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Investor to Pacific Premier: Take down the defenses

By Kalpesh Chaudhari

David Moore, managing partner of Marathon Financial Ventures I LP, is seeking changes to reduce anti-takeover provisions in Costa Mesa, Calif.-based Pacific Premier Bancorp Inc., according to a letter to the board dated Dec. 27, 2011, and obtained recently by SNL.

Marathon Financial Ventures I LP owns 208,600 common shares, approximately 2.0% of fully diluted outstanding shares of Pacific Premier Bancorp, the letter stated.

"Assuming that a sale of the company is a non-starter for the foreseeable future, the question is whether the board is willing to amend Pacific Premier's anti-takeover provisions so that at least the valuation gap with its peers can be narrowed," Moore wrote.

A capital raise in 2009 has been dilutive, despite the effects of the purchase of failed Canyon National Bank and a warrant repurchase in 2011, the letter stated.

While the letter applauded Pacific Premier for largely steering clear of credit troubles, it said that the company's governance structure gives the appearance of an entrenched board, potentially contributing to a sub-par stock price relative to peers.

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David B Moore CFA
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27 December 2011

Board of Directors
Pacific Premier Bancorp, Inc.
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Gentlemen:

Marathon Financial Ventures I, LP ("MFV"), a limited partnership I manage, owns 208,600 common shares of Pacific Premier Bancorp ("Pacific Premier" or the "Company"). As such, MFV owns approximately 2.0% of Pacific Premier's fully-diluted outstanding shares.

I originally purchased warrants in Pacific Premier on behalf of MFV in August 2008 (these warrants have since been exercised and converted to common shares) because I felt the Company's management had done a good job of avoiding the pitfalls of construction lending and, equally important, at roughly 40% of tangible book value, the price seemed attractive.

To management's credit, since that time, Pacific Premier's operating performance has improved significantly on both absolute and relative bases. Additionally, the Company's overall performance through the recent financial crisis, despite a couple of bumps (e.g., Shay Investments), was quite good in relative terms. Finally, the recent acquisition of Canyon National Bank has materially improved the Company's deposit franchise. I congratulate you on these successes.

On the negative side of the ledger, however, is the capital raise the board undertook in 4Q09 that diluted per share tangible book value by 32%. Clearly, some portion of that dilution has been offset (or "accreted back") by the combination of the Canyon National acquisition (which admittedly would not have been possible without the capital raise) and the accretive repurchase of certain warrants during 1Q11. Despite these value-added maneuvers, on a net basis, the capital raise has turned out to be dilutive to shareholder value. (I am sure I do not have to point out that raising capital at \$3.25 per share and then using a portion of that capital to repurchase warrants at an effective price of ~ \$6.00 per share is not going to engender any Financier of the Year nominations.) At this point, however, the capital raise is water under the bridge as far as I am concerned. The bottom line is that Pacific Premier's operating performance continues to improve, and in 2012 we may see the Company back in the neighborhood of its pre-crisis profitability, which would reflect extremely well on the management and board.

Without any gripes on the operating side of things (to the contrary, in fact), the reason for my letter is to address the issue of Pacific Premier's market valuation – more specifically, our Company's discounted valuation relative to its peers.

In Exhibits 1 and 2 on the following page I have compared Pacific Premier's key profit (and certain operating) metrics, and its valuation, with those of the Company's peer group (California-based publicly-traded banks with assets between $500 million and $2 billion). Exhibit 1 compares Pacific Premier to its "clean" peers – that is, those peers with less than 3% NPAs-to-Loans. As you can see, the Company's key profit and operating metrics are, for the most part, similar to the average member of this group. Next year I anticipate that Pacific Premier will be among the top three or four of this group in terms of Return on Equity (and other key metrics). Nevertheless, our Company's stock trades at roughly a 20% discount to the typical member of this peer group (in terms of Price/Tangible Book).

Exhibit 2 compares Pacific Premier to its "less clean" peers, or those peers with greater than 3% NPAs-to-Loans. Despite generating clearly superior operating results in comparison with all but perhaps one or two of the banks in this group, our Company's stock basically trades in line with these less-than-stellar (as a group) peers.

To summarize: Pacific Premier's valuation resides at the bottom of its most applicable peer group (its "clean" peers), and in the middle of a group of banks that the board would likely not consider its true peers (the "less clean" banks). The question, of course, is: Why?

To cut to the punch line: governance issues (hopefully unintentional) are the most likely answer.

The body of academic research examining the relationship between corporate governance and market values is both rich and voluminous. The vast majority of such research concludes that poor governance – generally as evidenced by anti-takeover measures – results in a relative valuation discount of 15%-25% for the company in question.

Two of the seminal papers on the topic have particular relevance to Pacific Premier. Bebchuk and Cohen (2005) found "… that the coefficient of staggered boards is not only statistically significant but also economically significant. During the period 1995 to 2002, and controlling for other governance provisions, having a staggered board is associated with a Tobin's Q that is lower by 17 points."[1] Or, in layman's terms, having a staggered board – as Pacific Premier does – resulted in an average 17% discount in terms of Price/Book Value over the period. And, importantly, that is the result of having a staggered board *alone* – this discount does not reflect the presence of *additional* anti-takeover provisions, as has Pacific Premier.

Bebchuk, Cohen and Ferrell (2004) created an "Entrenchment Index" to measure the degree to which a company's management and board are entrenched. The index is comprised of six anti-takeover measures, including a staggered board, supermajority requirements for mergers and charter amendments, and golden parachutes, among others. For the period under observation (1990-2003, including 90% of all public companies), the authors assigned each company an Entrenchment Index score between 1 and 6, from least to most entrenched. Less than 5% of the companies in the study had a score of 5 or 6 (that is, "most entrenched"). The authors concluded that firms with higher entrenchment scores had progressively lower relative valuations and stock returns.[2]

Exhibit 1

Clean Peers: Pubicly-traded CA banks with both (a) assets >$500 million and <$2 billion AND (b) NPAs+90s/Loans+REO <3%

Institution Name	State	Ticker	Total Assets ($000) 2011Q3	Closing Price ($) 12/14/2011	Core ROAA (%) Most Recent Yr	Core ROAE (%) Most Recent Yr	Core ROAA (%) 2011Q3	Core ROAE (%) 2011Q3	NIM (%) 2011Q3	NPAs & 90+ PD/ Loans & REO (%) 2011Q3	Loan Loss Reserves/ Gross Loans (%) 2011Q3	Reserves/ NPAs & 90+ PD (%) 2011Q3	Price/ Tangible Book (%) 12/14/2011	Tangible Premium/ Deposits (%) 12/14/2011
Farmers & Merchants Bancorp	CA	FMCB	1,880,223	360.00	1.09	11.16	1.35	13.62	4.49	1.05	2.80	266.99	148.29	5.75
Bank of Marin Bancorp	CA	BMRC	1,362,717	36.00	1.14	11.67	1.25	12.93	4.87	1.61	1.33	82.70	145.06	5.07
American Business Bank	CA	AMBZ	1,140,244	22.25	0.76	11.56	0.87	11.90	3.32	0.59	2.06	349.73	118.34	1.51
Malaga Financial Corporation	CA	MLGF	821,000	13.40	1.28	15.60	1.34	14.07	3.63	0.22	0.36	165.01	100.22	(0.12)
Heritage Oaks Bancorp	CA	HEOP	983,117	3.50	(1.88)	(15.38)	0.73	5.70	4.71	2.43	3.09	126.93	98.04	(0.19)
California United Bank	CA	CUNB	791,694	10.05	(0.36)	(3.30)	0.32	3.20	3.64	1.86	1.50	80.22	95.70	(0.90)
Heritage Commerce Corp	CA	HTBK	1,252,700	4.92	(2.14)	(15.83)	1.56	10.29	4.04	2.62	2.70	102.70	95.12	(0.66)
Oak Valley Bancorp	CA	OVLY	583,955	6.58	0.86	7.15	1.20	10.06	4.89	2.39	2.27	94.71	90.59	(1.04)
Private Bank of California	CA	PBCA	566,930	8.75	(0.15)	(1.33)	0.64	7.60	3.06	0.00	1.67	INF	86.28	(1.10)
1st Enterprise Bank	CA	FENB	563,140	10.00	0.34	3.71	0.47	5.51	3.00	0.95	1.58	166.05	85.48	(0.96)
CA Peer Median	CA	**NA**	**902,059**	**NA**	**0.55**	**5.43**	**1.04**	**10.17**	**3.84**	**1.33**	**1.87**	**126.93**	**96.87**	**(0.43)**
CA Peer Average	CA	**NA**	**994,572**	**NA**	**0.09**	**2.50**	**0.97**	**9.49**	**3.96**	**1.37**	**1.94**	**159.45**	**106.31**	**0.74**
Pacific Premier Bancorp, Inc.	**CA**	**PPBI**	**928,502**	**6.24**	**0.54**	**5.63**	**0.88**	**9.95**	**4.58**	**1.64**	**1.16**	**70.75**	**78.79**	**(2.59)**

Exhibit 2

Less Clean Peers: Pubicly-traded CA banks with both (a) assets >$500 million and <$2 billion AND (b) NPAs+90s/Loans+REO >3%

Institution Name	State	Ticker	Total Assets ($000) 2011Q3	Closing Price ($) 12/14/2011	Core ROAA (%) Most Recent Yr	Core ROAE (%) Most Recent Yr	Core ROAA (%) 2011Q3	Core ROAE (%) 2011Q3	NIM (%) 2011Q3	NPAs & 90+ PD/ Loans & REO (%) 2011Q3	Loan Loss Reserves/ Gross Loans (%) 2011Q3	Reserves/ NPAs & 90+ PD (%) 2011Q3	Price/ Tangible Book (%) 12/14/2011	Tangible Premium/ Deposits (%) 12/14/2011
United Security Bancshares	CA	UBFO	668,490	2.35	(0.30)	(2.68)	(0.71)	(7.07)	4.41	14.25	3.34	21.87	52.30	(5.11)
Sierra Bancorp	CA	BSRR	1,351,242	9.25	0.44	4.06	0.75	6.04	4.60	13.01	2.70	20.26	79.91	(2.96)
American River Bankshares	CA	AMRB	581,720	4.71	0.11	0.70	0.60	3.80	4.43	12.50	2.51	19.82	60.85	(6.46)
Preferred Bank	CA	PFBC	1,260,866	7.46	(1.23)	(12.96)	1.93	15.32	3.77	12.39	2.66	20.58	63.82	(5.21)
Exchange Bank	CA	EXSR	1,551,242	50.00	0.67	6.63	0.78	7.27	4.55	7.53	3.12	40.99	69.19	(2.88)
Pacific City Financial Corporation	CA	PFCF	543,362	0.90	(3.22)	(34.80)	0.94	8.44	4.15	7.49	3.86	50.84	54.70	(3.90)
Saehan Bancorp	CA	SAEB	563,564	0.26	(3.29)	(43.18)	0.52	6.28	3.29	7.19	5.65	77.70	105.33	0.66
Pacific Mercantile Bancorp	CA	PMBC	1,007,435	3.24	(1.27)	(20.38)	0.25	3.55	3.34	7.09	2.30	31.42	58.38	(3.35)
North Valley Bancorp	CA	NOVB	911,289	9.70	(0.67)	(7.78)	0.39	3.94	3.93	7.06	2.90	39.29	73.40	(3.12)
Bank of Commerce Holdings	CA	BOCH	928,171	3.26	0.55	5.18	0.76	6.30	4.03	6.27	1.59	25.32	64.15	(4.76)
Central Valley Community Bancorp	CA	CVCY	834,908	5.78	0.62	4.89	0.66	5.05	4.66	6.14	2.59	42.19	73.70	(2.79)
River City Bank	CA	RCBC	1,082,104	63.00	0.44	4.51	0.96	8.40	4.00	5.56	4.31	76.56	70.10	(4.03)
First PacTrust Bancorp, Inc.	CA	BANC	928,977	11.69	0.10	0.86	(0.04)	(0.22)	3.57	5.44	1.28	22.78	84.97	(3.37)
Provident Financial Holdings, Inc.	CA	PROV	1,319,868	9.26	0.92	9.27	0.71	6.51	2.73	5.40	2.46	45.30	73.78	NA
Premier Valley Bank	CA	PVLY	511,296	5.25	0.90	7.10	0.94	7.36	4.48	4.83	1.97	40.21	135.12	4.04
FNB Bancorp	CA	FNBG	723,020	12.15	0.46	4.14	0.61	5.18	4.87	4.40	2.07	46.75	59.98	(4.50)
Bridge Capital Holdings	CA	BBNK	1,093,983	9.85	0.28	2.17	0.68	5.77	4.99	4.40	2.55	57.22	118.24	2.45
First California Financial Group, Inc.	CA	FCAL	1,804,901	3.50	0.03	0.24	0.62	5.10	4.07	3.75	1.67	50.56	85.69	(1.21)
Kaiser Federal Financial Group, Inc.	CA	KFFG	914,674	12.10	1.00	6.64	0.92	5.21	3.43	3.69	1.49	40.43	74.89	(5.97)
First Northern Community Bancorp	CA	FNRN	766,653	4.60	0.30	2.85	0.44	4.04	3.91	3.48	2.58	73.84	63.92	(3.57)
Community West Bancshares	CA	CWBC	643,156	1.65	0.31	3.42	(1.43)	(14.86)	4.41	NA	2.53	NA	22.28	(6.79)
CA Peer Median	CA	**NA**	**914,674**	**NA**	**0.30**	**2.85**	**0.66**	**5.21**	**4.07**	**6.20**	**2.55**	**40.71**	**70.10**	**(3.47)**
CA Peer Average	CA	**NA**	**951,949**	**NA**	**(0.14)**	**(2.82)**	**0.54**	**4.35**	**4.08**	**7.09**	**2.67**	**42.20**	**73.56**	**(3.14)**
Pacific Premier Bancorp, Inc.	**CA**	**PPBI**	**928,502**	**6.24**	**0.54**	**5.63**	**0.88**	**9.95**	**4.58**	**1.64**	**1.16**	**70.75**	**78.79**	**(2.59)**

Source: SNL Securities Datasource

Unfortunately for shareholders, under its current governance structure, Pacific Premier would have an Entrenchment Index rating of 5 or 6, placing it in the bottom 5% of publicly-traded companies. Moreover, setting aside theory and focusing on the empirical, Institutional Shareholder Services (ISS), the leading provider of corporate governance services to the global financial community, rates Pacific Premier's shareholder rights a "high concern," its worst rating. From ISS literature, "a 'high concern' suggests a meaningful variance between a company's practices and market standards," and that "investors should explore further whether the company's practices raise questions about long-term risk."

In Exhibit 4, which follows this letter, I have listed some of the most obvious anti-shareholder provisions in our Company's Certificate of Incorporation, along with suggestions for amendments that would make these provisions modestly more shareholder friendly. (I see no reason to dwell on the particulars in the body of this letter.) In over 15 years of reviewing innumerable corporate articles and bylaws, I have never seen a set of articles as anti-shareholder as those of Pacific Premier. Now, I assume that these offending provisions are a holdover from the 2002 recapitalization – which resulted in Ezri Namvar's investment vehicle holding a large concentrated (convertible) ownership position in the Company – as opposed to a deliberate ongoing campaign by the Company's board members to entrench themselves. As we are all aware, after all, the Namvar-related share concentration ceased to be an issue several years ago. Consequently, outside of entrenchment reasons, there is no longer a good rationale for maintaining the myriad anti-takeover provisions in our Company's Certificate of Incorporation.

To summarize: Despite Pacific Premier's improving operating performance, its stock trades at a significant discount to its publicly-traded peers (with similar operating performance). As measured by the Entrenchment Index, our Company's anti-takeover provisions – which are many and varied – place it among a small group of the most entrenched boards. Moreover, ISS rates Pacific Premier's shareholder rights a "high concern". Finally, the academic evidence overwhelmingly supports the notion that companies with high Entrenchment Index scores trade at meaningful valuation discounts. Consequently – while being mindful of the distinction between causation and correlation – it is not a stretch to suggest that there is a high likelihood that Pacific Premier's stock trades at a discount to its peers principally as a result of its Certificate of Incorporation's myriad anti-takeover provisions, which collectively send a clear signal to investors – perhaps unintentionally – that our Company's board and management are entrenched.

To put an anecdotal voice to my supposition I will recount a recent conversation I had with an institutional investor regarding Pacific Premier. I asked this investor what he thought of our Company and he responded (I am paraphrasing), "The fundamentals are improving and it's turning into a pretty nice bank but I can't own the stock. Steve [Gardner] has a large family to support and it would be very difficult for him replicate the compensation he's receiving now. And he doesn't own enough stock to offset the lost compensation in a sale. So, despite a generous employment agreement, it's unlikely he would support a sale of the company. And even if the bank's fundamentals continue to improve, the stock will always trade at a steep discount as a result of the governance issues. Consequently, we see no reason to own it." (As a side note, ISS also rates Pacific Premier's management compensation a "high concern," but that is an issue for another day.)

Even if that investor's view is incorrect, it likely represents the conventional wisdom in the eyes of institutional investors where our Company's stock is concerned.

On the subject of a sale, I am highly confident that Pacific Premier's stock is currently worth $9.50-$10.25 per share in a traditional acquisition (see Exhibit 3 immediately following this letter – I won't bore you with additional analytical details herein although I am happy to provide them to you), or roughly 50%-70% above its current trading price. You might, with some justification, argue that bank valuations, in general, are depressed and that now is not the optimal time to sell. While I sympathize with this view, I must point out that from the standpoint of modern portfolio theory Pacific Premier's shareholders would be better off if the Company was sold for the premium available today – even though this premium might be less-than-optimal in a vacuum – because these investors could then turn around and re-invest in another bank trading at a much lower valuation. But I digress.

Getting back to the principal point of this letter, and assuming that a sale of the Company is a non-starter for the foreseeable future, the question is whether the board is willing to amend Pacific Premier's anti-takeover provisions so that at least the valuation gap with its peers can be narrowed. To reiterate, the aforementioned rationale for maintaining these provisions no longer exists. Consequently, the only logical conclusion is that the Company's surfeit of anti- takeover provisions remains for only one reason: to further entrench the Company's board and management.

Thus, giving the board the benefit of the doubt and assuming that it is, in fact, more interested in maximizing shareholder value than in entrenching itself… then amending the Company's anti-takeover provisions is a logical, relatively simple place to start. While Mr. Gardner's oft-repeated, and presumably earnest, mantra of working to maximize shareholder value is encouraging (and appreciated), as the old saw goes: "Words are plentiful; deeds are precious." Absent the board addressing our Company's anti-takeover provisions – for which (again) the rationale disappeared long ago, and which are clearly negatively impacting shareholder value – the only conclusion an investor can reach is that any talk of shareholder value on the part of management is just that – talk. I will assume that the board is interested in dispelling this view.

In closing, to reiterate, the Company's management and board are to be commended for side-stepping the credit landmines that buried many of its peers, and for otherwise producing solid operating results in a difficult environment (particularly true on a relative basis). (The dilutive capital raise, while painful, is water under the bridge.) The next iteration of building shareholder value, however, is addressing the anti-takeover provisions that weigh on our Company's stock. I am hopeful that my comments in Exhibit 4 will be helpful in that regard.

Feel free to contact me if you would like to discuss these issues further. Otherwise, many thanks for your time and consideration.

Regards,

David B. Moore

References:

1. Bebchuk, L.A. and Cohen, A., 2005. “The Costs of Entrenched Boards.” *Journal of Financial Economics*, volume 78, pp. 409-433.

2. Bebchuk, L.A., Cohen, A., and Ferrell, A., 2004. “What Matters in Corporate Governance.” John M. Olin Center for Law, Economics, and Business Discussion Paper No. 491 as revised for publication in *The Review of Financial Studies*.

Exhibit 3

Mergers and acquisitions: California banks with assets >$250 million and <$2.5 billion since 6/30/11

Buyer Name/ Target Name	Announce Date	Completion/ Termination Date	Target State	Target Total Assets ($000) Most Rec Yr	Target LTM ROAA (%) Most Rec Yr	Target LTM ROAE (%) Most Rec Yr	Target NPAs/ Assets (%) Most Rec Yr	Deal Value/ Tangible Book (%) At Announcement	Deal Value/ Tangible Book (%) At Completion	Notes
Traditional Acquisitions										
First PacTrust Bancorp, Inc./ Beach Business Bank*	08/30/11	Pending	CA	304,209	0.66	5.56	2.45	125.2	Pending	Warrants valued at $1.48 each
Opus Bank/ RMG Capital Corporation	06/06/11	10/31/11	CA	684,373	0.15	2.56	3.51	115.8	114.4	
Grandpoint Capital, Inc./ First Commerce Bancorp	07/14/10	12/28/10	CA	348,307	0.30	3.14	5.55	134.2	133.0	
Average				**445,630**	**0.37**	**3.75**	**3.84**	**125.0**	**123.7**	
* Deal Value/Tangible Book assumes investor takes $9.12 in cash plus warrants										
Mergers of Equals/Recaps										
California United Bank/ Premier Commercial Bancorp	12/08/11	Pending	CA	449,752	0.24	2.75	0.80	92.4	Pending	MOE - no premium
Nara Bancorp, Inc./ Center Financial Corporation	12/09/10	11/30/11	CA	2,267,439	-0.38	-3.33	3.03	NM	NM	MOE - no premium
Pre-Opus Investor group/ Bay Cities National Bank	09/07/10	09/30/10	CA	273,112	-0.97	-23.85	0.79	NA	NA	Recap; terms not disclosed
SCJ, Inc./ Professional Business Bank	07/14/10	12/31/10	CA	304,859	-10.61	-110.99	10.76	NA	NA	MOE - no premium

Source: SNL Securities Datasource

Exhibit 4
Anti-takeover Provisions in Pacific Premier's Certificate of Incorporation

From Article FOURTH, C.1.:

"Notwithstanding any other provision of this Certificate of Incorporation, in no event shall any record owner of any outstanding Common Stock which is beneficially owned, directly or, by a person who, as of any record date for the determination of stockholders entitled to vote on any matter, beneficially owns in excess of 10% of the then-outstanding shares of Common Stock (the 'Limit'), be entitled, or permitted to any vote in respect of the shares held in excess of the Limit.

My comments: Shareholders should be able to vote all of their shares regardless of their ownership level, which is the industry standard. Currently this is not an issue as no shareholder owns greater than 10% of the Company's outstanding shares. Furthermore, ownership of greater than 10% of the Company's voting shares would require regulatory approval. Nevertheless, should an investor eventually come along that is capable of obtaining regulatory approval to own greater than 10% of Pacific Premier's voting stock, that investor should be able to vote all of its shares.

From Article SIXTH, A.:

"The Directors shall be divided into three classes, as nearly equal in number as reasonably possible, with the term of office of the first class to expire at the first annual meeting of stockholders, the term of office of the second class to expire at the annual meeting of stockholders one year thereafter and the term of office of the third class to expire at the annual meeting of stockholders two years thereafter with each Director to hold office until his or her successor shall have been duly elected and qualified."

My comments: This staggered board provision should be eliminated entirely. Alternatively, reducing the number of classes from three to two would at least be an improvement. Staggered board provisions such as this one send a clear anti-shareholder message to investors. As I am sure you are aware, many states do not even allow banks incorporated therein to have staggered boards. California is one such state, although Pacific Premier's holding company has navigated around this issue by incorporating in Delaware.

From Article SIXTH, D.:

"Subject to the rights of holders of any series of Preferred Stock then outstanding, any Director, or the entire Board of Directors, may be removed from office at any time, but only for cause and only by the affirmative vote of the holders of at least 80 percent of the voting power of all of the then-outstanding shares of capital stock of the Corporation entitled to vote generally in the election of Directors (after giving effect to the provisions of Article FOURTH of this Certificate of Incorporation ('Article FOURTH')), voting together as a single class."

My comments: A simple majority of shareholder votes (which is the industry standard) should be sufficient to remove any Directors or the entire Board; "cause" should be irrelevant. The message sent to prospective investors in requiring both "cause" and an 80% vote in order to remove any Director or the entire Board is, "This is a private

Company, controlled by persons owning less than 4% of shares outstanding, which happens to have a ticker symbol, and in which you will have virtually no voice." Removing the "cause" language and reducing the vote required to remove a Director from 80% to 66.7% (still a so-called "supermajority") would be a significant improvement.

From Article SEVENTH:

"The Board of Directors is expressly empowered to adopt, amend or—repeal Bylaws of the Corporation. Any adoption, amendment or repeal of the Bylaws of the Corporation by the Board of Directors shall require the approval of a majority of the Whole Board. The stockholders shall also have power to adopt, amend or repeal the Bylaws of the Corporation; provided, however, that, in addition to any vote of the holders of any class or series of stock of this Corporation required by law or by this Certificate of Incorporation, the affirmative vote of the holders of at least 80 percent of the voting power of all of the then-outstanding shares of the capital stock of the Corporation entitled to vote generally in the election of Directors (after giving effect to the provisions of Article FOURTH), voting together as a single class, shall be required to adopt, amend or repeal any provisions of the Bylaws of the Corporation."

My comments: The problem here, of course, is the 80% vote requirement. Although a simple majority would be preferable (and in line with industry standards), reducing the requirement from 80% to 66.7% (still a supermajority) would be a significant improvement.

From Article EIGHTH A.:

"In addition to any affirmative vote required by law or this Certificate of Incorporation, and except as otherwise expressly provided in this Article EIGHTH:

1. any merger or consolidation of the Corporation or any Subsidiary (as hereinafter defined) with (i) any Interested Stockholder (as hereinafter defined) or (ii) any other corporation (whether or not itself an Interested Stockholder) which is, or after such merger or consolidation would be, an Affiliate (as hereinafter defined) of an
Interested Stockholder; or

2. any sale, lease, exchange, mortgage, pledge, transfer or other disposition (in one transaction or a series of transactions) to or with any Interested Stockholder, or any Affiliate of any 7 Interested Stockholder, of any assets of the Corporation or any Subsidiary having an aggregate Fair Market Value (as hereinafter defined) equaling or exceeding 25% or more of the combined assets of the Corporation and its Subsidiaries; or

3. the issuance or transfer by the Corporation or any Subsidiary (in one transaction or a series of transactions) of any securities of the Corporation or any Subsidiary to any Interested Stockholder or any Affiliate of any Interested Stockholder in exchange for cash, securities or other property (or a combination thereof) having an aggregate Fair Market Value (as hereinafter defined) equaling or exceeding 25% of the combined Fair Market Value of the outstanding common stock of the Corporation and its Subsidiaries, except for any issuance or transfer pursuant to an employee benefit plan of the Corporation or any Subsidiary thereof; or

4. the adoption of any plan or proposal for the liquidation or dissolution of the Corporation proposed by or on behalf of an Interested Stockholder or any Affiliate of any Interested Stockholder; or

5. any reclassification of securities (including any reverse stock split), or recapitalization of the Corporation, or any merger or consolidation of the Corporation with any of its Subsidiaries or any other transaction (whether or not with or into or otherwise involving an Interested Stockholder) which has the effect, directly or indirectly, of increasing the proportionate share of the outstanding shares of any class of equity or convertible securities of the Corporation or any Subsidiary which is directly or indirectly owned by any Interested Stockholder or any Affiliate of any Interested Stockholder; shall require the affirmative vote of the holders of at least 80% of the voting power of the then-outstanding shares of stock of the Corporation entitled to vote in the election of Directors (the 'Voting Stock') (after giving effect to the provisions of Article FOURTH), voting together as a single class. Such affirmative vote shall be required notwithstanding the fact that no vote may be required, or that a lesser percentage may be specified, by law or by any other provisions of this Certificate of Incorporation or any Preferred Stock Designation in any agreement with any national securities exchange or otherwise."

My comments: The problem, again, is the 80% vote requirement. Although a simple majority would be preferable (and in line with industry standards), reducing the requirement from 80% to 66.7% (still a supermajority) would be a significant improvement.

From Article NINTH:

"The Board of Directors of the Corporation, when evaluating any offer of another Person (as defined in Article EIGHTH hereof) to (A) make a tender or exchange offer for any equity security of the Corporation, (B) merge or consolidate the Corporation with another corporation or entity or (C) purchase or otherwise acquire all or substantially all of the properties and assets of the Corporation, may, in connection with the exercise of its judgment in determining what is in the best interest of the Corporation and its stockholders, give due consideration to all relevant factors, including, without limitation, those factors that Directors of any subsidiary of the Corporation may consider in evaluating any action that may result in a change or potential change in the control of the subsidiary, and the social and economic effect of acceptance of such offer: on the Corporation's present and future customers and employees and those of its Subsidiaries (as defined in Article EIGHTH hereof); on the communities in which the Corporation and its Subsidiaries operate or are located; on the ability of the Corporation to fulfill its corporate objective as a savings and loan holding company under applicable laws and regulations; and on the ability of its subsidiary savings bank to fulfill the objectives of a federally-chartered stock form savings bank under applicable statutes and regulations."

My comments: This entire Article is unnecessary and should be eliminated. In so many words it allows the Board to turn down any offer made for Pacific Premier by a potential acquirer on virtually whatever grounds the Board may choose. This Article represents a blanket "out" for the Board in exercising its fiduciary duties toward shareholders where evaluating a potential acquisition offer is concerned.

From Article TWELFTH:

"The Corporation reserves the right to amend or repeal any provision contained in this Certificate of Incorporation in the manner prescribed by the laws of the State of Delaware and all rights conferred upon stockholders are granted subject to this reservation; provided, however, that, notwithstanding any other provision of this Certificate of Incorporation or any provision of law which might otherwise permit a lesser vote or no vote, but in addition to any vote of the holders of any class or series of the stock of this Corporation required by law or by this Certificate of Incorporation, the affirmative vote of the holders of at least 80 percent of the voting power of all of the then-outstanding shares of the capital stock of the Corporation entitled to vote generally in the election of Directors."

My comments: The problem, again, is the 80% vote requirement. Although a simple majority would be preferable (and in line with industry standards), reducing the requirement from 80% to 66.7% (still a supermajority) would be a significant improvement.

General Issue:

As a Delaware corporation, Pacific Premier is subject to Section 203 of the Delaware General Corporation Law which, in general, prevents an interested stockholder, defined generally as a person owning 15% or more of a corporation's outstanding voting stock, from engaging in a business combination with the Company for three years following the date that investor became an interested stockholder unless certain specified conditions are satisfied. As the Company acknowledges, "The existence of this provision may have an anti-takeover effect with respect to transactions not approved in advance by our board of directors, including discouraging attempts that might result in a premium over the market price for the shares of common stock held by stockholders."

My comments: The restrictions contained in Section 203 need not apply to Pacific Premier if, "the corporation, by action of its stockholders, adopts an amendment to its certificate of incorporation or bylaws expressly electing not to be governed by this section…" In other words, Pacific Premier can, for all intents and purposes, "opt out" of being governed by Section 203. The Board, of course, would have to initiate this process. I am quite confident that 95%+ of Pacific Premier's shareholders would support amending the Company's Certificate of Incorporation so as to elect not to be governed by Section 203.