
FEDERAL DEPOSIT INSURANCE CORPORATION
WASHINGTON, DC 20429

FORM 8-K
CURRENT REPORT

Date of Report (Date of earliest event reported): January 31, 2005

First Bank of Delaware

(Exact name of Registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

34929
(FDIC Certificate No.)

51-0389698
(I.R.S. Employer Identification No.)

**Brandywine Commons, 1000 Rocky Run
Parkway, Wilmington, Delaware**
(Address of principal executive offices)

19803
(Zip Code)

Registrant's telephone number, including area
code:

(302) 529-5984

(Former name or former address, if changed since last report.)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant

under any of the following provisions (see General Instruction A.2. below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Item 8.01. Other Events.

On January 31, 2005, Republic First Bancorp, Inc. (“Republic First”) completed the spin off of all of its ownership interest in the Registrant. Stockholders who owned the stock at the close of business on January 31, 2005 received one share of the Registrant’s stock for each share of Republic First they owned. Pursuant to the spin off, the Registrant and Republic First entered into several agreements on January 31, 2005, including the Separation and Distribution Agreement and Tax Disaffiliation Agreement.

The Separation and Distribution Agreement provides that on or prior to the distribution date, the Registrant authorized and issued to Republic First a number of the Registrant’s shares of common stock equal to the total number of shares of Republic First common stock outstanding on January 19, 2005, the record date. Republic First effected the distribution by delivering a certificate representing all of the shares of the Registrant’s common stock that were to be issued in the distribution to the distribution agent. Effective as of January 31, 2005, the distribution date, each of the Registrant and Republic First discharged the other from all liabilities against such other party. The Separation and Distribution Agreement also provides that the Registrant and Republic First grant each other access to certain records and information in the possession of the other. The foregoing is a summary of the terms of this Agreement and does not purport to describe all of the terms. The full text of the Agreement is attached to this Current Report on Form 8-K as an exhibit.

The Tax Disaffiliation Agreement sets out each party’s rights and obligations with respect to deficiencies and refunds, if any, of federal, state, local or foreign taxes for periods before and after the distribution and related matters, such as the filing of tax returns and the conduct of IRS and other audits. Under the Tax Disaffiliation Agreement, the Registrant will indemnify Republic First for any of the Registrant’s allocable share of the liability for federal taxes of Republic First prior to the distribution and any liability resulting from any income tax obligations of the Registrant with respect to any post-distribution tax period. Republic First will indemnify the Registrant for any of Republic First’s allocable share of the liability for federal taxes prior to the distribution and any liability resulting from any income tax obligations of Republic First with respect to any post-distribution tax period. The foregoing is a summary of the terms of this Agreement and does not purport to describe all of the terms. The full text of the Agreement is attached to this Current Report on Form 8-K as an exhibit.

On June 22, 2004, the Registrant entered into an amended employment agreement with Harry D. Madonna, President and Chief Executive Officer of the Registrant (the “Madonna Agreement”) for three years, effective January 1, 2005, at an annual base salary of \$200,000 increasing 10% per annum on the second and third anniversary dates. Mr. Madonna or the Registrant may terminate the Madonna Agreement after three years. The Registrant may terminate this Agreement at any time for cause or Mr. Madonna may terminate the Agreement upon six (6) months’ written notice. Mr. Madonna is also eligible to receive an annual bonus of at least twenty-five (25) percent of his then annual base compensation in the sole discretion and determination of the Board of Directors of the Registrant upon achieving mutually agreed upon annual budget-based criteria. Upon the occurrence of certain hostile fundamental changes in the Registrant, as set forth in the policies of the Registrant, Mr. Madonna will receive a severance payment equal to two (2) times his annual base salary in the year of the occurrence in addition to his employment contract severance equal to up to 12 months base salary following termination of the Madonna Agreement. The Madonna Agreement provides for the non-disclosure by Mr. Madonna of confidential information acquired by him in the context of his employment with the Registrant.

Item 9.01. Financial Statements and Exhibits

(c) Exhibits

<u>Number</u>	<u>Description of Document</u>
3.1	Amended Articles of Association of First Bank of Delaware, as filed with the Secretary of State of the State of Delaware.
3.2	Change of Control Policy effective February 1, 2005 (incorporated by reference to Exhibit A of Exhibit 10.3 attached hereto.
10.1	Separation and Distribution Agreement between Republic First Bancorp, Inc. and First Bank of Delaware dated January 31, 2005.
10.2	Tax Disaffiliation Agreement between Republic First Bancorp, Inc. and First Bank of Delaware dated January 31, 2005.
10.3	Employment Agreement between First Bank of Delaware and Harry D. Madonna, dated June 22, 2004, effective January 1, 2005.
99.1	Press Release issued January 31, 2005 by Republic First Bancorp, Inc. with respect to expected closing of the spin off.

SIGNATURES

The Registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

First Bank of Delaware
(Registrant)

February 3, 2005

By:

Name: Paul Frenkiel
Title: Chief Financial Officer

EMPLOYMENT AGREEMENT

THIS AGREEMENT, entered into as of this 22nd day of June 2004, by and between First Bank of Delaware, a Delaware banking corporation (“Company”) and Harry D. Madonna (“Executive”).

WHEREAS, the Company desires to employ Executive as Chairman of the Board of Directors, President and Chief Executive Officer of the Company; and

WHEREAS, Executive desires to be employed in such capacities by the Company subject to the terms and conditions of this Agreement;

NOW THEREFORE, in consideration of the mutual promises contained herein, and other good and valuable consideration, receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the parties agree as follows:

1. **Term.** This Agreement shall be effective as of January 1, 2005 (“Effective Date”) and shall continue until terminated as provided for in Paragraph 4 below.
2. **Duties and Employment.** Company hereby employ Executive as Chairman, President and Chief Executive Officer of the Company pursuant to the terms hereof. Executive shall faithfully perform such duties as are customarily required of a Chairman, President and Chief Executive Officer and shall devote his time, energy and attention to those duties and to such other duties as may be reasonably assigned to him by the Board; provided that Executive may be employed by a law firm in an “of counsel” or similar capacity and in that capacity may bill clients of such law firm for up to twenty-five (25) billable hours per month, and nothing contained herein shall prohibit Executive from making personal investments (provided that such investments do not interfere with his duties hereunder) or participating or engaging in community, charitable and educational affairs that do not interfere with his duties hereunder. Executive may also serve as Chairman, President and Chief Executive Officer of Republic First Bancorp, Inc. and Chairman of the Board of Directors of Republic First Bank.

3. **Compensation.**

(a) **Regular Compensation.** For all services rendered by Executive under this Agreement, Employer shall pay Executive in accordance with the normal payment practices of the Company an annual salary of Two Hundred Thousand Dollars (\$200,000), which base annual compensation shall increase by ten (10) percent each year during the second and third years of this Agreement on the anniversary date of the commencement of Executive's employment.

(b) **Stock and Deferred Compensation Plans.** Executive shall be eligible to participate in stock purchase, stock grant, stock option, deferred compensation, retirement, savings, or other compensation plans presently or hereafter maintained by the Company or the Banks for their senior executives. Eligibility in no way guarantees Executive's receipt of any stock grant, stock option or other compensation pursuant to such plans, which shall be in the sole discretion of the respective Boards. The Board, or its designated committee or officer, shall consider awarding any such bonus at least annually. While not legally required to pay or give any such compensation, except as specifically provided for in this Agreement, the Board may take into account in its determinations the performance of the Employers and the Executive and the general economic and competitive conditions as well as Executive's responsibilities and other pertinent factors.

(c) **Bonuses.** Executive shall also be able to earn an annual bonus based on a percent of his annual base salary of a minimum of twenty-five (25) percent of his then annual base salary, contingent upon the Company and/or the Del Bank, in the sole discretion and determination of their respective Boards, achieving mutually agreed upon annual budget based criteria, including by way of illustration only for the Company, net income, stock price, new programs, etc. and for Del Bank, net income, core deposits, loan growth, income from loan programs, and such other criteria as shall be set by the respective Boards.

(d) **Health, Disability and Retirement.** Employers shall maintain such medical and disability insurance coverage (in an amount equal to at least Executive's annual base salary) and such retirement plan or plans for Executive and his dependents as it maintains for other senior executives. Executive shall be entitled to four weeks paid vacation per annum.

(e) **Automobile.** During the term of this Agreement, the Employers shall provide Executive with a luxury automobile comparable to the one provided by Company under its prior Agreement with Executive. Employers shall also pay or reimburse the Executive for all reasonable expenses associated with the operation, maintenance and insurance of such automobile, including expenses for parking spaces convenient to the Employers, and including a car telephone, as long as such telephone is used primarily for business use.

(f) **Life Insurance Policy.** Employers agree to purchase a life insurance policy on Executive's life in an amount equal to at least twice the annual base salary of Executive and such other terms and conditions as may be accepted by Executive.

(g) **Sale or Take-Over Protection.** In the event of a sale of assets or stock or a merger of the Company or any other change of control of the Company approved by the Board and/or shareholders (a "Sale") or through a hostile Change of Control as defined in the Company's existing "Change of Control" policy (the "Policy"), a copy of which is attached, which Policy may not be terminated or changed in a manner which could be detrimental to Executive, Executive will receive a severance payment equal to two (2) times Executive's annual base salary in the year the Sale or Change of Control occurs and in addition, such Sale or Change of Control shall be considered a breach of Section 4(f) of this Employment Agreement and Executive shall also receive as additional severance the benefits provided under Section 5(a) of this Agreement.

(h) **Travel Expense.** During the term of this Agreement, Executive shall be reimbursed for normal and reasonable travel expenses incurred on behalf of the Company or the Banks.

(i) **Entertainment Expense.** Executive will be reimbursed for all reasonable expenses incurred by Executive in fulfillment of his duties on behalf of the Company or the Banks, including entertainment, business meals and the like.

(j) **Other Benefits.** Executive will be reimbursed for expenses of one Center City lunch club and the annual dues for a golf club approved by the Board of the Company or its designated compensation committees or any committee performing a similar function.

(k) **Approvals.** All expenses incurred by the Executive under subparagraphs (h) and (i) hereof shall be approved by the Chief Financial Officer of the Company or his designee.

(l) **Deferred Compensation.** Employers and Executive shall use their best efforts to develop a senior officer deferred compensation plan in which Executive will be eligible to participate.

4. Term; Termination.

(a) This Agreement shall terminate on the day before the third anniversary of the date Executive commences employment (the "Termination Date") unless extended pursuant to the terms hereof. This Agreement shall be renewed automatically for additional one year terms from year to year after the Termination Date unless Employers or Executive give written notice at least 180 days prior to such anniversary of their or his intention not to renew.

(b) Executive may terminate this Agreement upon six (6) months written notice to the Employers.

(c) This Agreement shall automatically terminate upon the death of Executive without additional payments of salary or other benefits to Executive except as may be required bylaw.

(d) This Agreement shall automatically terminate upon Executive's "total disability", which shall be defined as total disability under Executive's disability insurance policy.

(e) The Company may terminate Executive immediately for “good cause.”

For purposes of this Agreement, “good cause” shall mean (i) breach of a fiduciary duty to Employers involving personal profit or which causes material harm to the Employers, (ii) conviction of a felony or willful violation of any banking law or regulation or a crime of moral turpitude, (iii) gross negligent performance of the duties under this Agreement resulting in a material impairment of Company’s financial condition, (iv) an order from any regulatory authority to terminate the Executive for breach of any law or regulations, or (v) a failure of the Executive to comply with a lawful direct order of the Board of the Company.

(f) Executive may terminate this Agreement for “good reason.” For

purposes of this Agreement, “good reason” shall mean failure of either Employer to comply in any material respect with any material provision of this Agreement, which failure has not been cured within thirty (30) days after a written notice of such noncompliance has been given by Executive to one or both of Employers, a change in the substantive duties of Executive, a change in location of business or a Change of Control as that term is defined in the Policy.

5. Payments to Executive Upon Termination.

(a) In the event of the termination of Executive’s employment pursuant to

Paragraph 4(a) or 4(f), as consideration for Executive’s services to Employers prior to Executive’s termination, Employers shall continue to pay to Executive for the duration of the Severance Period (hereinafter defined), his base annual salary in the year of the termination, the funding under any life insurance policy covering Executive, and under his 401(k) plan and for his health/life insurance benefits. “Severance Period” shall mean the period between the effective date of the termination under Paragraph 4(a) or 4(f) and the Termination Date of this Agreement, as that date may be extended by renewals of the Agreement, plus one year. In addition, Employers shall transfer the title to the automobile then made available to Executive free of all liens, costs, liabilities, or encumbrances, plus such funds to reimburse Executive for all fees and costs involved in the transfer of title and all federal and state income taxes assessed to Executive

for such transfer. Upon such termination, all stock options, annuities, and pensions held by or for Executive shall fully vest.

(b) Under no circumstances shall Employers be obligated to pay any compensation to Executive following termination pursuant to paragraphs 4(b), (c), (d) or (e) hereof.

(c) Employers shall have the option to accelerate payment of the sum(s) due during the Severance Period and to pay such sum(s) in such lump payment(s) as Employers shall deem appropriate provided that all such payments shall be made during the Severance Period and the amount of such payments shall not be lesser than would have resulted from payment in accordance with Employers' standard practices or as otherwise provided in this Agreement.

6. **Confidentiality.** Executive acknowledges that, in the course of his employment by Employers, he will have access to confidential information, trade secrets, and unique business procedures which are the valuable property of Employers. Executive agrees not to disclose for any reason, directly or indirectly, any confidential, trade secret or other proprietary information, as determined by Employers in this reasonable discretion, at any time, during or after the period Executive is employed by Employers, for any purpose other than to perform his assigned duties on behalf of Employers.

7. **Remedy.** Employers and Executive acknowledge and agree that any breach of Paragraph 6 of this Agreement would cause irreparable injury to Employers as the case may be, and that Employers' remedy at law for any breach of any of Executive's obligations under Paragraph 6 hereof would be inadequate, and Executive agrees and consents that temporary and permanent injunctive relief may be granted in any proceeding which may be brought to enforce any provision of Paragraph 6 hereof without the necessity of proof that Employers' remedy at law is inadequate and Employers shall have the right, in their sole discretion to, in addition to any other remedy it may be entitled to under law or in equity, set off any amounts due Executive

under this Agreement or otherwise as partial damages for violations of such paragraphs by Executive.

8. **Indemnification.** Employers shall indemnify Executive to the full extent permitted by law and by the by-laws or certificates of incorporation of the Company and the Banks for the benefit of their respective officers or directors as in effect on the date hereof.

9. **Notices.** Any and all notices, designations, consents, offers, acceptances, or any other communications provided for herein shall be given in writing by registered or certified mail, return receipt requested to the addresses set forth below or as may be changed by the parties:

If to Company or Del Bank:

1608 Walnut Street
Philadelphia, P A 19103
Attention: Chairman of the Board

If to Executive:

Harry D. Madonna
1320 North Avignon Drive
Gladwyne, PA 19035

or to such other or additional person or persons or such other addresses as either party may designate to the other party in writing or by like notice.

10. **Invalid Provisions.** The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof, and the Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

11. **Modification.** No change or modification of this Agreement shall be enforceable against any party unless the same be in writing and signed by the party against whom enforcement is sought.

12. **Entire Agreement.** This Agreement represents the entire agreement between the parties with respect to the subject matter hereof, and supersedes all prior agreements and understandings with respect thereto.

13. **Representation of Employers.** The Employers represent and warrant that the execution of this Agreement by the Employers has been duly authorized by resolution of their respective Boards of Directors.

14. **Headings.** Any headings preceding the text of the several paragraphs hereof are inserted solely for the convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect.

15. **Successors; Assigns.** This Agreement shall inure to the benefit of, and be binding upon, the parties hereto, and their respective heirs, executors, administrators, successors and, to the extent permitted herein, assigns. Notwithstanding the foregoing, no party hereto may assign its rights or obligations hereunder.

16. **Governing Law.** This Agreement shall be governed by, and construed in accordance with, the laws of the Commonwealth of Pennsylvania.

17. **Disputes.** In the event any dispute shall arise between the Executive and either the Company or Del Bank as to the terms or interpretation of this Agreement, whether instituted by formal legal proceedings or otherwise, including any action taken by Executive to enforce the terms of this Agreement or in defending against any action taken by the Company or Del Bank, the Company shall reimburse Executive for all costs and expenses, including reasonable attorneys' fees, arising from such dispute, proceedings, or actions, notwithstanding the ultimate outcome thereof. Such reimbursement shall be paid within ten (10) days of Executive furnishing to the Company written evidence, which may be in the form, among other things, of a canceled check or receipt, of any costs or expenses incurred by Executive. Any such request for reimbursement by Executive shall be made no more frequently than at thirty (30) day intervals.

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IN WITNESS WHEREOF, the undersigned have hereunto set their hands and seals the date and year above first written.

Attest:

FIRST BANK OF DELAWARE

By: _____
Paul Frenkiel

Its: Chief Financial Officer

HARRY D. MADONNA

FOR IMMEDIATE RELEASE

DATE: January 31, 2005
CONTACT: Paul Frenkiel, (215) 735-4422

**REPUBLIC FIRST BANCORP ANNOUNCES
EXPECTED COMPLETION OF SPIN-OFF OF
FIRST BANK OF DELAWARE**

Philadelphia, PA, January 31, 2005 – Republic First Bancorp, Inc. (the “Company”) (Nasdaq: FRBK) today announced that it expects to complete the distribution at the close of the market today, in a spin off transaction, of its equity interest in First Bank of Delaware (“FBD”) to Company shareholders. The shares of FBD are expected to be mailed to Company shareholders who owned the stock as of January 31, 2005 shortly.

As a result of the spin off, the Company will no longer have any ownership interest in FBD, and FBD will be an independent public company. Beginning on February 1, 2005, the Company’s stock will trade without the right to receive the dividend of FBD common stock.

FBD is in the process of arranging for its common stock to be quoted on the OTC Bulletin Board following the date of the distribution under the symbol “FBOD.” FBD’s stock is expected to begin trading on the OTC Bulletin Board on or about February 1, 2005. No current public trading market for FBD common stock exists.

An information statement describing the distribution was mailed to Company shareholders on or about January 10, 2005. Company shareholders will not be required to pay cash or other consideration when the FBD shares are distributed to them or to surrender or exchange their shares of Company common stock to receive the distribution.

FBD will maintain its headquarters located in Wilmington, Delaware and will have total assets of approximately \$50 million and 2 full-service banking offices located throughout Delaware.

The Company's remaining subsidiary will continue to operate as Republic First Bank, with headquarters located in Philadelphia, Pennsylvania. Republic First Bank, will have total assets of approximately \$650 million and operate 9 offices in Pennsylvania.

Some of the information presented in this announcement constitutes forward-looking statements made pursuant to the safe harbor provisions of the Private Securities Litigation Reform Act of 1995. Forward-looking statements represent the Company's judgment regarding future events, and are based on currently available information. Although the Company believes it has a reasonable basis for these forward-looking statements, the Company cannot guarantee their accuracy and actual results may differ materially from those the Company anticipated due to a number of known and unknown uncertainties, many of which the Company is not aware. Factors which could cause actual results to differ from expectations include, among others, (1) whether the spin-off will be consummated; (2) whether a trading market will develop for FBD common stock; (3) competitive pressures among depository institutions increase significantly; (4) prepayment speeds, loan sale volumes, charge-offs and loan loss provisions; (5) general economic conditions are less favorable than expected; (6) legislative, regulatory changes or developments in litigation which could adversely affect the businesses in which the Company is engaged; or (7) changes in the securities markets. For additional information concerning these and other important factors that may cause the Company's actual results to differ materially from expectations and underlying assumptions, please refer to the reports filed by the Company with the Securities and Exchange Commission.