

FIRST PACTRUST BANCORP INC

Form 10-K/A

April 17, 2012

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-K/A

(Amendment No. One)

(Mark One)

☒ **ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the fiscal year ended December 31, 2011

or

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the transition period from to

Commission file number 000-49806

FIRST PACTRUST BANCORP, INC.

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(Exact name of registrant as specified in its charter)

Maryland (State or other jurisdiction of incorporation or organization)	04-3639825 (I.R.S. Employer Identification No.)
18500 Von Karman Ave, Suite 1100, Irvine, California (Address of Principal Executive Offices)	92612 (Zip Code)
Registrant's telephone number, including area code: (949) 236-5211	

Securities Registered Pursuant to Section 12(b) of the Act:

Common Stock, par value \$0.01 per share

(Title of class)

Nasdaq Global Market

(Name of each exchange on which registered)

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 Section 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 ☐.

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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, 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.

Large accelerated filer ☐ Accelerated filer ☒

Non-accelerated filer ☐ (Do not check if a smaller reporting company) Smaller reporting company ☒

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

The aggregate market value of the voting stock held by non-affiliates of the registrant, computed by reference to the closing price of such stock on the Nasdaq Global Market as of June 30, 2011, was \$142.4 million. (The exclusion from such amount of the market value of the shares owned by any person shall not be deemed an admission by the registrant that such person is an affiliate of the registrant.) As of March 15, 2012, there were issued and outstanding 11,660,444 shares of the Registrant's Common Stock.

DOCUMENTS INCORPORATED BY REFERENCE

PART III of Form 10-K Portions of the Proxy Statement for the Annual Meeting of Shareholders to be held during May 2012.

EXPLANATORY NOTE

The sole purpose of this amendment on Form 10-K/A to the Annual Report on Form 10-K of First PacTrust Bancorp, Inc. (the Company) for the year ended December 31, 2011 is to add Exhibit 21, Subsidiaries of the Registrant, to the list of exhibits in Item 15 of the Form 10-K, to make other minor changes to such list of exhibits, to file Exhibit 21 to the Form 10-K and to check the box on the Form 10-K cover page to indicate the Company's smaller reporting company status with respect to the Form 10-K (which box was inadvertently left unchecked on the cover page of the original Form 10-K). Aside from the inclusion with this amendment of new certifications required by Rules 13a-14(a) and 13a-14(b) under the Securities Exchange Act of 1934, as amended, no other change is being made to the original Form 10-K.

Item 15. Exhibits and Financial Statement Schedules

(a)(1)	Financial Statements: See Part II Item 8. Financial Statements and Supplementary Data	
(a)(2)	Financial Statement Schedule: All financial statement schedules have been omitted as the information is not required under the related instructions or is not applicable.	
(a)(3)	Exhibits	
2.1	Stock Purchase Agreement, dated as of June 3, 2011, by and among First PacTrust Bancorp, Inc. (sometimes referred to below as the Registrant or the Company), Gateway Bancorp, Inc. (Gateway), each of the stockholders of Gateway and the D & E Tarbell Trust, u/d/t dated February 19, 2002 (in its capacity as the Sellers Representative)	(a)
2.1A	Amendment No. 1, dated as of November 28, 2011, to Stock Purchase Agreement, dated as of June 3, 2011, by and among First PacTrust Bancorp, Inc., Gateway Bancorp, the Sellers named therein and the D & E Tarbell Trust, u/d/t dated February 19, 2002 (in its capacity as the Sellers Representative)	(a)(1)
2.2B	Amendment No. 2, dated as of February 24, 2012, to Stock Purchase Agreement, dated as of June 3, 2011, by and among First PacTrust Bancorp, Inc., Gateway Bancorp, the Sellers named therein and the D & E Tarbell Trust, u/d/t dated February 19, 2002 (in its capacity as the Sellers Representative)	(a)(2)
2.2	Agreement and Plan of Merger, dated as of August 30, 2011, by and between First PacTrust Bancorp, Inc. and Beach Business Bank, as amended by Amendment No. 1 thereto dated as of October 31, 2011	(b)
3.1	Articles of Incorporation of First PacTrust Bancorp, Inc.	(c)
3.2	Articles of Amendment to the Charter of First PacTrust Bancorp, Inc.	(d)
3.3	Articles supplementary to the Charter of First PacTrust Bancorp, Inc. containing the terms of First PacTrust Bancorp, Inc.'s Senior Non-Cumulative Perpetual Preferred Stock, Series A	(e)
3.4	Articles supplementary to the Charter of First PacTrust Bancorp, Inc. containing the terms of First PacTrust Bancorp, Inc.'s Class B Non-Voting Common Stock	(f)
3.5	Articles of Amendment to Articles Supplementary to the Charter of First PacTrust Bancorp, Inc. containing the terms of First PacTrust Bancorp, Inc.'s Class B Non-Voting Common Stock	(g)
3.6	Bylaws of First PacTrust Bancorp, Inc.	(h)
4.1	Warrant to purchase up to 240,000 shares of First PacTrust Bancorp, Inc. common stock originally issued on November 1, 2010	(f)
4.2	Warrant to purchase up to 1,395,000 shares of First PacTrust Bancorp, Inc. common stock originally issued on November 1, 2010	(f)
9.0	Voting Trust Agreement	None
10.1	Severance Agreement with Hans R. Ganz	(c)

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10.2	Severance Agreement with Melanie M. Yaptangco, formerly Stewart	(c)
10.3	Severance Agreement with James P. Sheehy	(c)
10.4	Severance Agreement with Regan J. Lauer (substantially identical to forms of Severance Agreements with Melanie M. Yaptangco and James P. Sheehy)	(c)
10.5	Form of Agreement to Modify Severance Benefits with each of Hans R. Ganz, James P. Sheehy, Melanie M. Yaptangco and Regan Lauer	(i)
10.6	Employment Agreement with Gregory A. Mitchell (including as exhibits thereto the forms of agreements for the restricted stock inducement grant and stock option inducement grant made to Mr. Mitchell pursuant to his Employment Agreement)	(f)
10.7	Employment Agreement with Richard Herrin (including as exhibits thereto the forms of agreements for the restricted stock inducement grant and stock option inducement grant made to Mr. Herrin pursuant to his Employment Agreement)	(j)
10.8	Employment Agreement with Matthew Bonaccorso (including as exhibits thereto the forms of agreements for the restricted stock inducement grant and stock option inducement grant made to Mr. Bonaccorso pursuant to his Employment Agreement)	(k)
10.9	Employment Agreement with Gaylin Anderson (including as exhibits thereto the forms of agreements for the restricted stock inducement grant and stock option inducement grant made to Mr. Anderson pursuant to his Employment Agreement)	(k)
10.10	Employment Agreement with Chang Liu (including as exhibits thereto the forms of agreements for the restricted stock inducement grant and stock option inducement grant made to Mr. Liu pursuant to his Employment Agreement)	(k)
10.11	Employment Agreement with Marito Domingo (including as exhibits thereto the forms of agreements for the restricted stock inducement grant and stock option inducement grant made to Mr. Domingo pursuant to his Employment Agreement)	(l)
10.12	Registrant's 2011 Omnibus Incentive Plan	(m)
10.12A	Form of Incentive Stock Option Agreement under 2011 Omnibus Incentive Plan	(p)
10.12B	Form of Non-Qualified Stock Option Agreement under 2011 Omnibus Incentive Plan	(p)
10.12C	Form of Restricted Stock Agreement under 2011 Omnibus Incentive Plan	(p)
10.13	Registrant's 2003 Stock Option and Incentive Plan	(n)
10.14	Registrant's 2003 Recognition and Retention Plan	(n)
10.15	Small Business Lending Fund-Securities Purchase Agreement, dated August 30, 2011, between First PacTrust Bancorp, Inc. and the Secretary of the United States Treasury	(e)
11.0	Statement regarding computation of per share earnings	None
12.0	Statements regarding computation of ratios	None
13.0	Annual Report to Security Holders	None
14.0	Code of Ethics	(o)

16.0	Letter re change in certifying accountant	None
18.0	Letter regarding change in accounting principles	None
21.0	Subsidiaries of the Registrant	21.0
22.0	Published Report regarding matters submitted to vote of security holders	None
23.0	Consent of Crowe Horwath LLP	(p)
24.0	Power of Attorney	(q)
31.1	Rule 13(a)-14(a) Certification (Chief Executive Officer)	31.1
31.2	Rule 13(a)-14(a) Certification (Chief Financial Officer)	31.2
31.3	Rule 13(a)-14(a) Certification (Principal Accounting Officer)	31.3
32.0	Rule 13(a)-14(b) and 18 U.S.C. 1350 Certification	32.0
101.0	The following financial statements and footnotes from the Registrant's Annual Report on Form 10-K for the year ended December 31, 2011 formatted in Extensible Business Reporting Language (XBRL): (i) Consolidated Statements of Financial Condition; (ii) Consolidated Statements of Operations; (iii) Consolidated Statements of Shareholder's Equity; (iv) Consolidated Statements of Cash Flows; and (v) the Notes to Consolidated Financial Statements, tagged as blocks of text.	101.0

- (a) Filed as an exhibit to the Registrant's Current Report on Form 8-K filed on June 9, 2011 and incorporated herein by reference.
- (a)(1) Filed as an exhibit to the Registrant's Current Report on Form 8-K filed on December 1, 2011 and incorporated herein by reference.
- (a)(2) Filed as an exhibit to the Registrant's Current Report on Form 8-K filed on February 28, 2012 and incorporated herein by reference.
- (b) Filed as Appendix A to the proxy statement/prospectus included in the Registrant's Registration Statement on Form S-4 filed on November 1, 2011 and incorporated herein by reference.
- (c) Filed as an exhibit to the Registrant's Registration Statement on Form S-1 filed on March 28, 2002 and incorporated herein by reference.
- (d) Filed as an exhibit to the Registrant's Current Report on Form 8-K filed on March 4, 2011 and incorporated herein by reference.
- (e) Filed as an exhibit to the Registrant's Current Report on Form 8-K filed on August 30, 2011 and incorporated herein by reference.
- (f) Filed as an exhibit to the Registrant's Current Report on Form 8-K/A filed on November 16, 2010 and incorporated herein by reference.
- (g) Filed as an exhibit to the Registrant's Current Report on Form 8-K filed on May 12, 2011 and incorporated herein by reference.
- (h) Filed as an exhibit to the Registrant's Current Report on Form 8-K filed on February 28, 2011 and incorporated herein by reference.
- (i) Filed as an exhibit to the Registrant's Current Report on Form 8-K/A filed on December 20, 2010 and incorporated herein by reference.
- (j) Filed as an exhibit to the Registrant's Current Report on Form 8-K filed on November 19, 2010 and incorporated herein by reference.
- (k) Filed as an exhibit to the Company's Annual report on Form 10-K for the year ended December 31, 2010 and incorporated herein by reference.
- (l) Filed as an exhibit to the Registrant's Current Report on Form 8-K filed on May 10, 2011 and incorporated herein by reference.
- (m) Filed as an appendix to the Registrant's definitive proxy statement filed on April 25, 2011 and incorporated herein by reference.
- (n) Filed as an appendix to the Registrant's definitive proxy statement filed on March 21, 2003 and incorporated herein by reference.
- (o) Filed as an exhibit to the Registrant's Annual Report on Form 10-K for the year ended December 31, 2003 and incorporated herein by reference.

- (p) Filed as an exhibit to the original filing of the Registrant's Annual Report on Form 10-K for the year ended December 31, 2011 and incorporated herein by reference.
- (q) Contained on signature page of the original filing of the Registrant's Annual Report on Form 10-K for the year ended December 31, 2011 and incorporated herein by reference.

SIGNATURE

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.

FIRST PACTRUST BANCORP, INC.

Date: April 17, 2012

By: */s/* GREGORY A. MITCHELL
Gregory A. Mitchell, President and Chief Executive Officer
(Duly Authorized Representative)