

UNITED STATES OF AMERICA
Before The
OFFICE OF THRIFT SUPERVISION

_____)	
In the Matter of:)	
)	
FIRST ARIZONA SAVINGS, a f.s.b.)	OTS Order No.: WN-10-030
)	
)	
Scottsdale, Arizona)	
OTS No. 08489)	Effective Date: September 22, 2010
_____)	

PROMPT CORRECTIVE ACTION DIRECTIVE

WHEREAS, First Arizona Savings, a f.s.b., OTS Docket No. 08489 (Association), is a federally chartered savings association that is regulated by the Office of Thrift Supervision (OTS);

WHEREAS, Section 38 of the Federal Deposit Insurance Act (FDIA), 12 U.S.C. § 1831o, and Part 565 of the OTS Regulations, 12 C.F.R. Part 565, require insured depository institutions that are undercapitalized to file a capital restoration plan specifying the steps the insured depository institution will take to become at least “adequately capitalized” and remain “adequately capitalized” for four consecutive quarters;

WHEREAS, Section 38 of FDIA, 12 U.S.C. § 1831o, requires the OTS to take prompt corrective action to resolve the problems of insured depository institutions at the least possible long-term loss to the Deposit Insurance Fund;

WHEREAS, Section 565.7 of the OTS Regulations, 12 C.F.R. § 565.7, provides for the OTS’s issuance of directives to take prompt corrective action to resolve the problems of insured depository institutions and to restore their capital;

WHEREAS, on July 30, 2010, the date upon which the Association was required to file its most recent Thrift Financial Report (TFR), the Association had notice that it was critically undercapitalized for purposes of the prompt corrective action provisions of Section 38 of FDIA, 12 U.S.C. § 1831o; and

WHEREAS, the OTS, on August 5, 2010, confirmed to the Association that it was critically undercapitalized for purposes of the prompt corrective action provisions of Section 38 of FDIA, 12 U.S.C. § 1831o, and notified the Association that it was required to submit a capital restoration plan no later than August 20, 2010; and

WHEREAS, the Association also is not in compliance with the capital standards required by Section 5(t) of the Home Owners' Loan Act (HOLA), 12 U.S.C. § 1464(t); and

WHEREAS, Section 5(t)(6)(B)(ii) of HOLA, 12 U.S.C. § 1464(t)(6)(B)(ii), requires any institution not in compliance with the capital standards to comply with a capital directive issued by the OTS; and

WHEREAS, on August 20, 2010, the Association submitted to the OTS a capital restoration plan (Capital Restoration Plan) under Section 38(e)(2)(A) of the FDIA, 12 U.S.C. § 1831o(e)(2)(A);

WHEREAS, the OTS has considered the Association's capital deficiency and the submitted Capital Restoration Plan in accordance with Section 567.10 and Section 38(e)(2) of the FDIA, 12 U.S.C. § 1831o(e)(2), and denied the Capital Restoration Plan as set forth in the Notice of Intent to Issue Prompt Corrective Action Directive (PCA Directive) on September 14, 2010 (Notice of Intent);

WHEREAS, the OTS issued the Notice of Intent and the Association failed to respond within the specified time period, thus consenting to the issuance of this PCA Directive (12 C.F.R. § 565.7(e)); and

WHEREAS, the OTS has determined to issue this PCA Directive in order to resolve the Association's problems at the least long term cost to the deposit insurance fund, thereby effectuating the purpose of Section 38 of FDIA, 12 U.S.C. § 1831o.

NOW THEREFORE, pursuant to Section 38 of FDIA, 12 U.S.C. § 1831o, including but not limited to subsection (f) thereof, and Section 565.7 of the OTS Regulations, 12 C.F.R. § 565.7, the OTS directs the Association and its Board of Directors to do the following¹:

PART I - IMPROVING CAPITAL

Section 1.1 Required Recapitalization through Merger, Acquisition, or Sale.

Pursuant to 12 U.S.C. §§ 1831o(f)(2)(A)(iii) and (e)(5), the Association must be recapitalized prior to September 30, 2010. Not later than September 27, 2010, the Association shall submit to the OTS a fully executed binding agreement to:

¹ The OTS must impose one or more of the presumptive restrictions set forth in 12 U.S.C. § 1831o(f), especially 12 U.S.C. §§ 1831o(f)(3) and (4), if the Association: (1) is significantly or critically undercapitalized, (2) is undercapitalized and did not submit an acceptable capital restoration plan, or (3) fails to implement an approved capital restoration plan. Critically undercapitalized savings associations are also subject to the restrictions in 12 U.S.C. § 1831o(i).

(a) merge with or be acquired by another financial institution, financial holding company, or other entity² whereby the resulting depository institution would be at least “adequately capitalized” (as defined in 12 C.F.R. § 565.4) by September 30, 2010 and remain so for four (4) consecutive quarters; or

(b) sell all or substantially all of the Association’s assets and liabilities to another financial institution, financial institution holding company, or other entity by September 30, 2010.

The Association’s management and Board of Directors shall take appropriate steps to accomplish such merger or acquisition.

Section 1.2 Required Recapitalization.

Pursuant to 12 U.S.C. §§ 1831o(f)(2)(A) and (f)(2)(J), the Association is directed to achieve and maintain, at a minimum, the following capital levels by September 30, 2010:

Total Risk Based Capital Ratio:	8.0%
Tier 1 Core Risk Based Capital Ratio:	4.0%
Leverage Ratio:	4.0%

Section 1.3 Efforts to Obtain Capital.

The Board of Directors of the Association shall at all times make diligent and good faith efforts to cause the Association to become adequately capitalized.

The OTS requires this action pursuant to 12 U.S.C. § 1831o(f)(2)(J) having determined that such actions will better carry out the purposes of 12 U.S.C. § 1831o.

Section 1.4 Prior Notice Required.

(a) The Association and any subsidiary or holding company thereof shall not issue any securities; or enter into any agreement, letter of intent, or understanding to merge, consolidate, sell all or substantially all of its assets and liabilities or otherwise be acquired; or enter into any agreement or understanding to reorganize unless (i) the Association has provided the OTS with prior written notice of its intention to take such action, and (ii) following such notice, the OTS has provided the Association with prior written notice of its non-objection to the proposed action by the Association.

(b) The OTS requires this action pursuant to 12 U.S.C. § 1831o(f)(2)(J) having determined that such actions will better carry out the purposes of 12 U.S.C. § 1831o.

² For purposes of this PCA Directive, “other entity” may include but is not limited to an individual, a group of individuals, a partnership, a corporation, or any other form of business organization that may, under applicable statutes and regulations, merge with or acquire the Association or purchase all or substantially all of its assets and liabilities.

Section 1.5 Ongoing Monitoring of Capital Category Required.

(a) The Association must monitor its own PCA capital ratios and if the Association improves from a lower to a higher PCA capital category, it must continue to comply with each provision of this PCA Directive except to the extent the provision shall be modified, terminated, suspended or set aside by the OTS in writing.

(b) The Association must comply immediately with the appropriate additional restrictions contained in 12 U.S.C. § 1831o and 12 C.F.R. § 565.6.

(c) The OTS requires this action pursuant to 12 U.S.C. § 1831o(f)(2)(J) and based upon a determination by the OTS that such action will better carry out the purposes of Section 38 of the FDIA.

Section 1.6 Reports of Compliance.

No later than the close of business on the 15th day of each month following the Effective Date of this PCA Directive:

(a) The management of the Association shall prepare a written report concerning the Association's compliance with each of the requirements of this PCA Directive during the preceding month. The report shall include confirmation that the Association is in compliance with: (i) all restrictions that apply automatically to an institution that is "critically undercapitalized," and (ii) with the other restrictions and requirements contained in this PCA Directive. The Association shall document this review in the minutes of the meeting of the Board of Directors. All documentation considered by the Board of Directors in performing its review shall be explicitly referenced in the minutes of the meeting at which the review was undertaken.

(b) The Association shall continue to provide status reports required by Section 1.6(a) above until directed otherwise by the Regional Director. The OTS requires this action pursuant to 12 U.S.C. § 1831o(f)(2)(J) and based upon a determination by the OTS that such action will better carry out the purposes of Section 38 of the FDIA.

Section 1.7 Adequate Progress.

If the OTS, in its sole discretion, determines that the Association is failing to make adequate progress towards achieving the requirements set forth in this Part I of this Directive, the OTS may take such further supervisory, enforcement or resolution action as it deems appropriate.

PART II - OPERATING RESTRICTIONS

Section 2.1 Compliance with Mandatory Restrictions.

The Association shall comply with all of the mandatory prompt corrective action provisions set forth in 12 U.S.C. § 1831o and 12 C.F.R. § 565.6 that automatically apply to the Association based upon the Association's prompt corrective action capital category. These provisions are set forth as follows:

(a) No capital distributions shall be made without the prior written approval of the OTS. 12 U.S.C. § 1831o(d)(1); 12 C.F.R. §§ 565.6(a)(1) and (a)(2)(i).

(b) No management fees shall be paid to any person having control of the Association if: (i) the Association is not adequately capitalized; or (ii) after making the payment, the Association would be undercapitalized. 12 U.S.C. § 1831o(d)(2); 12 C.F.R. §§ 565.6(a)(1) and (a)(2)(i).

(c) The Association shall not permit its average total assets during any calendar quarter to exceed its average total assets during the preceding quarter. 12 U.S.C. § 1831o(e)(3); 12 C.F.R. § 565.6(a)(2)(iv).

(d) The Association shall not, directly or indirectly, acquire any interest in any company or insured depository institution, establish or acquire any additional branch office, or engage in any new line of business, unless (i) the OTS has accepted the Association's capital restoration plan, the Association is in compliance with the plan, and the OTS determines that the action is consistent with, and will further achievement of the plan, or (ii) the FDIC Board of Directors approves the action. 12 U.S.C. § 1831o(e)(4); 12 C.F.R. § 565.6(a)(2)(v).

(e) The Association shall not, without the OTS's prior written approval, (i) pay any bonus to any Senior Executive Officer, as that term is defined in 12 C.F.R. § 563.555, or (ii) provide compensation to any Senior Executive Officer exceeding that Officer's average rate of compensation (excluding bonuses, stock options, and profit-sharing) during the 12 calendar months preceding the calendar month in which the Association became undercapitalized. 12 U.S.C. § 1831o(f)(4); 12 C.F.R. § 565.6(a)(3).

(f) The Association may not accept, renew or rollover any brokered deposit. 12 U.S.C. § 1831f(a); 12 C.F.R. § 337.6(b)(3).

(g) The Association shall monitor its compliance with applicable requirements of 12 U.S.C. § 1831o(e) and 12 C.F.R. Part 565.

(h) The Association may not make any payment of principal or interest on its subordinated debt beginning 60 days after the Association becomes critically undercapitalized. 12 U.S.C. § 1831o(h)(2)(A); 12 C.F.R. § 565.6(a)(4)(ii).

(i) Without the FDIC's prior written approval, as required by 12 U.S.C. §§ 1831o(h)(1) and (i)(2) and 12 C.F.R. § 565.6(a)(4)(i), the Association may not:

(1) Enter into any material transaction other than in the usual course of business, including any investment, expansion, acquisition, sale of assets, or similar action with respect to which the Association is required to give notice to the OTS;

(2) Extend credit for any highly leveraged transaction;

(3) Amend the Association's charter or bylaws, except to the extent necessary to carry out any other requirement of any law, regulation or order;

(4) Make any material change in accounting methods;

(5) Engage in any "covered transaction" with an affiliate, as defined in 12 U.S.C. § 371c(b);

(6) Pay excessive compensation or bonuses; or

(7) Pay interest on new or renewed liabilities at a rate that would increase the Association's weighted average cost of funds to a level significantly exceeding the prevailing rates of interest on insured deposits in the Association's normal market area.

Section 2.2 Restrictions on Affiliate Transactions.

The assets, facilities and staff of the Association shall only be used for the benefit of the Association and shall not be shared or otherwise used, directly or indirectly, for the benefit of any affiliate or other company. The OTS is imposing this restriction pursuant to the authority at 12 U.S.C. § 1831o(f)(2)(B).

Section 2.3 Restrictions on Activities Posing Excessive Risk.

A. The OTS imposes these restrictions pursuant to 12 U.S.C. §§ 1831o(e)(5), (f)(2)(E), and (J), having determined that these activities pose excessive risk to the Association in view of its deteriorating financial condition and based upon a determination by the OTS that the following action will better carry out the purposes of 12 U.S.C. § 1831o(f). The Association, directly or indirectly, shall not do any of the following without prior written approval from the OTS:

(a) make, invest in, purchase, sell, refinance, extend, deal in (including loan brokering) or otherwise modify, or commit to make, invest in, purchase, sell, refinance, extend, deal in (including loan brokering) or otherwise modify any loan secured by real estate or any participation therein or any real estate investment (including, but not limited to, any loan to finance the acquisition, development and/or construction of real property), or any set of such loans, participations, or investments. All marketing and advertising related to loans not permitted herein shall be immediately discontinued;

(b) make, invest in, purchase, sell, refinance, extend, or otherwise modify, or commit to make, invest in, purchase, sell, refinance, extend, or otherwise modify any commercial loans, letters of credit, participations therein, or any set of such loans, letters of credit, or participations;

(c) make, invest in, purchase, sell, refinance, extend, or otherwise modify, or commit to make, invest in, purchase, sell, refinance, extend, or otherwise modify any consumer or education loans;

(d) release any borrower or guarantor from personal or corporate liability on any loan or extension of credit granted by the Association, except when the outstanding balance of the loan and other outstanding loans to the borrower or guarantor have been paid in full;

(e) make or commit to make any investment in any service corporation, finance subsidiary, or operating subsidiary, or any subsidiary of a service corporation in real estate or equity securities;

(f) enter into any joint venture or limited partnership agreement, directly or indirectly;

(g) engage in any forward commitment, futures transaction, or financial options transaction;

(h) enter into any new contract or agreement for the purchase, sale, or lease of goods, materials, equipment, supplies, services or capital assets; however, this restriction does not apply to contracts or agreements to be entered into in the normal course of business where the amount of each contract or agreement does not exceed twenty thousand dollars (\$20,000);

(i) enter into any lease or contract for the purchase or sale of real estate or of any interest therein;

(j) encumber any of its property or other assets, except that the Association may pledge its assets in connection with borrowings necessary to meet liquidity needs;

(k) incur any material obligation or contingent liability, except as otherwise permitted by this PCA Directive;

(l) establish any loan production office or agency office;

(m) accept any non-cash capital contribution;

(n) accept deposits, or renewals or roll-overs of prior deposits, from correspondent depository banks;

(o) accept new employee benefit plan deposits, 12 U.S.C. § 1821(a)(1)(D)(ii);

- (p) accept, renew, or rollover any deposits not fully insured by the FDIC;
- (q) purchase any bank-owned life insurance (BOLI); or
- (r) extend any credit to executive officers, directors, or principal shareholders.

B. If the Association improves from a lower to a higher PCA capital category, it must continue to comply with the previously applicable mandatory sanctions of the lower category, until such time as approval to cease compliance with the lower category sanctions is requested of, and received from the OTS.

C. To the degree that any restriction contained in any subsequent Section of this PCA Directive indicates that it is imposed pursuant to 12 U.S.C. § 1831o(f)(2), the OTS hereby imposes that restriction pursuant to 12 U.S.C. § 1831o(e)(5), based upon the determination that the restriction is necessary to carry out the purpose of 12 U.S.C. § 1831o.

Section 2.4 Restrictions on Interest Rates; Brokered Deposits.

(a) The Association shall restrict the rates it pays on deposits to the prevailing rates of interest on deposits of comparable amounts and maturities in the Association's normal market area. Nothing herein shall be construed as requiring a reduction of rates paid on outstanding time deposits prior to their renewal. The OTS is imposing this restriction pursuant to 12 U.S.C. § 1831o(f)(2)(C).

(b) Notwithstanding the foregoing restrictions, the Association may pay interest rates that exceed the interest rates that would be permitted under the foregoing restrictions provided that: (a) the interest rates are within the limitations of 12 C.F.R. § 337.6; and (b) the interest rates are necessary to most effectively manage the Association's weighted average cost of funds, giving consideration to the Association's liquidity requirements.

(c) Pursuant to 12 U.S.C. §§ 1831o(f)(5) and (i)(2)(G) and 12 C.F.R. § 337.6, based upon a determination by the OTS that the action is necessary to carry out the purpose of 12 U.S.C. § 1831o, the Association may not pay interest on new or renewed liabilities at a rate that would increase the Association's weighted average cost of funds to a level significantly exceeding the prevailing rates of interest on insured deposits in the Association's normal market areas.

Section 2.5 Liquidity Reporting.

The Association shall submit electronically to the Regional Director or his authorized representative a liquidity status report each week in a format acceptable to the Regional Director.

Section 2.6 Imposition of Restrictions/Requirements On Subsidiaries.

Pursuant to 12 U.S.C. § 1831o(f)(2)(E), the Association shall cause all subsidiaries in which the Association owns a majority of the stock to abide by the restrictions, limitations or requirements imposed on the Association by this PCA Directive. The Association shall also vote its shares, use its influence and otherwise use its best efforts to impose the same restriction on any subsidiary of which the Association owns a minority of the stock. The Association shall immediately notify the OTS in the event that the actions of any subsidiary would contravene the restrictions, limitations or requirements of this PCA Directive if undertaken directly by the Association.

Section 2.7 Limits on Compensation and Benefits.

Pursuant to 12 U.S.C. §§ 1831o(f)(2)(J), (f)(4), and (f)(5), based upon a determination by the OTS that the following restrictions will better carry out the purpose of 12 U.S.C. § 1831o, the Association is hereby directed:

(a) Not to provide any compensation or other direct or indirect benefits to directors (which shall include directors emeritus or honorary directors for purposes of this Section), officers or employees beyond those determined reasonable and prudent for a capital deficient institution. Such compensation for directors and other employees shall be in accordance with 12 C.F.R. § 563.161(b), Appendix A to 12 C.F.R. Part 570, and current OTS guidance;

(b) Not to enter into, modify, or renew any agreement or employment contract with or increase the compensation of or severance pay for any Senior Executive Officer or director of the Association without the OTS's prior written approval;

(c) Not to incur any compensation or benefit expense for items or services that do not have an immediate, direct relationship to the performance of any individual's duties, except for expenses incurred for employee pension/profit sharing/retirement plans and health and medical plans in existence as of the effective date of this PCA Directive; and

(d) Not to make any "golden parachute payment" as that term is defined in 12 U.S.C. § 1828(k) and 12 C.F.R. Part 359, except in accordance with that statute and regulation.

The requirements of this Section 2.7 are imposed in addition to the mandatory restrictions imposed in Senior Executive Officers' compensation set forth in Section 2.1.

Section 2.8 Changes in Directorate or Management.

Pursuant to 12 U.S.C. § 1831o(f)(2)(F), the Association shall provide the OTS at least 30 days prior written notice of the addition of any director or Senior Executive Officer, including a change in responsibilities in any existing Senior Executive Officer, pursuant to 12 U.S.C. § 1831i and 12 C.F.R. § 563.560.

Section 2.9 Restrictions on Third Party Contracts.

Pursuant to 12 U.S.C. § 1831o(f)(2)(E), in order to reduce excessive risk posed to the Association by certain third party contracts outside the normal course of business, the Association is hereby prohibited from entering into any third party contracts, as set forth in Section 310 of the OTS Examination Handbook, without the prior written approval of the OTS.

PART III - RELIEF FROM RESTRICTIONS

Section 3.1 Waiver Requests.

(a) The Association may submit written requests to the OTS, requesting the OTS to issue a notice of non-objection for the purpose of either relieving the Association from certain restrictions hereunder or requesting OTS to provide notice of supervisory non-objection with respect to a particular specifically identified transaction, loan, or investment.

(b) Requests for written notice of the OTS's non-objection pursuant to subsection (a) above must be accompanied by a resolution of the Board, signed by each individual member of the Board voting in favor of the resolution. All documentation considered by the Board in adopting each such resolution shall be explicitly referenced in the minutes of the meeting at which the resolution was adopted and shall be made available to OTS representatives upon request.

PART IV - GENERAL PROVISIONS

Section 4.1 Jurisdiction.

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

Section 4.2 Definitions.

(a) All technical words or terms used in this PCA Directive, for which meanings are not specified or otherwise provided by the provisions of this PCA Directive, shall, insofar as applicable, have meanings as defined in Chapter V of Title 12 of the Code of Federal Regulations, HOLA, FDIA, OTS Bulletins, or the OTS Examination Handbook. Any such technical words or terms used in this PCA Directive and undefined in Code of Federal Regulations, HOLA, FDIA, OTS Bulletins or the OTS Examination Handbook shall have meanings that are in accordance with the best custom and usage in the savings and loan industry.

(b) Reference in this PCA Directive to provisions of statutes and regulations shall be deemed to include references to all amendments to such provisions as have been made as of the Effective Date and references to successor provisions as they become applicable.

Section 4.3 Notices.

Except as otherwise provided herein, any request, demand, authorization, direction, notice, consent, waiver or other document provided or permitted by the PCA Directive to be made upon, given or furnished to, delivered to, or filed with the OTS or the Association shall be in writing and sent by first class U.S. mail (or by reputable overnight courier, electronic facsimile transmission, or hand delivery via messenger) addressed as follows:

OTS: Philip A. Gerbick, Regional Director, Western Region
Attn: Timothy Lane, Assistant Director
Office of Thrift Supervision
1551 North Tustin Avenue, Suite 1050
Santa Ana, CA 92705-8661
Facsimile: (714) 796-4710

Association: Board of Directors
Attention: Mark G. Villalpando, Chairman
First Arizona Savings, a f.s.b.
17015 North Scottsdale Road, Suite 150
Scottsdale, AZ 85255
Facsimile: (480) 481-8515

Section 4.4 Duration, Termination or Suspension of the PCA Directive.

(a) The terms and provisions of this PCA Directive shall be binding upon the Association, its directors, officers, employees, agents, successors, assigns, and other persons participating in the affairs of the Association.

(b) The PCA Directive shall remain in effect until terminated, modified or suspended in writing by the OTS.

(c) The OTS, in its discretion, may, by written notice, suspend any or all provisions of the PCA Directive, except for Section 2.1 (Mandatory Restrictions).

Section 4.5 Effect of Headings.

The Part and Section headings herein are for convenience only and shall not affect the construction hereof.

Section 4.6 Separability Clause.

In case any provision in this PCA Directive is ruled to be invalid, illegal or unenforceable by the decision of any court of competent jurisdiction, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby unless the OTS, in its sole discretion, determines otherwise.

Section 4.7 No Violations Authorized; Consequences of PCA Directive.

Nothing in this PCA Directive, including, without limitation, any of the timeframes for actions set forth in Part I, shall be construed as: (i) allowing the Association to violate any law, rule, regulation, or policy statement to which it is subject or (ii) restricting the OTS from taking such actions as are appropriate in fulfilling the responsibilities placed upon it by law, including, without limitation, actions pursuant to 12 U.S.C. § 1831o, or taking any other type of supervisory, enforcement, or resolution action that the OTS determines to be appropriate.

Section 4.8 Other Enforcement Document.

(a) The Order to Cease and Desist and its accompanying Stipulation and Consent to the issuance by the OTS (Order No. WN-09-033, dated November 2, 2009) against the Association remain in effect. In the event of a conflict between a provision of the Order to Cease and Desist and a provision of this PCA Directive, the more restrictive provision shall control.

(b) Nothing contained in this PCA Directive shall affect or limit the OTS's ability to take enforcement action in connection with any violation of the above-referenced Order to Cease and Desist dated November 2, 2009, regardless of when such violation has or may occur.

Section 4.9 Effective Date of This PCA Directive.

The provisions of this PCA Directive are effective immediately upon the issuance of the PCA Directive by the Regional Director, which is the date indicated on the first page of this PCA Directive (Effective Date).

IT IS SO ORDERED.

OFFICE OF THRIFT SUPERVISION

By: _____ /s/
Philip A. Gerbick, Regional Director
Western Region

Date: See Effective Date on page 1