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BAY NATIONAL CORP
Form 10KSB/A
February 01, 2005

[BAY NATIONAL CORPORATION LOGO OMITTED]

U.S. Securities and Exchange Commission
Washington, D.C. 20549

Form 10-KSB/A
(Amendment No. 1)

(Mark One)

[X] ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES
EXCHANGE ACT OF 1934

For the year ended December 31, 2003

[] TRANSITION REPORT UNDER SECTION 13 OR 15(d) OF THE SECURITIES
EXCHANGE ACT OF 1934

For the transition period from _____ to _____

Commission File Number 333-87781

Bay National Corporation

(Name of small business issuer in its charter)

Maryland

52-2176710

(State or other jurisdiction of
incorporation or organization)

(I.R.S. Employer
Identification No.)

2328 West Joppa Road, Lutherville, Maryland 21093

(Address of principal executive offices) (Zip Code)

Issuer's telephone number: 410-494-2580

Securities registered under Section 12(b) of the Exchange Act: None

Securities registered under Section 12(g) of the Exchange Act: None

Check whether the issuer (1) filed all reports required to be filed by
Section 13 or 15(d) of the Exchange Act during the past 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 X No ___

Check if there is no disclosure of delinquent filers in response to
Item 405 of Regulation S-B contained in this form, and no disclosure will be
contained, to the best of registrant's knowledge, in

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definitive proxy or information statements incorporated by reference in Part III of this Form 10-KSB or any amendment to this Form 10-KSB. [x]

The issuer's revenues for its most recent fiscal year were \$6,145,331.

The aggregate market value of the common equity held by non-affiliates was \$15,999,706 as of March 19, 2004, based on a sales price of \$11.40 per share of Common Stock, which is the sales price at which shares of Common Stock were last sold in over the counter trading on March 12, 2004.

The number of shares outstanding of the issuer's Common Stock was 1,862,710 as of March 19, 2004.

Transitional Small Business Disclosure Format (check one):

Yes No

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Explanatory Note

This Amendment No. 1 to the Annual Report on Form 10-KSB/A (this "Amendment") amends the Annual Report on Form 10-KSB for the year ended December 31, 2003 filed on March 30, 2004 (the "Original Filing"). Bay National Corporation has filed this Amendment to add additional disclosure to Item 9 of the Original Filing. Pursuant to Rule 12b-15 under the Securities Exchange Act of 1934, as amended, the complete text of Items 9 as amended is set forth below. The remainder of the Form 10-KSB is unchanged and is not reproduced in this Amendment. The certifications required by Section 302 of the Sarbanes-Oxley Act are also included with this Amendment.

This Amendment speaks as of the original filing date of the Form 10-KSB and reflects only the changes described above. No other information included in the Original Filing, including the consolidated financial statements and the footnotes thereto, has been modified or updated in any way.

This Amendment should be read together with other documents that Bay National Corporation has filed with the Securities and Exchange Commission subsequent to the filing of the Original Filing. Information in such reports and documents updates and supersedes certain information contained in this Amendment. The filing of this Amendment shall not be deemed an admission that our Original Filing, when made, included any known, untrue statement of material fact or knowingly omitted to state a material fact necessary to make a statement not misleading.

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Item 12. Certain Relationships and Related Transactions

Prior to Bay National Corporation's initial public offering, the organizers of Bay National Corporation and Bay National Bank and certain other investors purchased an aggregate of 112,500 shares of Bay National Corporation's common stock at a purchase price of \$10.00 per share. The primary purpose of

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this "organizational offering" was to provide Bay National Corporation and Bay National Bank with the capital necessary to fund some of the initial organizational and prepaid operating expenses.

In recognition of the financial and organizational risk undertaken by the purchasers in the organizational offering, on September 10, 1999, the purchasers in the organizational offering received, for no additional consideration, a warrant to purchase one share of common stock at \$10.00 per share for every two shares that they purchased in the organizational offering. As a result, Bay National Corporation issued warrants to purchase an aggregate of 56,250 shares of common stock to the purchasers in the organizational offering.

The warrants became exercisable on April 30, 2001 and are exercisable in whole or in part until November 16, 2004. The warrants and the shares of common stock issuable upon the exercise of the warrants are transferable subject to compliance with applicable securities laws. Among other requirements, if the OCC issues a capital directive or other order requiring Bay National Bank to obtain additional capital, the warrants are forfeited if not immediately exercised.

Lucy Mohler, the spouse of Hugh W. Mohler, serves as Bay National Corporation's and Bay National Bank's Vice President of Marketing and Investor Relations. Ms. Mohler earned an aggregate compensation of \$64,371 plus benefits valued at \$2,932 during 2003 from Bay National Bank.

Director John R. Lerch owns a 100% interest in the property being leased for Bay National Bank's Salisbury, Maryland branch office. Pursuant to that lease, which is for a five-year term and commenced as of September 1, 1999, Bay National Corporation agreed to pay Mr. Lerch monthly rent of approximately \$1,980 plus all real estate taxes and utilities. Bay National Corporation believes that the lease rate, at the time of entering into the lease, was at fair market value, based, in part, on an evaluation of the lease terms by William E. Martin of ERA Martin Associates, a Salisbury-based real estate brokerage firm. Bay National Corporation engaged Mr. Martin to review the lease terms for the purpose of determining whether the terms were consistent with the lease terms for similar properties in the downtown Salisbury area.

Director Gary T. Gill is president and chief executive officer of the MacKenzie Companies, which owns the property being leased for Bay National Bank's Lutherville, Maryland corporate and branch offices. Bay National Corporation is a party to two leases for this property. Pursuant to the first lease, which is for a five year and five month term and commenced on July 26, 1999, Bay National Corporation agreed to pay monthly rent of approximately \$1,900, which amount increases at the rate of four percent per year. The monthly rent as of December 31, 2003 was \$2,223. Pursuant to the second lease, which is for a five year term and commenced on March 1, 2000, Bay National Corporation agreed to pay monthly rent of approximately \$10,773, which amount increases at the rate of four percent per year. The monthly rent as of December 31, 2003 was \$12,118. The monthly rent under both leases includes Bay National Corporation's share of taxes and building operating costs. Both leases were entered into well in advance of Mr. Gill's appointment to the Board of Directors in January 2003. Bay National Corporation believes that the lease rates, at the time of entering into the lease, were at fair market value,

Some of Bay National Bank's directors and officers and the business and professional organizations with which they are associated have banking transactions with Bay National Bank in the ordinary course of business. It is Bay National Bank's policy that any loans and loan

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commitments will be made in accordance with applicable laws and on substantially the same terms, including interest rates and collateral, as those prevailing at the time for comparable transactions with other persons of comparable credit standing. Loans to directors and officers must comply with Bay National Bank's lending policies and statutory lending limits, and directors with a personal interest in any loan application will be excluded from considering any such loan application.

The officers and directors of Bay National Corporation and Bay National Bank have loans due to Bay National Bank of \$4,672,104 at December 31, 2003. All loans were made on substantially the same terms, including interest rates and collateral, as those prevailing at the time for comparable transactions with unaffiliated third parties and do not involve more than the normal risk of repayment or present other unfavorable features.

Item 13. Exhibits and Reports on Form 8-K

(a) Exhibits. The following exhibits are filed with or incorporated by reference into this report.

| Exhibit No. | Description of Exhibit |
|----------------|--|
| --- | ----- |
| 31.1 | Certification of Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 |
| 31.2 | Certification of Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 |

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SIGNATURES

In accordance with Section 13 or 15(d) of the Exchange Act, the registrant caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

BAY NATIONAL CORPORATION

Date: January 31, 2005

By: /s/ Hugh W. Mohler

Hugh W. Mohler, President

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EXHIBIT INDEX

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