FIRST MERCHANTS CORP
Form 8-K
March 09, 2006

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, DC 20549

FORM 8-K

CURRENT REPORT

PURSUANT TO SECTION 13 OR 15(d) OF THE

SECURITIES EXCHANGE ACT OF 1934

DATE OF REPORT (Date of earliest event reported): March 9, 2006

FIRST MERCHANTS CORPORATION
(Exact Name of Registrant as Specified in its Charter)

INDIANA	0-17071	35-1544218
(State or other jurisdiction of incorporation)	(Commission File Number)	(IRS Employer Identification No.)

200 East Jackson Street
P.O. Box 792
Muncie, IN 47305-2814
(Address of Principal Executive Offices, including Zip Code)

(765) 747-1500
(Registrant's Telephone Number, including Area Code)

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:

[ ] 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 1.01 ENTRY INTO A MATERIAL DEFINITIVE AGREEMENT.

(a) On February 14, 2006, First Merchants Corporation (the "Corporation") amended the Change of Control Agreement (the "Amendment") with Mark K. Hardwick, Executive Vice President and Chief Financial Officer of the Corporation. The Amendment changes the "Compensation Upon Termination" section within item 4.(B) to provide for a lump sum severance payment to Mr. Hardwick, in cash, equal to two and ninety-nine hundredths (2.99), times the sum of the defined base salary rate and bonus as per the Agreement. The salary multiple utilized in his previous change of control agreement was 2.00. A copy of the Agreement, as amended, is attached hereto as Exhibit 10.1.

ITEM 9.01 FINANCIAL STATEMENTS AND EXHIBITS.

(a) None

(b) None

(c) Exhibits.

Exhibit 10.1 Change of Control Agreement, as amended, between First Merchants Corporation and Mark K. Hardwick, dated February 14, 2006.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

FIRST MERCHANTS CORPORATION
(Registrant)

By: /s/ Mark K. Hardwick

Mark K. Hardwick
Executive Vice President and
Chief Financial Officer
(Principal Financial and Chief
Accounting Officer)

Dated: March 9, 2006

EXHIBIT INDEX

Exhibit No.	Description
10.1	Change of Control Agreement, as amended, between

First Merchants Corporation and Mark K. Hardwick, dated February 14, 2006.

First Merchants Corporation

Exhibit No. 10.1

CHANGE OF CONTROL AGREEMENT
(AS AMENDED)

This Agreement is made and entered into as of February 14, 2006, by and between First Merchants Corporation, an Indiana corporation (hereinafter referred to as "Corporation"), with its principal office located at 200 East Jackson Street, Muncie, Indiana, and Mark K. Hardwick (hereinafter referred to as "Executive"), of Yorktown, Indiana.

WHEREAS, the Corporation considers the continuance of proficient and experienced management to be essential to protecting and enhancing the best interests of the Corporation and its shareholders; and

WHEREAS, the Corporation desires to assure the continued services of the Executive on behalf of the Corporation; and

WHEREAS, the Corporation recognizes that if faced with a proposal for a Change of Control, as hereinafter defined, the Executive will have a significant role in helping the Board of Directors assess the options and advising the Board of Directors on what is in the best interests of the Corporation and its shareholders; and it is necessary for the Executive to be able to provide this advice and counsel without being influenced by the uncertainties of the Executive's own situation; and

WHEREAS, the Corporation desires to provide fair and reasonable benefits to the Executive on the terms and subject to the conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and undertakings herein contained and the continued employment of the Executive by the Corporation as its Executive Vice President and Chief Financial Officer, the Corporation and the Executive, each intending to be legally bound, covenant and agree as follows:

1. Term of Agreement.

This Agreement shall continue in effect through December 31, 2006; provided, however, December 31, 2006 and each December 31 thereafter, the term of this Agreement shall automatical one additional year unless, not later than October 31, 2006 or October 31 immediately precedi thereafter, the Corporation shall have given the Executive notice that it does not wish to exte and provided further, that if a Change of Control of the Corporation, as defined in Sec occurred during the original or extended term of this Agreement, this Agreement shall contin period of not less than twenty-four (24) months beyond the month in which such Change of Control

2. Definitions.

For purposes of this Agreement, the following definitions shall apply:

A. Cause: "Cause" shall mean:

(1) professional incompetence;

(2) willful misconduct;

(3) personal dishonesty;

(4) breach of fiduciary duty involving personal profit;

(5) intentional failure to perform stated duties;

(6) willful violation of any law, rule or regulation (ot violations or similar offenses) or final cease and desist ord

(7) any intentional material breach of any term, condition o Agreement.

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(B) Change of Control: "Change of Control" shall mean:

(1) any person (as such term is used in Sections 13(d) and 14(d) Exchange Act of 1934 ["Exchange Act"]), other than the C becomes the Beneficial Owner (as defined in Rule 13d-3 under directly or indirectly of securities of the Corporat twenty-five percent (25%) or more of the combined vot Corporation's then outstanding securities;

(2) persons constituting a majority of the Board of Directors o were not directors of the Corporation for at least the preceding months;

(3) the stockholders of the Corporation approve a merger or co Corporation with any other corporation, other than consolidation which would result in the voting securities o outstanding immediately prior thereto continuing to rep remaining outstanding or by being converted into voting surviving entity) more than fifty percent (50%) of the comb of the voting securities of the Corporation or such outstanding immediately after such a merger or consolidation or consolidation effected to implement a recapitalization (or similar transaction) in which no person acquires fift more of the combined voting power of the Corporation's securities; or

(4) the stockholders of the Corporation approve a plan of comple the Corporation or an agreement for the sale or disposition of all or substantially all of the Corporation's assets.

(C) Date of Termination: "Date of Termination" shall mean the date st of Termination (as hereinafter defined) or thirty (30) days from th of such notice, as hereinafter defined, whichever comes first.

(D) Disability: "Disability" shall mean the definition of such ter disability policy then in effect for the Corporation, and a dete disability by the Corporation; provided that in the event there insurance then in force, "disability" shall mean incapacity due to illness which will have caused the Executive to have been unable to with the Corporation on a full time basis for one hundred eighty calendar days.

(E) Notice of Termination: "Notice of Termination" shall mean a communicated to the other parties hereto, which shall indic termination provisions of this Agreement relied upon and set for detail the facts and circumstances claimed to provide a basis for t Executive's employment under the provisions so indicated.

(F) Retirement: "Retirement" shall mean termination of employment by accordance with the Corporation's normal retirement policy generally salaried employees in effect at the time of a Change of Control.

3. Termination.

(A) General. If any of the events described in Section 2 constituting a of the Corporation shall have occurred, the Executive shall be benefits described in Section 4 upon the subsequent termination o employment during the term of this Agreement, unless such terminat of the death or Disability of the Executive, (b) by the Corporation by the Executive other than on account of Constructive Termination defined).

(B) If, following a Change of Control, the Executive's employment shall Cause, the Corporation shall pay him his salary through the Date of rate in effect on the date of the Notice of Termination, and the have no further obligations under this Agreement. If, following a the Executive's employment shall be terminated as a result of dea compensation to the Executive shall be made pursuant to the C existing policies on death or Disability, and the Corporation sha obligations under this Agreement. If, following a Change of Control employment is terminated by and at the request of the Executive Retirement, compensation to the Executive shall be made pursuant to normal retirement policy generally applicable to its salaried employ the Change of Control, and the Corporation shall have no further this Agreement.

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(C) Constructive Termination. The Executive shall be entitled to termin upon the occurrence of Constructive Termination. For purposes o "Constructive Termination" shall mean, without the Executive's expres the occurrence, after a Change of Control of the Corporation, of an circumstances:

(1) the assignment to the Executive of any duties inconsiste nature of a promotion) with the position in the Corporation held immediately prior to the Change of Control of the significant adverse reduction or alteration in the natur Executive's position, duties or responsibilities or the Executive's employment from those in effect immediately pr of Control;

(2) a reduction in the Executive's annual base salary, as in e prior to the Change of Control of the Corporation or a adjusted from time to time, except for across-the-board similarly affecting all management personnel of the Corporati

(3) the Corporation requires the Executive to be relocated anywh offices in Muncie, Indiana;

(4) the taking of any action to deprive the Executive of any benefit enjoyed by him at the time of the Change of Control, provide him with the number of paid vacation days to which

the basis of years of service with the Corporation and in a
Corporation's normal vacation policy in effect at the time
Control;

(5) the failure to continue to provide the Executive with benef
similar to those enjoyed by the Executive under any of the C
insurance, medical, health and accident, or disability
Executive was participating at the time of the Change o
Corporation, or the taking of any action which would direc
materially reduce any of such benefits; or

(6) the failure of the Corporation to continue this Agreement
obtain a satisfactory agreement from any successor to as
perform this Agreement, as contemplated in Section 5 hereof.

4. Compensation Upon Termination.

Following a Change of Control, if his employment by the Corporation shall be terminate
on account of Constructive Termination or by the Corporation other than for Cause, death
Retirement (by and at the request of the Executive), then the Executive shall be entitled
provided below:

(A) No later than the fifth day following the Date of Termination, the
pay to the Executive his full base salary through the Date of Termina
in effect at the time Notice of Termination is given, plus all othe
the Executive is entitled under any incentive, bonus or other compen
Corporation in effect at the time such payments are due;

(B) In lieu of any further salary payments to the Executive for periods
Date of Termination, no later than the fifth day following the Dat
the Corporation shall pay to the Executive a lump sum severance
equal to two and ninety-nine hundredths (2.99) times the sum of (a
annual base salary rate as in effect on the date of the Notice of Ter
the largest bonus received by the Executive during the two (2)
preceding the Date of Termination under the Corporation's Manageme
covering the Executive;

(C) During the period beginning with the Executive's Date of Terminati
until the earlier of (a) the second anniversary of such Date of Te
Executive's sixty-fifth (65th) birthday, the Corporation shall arra
Executive with life, disability, accident and health insurance benef
similar to those which the Executive was receiving immediately prio
Termination and shall pay the same percentage of the cost of such
Corporation was paying on the Executive's behalf on the date of such N

(D) In lieu of shares of common stock of the Corporation ("Corporation
upon the exercise of outstanding options ("Options"), if any, grante
under any Corporation stock option plan (which Options shall be c
making of the payment referred to below), the Executive shall re
cash equal to the product of (a) the excess of the higher of the
Corporation Shares as reported on the NASDAQ National Market Syst
Stock Exchange or the New York Stock Exchange, wherever listed, on o
of Termination or the highest per share price for Corporation Shares
connection with any Change of Control of the Corporation, over the
price of each Option held by the Executive (whether or not then fu
times (b) the number of Corporation Shares covered by each such Option

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(E) If the payments or benefits, if any, received or to be received
(whether under this Agreement or under any other plan, arrangeme

between the Executive and the Corporation), in connection wit
Constructive Termination of the Executive's employment following a
constitute an "excess parachute payment" within the meaning of ss.
Revenue Code ("Code"), the Corporation shall pay to the Executive,
fifth day following the Date of Termination, an additional amount
the Corporation's independent public accountants) equal to the ex
imposed on the "excess parachute payment" under ss.4999 of the Code;
if the amount of such excise tax is finally determined to be mor
amount paid to the Executive hereunder, the Corporation (or the
finally determined amount is less than the original amount pai
difference between the amount originally paid and the finally determ
other party no later than the fifth day following the date such final
made;

(F) The Corporation shall pay to the Executive all reasonable legal
incurred by the Executive as a result of such termination (including
expenses, if any, incurred in contesting or disputing any such
seeking to obtain or enforce any right or benefit provided by this A
the decision-maker in any proceeding, contest, or dispute arising
formal finding that the Executive did not have a reasonable basis for
proceeding, contest, or dispute;

(G) The Corporation shall provide the Executive with individual out-plac
accordance with the general custom and practice generally accorded
the Executive's position.

5. Successors; Binding Agreement.

(A) The Corporation shall require any successor (whether direct or indir
merger, consolidation or otherwise) to all or substantially all of t
assets of the Corporation to expressly assume and agree to perform
the same manner and to the same extent that the Corporation woul
perform it if no such succession had taken place. Failure of th
obtain such assumption and agreement prior to the effectiveness of a
shall be a breach of this Agreement and shall entitle the Executiv
from the Corporation in the same amount and on the same terms to wh
would be entitled hereunder if the Executive terminates his employ
Constructive Termination following a Change of Control of the Corpora
for the purposes of implementing the foregoing, the date on which a
becomes effective shall be deemed the Date of Termination. As used
"the Corporation" shall mean the Corporation and any successor to i
assets as aforesaid which assumes and agrees to perform this Agreem
of law or otherwise.

(B) This Agreement shall inure to the benefit of and be enforceable by
his personal or legal representatives, executors, administrators, s
distributees, devisees and legatees. If the Executive should di
would still be payable to the Executive hereunder had the Executive
all such amounts, unless otherwise provided herein, shall be paid
the terms of this Agreement to the devisee, legatee or other design
no such designee, to his estate.

6. Miscellaneous.

No provision of this Agreement may be modified, waived or discharged unless such waiver
discharge is agreed to in writing and signed by the Executive and such officer as may be specif
by the Corporation. No waiver by either party hereto at the time of any breach by the other p
compliance with, any condition or provision of this Agreement to be performed by such other par
a waiver of similar or dissimilar provisions or conditions at the same or at any prior or su
agreement or representations, oral or otherwise, express or implied, with respect to the subj
have been made by either party which are not expressly set forth in this Agreement
interpretation, construction and performance of this Agreement shall be governed by the la

Indiana without regard to its conflicts of law principles. All references to a section of t the Code shall be deemed also to refer to any successor provisions to such section. Any paym hereunder shall be paid net of any applicable withholding required under federal, state o obligations of the Corporation under Section 4 shall survive the expiration of the term of this A

7. Validity.

The invalidity or unenforceability of any provision of this Agreement shall not affe enforceability of any other provision of this Agreement, which shall remain in full force and eff

8. Counterparts.

This Agreement may be executed in several counterparts, each of which shall be deemed but all of which together shall constitute one and the same instrument.

9. Arbitration.

Any dispute or controversy arising under or in connection with this Agreement exclusively by arbitration, conducted before a panel of three (3) arbitrators in Muncie, Ind with the rules of the American Arbitration Association then in effect. Judgment may b arbitrator's award in any court having jurisdiction; provided, however, that the Executive sh seek specific performance of his right to be paid until the Date of Termination during the dispute or controversy arising under or in connection with this Agreement.

10. Entire Agreement.

This Agreement sets forth the entire agreement of the parties hereto in respect of t contained herein and supersedes all prior agreements, promises, covenants, arrangements, representations or warranties, whether oral or written, by any officer, employee or represent hereto; and any prior agreement of the parties hereto in respect of the subject matter containe terminated and cancelled.

IN WITNESS WHEREOF, the Corporation has caused this Agreement to be executed by thei officers, and the Executive has hereunder subscribed his name, as of the day and year first above

"CORPORATION"	"EXECUTIVE"
FIRST MERCHANTS CORPORATION	
By ______________________________	By ______________________________
Michael L. Cox, President & Chief Executive Officer	Mark K. Hardwick