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STERLING BANCORP

Form 10-K/A

April 28, 2005

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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

AMENDMENT NO. 1 ON
FORM 10-K/A

Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange
Act of 1934

For the fiscal year ended December 31, 2004 Commission File No. 1-5273-1

STERLING BANCORP
(Exact name of registrant as specified in its charter)

New York 13-2565216
(State or other jurisdiction of (I.R.S. employer identification No.)
incorporation or organization)

650 Fifth Avenue, New York, N.Y. 10019-6108
(Address of principal executive offices) (Zip Code)

(212) 757-3300
(Registrant's telephone number, including area code)

SECURITIES REGISTERED PURSUANT TO SECTION 12(B) OF THE ACT:

Table with 2 columns: TITLE OF EACH CLASS, NAME OF EACH EXCHANGE ON WHICH REGISTERED. Rows include Common Shares, \$1 par value per share, and attached Preferred Stock Purchase Rights; Cumulative Trust Preferred Securities 8.375% (Liquidation Amount \$10 per Preferred Security) of Sterling Bancorp Trust I and Guarantee of Sterling Bancorp with respect thereto.

SECURITIES REGISTERED PURSUANT TO SECTION 12(G) OF THE ACT: NONE

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 |X| 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. |X|

Indicate by check mark whether the Registrant is an accelerated filer (as defined in Rule 12b-2 under the Act). Yes |X| No |_|

On April 20, 2005, the aggregate market value of the common equity held by non-affiliates of the Registrant was \$364,740,868.

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Indicate the number of shares outstanding of each of the Registrant's classes of common stock, as of the latest practicable date:

The Registrant has one class of common stock, of which 18,337,597 shares were outstanding at April 20, 2005.

DOCUMENTS INCORPORATED BY REFERENCE

Portions of Sterling Bancorp's definitive Proxy Statement dated March 31, 2005 filed pursuant to Regulation 14A are incorporated by reference in Part III.

EXPLANATORY NOTE

This Amendment No. 1 on Form 10-K/A includes management's annual report on internal control over financial reporting as of December 31, 2004, required by Item 308(a) of Regulation S-K, and the related attestation report of independent registered public accounting firm, required by Item 308(b) of Regulation S-K, in accordance with the Securities and Exchange Commission's exemptive order set forth in Securities Exchange Act of 1934 Release No. 50754 (November 30, 2004). Accordingly, this Amendment No. 1 restates in its entirety Item 9A in Part II of the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2004. This Amendment No. 1 also restates in its entirety Item 15 in Part IV of that Form 10-K (except that certain exhibits that were previously filed with that Form 10-K have been incorporated herein by reference to that Form 10-K).

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PART II

ITEM 9A. CONTROLS AND PROCEDURES

(a) Evaluation of disclosure controls and procedures

As required under the Securities Exchange Act of 1934, the Company's management, with the participation of the Company's principal executive and principal financial officers, evaluated the Company's disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act) as of the end of the period covered by this annual report on Form 10-K. Based on this evaluation and the identification of a material weakness in our internal control over financial reporting described below, the Company's management, including

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the Chief Executive Officer and Chief Financial Officer, concluded that, as of December 31, 2004, the Company's disclosure controls and procedures were not effective to ensure that information required to be disclosed by the Company in reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in SEC rules and forms. For a discussion of the reasons and matters on which this conclusion was based, see "Management's annual report on internal control over financial reporting" below.

(b) Management's annual report on internal control over financial reporting

The management of the Company is responsible for establishing and maintaining adequate internal control over financial reporting. The Company's internal control system was designed to provide reasonable assurance to the Company's management and Board of Directors regarding the preparation and fair presentation of published financial statements.

The management of the Company assessed the effectiveness of the Company's internal control over financial reporting as of December 31, 2004. In making its assessment of internal control over financial reporting, management used the criteria issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) in Internal Control--Integrated Framework.

In connection with this assessment as of December 31, 2004, the following material weakness in internal control over financial reporting (as such term is defined in Public Company Accounting Oversight Board Auditing Standard No. 2) was identified: As of December 31, 2004, the Company did not employ sufficient personnel with adequate technical skills relative to accounting for Company-owned split-dollar life insurance policies on the lives of certain officers of the Company. As a result of this deficiency, employee benefits expense in prior periods was materially misstated. On March 15, 2005, the Company concluded that it should restate its audited financial statements for the years ended December 31, 2002 and 2003, and its unaudited condensed financial information for the three months ended March 31, 2003 and 2004, the three months and six months ended June 30, 2003 and 2004, and the three months and nine months ended September 30, 2003 and 2004, to reflect the correction of the errors in the Company's accounting for split-dollar life insurance policies.

As a result of the material weakness described above, the Company's management concluded that, as of December 31, 2004, the Company's internal control over financial reporting was not effective based on the criteria in Internal Control--Integrated Framework.

Management's assessment of the effectiveness of our internal control over financial reporting as of December 31, 2004 has been audited by KPMG LLP, as stated in their report, which is included below.

(c) Report of independent registered public accounting firm

Report of Independent Registered Public Accounting Firm

The Shareholders and Board of Directors
Sterling Bancorp:

We have audited management's assessment, included in the accompanying Management's annual report on internal control over financial reporting (Item 9A(b)), that Sterling Bancorp and subsidiaries (the Company) did not maintain effective internal control over financial reporting as of December 31, 2004, because of the effect of the material weakness identified in management's assessment, based on criteria established in Internal Control--Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). The Company's management is responsible for maintaining

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effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting. Our responsibility is to express an opinion on management's assessment and an opinion on the effectiveness of the Company's internal control over financial reporting based on our audit.

We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit included obtaining an understanding of internal control over financial reporting, evaluating management's assessment, testing and evaluating the design and operating effectiveness of internal control, and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

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A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

A material weakness is a control deficiency, or combination of control deficiencies, that results in more than a remote likelihood that a material misstatement of the annual or interim financial statements will not be prevented or detected. The following material weakness has been identified and included in management's assessment as of December 31, 2004: The Company did not employ sufficient personnel with adequate technical skills relative to accounting for Company-owned split-dollar life insurance policies on the lives of certain officers of the Company. As a result of this deficiency, employee benefits expense in prior periods was materially misstated. Accordingly, the Company restated its audited consolidated financial statements for the years ended December 31, 2002 and 2003, and its unaudited condensed financial information for the three months ended March 31, 2003 and 2004, the three months and six months ended June 30, 2003 and 2004, and the three months and nine months ended September 30, 2003 and 2004, to reflect the correction of the errors in the Company's accounting for split-dollar life insurance policies.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the accompanying consolidated balance sheets of Sterling Bancorp and subsidiaries as of December 31, 2004 and 2003, and the related consolidated statements of income, comprehensive income, changes in shareholders' equity, and cash flows for each of the years in the

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three-year period ended December 31, 2004, and the consolidated statements of condition of Sterling National Bank and subsidiaries as of December 31, 2004 and 2003. The aforementioned material weakness was considered in determining the nature, timing, and extent of audit tests applied in our audit of the 2004 consolidated financial statements, and this report does not affect our report dated March 29, 2005, which expressed an unqualified opinion on those consolidated financial statements.

In our opinion, management's assessment that the Company did not maintain effective internal control over financial reporting as of December 31, 2004, is fairly stated, in all material respects, based on criteria established in Internal Control--Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). Also, in our opinion, because of the effect of the material weakness described above on the achievement of the objectives of the control criteria, the Company has not maintained effective internal control over financial reporting as of December 31, 2004, based on criteria established in Internal Control--Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

/s/ KPMG LLP

New York, New York
April 28, 2005

(d) Changes in internal control over financial reporting

No change in the Company's internal control over financial reporting occurred during the fiscal quarter ended December 31, 2004 that has materially affected, or is reasonably likely to materially affect, the Company's internal control over financial reporting.

The Company is currently working to eliminate the material weakness in internal control over financial reporting described above in "Management's annual report on internal control over financial reporting" and "Report of independent registered public accounting firm," and has recently implemented several changes to its internal control over financial reporting and intends to implement additional changes. The Company has developed and implemented procedures for monthly expensing of premiums paid or prepaid for split-dollar life insurance policies on the lives of certain officers of the Company, has retained actuarial assistance in determining the appropriate amounts to be expensed in respect of the Company's obligations to pay future premiums on split-dollar life insurance policies issued as part of a transaction in which an officer relinquishes his right to receive pension payments in exchange for the insurance policy and in respect of the Company's obligations to pay future post-retirement premiums on certain split-dollar

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PART IV

life insurance policies, and has retained life insurance consultants for assistance in determining the appropriate amounts to be credited in respect of increases in the cash surrender values of these various policies. The Company intends to add personnel with greater expertise in accounting for employee benefits and related transactions under generally accepted accounting principles.

ITEM 15. EXHIBITS, FINANCIAL STATEMENT SCHEDULES

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(a) The documents filed as a part of this report are listed below:

1. Financial Statements

Sterling Bancorp

Consolidated Balance Sheets as of December 31, 2004 and 2003*

Consolidated Statements of Income for the Years Ended December 31, 2004, 2003* and 2002*

Consolidated Statements of Comprehensive Income for the Years Ended December 31, 2004, 2003* and 2002*

Consolidated Statements of Changes in Shareholders' Equity for the Years Ended December 31, 2004, 2003* and 2002*

Consolidated Statements of Cash Flows for the Years Ended December 31, 2004, 2003* and 2002*

Sterling National Bank

Consolidated Statements of Condition as of December 31, 2004 and 2003*

*Consolidated financial statements for 2003 and 2002 are restated.

2. Financial Statement Schedules

None

3. Exhibits

3. (i) Restated Certificate of Incorporation filed with the State of New York Department of State, October 28, 2004 (Filed as Exhibit 3(i) to the Registrant's Form 10-Q for the quarter ended September 30, 2004 and incorporated herein by reference).

(ii) By-Laws as in effect on August 5, 2004 (Filed as Exhibit 3(ii) (A) to the Registrant's Form 10-Q for the quarter ended June 30, 2004 and incorporated herein by reference).

4. (a) Pursuant to Regulation S-K, Item 601(b)(4) (iii) (A), no instrument which defines the rights of holders of long-term debt of the Registrant or any of its consolidated subsidiaries is filed herewith. Pursuant to this regulation, the Registrant hereby agrees to furnish a copy of any such instrument to the SEC upon request.

10.(i) (A) Sterling Bancorp Stock Incentive Plan (Amended and Restated as of May 20, 2004) (Filed as Exhibit 10 to the Registrant's Form 10-Q for the quarter ended September 30, 2004 and incorporated herein by reference).

(i) (B) Form of Award Letter for Non-Employee Directors (Filed as Exhibit 10 to the Registrant's Form 10-Q for the quarter ended September 30, 2004 and incorporated herein by reference).

(i) (C) Form of Award Letter for Officers (Filed as Exhibit 10 to the Registrant's Form 10-Q for the quarter ended September 30, 2004 and incorporated herein by reference).

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reference).

- (i) (D) Form of Nonqualified Stock Option Award (Filed as Exhibit 10(A) to the Registrant's Form 8-K dated March 18, 2005 and filed on March 24, 2005 and incorporated herein by reference).
- (ii) (A) Sterling Bancorp Key Executive Incentive Bonus Plan (Filed as Exhibit C to the Registrant's definitive Proxy Statement, dated March 13, 2001, filed on March 16, 2001 and incorporated herein by reference).
- (iii) (A) Amended and Restated Employment Agreements dated March 22, 2002 for Louis J. Cappelli and John C. Millman (Filed as Exhibits 10(i) (a) and 10(i) (b), respectively, to the Registrant's Form 10-Q for the quarter ended March 31, 2002 and incorporated by reference herein).
- (iii) (B) Amendments to Employment Agreements dated February 26, 2003 for Louis J. Cappelli and John C. Millman (Filed as Exhibits 3.10(xiv) (a) and 3.10(xiv) (b), respectively, to the Registrant's Form 10-K for the fiscal year ended December 31, 2002 and incorporated herein by reference).

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- (iii) (C) Amendments to Employment Agreements dated February 24, 2004 for Louis J. Cappelli and John C. Millman (Filed as Exhibits 10(xv) (a) and 10(xv) (b), respectively, to the Registrant's Form 10-K dated December 31, 2003 and filed on March 12, 2004 and incorporated herein by reference).
- (iii) (D) Amendments to Employment Agreements dated March 18, 2005 for Louis J. Cappelli and John C. Millman (Filed as Exhibits 10(B) and 10(C), respectively, to the Registrant's Form 8-K dated March 18, 2005 and filed on March 24, 2005 and incorporated herein by reference).
- (iv) (A) Form of Change of Control Severance Agreement entered into May 22, 1998 between the Registrant and each of six executives (Filed as Exhibit 10(ii) to the Registrant's Form 10-Q for the quarter ended June 30, 1998 and incorporated herein by reference).
- (iv) (B) Amendment to Form of Change of Control Severance Agreement dated February 6, 2002 entered into between the Registrant and each of four executives (Filed as Exhibit 10(ii) to the Registrant's Form 10-Q for the quarter ended March 31, 2002 and incorporated herein by reference).
- (iv) (C) Form of Change of Control Severance Agreement dated April 3, 2002 entered into between the Registrant and one executive (Filed as Exhibit 10(i) to the Registrant's Form 10-Q for the quarter ended June 30, 2002 and incorporated herein by reference).
- (iv) (D) Form of Change of Control Severance Agreement dated June 8, 2004 entered into between the Registrant and one executive (Filed as Exhibit 10(i) to the Registrant's

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Form 10-Q for the quarter ended June 30, 2004 and incorporated herein by reference).

11. Statement re: Computation of Per Share Earnings (Filed as Exhibit 11 to the Registrant's Form 10-K for the year ended December 31, 2004 and incorporated herein by reference).
12. Statement re: Computation of Ratios (Filed as Exhibit 12 to the Registrant's Form 10-K for the year ended December 31, 2004 and incorporated herein by reference).
14. Code of Business Conduct and Ethics (Filed as Exhibit 14 to the Registrant's Form 10-K for the year ended December 31, 2004 and incorporated herein by reference).
21. Subsidiaries of the Registrant (Filed as Exhibit 21 to the Registrant's Form 10-K for the year ended December 31, 2004 and incorporated herein by reference).
23. Consent of KPMG LLP Independent Registered Public Accounting Firm.
31. Rule 13a-14(a) Certifications.
32. Section 1350 Certifications.

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SIGNATURES

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

STERLING BANCORP

/s/ Louis J. Cappelli

Louis J. Cappelli, Chairman
(Principal Executive Officer)

April 28, 2005

Date

/s/ John W. Tietjen

John W. Tietjen, Treasurer
(Principal Financial and Accounting Officer)

April 28, 2005

Date

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