



**PACIFIC MERCANTILE BANCORP &
SUBSIDIARIES**

BOARD OF DIRECTORS

AUDIT

COMMITTEE CHARTER

Adopted:

February 24, 2013

PACIFIC MERCANTILE BANCORP
AMENDED AND RESTATED CHARTER OF THE AUDIT COMMITTEE
OF
THE BOARD OF DIRECTORS

I. PURPOSE OF THE AUDIT COMMITTEE

A. Purpose of the Audit Committee.

The purpose of the Audit Committee (the “Committee”) of Pacific Mercantile Bancorp (the “Company”) shall be to assist the Board of Directors (the “Board”) in fulfilling its oversight responsibility with respect to the Company’s:

- internal financial systems and accounting systems;
- financial reporting, and accounting practices and policies; and
- internal and external audit functions

In addition, the Committee shall serve as the “qualified legal compliance committee” of the Company within the meaning of Part 205 of Chapter II of Title 17 of the Federal Register (“Part 205”) (in such capacity, the “QLCC”).

B. Certain Guiding Principles.

In fulfilling this purpose, the Committee shall be guided by the following principles:

- The Company’s independent public accountants (the “Outside Auditors”) are ultimately accountable to the Board of Directors and the Audit Committee and not to management of the Company.
- Free and open communications should be encouraged and promoted among the members of the Committee and the other members of the Board of Directors, the Company’s Outside Auditors and the Company’s management.
- To best carry out its responsibilities, the Committee’s policies and procedures shall remain flexible in order to address changing conditions.

II. COMMITTEE COMPOSITION AND MEMBER INDEPENDENCE

A. Committee Membership.

1. *Committee Composition.* The Committee shall be comprised solely of members of the Board of Directors who are independent directors (as defined below);

2. *Number of Members.* The Committee shall have not less than three (3) members who shall be appointed annually by the Board.

3. *Committee Chair.* The Board shall appoint one member of the Committee annually to serve as Committee Chair.

4. *Power to Remove Members.* The Board, in its discretion, by vote of a majority of the independent directors, may at any time remove any member of the Audit Committee; provided that if the removal of any member would have the effect of reducing the number of members of the Committee to a number less than three, the Board shall elect one or more new members to the Committee in order that the Committee shall, at all time, have at least three members, all of whom meet the independence standards and other membership qualifications set forth below.

B. Committee Member Independence and Qualifications.

1. *Independence and Qualifications of Committee Members.* All members of the Audit Committee shall:

- be independent directors within the meaning of NASDAQ Rule 4200(a)(15);
- satisfy the enhanced independence requirements for audit committee members under the Rule 10A-3(b)(1) under the Securities Exchange Act of 1934, as amended (the “Securities Exchange Act”);
- have sufficient financial experience and ability to discharge their responsibilities, as outline in this Charter and as required by applicable law and applicable NASDAQ Rules, including the ability to read and understand fundamental financial statements, comprised at least of a company’s balance sheet, income statement, and cash flow statement;
- possess an understanding of the Company’s business and its services and financial products, as well as knowledge of the material risks to which its business is subject; and
- possess an appreciation and recognition of the Audit Committee’s role in corporate governance, including the integrity, dedication of time and energy, and the exercise of independent judgment, that are required of members of the Committee.

2. *“Financial Expert.”* At all times, at least one member of the Committee shall be a financial expert as defined in NASDAQ Rule 4350(d)(A) and the applicable rules of the Securities and Exchange Commission (the “SEC”).

III. MEETINGS OF THE COMMITTEE

The Committee shall meet at least once each quarter, and hold separate sessions with the Company’s senior management, including its financial officers, the Company’s internal auditor (if any) and the Company’s Outside Auditors, respectively. The Committee may, if it deems it appropriate, meet by telephone conference call and may take actions by written consent approved by a majority of the members of the Committee (provided that each member’s consent has been sought). The Committee shall maintain a written record, which may take the form of minutes, setting forth the material actions taken at each meeting of the Committee.

At each meeting of the Company’s Board of Directors, the Committee Chair or another member of the Committee shall report on the Committee proceedings and the actions taken by the Committee at the meeting or meetings of the Committee that took place subsequent to the previous Board meeting at which such a report was given.

IV. OUTSIDE ADVISORS AND INVESTIGATORY POWERS OF THE COMMITTEE

A. Retention of Advisors.

1. *Retention of and Reliance on Advisors.* The Committee shall have authority to retain such accounting, legal and other advisors, consultants and experts as the Committee, in its sole discretion, may deem necessary or appropriate in connection with the performance of its responsibilities. The Committee shall be entitled to rely on the advice provided by those advisors, consultants and experts, without independent verification, provided that such reliance was reasonable under the circumstances as they existed at the time such advice was rendered.

2. *Advisors' Compensation.* The Audit Committee shall have sole authority to determine and approve the compensation that shall be paid to and the other terms of retention of such advisors and experts. The Company shall be responsible for paying and shall pay such compensation.

B. Investigatory Powers.

The Audit Committee shall have the authority to conduct any investigation as it deems appropriate to the fulfillment by it of its responsibilities. Additionally, the Committee shall have direct access to the Company's Outside Auditors and outside counsel, as well as any officers or other employees of the Company, as the Committee deems to be appropriate or desirable. The Committee also has the authority to retain, at the Company's expense, special legal, accounting, or other consultants or experts as it deems, in its discretion, to be necessary or appropriate in the exercise of its investigatory powers and authority.

V. AUDIT COMMITTEE AUTHORITY AND RESPONSIBILITIES

A. Matters Pertaining to the Company's Outside Auditors.

The Committee shall have the powers and authority, and certain specific responsibilities, relating to the Company's Outside Auditors as set forth below. Unless otherwise stated, any such powers or authority conferred by this Charter on the Audit Committee shall be exercised solely by the Audit Committee.

1. *Selection and Removal of Outside Auditors.* The Committee shall select and appoint and shall have the sole power and authority to remove or terminate and replace the Company's Outside Auditors.

2. *Determination of Outside Auditors' Compensation.* The Committee shall have the authority to approve the compensation to be paid and the other terms of engagement of the Outside Auditors.

3. *Pre-Approval of Engagements.* The Committee shall have the authority, and also the responsibility, to pre-approve all audit and non-audit services to be provided to the Company by the Outside Auditors, which authority and responsibility may be delegated by the Committee to one or more members of the Committee, *provided* that, in the event of any such delegation, the pre-approval decision and related services are presented to the Audit Committee at its next regularly scheduled meeting for the Committee's consideration and approval.

4. *Evaluation and Determination of Independence.* The Committee shall have the authority, and the responsibility, to evaluate and make all determinations with respect to the independence of the Outside Auditors and, in that connection,

- to conduct a review of non audit-related services provided by and related fees charged by the Outside Auditors;
- to obtain a formal written statement, consistent with Independence Standards Board Standard No. 1, from the Outside Auditors delineating any and all relationships between the Outside Auditors and the Company;

- to engage in an active dialogue with the Outside Auditors regarding matters that might reasonably be expected to affect their objectivity or independence; and
- to take, or recommend that the full board take, appropriate action to oversee the independence of the Outside Auditors.

5. *Review of Certain Matters Involving the Outside Auditors.* The Committee shall have the authority to obtain and review, at least annually, a report by the Outside Auditors describing (a) their internal quality-control procedures, (b) any material issues raised by the most recent internal quality-control review or peer review of the Outside Auditors, and (c) any issues raised by any inquiry or investigation by governmental or professional authorities which occurred within the preceding five years respecting one or more independent audits carried out by the Outside Auditors and any steps taken to deal with any such issues. The Outside Auditors shall be expected to cooperate fully with the Committee with respect to these matters.

6. *Hiring Policies.* The Committee shall have the authority to set clear and unambiguous Company policies with respect to the hiring and employment of employees and former employees of the Outside Auditors that shall comply with all applicable SEC and NASDAQ requirements.

7. *Certain Communications.* The Committee shall have the authority and responsibility to discuss with the Outside Auditors the matters required to be communicated to audit committees in accordance with AICPA SAS 61.

C. Matters Pertaining to the Company's Financial Statements.

The Committee shall:

1. *Annual Audit Plan.* Meet with the Company's Outside Auditors and financial management to review the annual audit plan and discuss with them such matters as the scope of and general approach to be taken with respect to the audit, the staffing requirements for the audit, the locations where the audit will be conducted, and the extent to which the Outside Auditors will rely on management or internal auditors in connection with the annual audit.

2. *Accounting Standards and Policies.* Review and discuss with the Company's financial management and Outside Auditors the Company's financial reporting, accounting standards, accounting principles; any proposed significant changes in such standards or principles; and the application of such standards or principles to, and the key accounting decisions which affect, the Company's financial statements, including alternatives to and the rationale for the decisions made with respect to the accounting principles and standards that the Company follows in the preparation of its financial statements.

3. *Disagreements between Management and the Outside Auditors.* Review with the Outside Auditors any disagreements they may have with management or any problems or difficulties encountered in connection with their audits or reviews of the Company's annual or quarterly financial statements.

4. *Risk Management Policies.* Discuss with the Company's management and the Outside Auditors, as appropriate, the Company's risk assessment and risk management policies, including the Company's major financial risk exposure(s) and the steps taken by management to monitor and mitigate such exposure(s).

5. *Legal and Compliance Matters Affecting Financial Statements.* As the Committee deems appropriate, review with the Company's outside counsel and Outside Auditors (a) any legal matters, (b) any accounting or compliance policies, and (c) any reports or inquiries received from regulatory or other governmental agencies or from Company employees that that may have a material impact or raise any material issues regarding the Company's financial statements or the Company's accounting or compliance policies.

6. *The Conduct and Results of Annual Audit.* Discuss the conduct and results of each annual audit of the Company's consolidated financial statements with the Outside Auditors, prior to Company's public announcement of fiscal year operating results.

7. *Earnings Releases.* Review with management and, if the Committee deems it to be appropriate, with the Outside Auditors and outside legal counsel, the Company's earnings press releases, including a review of any "pro-forma" or "adjusted" non-GAAP information or non-GAAP measures and the disclosures relating thereto, and any proposed Regulation FD disclosures, including forward looking financial information, forecasts or projections or earnings guidance, to be included in any earnings press releases.

8. *Annual Report on Form 10-K.* Review with management and the Outside Auditors the Company's annual audited financial statements to be included in the Company's Annual Report on Form 10-K, including (a) the Company's disclosures under Management's Discussion and Analysis of Financial Condition and Results of Operations, and (b) any significant issues and judgments regarding accounting and auditing principles and practices that were followed in the preparation of those financial statements.

9. *Inclusion of Financial Statements in Annual Report on Form 10-K.* Recommend to the Board of Directors whether the Company's annual audited financial statements should be included in the Company's Annual Report on Form 10-K to be filed with the SEC.

10. *Quarterly Financial Statement Reviews.* Review and discuss with management and the Outside Auditors the Company's quarterly financial statements prior to filing any Quarterly Report on Form 10-Q containing such financial statements, including (a) the results of the Outside Auditor's review of the quarterly financial statements, and (b) the Company's disclosures under Management's Discussion and Analysis of Financial Condition and Results of Operations to be included in such Quarterly Reports.

D. Other Matters Within the Committee's Authority.

The Committee also shall:

1. *Internal Controls and Disclosure Controls.* Discuss with the Company's Chief Executive Officer and the Chief Financial Officer, and such other officers or employees or outside consultants as the Committee deems appropriate, the adequacy and effectiveness of the Company's:

(a) internal controls, including any significant deficiencies or significant changes in such controls; and

(b) disclosure controls and procedures.

2. *Whistleblower Procedures.* Establish procedures for the anonymous submission by Company employees or third parties to the Audit Committee of concerns regarding accounting or auditing matters and for the receipt, retention and treatment of those submissions and any complaints received with respect to accounting, internal accounting controls or auditing matters.

3. *Governance Reviews.* Review and investigate any matters pertaining to the integrity of management or other Company employees, including conflicts of interest and/or adherence to standards of business conduct, as required by the policies of the Company and, in connection with these reviews, the Committee shall meet with the Company's outside counsel, officers or employees or any outside consultants as the Committee deems appropriate.

4. *Code of Business Conduct.* Approve a Code of Business Conduct for management of the Company and its subsidiaries and review management's compliance with that Code.

5. *Certain Proxy Statement Disclosures.* So long as may be required by SEC rules, cause the proxy statement for each year's Annual Meeting of the Company to include a report of the Audit Committee and required disclosures with respect to the Audit Committee Charter and the Outside Auditor's independence.

6. *Other Activities.* Perform any other activities that the Committee or the Board deems necessary or appropriate consistent with this Charter, the Company's Bylaws, and governing law and regulations, including applicable rules of the SEC and NASDAQ.

7. *Review of Charter.* Review, at least annually, the adequacy of this Charter, and recommend proposed changes to the Board of Directors.

8. *Review of Committee Performance.* Review and evaluate, at least annually, the performance of the Audit Committee and its members.

E. Certain Responsibilities of Management.

The Company's Chief Executive Officer and Chief Financial Officer shall:

1. Provide to the Committee such assistance as it may request from time to time, including arranging for other members of management to meet with the Committee in executive session.

2. Advise the Committee of any concerns or issues either of them may have with respect to any accounting matters or with respect to the performance of the Outside Auditors.

3. Arrange for funding as may be required by the Committee to perform its responsibilities and exercise its powers.

VI. NATURE OF AND LIMITATIONS ON THE RESPONSIBILITIES OF THE COMMITTEE

The Audit Committee's duty is one of oversight. It is not the responsibility of the Committee to prepare or to plan or conduct audits of the Company's annual financial statements or reviews of the Company's interim financial statements or to determine that such financial statements are complete or accurate or have been prepared in conformity with generally accepted accounting principles as in effect in the United States of America or the applicable rules and regulations of the SEC as they relate to such financial statements. These are the responsibilities of the Company's management and the Company's Outside Auditors. Accordingly, the members of the Audit Committee may rely without independent verification, on the information provided to them and on the representations made to them by management and the Company's Outside Accountants. Additionally, it is the responsibility of the Audit Committee to make any independent determinations as to whether management is maintaining appropriate accounting and financial reporting principles or appropriate internal controls and procedures that are designed to assure compliance with accounting standards and applicable laws and regulations or that the Company's Outside Auditors are in fact independent as to the Company.

VII. ADOPTION OF AMENDED AND RESTATED CHARTER

This Audit Committee Charter was approved and adopted by the Audit Committee and the Board of Directors of Pacific Mercantile Bancorp.

Revised February 24, 2013