

**OFFICE OF THRIFT SUPERVISION**

**APPROVAL OF APPLICATIONS FOR CONVERSION TO A FEDERAL SAVINGS BANK CHARTER, TRUST POWERS AND HOLDING COMPANY ACQUISITION**

**ORDER NO.** 99-26

**DATE:** May 19, 1999

First American Trust Company, Santa Ana, California (the "Bank"), has applied for the approval of the Office of Thrift Supervision ("OTS"), pursuant to 12 C.F.R. § 552.2-6, to convert from a California-chartered trust bank to a federal stock savings bank, First American Trust, FSB (the "New FSB"), and has applied, pursuant to 12 U.S.C. § 1464(n) and 12 C.F.R. Part 550, for trust powers for the New FSB. In addition, First American Financial Corporation, Santa Ana, California ("Holding Company") has applied for OTS approval pursuant to 12 U.S.C. § 1467a(e) and 12 C.F.R. § 574.3 to acquire the New FSB. (Collectively, the foregoing are referred to as "the Applications".) The Bank is, and the New FSB will remain, a member of the Bank Insurance Fund.

The OTS has considered the Applications under the standards set forth in 12 U.S.C. §§ 1464(e), 1464(n) and 1467a(e), and 12 C.F.R. §§ 552.2-1, 552.2-6 and 574.7, Part 550 and other applicable statutes and regulations. The OTS also has considered the Applications under the Community Reinvestment Act, 12 U.S.C. §§ 2901 *et seq.*, and the OTS regulations thereunder, 12 C.F.R. Part 563e.

In addition, the OTS has considered a digest from the Regional Office, analyses prepared by the Office of Examination and Supervision and the Fiduciary Unit, and a legal opinion from the Business Transactions Division (collectively, the "Staff Memoranda"). For the reasons set forth in the Staff Memoranda, the OTS finds that the Applications satisfy the applicable approval standards, provided that the following conditions are complied with in a manner satisfactory to the West Regional Director, or his designee ("Regional Director"). Accordingly, the Applications are hereby approved, subject to the following conditions:

1. The Holding Company and the Bank must receive all required regulatory approvals prior to consummation of the proposed transaction, with copies of all such approvals provided to the Regional Office;

2. The proposed transaction must be consummated within one hundred and twenty (120) calendar days from the date of this approval Order or within such additional period as the Regional Director may grant;
3. On the business day prior to the date of consummation of the proposed transaction, the Chief Financial Officers of the Holding Company and the Bank must certify in writing to the Regional Director that no material or adverse changes have occurred with respect to the financial condition or operation of the Holding Company and the Bank since the date of the financial statements submitted in the Applications;
4. The Holding Company and the New FSB must advise the Regional Office in writing within 5 calendar days after the effective date of the proposed transaction: (a) of the effective date of the proposed transaction and (b) that the transaction was consummated in accordance with all applicable laws and regulations, the Applications, and this Order;
5. The New FSB must operate within the parameters of its business plan. The New FSB must submit any proposed major deviations or material changes from the plan (including changes resulting from decisions made by the Holding Company), and in particular, those pertaining to cross-marketing, for the prior written non-objection of the Regional Director a minimum of 60 days before the proposed change is proposed to be implemented;
6. Prior to engaging in any business other than that permitted pursuant to OTS approval under section 5(n) of the HOLA, and that specifically proposed in the Applications, the New FSB must apply to the OTS, and receive approval of an application to engage in such business. The OTS will consider any such application under the standards set forth at section 5(e) of the HOLA and OTS regulations thereunder, and under the Community Reinvestment Act and OTS regulations thereunder at 12 C.F.R. Section 563e.29. Any such application may be subject to the public notice and comment procedures set forth at 12 C.F.R. Part 516, Subparts B and C;
7. The New FSB must submit quarterly activity reports which include: (a) the number and type of trust accounts serviced by the New FSB, (b) the total asset values of the trust accounts serviced by the New FSB, and (c) the minutes of the meetings of the New FSB's Trust Committee. The reports must be submitted to the Regional Office in the form and within the time periods specified by the Regional Director;

8. At least 40 percent of the New FSB's board of directors must be comprised of individuals who are not officers or employees of the Holding Company or affiliates thereof and at least one member of the New FSB's board of directors must be an individual who is not an officer, director or employee of the Holding Company or any affiliate and who is not an officer or employee of the New FSB. At least 50 percent of the New FSB's audit, investment and trust committees must be comprised of directors who are not officers or employees of the New FSB, the Holding Company or any affiliates. If compliance with this condition involves the selection of additional director(s), each director must receive the prior approval of the Regional Director;
9. For a period of three years following the effective date of the transaction, New FSB must submit any proposed new director for prior approval of the Regional Director;
10. Any affiliate of the Holding Company that engages in securities brokerage activities ("Broker-Dealer affiliate") must be operated as a separate legal entity from the New FSB so that: (a) their respective accounts and records are not intermingled; (b) each observes the procedural formalities of separate legal titles; (c) each is held out to the public as a separate enterprise; and (d) none dominates another to the extent that one is treated as a mere department of the other;
11. A majority of the New FSB's board of directors must not be comprised of individuals that are directors or employees of any Broker-Dealer affiliate;
12. The New FSB and any Broker-Dealer affiliate are prohibited from sharing common officers unless prior approval is obtained from the Regional Director, which shall be based on criteria such as regulatory compliance, experience, character, integrity and the ability to perform both duties;
13. The New FSB and the Broker-Dealer affiliate must take measures necessary to ensure that their officers and directors adhere to the principles set forth in OTS regulations on conflicts of interest, 12 C.F.R. § 563.200; corporate opportunity, 12 C.F.R. § 563.201; and any other additional or successor statements of policy or regulations addressing these subjects. The officers and directors of the New FSB and the Broker-Dealer affiliate are prohibited from using their influence to: (a) take advantage of a business opportunity for the Broker-Dealer affiliate's benefit when the opportunity is of present or potential advantage to the New FSB; or (b) place the Broker-Dealer affiliate in a position that leads to, or could create the appearance of a potential conflict of interest;

14. The New FSB, the Holding Company and the Broker-Dealer affiliate are subject to the provisions of 12 C.F.R. § 563.76, *Offers and Sales of Securities at an Office of the Savings Association*, and related policy established in OTS Thrift Bulletins 23-2, *InterAgency Statement on Retail Sales of Nondeposit Investment Products* (the "InterAgency Statement"), and 23a, *Limited Exceptions to Prohibitions on Sales of Savings Institution's Securities*, and any additional or successor statements of policy or regulations addressing these subjects. The New FSB and the Holding Company shall ensure compliance by the Broker-Dealer affiliate with, at a minimum, the General Guidelines in Disclosure and Advertising set forth in the InterAgency Statement whenever the Broker-Dealer affiliate or its representatives market, or offer for sale, trust services of the New FSB;

15. Prior to effecting the transaction, the New FSB must develop and implement, and thereafter maintain, a functioning oversight program consisting of a comprehensive audit program, a compliance management program, and a risk management program:

(a) The audit program must address auditor qualifications, audit scope and method, committee involvement, reporting, and the process for effectuating corrective action.

(b) The compliance management program must ensure compliance with applicable laws, regulations, and sound fiduciary principles. It must include, at a minimum: (i) the assignment of specific compliance responsibilities to experienced staff; (ii) training for affected staff; (iii) routine self-evaluations; (iv) periodic compliance audits; and (v) appropriate written policies and procedures.

(c) The risk management program must establish criteria to identify, measure, monitor, and control risks within the fiduciary activities.

A copy of this oversight program, along with information related to the results of its implementation, must be made available to the OTS for review upon request.

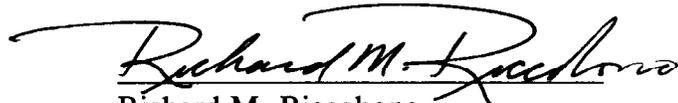
16. Any contracts or agreements pertaining to transactions with affiliates, not yet submitted to the OTS for review, must be provided to the Regional Director at least 30 days prior to their execution and must receive his written non-objection prior to implementation. In addition, prior to effecting the transaction, New FSB shall submit to the Regional Director for his review certain contracts and agreements and certain revised contracts and agreements pertaining to the following transactions with affiliates:

- (a) any deposits of affiliated title companies, including their own funds and escrow funds of their clients, held by New FSB;
- (b) services provided by Pacific American Securities LLC;
- (c) all services provided by New FSB for First American Capital Management, Inc.;
- (d) all services provided by New FSB for any employee benefit plan of an affiliate; and
- (e) methodology used to calculate value of payments from New FSB to First American Financial Corporation for telecommunications services.

These documents must be provided to the Regional Director at least 30 days prior to their execution and must receive his written non-objection prior to implementation; and,

17. At least 30 calendar days before effecting the transaction, the Bank must submit written evidence, acceptable to the Regional Director, that the Bank's Year 2000 efforts comply with the terms, milestone dates, requirements and conditions contained in the Year 2000 guidance issued by the OTS and/or the Federal Financial Institutions Examination Council.

Any time specified herein may be extended by the Regional Director, for good cause, for up to 120 calendar days. By Order of the Director of the Office of Thrift Supervision, or her designee, effective *MAY 19<sup>th</sup>, 1999.*

  
Richard M. Riccobono  
Deputy Director