#2011-035

UNITED STATES OF AMERICA
DEPARTMENT OF THE TREASURY
OFFICE OF THE COMPTROLLER OF THE CURRENCY

IN THE MATTER OF:	)	AA-EC-11-28
	)	
FIRST NATIONAL BANK OF DAVIS	)	
DAVIS, OKLAHOMA	)	

PROMPT CORRECTIVE ACTION DIRECTIVE

WHEREAS, First National Bank of Davis in Davis, Oklahoma (“Bank”) is a “significantly undercapitalized” bank pursuant to 12 U.S.C. § 1831o and 12 C.F.R. Part 6.

WHEREAS, on March 2, 2011, the Director for Special Supervision (“Director”) notified the Bank that it was “critically undercapitalized” pursuant to 12 U.S.C. § 1831o and 12 C.F.R. Part 6;

WHEREAS, the Comptroller of the Currency (“Comptroller”) is authorized, pursuant to 12 U.S.C. § 1831o(e)(5), to take certain supervisory actions against significantly undercapitalized banks; and

WHEREAS, the Comptroller finds it necessary in order to carry out the purpose of 12 U.S.C. § 1831o to issue this Prompt Corrective Action Directive (“Directive”) pursuant to 12 C.F.R. § 6.21(a)(2) requiring the Bank to immediately follow proscriptions and take actions;

NOW THEREFORE, pursuant to the authority in 12 U.S.C. § 1831o, the Comptroller hereby issues this Directive.

ARTICLE I

JURISDICTION

(1) The Bank is a national banking association chartered and examined by the Comptroller pursuant to the National Bank Act of 1864, as amended, 12 U.S.C. § 1, *et seq.*

(2) The Office of the Comptroller of the Currency is "the appropriate Federal banking agency" regarding the Bank, pursuant to 12 U.S.C. §§ 1813(q) and 1831o.

(3) The Bank is an "insured depository institution" within the meaning of 12 U.S.C. § 1831o.

(4) This Directive constitutes a final order under 12 U.S.C. § 1831o and is enforceable under 12 U.S.C. § 1818(i).

(5) A violation of this Directive constitutes a violation of a final order under § 1831o and is subject to the assessment of civil money penalties under 12 U.S.C. § 1818(i)(2)(A).

ARTICLE II

DISMISSAL: CHIEF EXECUTIVE OFFICER, PRESIDENT, AND DIRECTOR

(6) The Bank shall immediately dismiss W.A. Moore, Jr. from the positions of President of the Bank, Chief Executive Officer, and Director of the Bank's board of directors ("Board"), pursuant to 12 U.S.C. § 1831o(f)(2) and 12 C.F.R. § 6.21(a)(2).

(7) Following the Bank's dismissal of Mr. Moore, the Bank's Board shall ensure that Mr. Moore immediately relinquishes all Bank-owned or Bank-issued property in his possession. The Board shall provide Mr. Moore with twenty-four (24) hours to relinquish any Bank-owned or issued property currently located at any distant location. Such Bank-owned or Bank-issued property may include, but is not limited to: vehicles and keys; keys to all Bank premises; credit cards; computers and disc drives; printers; fax machines; photocopiers; cell phones; audiovisual

equipment; other electronic devices; supplies; and documents which are originals and/or copies of the Bank's books and records.

(8) Immediately following the Bank's dismissal of Mr. Moore, the Board shall also take immediate action to eliminate Mr. Moore’s access to Bank data systems, books, and records, and to implement procedures to prevent Mr. Moore from removing Bank-owned or Bank-issued property. Mr. Moore may, however, retain access to his personal Bank accounts to the same extent granted to other Bank customers.

(9) The Board shall immediately terminate or cancel any benefits provided to Mr. Moore by the Bank in his position as President, CEO, or Director. The Bank shall not make any payments of severance or remuneration to, or on behalf of, Mr. Moore, unless approved pursuant to 12 C.F.R. Part 359.

(10) The Bank shall make no indemnification payments to, or on behalf of, Mr. Moore, unless such payments fully comply with 12 U.S.C. § 1828(k)(5) and 12 C.F.R. Part 359. Pursuant to 12 U.S.C. § 1831o(f)(2)(J), the Bank shall not cause any indemnification payments to be made to, or on behalf of, Mr. Moore, without obtaining the prior written supervisory non-objection from the Director. Any request for the Director’s supervisory non-objection shall include a legal opinion from independent counsel setting forth the basis under which such indemnification payments fully satisfy the requirements of 12 U.S.C. § 1828(k)(5) and 12 C.F.R. Part 359.

(11) The Bank shall not employ, or enter into or renew contracts or engagements with either Mr. Moore or any company affiliated with Mr. Moore, to perform any services for, or on behalf of, the Bank without obtaining the prior written supervisory non-objection from the Director.

ARTICLE III

APPOINTMENT OF NEW PRESIDENT AND DIRECTOR

(12) Within seventy-two (72) hours of the Bank's dismissal of Mr. Moore, the Board shall identify and obtain the prior written supervisory non-objection from the Director for the appointment of an acting CEO/President, who shall serve as the Bank's CEO/President until a permanent successor is hired by the Bank.

(13) Within sixty (60) days, the Bank shall employ a new and fully qualified senior executive officer to serve as the Bank's President/CEO and Director.

(14) Prior to the appointment of any individual to a senior executive officer position or as a director of the Bank, the Board shall submit to the Director written notice as required by 12 C.F.R. § 5.51 and in accordance with the Comptroller's Licensing Manual.

ARTICLE IV

BOARD TO ENSURE COMPETENT MANAGEMENT

(15) The Board shall ensure that the Bank has competent management in place on a full-time basis in all senior executive officer level positions to carry out the Board’s policies; ensure compliance with this Directive; ensure compliance with applicable laws, rules, and regulations; and manage the day-to-day operations of the Bank in a safe and sound manner;

(16) Within thirty (30) days, the Board shall prepare a written assessment of the capabilities of the Bank’s officers at the vice president level and above to perform present and anticipated duties, which considers the officers’ past actual performance, experience, and qualifications, compared to their position descriptions, duties, and responsibilities. Upon completion, a copy of the written assessment shall be submitted to the Director.

(17) If the Board determines that an officer's performance, skills, or abilities need improvement, the Board will, within fifteen (15) days following its determination, require the Bank to develop and implement a written program, with specific timeframes, to improve the officer's performance, skills, and abilities. Upon completion, a copy of the written program shall be submitted to the Director.

(18) If the Board determines that an officer will not continue in his/her position, the Board shall document the reasons for this decision in its assessment performed pursuant to paragraph (17) of this Article, and shall within thirty (30) days of such vacancy identify and provide notice to the Director, pursuant to paragraph (20) of this Article, of a qualified and capable candidate for the vacant position, who shall be vested with sufficient authority to ensure the Bank's compliance with this Directive and the safe and sound operation of the functions within the scope of that person's responsibility.

(19) Prior to the appointment of any individual to a vice-president level position, the Board shall submit to the Director written notice, as required by 12 C.F.R. § 5.51 and in accordance with the Comptroller's Licensing Manual. The Director shall have the power to disapprove the appointment of the proposed officer. However, the failure to exercise such veto power shall not constitute an approval or endorsement of the proposed officer. The requirement to submit information and the prior disapproval provisions of this Article are based upon the authority of 12 U.S.C. § 1818(b) and do not require the Comptroller or the Director to complete his review and act on any such information or authority within (90) days.

(20) The Board shall perform, at least annually, a written performance appraisal for each Bank officer at the vice-president level or above that establishes objectives by which the officer's effectiveness will be measured, evaluates performance according to the position's

description and responsibilities, and assesses accountability for action plans to remedy issues raised by the OCC in any correspondence with the Bank. Upon completion, copies of the performance appraisals shall be submitted to the Director.

ARTICLE V

PRESERVATION OF BOOKS AND RECORDS

(21) The Board shall immediately ensure that no Bank documents, books, or records are destroyed, altered, or removed from the Bank's premises until further written notice from the Director, except that such documents, books, and records may be altered and amended, in the course of ordinary Bank business, in order to record the taking and withdrawals of deposits, and the making of loans, the receiving of loan payments, along with the recording of other ordinary Bank business. For purposes of this paragraph, "documents, books, and records" shall have the broadest possible meaning reasonably imaginable and shall include, without limitation, paper and electronic records of all kinds, reports, notes, calendars, phone logs, e-mails, voice-mails, financial instruments, and tapes.

(22) The Board shall also take action to ensure that it maintains in its possession accurate and complete information concerning the books and records of any Bank affiliates, and that such information is sufficient and adequate for the Bank to carry out its activities and monitor operations.

(23) The Board shall ensure that, within twenty-four (24) hours, all of the Bank's documents, books, records, and other property that are not currently maintained on the Bank's premises are returned to the Bank and thereafter maintained in accordance with paragraph (1) above.

(24) The Bank shall not permit, and the Board shall ensure that, effective immediately, no Bank Director, officer, former Director or officer, agent, or independent contractor shall permit Mr. Moore access to any of the Bank's documents, books, or records, whether such documents, books, or records are located on the Bank's premises, or are not currently maintained on the Bank's premises.

(25) The Bank shall provide OCC personnel with prompt and unrestricted access to the documents, books, records, Directors, officers, and staff of the Bank.

(26) The Bank shall provide full and complete details of the purpose of the transactions by and between the Bank and any of its customers and by and between the Bank and any of its Directors, officers, and staff, to OCC personnel upon inquiry.

(27) Effective immediately, the Bank and Board, Directors, officers, and staff shall cease and desist from any action that directly or indirectly conceals transactions from the OCC, hinders or obstructs the OCC examination process, or constitutes the making of false entries or statements on any of the Bank's documents, books, or records.

ARTICLE VI

FORENSIC AUDIT TO VERIFY ACCURACY AND COMPLETENESS OF BANK DOCUMENTS, BOOKS, AND RECORDS

(28) Within thirty (30) days of the date of this Order, the Bank shall engage the services of a forensic auditor to verify, from January 2006 to the present, the accuracy and completeness of the Bank's documents, books, and records with respect to certain accounts identified by the Examiner-in-Charge.

(29) Prior to engaging the forensic auditor, the Bank shall submit the name and qualifications of the forensic auditor and the proposed engagement contract to the Director for a prior written determination of no supervisory objection. The audit must be completed within

thirty (30) days of receipt of the Director's non-objection. Following completion, the Bank shall submit the results of the forensic audit to the Director.

(30) Within thirty (30) days of receipt of written notice from the Director that additional accounts, relationships, or other Bank activities shall be reviewed, the Bank shall have the forensic auditor engaged pursuant to this Article verify the accuracy and completeness of the Bank's books and records with regard to such accounts, relationships, or activities. Such additional forensic audits must be completed within thirty (30) days of receipt of the Director's written notice.

ARTICLE VII

LIQUIDITY

(31) The Board shall immediately ensure that the liquidity of the Bank is maintained at a level sufficient to sustain the Bank's current operations and to withstand any anticipated or extraordinary demand against its funding base. Such actions shall include, but are not limited to:

(a) reducing the level of liquidity risk at the institution;

(b) improving the level of stable funding sources given the Bank's anticipated liquidity and funding needs;

(c) reducing wholesale or credit-sensitive liabilities;

(d) increasing the amount of liquid assets; and

(e) revising the Bank's strategic plan in light of the requirements of this Article.

(32) Effective immediately, the Bank shall not accept, renew, or roll over any brokered deposits as defined in 12 C.F.R. § 337.6(a)(2). The Bank shall restrict interest rates that the Bank pays on deposits to comply with the interest rate restrictions in 12 C.F.R. § 337.6.

(33) The Board shall review the Bank's liquidity on a quarterly basis. Such reviews shall consider, at a minimum:

(a) a maturity schedule of certificates of deposit, including large, uninsured deposits;

(b) the volatility of demand deposits, including escrow deposits;

(c) the amount and type of loan commitments and standby letters of credit; and

(d) an analysis of the continuing availability and volatility of present funding sources.

(34) The Board shall take appropriate action to ensure adequate sources of liquidity in relation to the Bank's needs. Quarterly reports shall set forth liquidity requirements and sources and establish a contingency plan. Copies of these reports shall be forwarded to the Director.

ARTICLE VIII

FEDERAL PROGRAM LOANS

(35) The Bank must immediately review all pending applications for contracts from federal agencies, in which the Bank is involved on behalf of any Bank customer, to ensure accuracy, reflect all information known to the Bank, and comply with all legal lending limits. Following its review, the Board shall submit its findings to the Director.

ARTICLE IX

VIOLATIONS OF LAW

(36) The Board shall require and the Bank shall immediately take all necessary steps to correct each violation of law, rule, or regulation cited in any Report of Examination, or brought to the Board's or Bank's attention in writing by management, regulators, auditors, loan review,

or other compliance efforts. Within fifteen (15) days after the violation is cited or brought to the Board's attention, the Bank shall provide to the Board a list of any violations that have not been corrected. This list shall include an explanation of the actions taken to correct the violation, the reasons why the violation has not yet been corrected, and a plan to correct the violation by a specified date.

(37) Within fifteen (15) days of the date of this Order, the Board shall adopt and the Bank (subject to Board review and ongoing monitoring) shall implement and thereafter ensure adherence to:

(a) specific procedures to prevent future violations as cited by the OCC in any correspondence to the Bank; and

(b) general procedures addressing compliance management that incorporate internal control systems and education of employees regarding laws, rules, and regulations applicable to their areas of responsibility.

(38) Upon adoption, the Board shall forward a copy of these policies and procedures to the Director for review.

ARTICLE X

HIGHER CAPITAL MINIMUMS

(39) The Bank shall immediately achieve the following minimum capital ratios (as defined in 12 C.F.R. Part 3)[1]:

(a) Total capital at least equal to thirteen percent (13%) of risk-weighted assets;

(b) Tier 1 capital at least equal to ten percent (10%) of adjusted total assets.[2]

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[1] The requirement in this Order to meet and maintain a specific capital level means that the Bank may not be deemed to be "well capitalized" for purposes of 12 U.S.C. § 1831o and 12 C.F.R. Part 6, pursuant to 12 C.F.R. § 6.4(b)(1)(iv).

[2] Adjusted total assets is defined in 12 C.F.R. § 3.2(a) as the average total asset figure required to be computed for and stated in the Bank's most recent quarterly *Consolidated Report of Condition and Income* ("call report") minus

(40) Any increase in capital necessary to meet the requirements of this Article may be accomplished by the following:

(a) the sale of common stock; or

(b) the sale of noncumulative perpetual preferred stock; or

(c) the direct contribution of cash by the Board and/or shareholders of the Bank; or

(d) any other means acceptable to the Director.

(41) The Bank shall comply fully with the provisions of section 38(d)(1) of the FDI Act, 12 U.S.C. § 1831o(d)(1), restricting the making of any capital distributions, including, but not limited to, the payment of dividends.

ARTICLE XI

OTHER ACTIONS REQUESTED

(42) Immediately upon issuance of this Directive, the Bank shall not do any of the following without the prior written approval of the Bank's Board and the prior written non-objection of the Director[3]:

(a) enter into any material transaction other than in the usual course of business, including any investment, expansion, acquisition, or other similar action;

(b) engage in the sale or transfer of any Bank asset or pool of assets exceeding a fair market value of one hundred thousand dollars ($100,000). Any asset

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end-of-quarter intangible assets, deferred tax assets, and credit-enhancing interest only-strips, that are deducted from Tier 1 capital, and minus nonfinancial equity investments for which a Tier 1 capital deduction is required pursuant to section 2(c)(5) of Appendix A of 12 C.F.R. Part 3.

[3] This is in addition to any approval required by the FDIC.

sale or transfer less than $100,000 should be reported to the OCC after the sale;

(c) transfer any asset to the holding company or other affiliated party or person;

(d) engage in any transaction for the transfer of funds, the extension of credit, the acceptance or transference of risk, and/or the conferring of another type of benefit, directly or indirectly, involving any Bank affiliates, as defined in 12 U.S.C. § 371(c), or current or former Bank directors, shareholders, senior executive officers, or their respective family members;

(e) amend the Bank's charter or bylaws, except to the extent necessary to carry out any other requirement of law, regulation, or order;

(f) make any change in accounting methods; or

(g) increase compensation or other payments, including bonuses, to any employee, agent or independent contractor above the average rate of compensation paid to that employee, agent or independent contractor by the Bank during the twelve (12) months preceding the month in which the Bank became undercapitalized.

(43) The Board shall ensure that the Bank develops and thereafter maintains processes, personnel, and control systems sufficient to ensure implementation of and adherence to this Directive.

ARTICLE XII

ACKNOWLEDGEMENT OF THIS ORDER, ADMINISTRATIVE APPEALS AND EXTENSIONS OF TIME, AND NOTICES TO THE OCC

(44) This Directive is enforceable under 12 U.S.C. § 1818(i). Each provision of this Directive shall be binding upon the Bank, its directors, officers, employees, agents, successors, assigns, and other persons participating in the affairs of the Bank.

(45) Any time limitations imposed by this Directive shall begin to run from the effective date of this Directive. Such time limitations may be extended in writing by the Director for good cause upon written application by the Board.

(46) The provisions of this Directive are effective upon issuance of this Directive by the Comptroller, through his authorized representative whose hand appears below, and shall remain effective and enforceable, except to the extent that, and until such time as, any provisions of this Directive shall have been amended, suspended, waived, or terminated in writing by the Comptroller.

(47) It is expressly and clearly understood that if, at any time, the Comptroller deems it appropriate in fulfilling the responsibilities placed upon him by the several laws of the United States of America to undertake any action affecting the Bank, or any institution-affiliated party of the Bank, nothing in this Directive shall in any way inhibit, estop, bar or otherwise prevent the Comptroller from so doing.

(48) The Bank may submit a written appeal of this Directive to the Comptroller. Such an appeal must be received by the Comptroller within fourteen (14) calendar days of the issuance of this Directive. If an appeal is filed in a timely manner, the Comptroller shall consider the

appeal in accordance with the procedures under 12 C.F.R. § 6.21(a)(2). During such period of review, this Directive shall remain in effect.

(49) Pursuant to the procedures under 12 C.F.R. Part 6, Subpart B and Part 19, Subpart N, Mr. W.A. Moore, Jr. may file a written request for reinstatement to the Comptroller. *See* 12 C.F.R. §6.20, *et seq.*, and 12 C.F.R. § 19.230-19.231. Such a request must be received by the Comptroller no later than ten (10) calendar days of receipt of this Directive. The request for reinstatement may include a request for an informal OCC hearing. Failure to request a hearing within this time period constitutes waiver. During the period of time of any pending request for reinstatement, the Directive requiring, among other things, the dismissal of Mr. Moore shall remain in effect unless the OCC, in its discretion, stays the Directive.

(50) Unless notified otherwise, all written petitions or appeals, or submissions required to be submitted to the Comptroller pursuant to this Directive shall be forwarded via overnight mail to:

John W. Quill, Deputy Comptroller for Special Supervision
Special Supervision Division, Mail Stop 6-4
Office of the Comptroller of the Currency
250 E Street SW
Washington, DC 20219

IT IS SO ORDERED, this 2nd day of March, 2011.

Signed .
Henry Fleming
Director, Special Supervision Division
Office of the Comptroller of the Currency