

PACWEST BANCORP
Form POS AM
May 16, 2008

As filed with the Securities and Exchange Commission on May 16, 2008.

Registration No. 333-124948

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

POST-EFFECTIVE AMENDMENT NO. 1

To

FORM S-3

**REGISTRATION STATEMENT UNDER THE
SECURITIES ACT OF 1933**

PACWEST BANCORP

(Exact Name of Registrant as Specified in Its Charter)

DELAWARE
(State or Other Jurisdiction of
Incorporation or Organization)

33-0885320
(IRS Employer
Identification Number)

401 West A Street

San Diego, California 92101

(619) 233-5588

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(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

Jared M. Wolff

Executive Vice President, General Counsel and Secretary

10250 Constellation Boulevard, Suite 1640

Los Angeles, California 90067

(310) 728-1023

(Name, address, including zip code, and telephone number, including area code, of agent for service)

with a copy to:

Patrick S. Brown

Sullivan & Cromwell LLP

1888 Century Park East

Los Angeles, California 90067

(310) 712-6600

Approximate date of commencement of proposed sale to the public: From time to time after this registration statement becomes effective.

If the only securities being registered on this form are being offered pursuant to dividend or interest reinvestment plans, please check the following box.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, other than securities offered only in connection with dividend or interest reinvestment plans, check the following box.

If this form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

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If this Form is a registration statement pursuant to General Instruction I.D. or a post-effective amendment thereto that shall become effective upon filing with the Commission pursuant to Rule 462(e) under the Securities Act, check the following box.

If this Form is a post-effective amendment to a registration statement filed pursuant to General Instruction I.D. filed to register additional securities or additional classes of securities pursuant to Rule 413(b) under the Securities Act, please check the following box.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of large accelerated filer, accelerated filer and smaller reporting company in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer Accelerated filer Non-accelerated filer Smaller reporting company
(Do not check if a smaller reporting company)

CALCULATION OF REGISTRATION FEE

| Title of securities to be registered | Amount to be registered (1) | Proposed maximum offering price per unit(2) | Proposed maximum aggregate offering price(2) | Amount of registration fee |
|--------------------------------------|-----------------------------|---|--|----------------------------|
| See Below (1) | NA | NA | NA | NA |

(1) No additional securities are to be registered, and registration fees were paid upon filing of the original Registration Statement on Form S-3 (File Nos. 333-124948). Therefore no further registration fee is required.

Post-Effective Amendment No. 1 to Form S-3

EXPLANATORY STATEMENT

Reincorporation; Assumption of Registration Statement

This Post-Effective Amendment is being filed pursuant to Rule 414 under the Securities Act of 1933, as amended (the Securities Act), and constitutes Amendment No. 1 to the registration statement on Form S-3 (File Nos. 333-124948) (the Registration Statement) by First Community Bancorp, a California corporation (First Community) and the predecessor of PacWest Bancorp, a Delaware corporation (PacWest or the Registrant). PacWest succeeded to the interests of First Community following a reincorporation effected pursuant to an Agreement and Plan of Merger, dated as of March 25, 2008 (the Merger Agreement), between PacWest and First Community. The Merger Agreement provided for, among other things, the merger of First Community with and into PacWest, a wholly owned subsidiary of First Community (the Merger). The Merger Agreement was approved by the shareholders of First Community at a special meeting of shareholders on April 23, 2008 for which proxies were solicited pursuant to Section 14(a) of the Securities Exchange Act of 1934, as amended (the Exchange Act).

As a result of the Merger, upon the effective date of the Merger, each outstanding share of First Community common stock, no par value, was automatically converted into one share of common stock, \$0.01 par value, of the Registrant. Immediately prior to the consummation of the Merger, the Registrant had nominal assets and liabilities.

In accordance with paragraph (d) of Rule 414 of the Securities Act, except as modified by this Post-Effective Amendment No. 1, the Registrant, as successor issuer to First Community, hereby expressly adopts the Registration Statement as its own registration statement for all purposes of the Securities Act and the Exchange Act. The applicable registration fees were paid at the time of the original filing of this Registration Statement.

PART II

INFORMATION NOT REQUIRED IN PROSPECTUS

Item 15. Indemnification of Directors and Officers.

Section 145 of the Delaware General Corporation Law (the DGCL) empowers a corporation to indemnify its directors and officers and to purchase insurance with respect to liability arising out of their capacity or status as directors and officers, provided that these provisions shall not eliminate or limit the liability of a director: (i) for any breach of the director's duty of loyalty to the corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) arising under Section 174 of the DGCL, or (iv) for any transaction from which the director derived an improper personal benefit. The DGCL provides further that the indemnification permitted thereunder shall not be deemed exclusive of any other rights to which the directors and officers may be entitled under the corporation's bylaws, any agreement, vote of stockholders or otherwise.

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Article IX of the Certificate of Incorporation of PacWest, as amended (the Certificate) provides that the corporation is authorized to indemnify any person serving as director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, to the fullest extent permissible under Delaware law. Under the DGCL, the directors have a fiduciary duty to the Registrant which is not eliminated by these provisions of the Certificate and, in appropriate circumstances, equitable remedies such as injunctive or other forms of non-monetary relief will remain available to the company. These provisions also do not affect the directors responsibilities under any other laws, such as the Federal securities laws or state or Federal environmental laws. The Registrant has obtained liability insurance for its officers and directors.

Article VI of the Bylaws of PacWest provides that PacWest shall indemnify to the full extent permitted by law any person made or threatened to be made a party to any action, suit or proceeding, whether civil, criminal,

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administrative or investigative, by reason of the fact that such person or such person's testator or intestate is or was a director, officer or employee of PacWest or serves or served at the request of PacWest any other enterprise as a director, officer or employee, Expenses including attorneys' fees, incurred by any such person in defending any such action, suit or proceeding shall be paid or reimbursed by PacWest promptly upon receipt by it of an undertaking of such person to repay such expenses if it shall ultimately be determined that such person is not entitled to be indemnified by PacWest.

At present, there is no pending litigation or proceeding involving any director, officer, employee or agent as to which indemnification will be required or permitted under the Certificate. PacWest is not aware of any threatened litigation or proceeding that may result in a claim for indemnification.

Item 16. Exhibits.

| Exhibit No. | Description |
|-------------|---|
| 2.1 | Agreement and Plan of Merger between First Community Bancorp, a California corporation, and PacWest Bancorp, a Delaware corporation, dated as of March 25, 2008 (Exhibit A of the Definitive Proxy Statement on Schedule 14A filed on March 25, 2008 and incorporated herein by reference). |
| 4.1 | Certificate of Incorporation of PacWest Bancorp, a Delaware corporation, as amended (Exhibit 3.1 of Form 8-K filed on May 14, 2008 and incorporated herein by reference). |
| 4.2 | Bylaws of PacWest Bancorp, a Delaware corporation (Exhibit 3.2 of Form 8-K filed on May 14, 2008 and incorporated herein by reference). |
| 5.1 | Opinion of Jared M. Wolff, Esq. as to the validity of the Common Stock. |
| 23.1 | Consent of KPMG LLP (independent auditors for PacWest Bancorp). |
| 23.2 | Consent of Jared M. Wolff, Esq. (included in his opinion filed as Exhibit 5.1). |
| 24.1 | Power of Attorney (included on signature page of this registration statement). |

Item 17. Undertakings

- (a) The undersigned Registrant hereby undertakes:
- (1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:
- (i) To include any prospectus required by Section 10(a)(3) of the Securities Act of 1933;

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(ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20 percent change in the maximum aggregate offering price set forth in the Calculation of Registration Fee table in the effective registration statement; and

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(iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement;

Provided, however, that paragraphs (a)(1)(i), (a)(1)(ii) and (a)(1)(iii) of this section do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Commission by the Registrant pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in this registration statement, or is contained in a form of prospectus filed pursuant to Rule 424(b) that is part of the registration statement;

(2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof; and

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(4) That, for the purpose of determining liability under the Securities Act of 1933 to any purchaser: if the Registrant is relying on Rule 430B:

(i) Each prospectus filed by the Registrant pursuant to Rule 424(b)(3) shall be deemed to be part of the registration statement as of the date the filed prospectus was deemed part of and included in the registration statement; and

(ii) Each prospectus required to be filed pursuant to Rule 424(b)(2), (b)(5), or (b)(7) as part of a registration statement in reliance on Rule 430B relating to an offering made pursuant to Rule 415(a)(1)(i), (vii) or (x), for the purpose of providing the information required by Section 10(a) of the Securities Act of 1933 shall be deemed to be part of and included in the registration statement as of the earlier of the date it is first used after effectiveness or the date of the first contract of sale of securities in the offering described in the prospectus. As provided in Rule 430B, for liability purposes of the issuer and any person that is at that date an underwriter, such date shall be deemed to be a new effective date of the registration statement relating to the securities in the registration statement to which that prospectus relates, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof. Provided, however, that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such effective date, supersede or modify any statement that was made in the registration statement or the prospectus that was part of the registration statement or made in any such document immediately prior to such effective date.

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(5) That, for the purpose of determining liability of the Registrant under the Securities Act of 1933 to any purchaser in the initial distribution of the securities: The undersigned Registrant undertakes that in a primary offering of securities of the undersigned Registrant pursuant to this registration statement, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered or sold to such purchaser by means of any of the following communications, the undersigned Registrant will be a seller to the purchaser and will be considered to offer or sell such securities to such purchaser:

(i) Any preliminary prospectus or prospectus of the undersigned Registrant relating to the offering required to be filed pursuant to Rule 424;

(ii) Any free writing prospectus relating to the offering prepared by or on behalf of the undersigned Registrant or used or referred to by the undersigned Registrant;

(iii) The portion of any other free writing prospectus relating to the offering containing material information about the undersigned Registrant or its securities provided by or on behalf of the undersigned Registrant; and

(iv) Any other communication that is an offer in the offering made by the undersigned Registrant to the purchaser.

(b) That, for purposes of determining any liability under the Securities Act of 1933, each filing of the Registrant's annual report pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

(c) Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise, the Registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

(d) The undersigned registrant hereby undertakes that:

(1) For purposes of determining any liability under the Securities Act of 1933, the information omitted from the form of prospectus filed as part of this registration statement in reliance upon Rule 430A and contained in a form of prospectus filed by the registrant pursuant to Rule 424(b)(1) or (4) or 497(h) under the Securities Act shall be deemed to be part of this registration statement as of the time it was

declared effective.

(2) For the purposes of determining any liability under the Securities Act of 1933, each post-effective amendment that contains a form of prospectus shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time be deemed to be the initial *bona fide* offering thereof.

Signatures

Pursuant to the requirements of the Securities Act of 1933, as amended, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-3 and has duly caused this Post Effective Amendment No. 1 to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Los Angeles, State of California, on this 15th day of May, 2008.

PACWEST BANCORP

| | | |
|----|--------|--|
| By | | /s/ JARED M. WOLFF |
| | Name: | Jared M. Wolff |
| | Title: | Executive Vice President, General Counsel and Secretary |

Power Of Attorney

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Matthew P. Wagner, Victor R. Santoro and Jared M. Wolff, and each of them, each with full power to act without the other, his or her true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution, for him or her and in his or her name, place and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) to this registration statement, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done, as fully for all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or their substitutes, may lawfully do or cause to be done by virtue thereof.

Pursuant to the requirements of the Securities Act of 1933, as amended, this Post Effective Amendment No. 1 has been signed by the following persons in the capacities and on the dates indicated.

| Signature | Title | Date |
|--|--|--------------|
| /s/ JOHN M. EGGEMEYER, III John M. Eggemeyer, III | Director and Chairman of the Board | May 15, 2008 |
| /s/ MATTHEW P. WAGNER Matthew P. Wagner | Chief Executive Officer and Director (Principal Executive Officer) | May 15, 2008 |
| /s/ VICTOR R. SANTORO Victor R. Santoro | Executive Vice President and Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer) | May 15, 2008 |
| /s/ MARK N. BAKER Mark N. Baker | Director | May 15, 2008 |

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| | | |
|--|----------|--------------|
| /s/ GARY W. DEEMS Gary W. Deems | Director | May 15, 2008 |
| /s/ STEPHEN M. DUNN Stephen M. Dunn | Director | May 15, 2008 |
| /s/ BARRY C. FITZPATRICK Barry C. Fitzpatrick | Director | May 15, 2008 |
| /s/ GEORGE L. LANGLEY George E. Langley | Director | May 15, 2008 |
| /s/ SUSAN E. LESTER Susan E. Lester | Director | May 15, 2008 |
| /s/ TIMOTHY B. MATZ Timothy B. Matz | Director | May 15, 2008 |
| /s/ ARNOLD W. MESSER Arnold W. Messer | Director | May 15, 2008 |
| /s/ DANIEL B. PLATT Daniel B. Platt | Director | May 15, 2008 |
| /s/ ROBERT A. STINE Robert A. Stine | Director | May 15, 2008 |
| /s/ DAVID S. WILLIAMS David S. Williams | Director | May 15, 2008 |

EXHIBIT INDEX

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