

FEDERAL DEPOSIT INSURANCE CORPORATION

Washington, D.C. 20429

FORM 8-K

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

Date of Report (Date of earliest event reported): January 28, 2021

FIRST REPUBLIC BANK

(Exact name of registrant as specified in its charter)

California
(State or other jurisdiction
of incorporation)

80-0513856
(I.R.S. Employer
Identification No.)

111 Pine Street, 2nd Floor
San Francisco, CA 94111
(Address, including zip code, of principal executive office)

Registrant's telephone number, including area code: (415) 392-1400

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act:

<u>Title of each class</u>	<u>Trading Symbol(s)</u>	<u>Name of each exchange on which registered</u>
Common Stock, \$0.01 par value	FRC	New York Stock Exchange
Depository Shares, Each Representing a 1/40th Interest in a Share of 5.50% Noncumulative Perpetual Series G Preferred Stock	FRC-PrG	New York Stock Exchange
Depository Shares, Each Representing a 1/40th Interest in a Share of 5.125% Noncumulative Perpetual Series H Preferred Stock	FRC-PrH	New York Stock Exchange
Depository Shares, Each Representing a 1/40th Interest in a Share of 5.50% Noncumulative Perpetual Series I Preferred Stock	FRC-PrI	New York Stock Exchange
Depository Shares, Each Representing a 1/40th Interest in a Share of 4.70% Noncumulative Perpetual Series J Preferred Stock	FRC-PrJ	New York Stock Exchange
Depository Shares, Each Representing a 1/40th Interest in a Share of 4.125% Noncumulative Perpetual Series K Preferred Stock	FRC-PrK	New York Stock Exchange

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Item 5.03 Amendment to Articles of Incorporation or Bylaws.

As previously reported, on January 28, 2021, First Republic Bank (the “Bank”) priced a public offering (the “Offering”) of 29,900,000 depository shares (including 3,900,000 depository shares subject to the underwriters’ option to purchase additional depository shares), each representing 1/40th interest in a share of its 4.250% Noncumulative Perpetual Series L Preferred Stock, \$0.01 par value per share, with a liquidation preference of \$1,000 per share (the “Series L Preferred Stock”). On January 28, 2021, the Bank filed a Certificate of Determination (the “Certificate of Determination”) with the Secretary of State of the State of California setting forth the rights, privileges, preferences and restrictions of the Series L Preferred Stock. The Certificate of Determination is attached hereto as Exhibit 3.1 and is incorporated by reference herein.

Item 8.01 Other Events.

On February 1, 2021, the underwriters’ exercised their option in full to purchase up to 3,900,000 additional depository shares. The Bank expects to complete the Offering on or about February 9, 2021, subject to the satisfaction of customary closing conditions.

This Current Report on Form 8-K contains forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. Statements about the Bank’s expectations, beliefs, plans, predictions, forecasts, objectives, assumptions or future events or performance are not historical facts and may be forward-looking. These statements are often, but not always, made through the use of words or phrases such as “anticipates,” “believes,” “can,” “could,” “may,” “predicts,” “potential,” “should,” “will,” “estimates,” “plans,” “projects,” “continuing,” “ongoing,” “expects,” “intends” and similar words or phrases. Accordingly, these statements are only predictions and involve estimates, known and unknown risks, assumptions and uncertainties that could cause actual results to differ materially from those expressed in them. All forward-looking statements are necessarily only estimates of future results, and there can be no assurance that actual results will not differ materially from expectations, and, therefore, you are cautioned not to place undue reliance on such statements. Any forward-looking statements are qualified in their entirety by reference to the factors discussed in the section titled “Risk Factors” in the Bank’s offering circular relating to the Offering, including the documents incorporated by reference therein, and other risks described in documents subsequently filed by the Bank from time to time under the Securities Exchange Act of 1934, as amended. Further, any forward-looking statement speaks only as of the date on which it is made, and the Bank undertakes no obligation to update any forward-looking statement to reflect events or circumstances after the date on which the statement is made or to reflect the occurrence of unanticipated events.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

Exhibit 3.1	Certificate of Determination for the Bank’s 4.250% Noncumulative Perpetual Series L Preferred Stock, par value \$0.01 per share.
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SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, as amended, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Date: February 3, 2021

First Republic Bank

By: /s/ Michael J. Roffler
Name: Michael J. Roffler
Title: Executive Vice President and
Chief Financial Officer

CERTIFICATE OF DETERMINATION

FIRST REPUBLIC BANK

4.250% NONCUMULATIVE PERPETUAL SERIES L PREFERRED STOCK

Pursuant to Section 401 of the Corporations Code of the State of California, we, Edward J. Dobranski, the Secretary and General Counsel and an Executive Vice President of First Republic Bank, a California state-chartered bank (the “*Bank*”), and Michael J. Roffler, the Chief Financial Officer and an Executive Vice President of the Bank, hereby certify as follows:

1. That by resolutions of the Board of Directors of the Bank (the “*Board*”) dated January 15 and 22, 2021, and by resolution of a committee thereof dated January 28, 2021, the Board authorized a series of 747,500 shares of the Bank’s preferred stock, par value \$0.01 per share (“*Preferred Stock*”), designated as the 4.250% Noncumulative Perpetual Series L Preferred Stock (“*Series L Preferred Stock*”).

2. As of the date hereof, no shares of Series L Preferred Stock are outstanding, and no shares of Series L Preferred Stock have been issued.

3. Pursuant to the authority conferred upon the Board by the Restated Articles of Incorporation and applicable law, the following resolution was adopted by the Board, acting through a committee thereof, on January 28, 2021, setting forth the rights, privileges, preferences and restrictions of the Series L Preferred Stock:

RESOLVED, that the Board, pursuant to Article Third of the Bank’s Restated Articles of Incorporation, hereby authorizes the creation of a series of Preferred Stock of the Bank out of the authorized but unissued shares of the Preferred Stock of the Bank, such series to be designated 4.250% Noncumulative Perpetual Series L Preferred Stock, to consist of 747,500 shares, par value \$0.01 per share, none of which are currently outstanding, the rights, privileges, preferences and restrictions of which shall be (in addition to those set forth in the Bank’s Restated Articles of Incorporation, as amended) as follows:

Section 1. *Dividends.*

(a) Payment of Dividends. Holders of Series L Preferred Stock shall be entitled to receive, when, as and if authorized and declared by the Board (which shall include any authorized committee thereof), out of funds of the Bank legally available therefor, cash dividends at an annual rate of 4.250% of the \$1,000.00 liquidation preference per share (equivalent to \$42.50 per share per annum) (the “*Dividend Rate*”), and no more. Such cash dividends shall be noncumulative and payable, if authorized and declared, quarterly in arrears on each January 30, April 30, July 30 and October 30 (each such date, a “*Dividend Payment Date*”), or, if such day is not a day other than a Saturday, Sunday or day on which banking institutions in New York, New York are authorized or obligated pursuant to legal requirements or executive order to be closed (each such day, a “*Business Day*”), on the immediately preceding Business Day, without adjustment. The initial Dividend Payment Date will be April 30, 2021. The amount of the dividend per share of Series L Preferred Stock on each Dividend Payment Date will be equal to the Dividend Rate multiplied by 0.25, then multiplied by \$1,000 (with the result rounded upward, if necessary, to the nearest 0.00001 of 1%), except for the initial Dividend Payment Date, as described in the next paragraph. Each authorized and declared dividend shall be payable to holders of record of the Series L Preferred Stock as they appear on the stock books of the Bank at the close of business on such record date, not more than 60 calendar days nor less than 10 calendar days preceding the Dividend Payment Date therefor, as may be determined by the Board (each such date, a “*Record Date*”); *provided, however*, that if the date fixed for redemption of any of the Series L Preferred Stock occurs after a dividend is authorized and declared but before it is paid, such dividend shall be paid as part of the redemption price to the person to whom the redemption price is paid. Quarterly dividend periods (each, a “*Dividend Period*”) shall commence on and include each Dividend Payment Date, and shall end on and exclude the following Dividend Payment Date (except that the first Dividend Period (i) for shares of Series L Preferred Stock issued in the initial issuance of Series L Preferred Stock shall commence on and include the initial date of issuance of shares of Series L Preferred Stock (the “*Issue Date*”) and (ii) for shares of Series L Preferred Stock issued after the Issue Date shall commence on and include the later of the Issue Date and the first day of the quarterly period in which such later date of issue occurs).

The amount of dividends payable for the Dividend Period commencing on the Issue Date shall be computed on the basis of the number of days elapsed in the Dividend Period using a 360-day year composed of twelve 30-day months.

Holders of the Series L Preferred Stock shall not be entitled to any interest, or any sum of money in lieu of interest, in respect of any dividend payment or payments on the Series L Preferred Stock authorized and declared by the Board that may be unpaid. Any dividend payment made on the Series L Preferred Stock shall first be credited against the earliest authorized and declared but unpaid cash dividend with respect to the Series L Preferred Stock.

(b) Dividends Noncumulative. The right of holders of Series L Preferred Stock to receive dividends is noncumulative. Accordingly, except as hereinafter expressly provided, if the Board does not authorize or declare a dividend payable in respect of any Dividend Period, holders of Series L Preferred Stock shall have no right to receive a dividend in respect of such Dividend Period and the Bank shall have no obligation to pay a dividend in respect of such Dividend Period, whether or not dividends have been or are authorized and declared payable in respect of any prior or subsequent Dividend Period.

(c) Priority as to Dividends; Limitations on Dividends on Junior Stock. If full dividends on the Series L Preferred Stock for any completed Dividend Period shall not have been declared and paid, or declared and a sum sufficient for the payment thereof shall not have been set apart for such payments, no dividends or distributions shall be authorized, declared or paid or set aside for payment (other than as provided in the second paragraph of this Section 1(c)) with respect to the common stock or any other classes or series of stock of the Bank now or hereafter authorized, issued or outstanding that expressly provide that they are junior to the Series L Preferred Stock as to dividends or amounts distributed upon liquidation, dissolution or winding up of the affairs of the Bank (together with the common stock, "*Junior Stock*"), other than (x) dividends payable on Junior Stock in Junior Stock and (y) cash in lieu of fractional shares in connection with any such dividend, nor shall any Junior Stock or any stock ranking on parity with the Series L Preferred Stock as to dividends or amounts upon liquidation, dissolution or winding up of the affairs of the Bank ("*Parity Stock*") be redeemed, purchased or otherwise acquired for any consideration (or any monies to be paid to or made available for a sinking fund for the redemption of any such stock) by the Bank (except (x) by conversion into or exchange for other Junior Stock or (y) by the tendering of Junior Stock in payment for the exercise of stock options under our equity incentive plans then in effect), until such time as dividends on all outstanding Series L Preferred Stock have been authorized, declared and paid, or a sum sufficient for the payment thereof has been set apart for payment, as of the Dividend Payment Date for the current Dividend Period.

When dividends are not paid in full (or a sum sufficient for such full payment is not so set apart) for any Dividend Period on the Series L Preferred Stock, all dividends declared on the Series L Preferred Stock and any other series ranking on a parity as to dividends with the Series L Preferred Stock shall be declared *pro rata* so that the amount of dividends declared per share on the Series L Preferred Stock and each such other series of capital stock shall in all cases bear to each other the same ratio that full dividends, for the then current Dividend Period, per share of Series L Preferred Stock (which shall not include any accumulation in respect of unpaid dividends for prior Dividend Periods) and full dividends, including required or permitted accumulations, if any, on the stock of each such other series ranking on a parity as to dividends with the Series L Preferred Stock bear to each other.

(d) Dividend Reference. Any reference to “*dividends*” or “*distributions*” in this Section 1 shall not be deemed to include any distribution made in connection with any voluntary or involuntary dissolution, liquidation or winding up of the Bank.

Section 2. *Redemption*.

(a) Optional Redemption. Subject to the further terms and conditions provided herein, the Bank, at its option, subject to the approval of the “appropriate Federal banking agency” with respect to the Bank (as defined in Section 3(q) of the Federal Deposit Insurance Act or any successor provision) (the “*Appropriate Federal Banking Agency*”), may, upon notice given as provided in Section 2(d), redeem shares of the Series L Preferred Stock at the time outstanding in whole or in part, from time to time, on or after March 30, 2026, at a cash redemption price equal to the sum of (i) \$1,000.00 per share plus (ii) the amount of any declared and unpaid dividends for any Dividend Period before the Dividend Period in which the redemption occurs, plus (iii) the amount of the accrued and unpaid dividends thereon (whether or not declared) from the beginning of the Dividend Period in which the redemption occurs to, but excluding, the date of redemption, computed on the basis of the number of days elapsed in the Dividend Period using a 360-day year comprised of twelve 30-day months (the “*Redemption Price*”).

(b) Regulatory Event Redemption. Notwithstanding Section 2(a), the Bank, at its option, subject to the approval of the Appropriate Federal Banking Agency, may redeem all (but not less than all) of the shares of Series L Preferred Stock at the time outstanding, upon notice given as provided in section 2(d), at the Redemption Price at any time within 90 days following the Bank’s good faith

determination that, as a result of (i) any amendment to, or change in, the laws or regulations of the United States or any political subdivision of or in the United States that is enacted or becomes effective after the Issue Date; (ii) any proposed change in such laws or regulations that is announced after the Issue Date; or (iii) any official administrative decision or judicial decision or administrative action or other official pronouncement interpreting or applying those laws or regulations that is announced after the Issue Date, there is more than an insubstantial risk that the Bank will not be entitled to treat the full liquidation value of the shares of Series L Preferred Stock then outstanding as “Tier 1 Capital” (or its equivalent), as defined at 12 C.F.R. § 325.2(v) of the regulations of the Federal Deposit Insurance Corporation, or any successor regulation of the Federal Deposit Insurance Corporation (or, as and if applicable, the corresponding regulations of any successor Appropriate Federal Banking Agency), as then in effect and applicable, for as long as any share of Series L Preferred Stock is outstanding.

(c) Partial Redemption. In the event that fewer than all the outstanding shares of Series L Preferred Stock are to be redeemed, the number of shares of Series L Preferred Stock to be redeemed shall be determined by the Board, and the shares to be redeemed shall be determined by lot or *pro rata* as may be determined by the Board.

Unless full dividends on the Series L Preferred Stock have been or contemporaneously are declared and paid or declared and a sum sufficient for the payment thereof has been set apart for payment for the then current Dividend Period, no Series L Preferred Stock shall be redeemed unless all outstanding Series L Preferred Stock are redeemed, and the Bank shall not purchase or otherwise acquire any Series L Preferred Stock; *provided, however*, that the Bank may purchase or acquire Series L Preferred Stock pursuant to a purchase or exchange offer made on the same terms to holders of all outstanding Series L Preferred Stock.

(d) Notice of Redemption. A notice by the Bank pursuant to this Section 2 shall be sufficiently given if in writing and mailed, first class postage prepaid, to each record holder of Series L Preferred Stock at the holder’s address as it appears in the records of the Bank’s transfer agent. In any case where notice is given by mail, neither the failure to mail such notice nor any defect in the notice to any particular holder shall affect the sufficiency of such notice to any other holder. Any notice mailed to a holder in the manner described above shall be deemed given on the date mailed, whether or not the holder actually receives

the notice. A notice of redemption shall be given not less than 30 days and not more than 60 days prior to the date of redemption specified in the notice, and shall specify (i) the redemption date, (ii) the number of shares of Series L Preferred Stock to be redeemed, (iii) the Redemption Price and (iv) the manner in which holders of Series L Preferred Stock called for redemption may obtain payment of the Redemption Price in respect of those shares. Notwithstanding anything to the contrary in this paragraph, if the Series L Preferred Stock or any depositary shares representing interests in the Series L Preferred Stock are issued in book-entry form through The Depository Trust Company or any other similar facility, notice of redemption may be given to the holders of Series L Preferred Stock at such time and in any manner permitted by such facility.

(e) Effect of Redemption. Any shares of Series L Preferred Stock that are duly called for redemption pursuant to this Section 2 shall be deemed no longer to be outstanding for any purpose from and after that time that the Bank shall have irrevocably deposited with the paying agent identified in the notice of redemption funds in an amount equal to the aggregate redemption price. From and after that time, the holders of the Series L Preferred Stock so called for redemption shall have no further rights as shareholders of the Bank and in lieu thereof shall have only the right to receive the Redemption Price, without interest.

Series L Preferred Stock redeemed pursuant to this Section 2 or purchased or otherwise acquired for value by the Bank shall, after such acquisition, have the status of authorized and unissued shares of Preferred Stock and may be reissued by the Bank at any time as shares of any series of Preferred Stock other than as Series L Preferred Stock.

Section 3. *Liquidation Rights.*

(a) Liquidation Value. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Bank, the holders of the Series L Preferred Stock at the time outstanding will be entitled to be paid out of assets of the Bank available for distribution to shareholders, before any distribution of assets is made to holders of Junior Stock, liquidating distributions in an amount equal to the sum of (i) \$1,000.00 per share plus (ii) the amount of any declared and unpaid dividends for any Dividend Period before the Dividend Period in which the liquidation occurs, plus (iii) the amount of the declared and unpaid dividends thereon from the beginning of the Dividend Period in which the liquidation occurs to the date of liquidation, computed on the basis of the number

of days elapsed in the Dividend Period using a 360-day year comprised of twelve 30-day months.

After payment of the full amount of the liquidating distributions to which they are entitled, pursuant to the preceding paragraph, the holders of Series L Preferred Stock will have no right or claim to any of the remaining assets of the Bank.

(b) Partial Payment. In the event that, upon any such voluntary or involuntary liquidation, dissolution or winding up, the available assets of the Bank are insufficient to pay the amount of the liquidating distributions on all outstanding shares of Series L Preferred Stock and the corresponding amounts payable on all shares of other classes or series of capital stock of the Bank ranking on a parity with the Series L Preferred Stock in the distribution of assets upon any liquidation, dissolution or winding up of the affairs of the Bank, then the holders of the Series L Preferred Stock and such other classes or series of capital stock ranking on parity with the Series L Preferred Stock shall share ratably in any such distribution of assets in proportion to the full liquidating distributions to which they otherwise respectively would be entitled.

(c) Consolidation, Merger or Sale of Assets not Liquidation. For the purposes of this Section 3, the merger or consolidation of the Bank with or into any other entity or by another entity with or into the Bank, or the sale, lease, conveyance, exchange or transfer (for cash, shares of stock, securities or other consideration) of all or substantially all of the property or business of the Bank, shall not be deemed to constitute the liquidation, dissolution or winding up of the Bank. If the Bank enters into any merger or consolidation transaction with or into any other entity and the Bank is not the surviving entity in such transaction, the Series L Preferred Stock may be converted into shares of the surviving or successor corporation or the direct or indirect parent of the surviving or successor corporation having terms identical to the terms of the Series L Preferred Stock set forth herein.

Section 4. *Voting Rights.*

(a) General. Except as expressly provided in this Section 4 and as required by law, holders of Series L Preferred Stock shall have no voting rights. When the holders of Series L Preferred Stock are entitled to vote, each share of Series L Preferred Stock will be entitled to one vote.

(b) Right to Elect Directors.

(1) If at any time the Bank has failed to pay or set aside for payment scheduled dividends (whether or not declared) in an aggregate amount equal to at least six full quarterly dividend payments (whether or not consecutive) on the Series L Preferred Stock, the holders of the Series L Preferred Stock, voting as a single class together with the holders of each other series of Preferred Stock of the Bank then outstanding ranking on a parity with Series L Preferred Stock as to payment of dividends and having voting rights equivalent to those provided in this Section 4(b) for the Series L Preferred Stock (“*Voting Parity Stock*”), will be entitled to elect two directors (the “*Preferred Directors*”) to serve on the Board, and the holders of all then outstanding shares of capital stock of the Bank otherwise entitled under the Bank’s Restated Articles of Incorporation, as the same may be amended or restated from time to time, or by law to elect directors (“*Voting Stock*”), shall be entitled to elect the remaining number of authorized directors. The Board shall at no time have more than two Preferred Directors.

(2) If, at any time after the right to elect directors is vested in the Series L Preferred Stock, the holders of the Series L Preferred Stock and any Voting Parity Stock call a special meeting of shareholders for the election of directors, and at the time the special meeting is called, the election of the Preferred Directors to the Board would cause the number of directors to exceed the maximum number authorized under the Bank’s Restated Articles of Incorporation or Bylaws, each as amended from time to time, then the holders of the Series L Preferred Stock and any Voting Parity Stock, voting as a single class, and the holders of the Voting Stock shall each elect directors at the special meeting as provided in Section 4(b)(1), the terms of office of all persons who were directors immediately prior to the special meeting shall terminate, and the directors elected by the holders of the Series L Preferred Stock and any Voting Parity Stock, as a single class, and the directors elected by the holders of the Voting Stock shall constitute the directors of the Bank until the next annual meeting.

If, at any time after the right to elect directors is vested in the Series L Preferred Stock, the holders of the Series L Preferred Stock and any Voting Parity Stock call a special meeting of shareholders for the election of directors, and at the time the special meeting is called, the election of the Preferred Directors to the Board would not cause the

number of directors to exceed the maximum number authorized under the Bank's Restated Articles of Incorporation or Bylaws, each as amended from time to time, then the terms of office of all persons who were directors immediately prior thereto shall continue until the next annual meeting.

(3) Whenever all dividends on the Series L Preferred Stock and any other Voting Parity Stock have been paid in full for four consecutive dividend periods (or otherwise for at least one year), then the right of the holders of Series L Preferred Stock to elect the Preferred Directors will cease (but subject always to the same provisions for the vesting of these voting rights in the case of any similar non-payment of dividends in respect of future dividend periods), and if no other Voting Parity Stock is then entitled to elect directors, the terms of office of all Preferred Directors will immediately terminate.

(c) Removal and Replacement of Preferred Directors. Except as otherwise provided for by applicable law, any Preferred Director may be removed only by the vote of the holders of record of the outstanding Series L Preferred Stock entitled to vote, voting together as a single class with the holders of all other Voting Parity Stock, at a meeting of the Bank's shareholders, or of the holders of the shares of Series L Preferred Stock and all other Voting Parity Stock, called for that purpose. As long as the right to elect Preferred Directors is continuing, (i) any vacancy in the office of any Preferred Director may be filled by the vote of the holders of record of the outstanding Series L Preferred Stock entitled to vote, voting together as a single class with the holders of all other Voting Parity Stock, at a meeting of the Bank's shareholders, or of the holders of the Series L Preferred Stock and all other Voting Parity Stock, called for that purpose, and (ii) in the case of the removal of any Preferred Director, the vacancy may be filled by the vote of the holders of the outstanding Series L Preferred Stock entitled to vote, voting together as a single class with the holders of all other Voting Parity Stock, at the same meeting at which such removal shall be voted. Until the time that any such vacancy is filled at a shareholder meeting as provided above, a successor shall be elected by the Board to serve until the next such shareholder meeting upon the nomination of the then remaining Preferred Director.

(d) Certain Voting Rights. The affirmative vote or written consent of the holders of at least two-thirds of the outstanding shares of each series of Preferred Stock of the Bank, including the Series L Preferred Stock, will be

required (i) to create any class or series of stock which shall, as to dividends or distribution of assets, rank prior to any outstanding series of Preferred Stock of the Bank (other than a series which shall not have any right to object to such creation) or (ii) to alter or change the provisions of the Bank's Restated Articles of Incorporation (including the terms of the Series L Preferred Stock) or Bylaws, including by consolidation or merger, so as to adversely affect the voting powers, preferences or special rights of the holders of a series of Preferred Stock of the Bank; *provided, however*, that if such amendment shall not adversely affect all series of Preferred Stock of the Bank, such amendment need only be approved by at least two-thirds of the holders of shares of each series of Preferred Stock adversely affected thereby. Notwithstanding the foregoing, an alteration or change to the provisions of the Bank's Restated Articles of Incorporation or Bylaws shall not be deemed to affect the voting powers, preferences or special rights of the holders of the Series L Preferred Stock, provided that: (x) the Series L Preferred Stock remain outstanding with the terms thereof unchanged; or (y) the Series L Preferred Stock are converted in a merger or consolidation transaction into shares of the surviving or successor corporation or the direct or indirect parent of the surviving or successor corporation having terms identical to the terms of the Series L Preferred Stock set forth herein. Additionally, (i) any increase in the amount of the authorized Common Stock or Preferred Stock or the creation or issuance of any other Junior Stock or Parity Stock and (ii) any change to the number of directors or number or classes of directors shall not, except as provided by law, be deemed to adversely affect the voting powers, preferences or special rights of the holders of the Series L Preferred Stock.

Section 5. *Ranking.*

(a) Ranking with Respect to Distributions upon Liquidation. With respect to rights upon liquidation, dissolution or winding up of the Bank, the Series L Preferred Stock shall rank: (i) senior to the Common Stock and to all other classes or series of stock of the Bank now or hereafter authorized, issued or outstanding that expressly provide that they are junior to the Series L Preferred Stock as to distributions upon liquidation, dissolution or winding up, (ii) on a parity with the 5.50% Noncumulative Perpetual Series G Preferred Stock, the 5.125% Noncumulative Perpetual Series H Preferred Stock, the 5.50% Noncumulative Perpetual Series I Preferred Stock, the 4.70% Noncumulative Perpetual Series J Preferred Stock, the 4.125% Noncumulative Perpetual Series K Preferred Stock and all other classes or series of Preferred Stock of the Bank now or hereafter authorized, issued or outstanding that expressly provide that they will rank on parity with the Series L Preferred Stock as to distributions upon liquidation, dissolution or winding up, and (iii) junior to all other classes or series

of Preferred Stock of the Corporation now or hereafter authorized, issued or outstanding that expressly provide that they are senior to the Series L Preferred Stock as to distributions upon liquidation, dissolution or winding up.

(b) Ranking with Respect to Dividends. With respect to dividends, the Series L Preferred Stock shall rank: (i) senior to the Common Stock and to all other classes or series of stock of the Bank now or hereafter authorized, issued or outstanding that expressly provide that they are junior to the Series L Preferred Stock with respect to dividends, (ii) on a parity with the 5.50% Noncumulative Perpetual Series G Preferred Stock, the 5.125% Noncumulative Perpetual Series H Preferred Stock, the 5.50% Noncumulative Perpetual Series I Preferred Stock, the 4.70% Noncumulative Perpetual Series J Preferred Stock, the 4.125% Noncumulative Perpetual Series K Preferred Stock and all other classes or series of Preferred Stock of the Bank now or hereafter authorized, issued or outstanding that expressly provide that they will rank on parity with the Series L Preferred Stock with respect to dividends, and (iii) junior to all other classes or series of Preferred Stock of the Corporation now or hereafter authorized, issued or outstanding that expressly provide that they are senior to the Series L Preferred Stock with respect to dividends.

Section 6. *No Conversion Rights.* The holders of Series L Preferred Stock shall not have any rights to convert such shares into shares of any other class or series of stock or into any other securities of, or any interest or property in, the Bank.

Section 7. *No Sinking Fund.* No sinking fund shall be established for the retirement or redemption of Series L Preferred Stock.

Section 8. *Preemptive or Subscription Rights.* No holder of Series L Preferred Stock of the Bank shall, as such holder, have any preemptive right to purchase or subscribe for any additional shares of stock of the Bank or any other security of the Bank that it may issue or sell.

Section 9. *No Other Rights.* The Series L Preferred Stock shall not have any designations, preferences or relative, participating, optional or other special rights except as set forth in the Bank's Restated Articles of Incorporation or as otherwise required by law.

Section 10. *Compliance with Applicable Law.* Declaration by the Board and payment by the Bank of dividends to holders of the Series L Preferred

Stock and repurchase, redemption or other acquisition by the Bank (or another entity as provided in subsection (a) of Section 3 hereof) of Series L Preferred Stock shall be subject in all respects to any and all restrictions and limitations placed on dividends, redemptions or other distributions by the Bank (or any such other entity) under (i) laws, regulations and regulatory conditions or limitations applicable to or regarding the Bank (or any such other entity) from time to time and (ii) agreements with federal or state banking authorities with respect to the Bank (or any such other entity) from time to time in effect.

IN WITNESS WHEREOF, we the undersigned have caused this Certificate of Determination to be executed as of this 28th day of January, 2021. We further declare under penalty of perjury under the laws of the State of California that the matters set forth in this certificate are true and correct of our own knowledge.

By: /s/ Edward J. Dobranski
Name: Edward J. Dobranski
Title: Executive Vice President,
Secretary and General Counsel

By: /s/ Michael J. Roffler
Name: Michael J. Roffler
Title: Executive Vice President and
Chief Financial Officer