14	Code of Ethics	(4)
21	List of Subsidiaries of the Company	(4)
23.1	Consent of Crowe Horwath LLP	(4)
31.1	Certification of Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002	(11)
31.2	Certification of Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002	(11)
32.1	Certification of Chief Executive Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002	(11)
32.2	Certification of Chief Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002	(11)

(1) Incorporated herein by reference to the like numbered exhibit in the Registrant's Form S-1 (File No. 33-93354).

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- (2) Incorporated herein by reference to like numbered exhibit in Registrant's 2001 Form 10-K
- (3) Incorporated herein by reference to like numbered exhibit in Registrant's 2004 Form 10-K
- (4) Previously filed on Registrant's 2008 Form 10-K
- (5) Incorporated herein by reference to Appendix B to the 2001 Proxy Statement
- (6) Incorporated herein by reference to exhibit 10.1 in Form 8-K filed October 1, 2007
- (7) Incorporated herein by reference to exhibit 10.2 in Form 8-K filed October 1, 2007
- (8) Incorporated herein by reference to exhibit 10.3 in Form 8-K filed October 1, 2007
- (9) Incorporated herein by reference to exhibit 10.4 in Form 8-K filed October 1, 2007
- (10) Incorporated herein by reference to Appendix A to the 2005 Proxy Statement
- (11) Included herein