

PACIFIC MERCANTILE BANCORP

Form 10-K/A

April 07, 2010

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

FORM 10-K/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 fiscal year ended December 31, 2009

OR

**.. TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE
ACT OF 1934 [FEE REQUIRED]**

For the transition period from _____ to _____

Commission file number 0-30777

PACIFIC MERCANTILE BANCORP

(Exact name of Registrant as specified in its charter)

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California
(State or other jurisdiction of

33-0898238
(I.R.S. Employer

incorporation or organization)

Identification No.)

949 South Coast Drive, Suite 300, Costa Mesa, California
(Address of principal executive offices)

92626
(Zip Code)

(714) 438-2500

(Registrant's telephone number, including area code)

Securities registered pursuant to Section 12(b) of the Act: Common Stock, without par value

Securities registered pursuant to Section 12(g) of the Act: None

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 the registrant is not required to file reports pursuant to Section 13 or 15(d) of the 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 whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). 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 ☐ Smaller reporting company ☒

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

The aggregate market value of voting shares held by non-affiliates of registrant as of June 30, 2009, which was determined on the basis of the closing price of registrant's shares on that date, was approximately \$41,775,000.

As of March 24, 2010, there were 10,434,665 shares of Common Stock outstanding.

DOCUMENTS INCORPORATED BY REFERENCE

Except as otherwise stated therein, Part III of the Form 10-K is incorporated by reference from the Registrant's Definitive Proxy Statement which is expected to be filed with the Commission on or before April 30, 2010 for its 2010 Annual Meeting of Shareholders.

EXPLANATORY NOTE

On April 1, 2010 Pacific Mercantile Bancorp (the we or us or the Company) filed its Annual Report on Form 10-K for the year ended December 31, 2009 (the 2009 10-K) with the Securities and Exchange Commission (the SEC).

This Amendment No. 1 is being filed to add, in Item 9 in Part II of the 2009 10-K, information that was previously disclosed in our Current Report on Form 8-K dated June 17, 2009 (filed with the SEC on June 22, 2009), regarding the dismissal of Grant Thornton, LLP, as the Company s independent registered public accounting firm and the appointment of Squar, Milner, Peterson, Miranda & Williamson, LLP, as the Company s new independent registered public accounting firm, both of which were effective June 17, 2009.

Additionally (i) a copy of an amendment to the Company s Articles of Incorporation is attached as Exhibit 3.1A to this Amendment No. 1, and (ii) as required by Rule 12b-15 under the Securities Exchange Act of 1934, as amended, new certifications by our principal executive officer and principal financial officer are attached as Exhibits 31.1, 31.2, 32.1 and 32.2 to this Amendment No. 1.

This Amendment No. 1 does not reflect any events that may have occurred during the period that began on April 1, 2009 and will end on the date of the filing of this Amendment No. 1 on Form 10-K/A with the SEC and does not modify or update any disclosures in the originally filed 2008 10-K that may have been affected by any such subsequent events.

(i)

PACIFIC MERCANTILE BANCORP
AMENDMENT NO. 1 ON FORM 10-K/A
TO
ANNUAL REPORT ON FORM 10-K
FOR THE YEAR ENDED DECEMBER 31, 2009
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PART II

ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURES

Change in Independent Registered Public Accounting Firm

As previously reported by us in a Current Report on Form 8-K dated June 17, 2009, effective on that date the Audit Committee of the Board of Directors (i) dismissed Grant Thornton, LLP (Grant Thornton) as the Company's independent registered public accounting firm, and (ii) approved the appointment and engagement of Squar, Milner, Peterson, Miranda & Williamson, LLP (Squar Milner), as the Company's new independent registered public accounting firm. That Current Report on Form 8-K was filed with the SEC on June 22, 2009.

During the period from January 1, 2007 to the date of the dismissal of Grant Thornton LLP (i) there had been no disagreements between us and Grant Thornton on any matter of accounting principles or practices, financial statement disclosure or auditing scope or procedures which, if not resolved to Grant Thornton's satisfaction, would have caused it to make reference to the subject matter of the disagreement in connection with its reports and (ii) there were no reportable events as defined in Item 304(a)(1)(v) of Regulation S-K.

The audit reports of Grant Thornton on our consolidated financial statements for fiscal years ended December 31, 2008 and 2007 contained no adverse opinion or disclaimer of opinion, and were not qualified or modified as to uncertainty, audit scope or accounting principles.

We provided Grant Thornton with a copy of the disclosure regarding its dismissal that we included in the above referenced Current Report on Form 8-K and, at our request Grant Thornton furnished us with a letter addressed to the Securities and Exchange Commission stating whether it agreed with the statements that we made in that Current Report relating to Grant Thornton. A copy of Grant Thornton's letter was attached as Exhibit 16.1 to that Report.

During the period from January 1, 2007 to September 17, 2009 (the date Squar Milner was engaged by us), neither the Company, nor anyone acting on its behalf, consulted with Squar Milner regarding (i) the application of accounting principles to a specified transaction, either completed or proposed, or the type of audit opinion that might be rendered on the Company's financial statements, or (ii) any of the matters or events set forth in Item 304(a)(2)(ii) of Regulation S-K.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the Company has duly caused this Amendment No. 1 on Form 10-K/A to be signed on its behalf by the undersigned, thereunto duly authorized, on the 6th day of April 2010.

PACIFIC MERCANTILE BANCORP

By: /s/ RAYMOND E. DELLERBA
Raymond E. Dellerba
President and Chief Executive Officer

Pursuant to the requirements of the Securities Exchange Act of 1934, this Amendment No. 1 on Form 10K/A has been signed below by the following persons in the capacities and on the dates indicated.

Signature	Title	Date
/s/ RAYMOND E. DELLERBA Raymond E. Dellerba	President, Chief Executive Officer and Director (Principal Executive Officer)	April 6, 2010
/s/ NANCY A. GRAY Nancy A. Gray	Senior Executive Vice President and Chief Financial Officer (Principal Financial and Accounting Officer)	April 6 2010
/s/ GEORGE H. WELLS* George H. Wells	Chairman of the Board and Director	April 6 2010
/s/ GARY M. WILLIAMS* Gary M. Williams	Director	April 6, 2010
/s/ WARREN T. FINLEY* Warren T. Finley	Director	April 6, 2010
/s/ JOHN THOMAS, M. D.* John Thomas, M.D.	Director	April 6, 2010
/s/ MATTHEW F. SCHAFNITZ* Matthew F. Schafnitz	Director	April 6, 2010
/s/ GEORGE L. ARGYROS* George L. Argyros	Director	April 6, 2010
By: /s/ NANCY A. GRAY * Nancy A. Gray, Attorney-in-Fact		April 6, 2010

INDEX TO EXHIBITS

TO

FORM 10-K/A

(Amendment No. 1)

Exhibit No.	Description of Exhibits
3.1A	Certificate of Amendment of Articles of Incorporation (effective as of June 7, 2001).
31.1	Certification of Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2004
31.2	Certification of Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2004
32.1	Certification of Chief Executive Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2004
32.2	Certification of Chief Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2004

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