

## OFFICE OF THRIFT SUPERVISION

### Approval of Application to Form an Operating Subsidiary And to Engage in a New Activity

**Order No.:** 2005-31  
**Date:** August 24, 2005  
**Docket No.:** 15660

First American Trust, FSB, Santa Ana, California (Savings Bank), a federal savings bank, has applied to the Office of Thrift Supervision (OTS), pursuant to 12 U.S.C. § 1828(m) and 12 C.F.R. Part 559 (Application), to establish an operating subsidiary, First American Fulfillment Solutions, LLC, Edmunds, Oklahoma (Operating Subsidiary). The Savings Bank is a wholly owned, first-tier subsidiary of First American Corporation (Holding Company). The Holding Company will transfer all of the Operating Subsidiary's stock to the Savings Bank, which will hold the Operating Subsidiary as an operating subsidiary. In addition, pursuant to Condition No. 6 (Condition 6) of OTS Order No. 99-26, May 11, 1999, approving the Savings Bank's application for a federal charter (1999 Order), the Savings Bank has requested OTS approval to engage in certain activities other than trust activities authorized pursuant to the section 5(n) of the Home Owners' Loan Act (HOLA), 12 U.S.C. § 1464(n), and other activities mentioned in the 1999 Order.

The Operating Subsidiary is a Delaware limited liability company. The Operating Subsidiary will continue its current activities, which include back-office processing of mortgage documents, as well as development and execution of marketing campaigns, ordering relevant documents such as appraisals and credit reports, preparing loan packages for underwriting and decision making by the lender, and delivering loan closing packages to the escrow or closing agent.

#### Operating Subsidiary Application

Generally, a federal savings association may invest in an operating subsidiary only if: (1) the subsidiary engages only in activities permissible for federal savings associations to engage in directly; (2) the federal savings association owns, directly or indirectly, more than 50 percent of the voting shares of the operating subsidiary; and (3) no person or entity other than the federal savings association exercises effective operating control over the operating subsidiary.<sup>1</sup> In addition, OTS may, at any time, limit a federal savings association's investment in operating subsidiaries, or may limit or refuse to permit any activities of an operating subsidiary, for supervisory, legal, or safety and soundness reasons.<sup>2</sup>

With regard to the requirement that the subsidiary may engage only in activities permissible for federal savings associations to engage in directly, the proposed activities of the

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<sup>1</sup> 12 C.F.R. § 559.2, 559.3(c)(1), and (e)(1) (2005).

<sup>2</sup> 12 C.F.R. § 559.1(a) (2005).

Operating Subsidiary are permissible for a federal savings association to engage in as part of its lending activities. Accordingly, OTS concludes that the Operating Subsidiary's proposed activities are permissible for a federal savings association.

With regard to the requirement that the federal savings association own, directly or indirectly, more than 50 percent of the voting shares of the operating subsidiary, the Savings Bank will own all of the Operating Subsidiary's voting securities. With regard to the requirement that no person or entity other than the federal savings association exercise operating control over the proposed operating subsidiary, the Savings Bank will own all of the Operating Subsidiary's voting securities and represents that no person or entity other than the federal savings association will have a role in the Operating Subsidiary's operations. OTS concludes that approval of the Operating Subsidiary application is consistent with the voting power and effective operating control requirements.

With regard to supervisory considerations, OTS has reviewed the operating subsidiary application and has concluded that the proposed transaction does not present supervisory concerns, provided that the standard conditions set forth below, which are intended to address potential issues regarding the establishment of an operating subsidiary, are satisfied.

#### **Condition 6 of the 1999 Order**

Condition 6 of the 1999 Order provides that OTS will review a request to engage in new activities pursuant to Condition 6 under the standards set forth in section 5(e) of the HOLA, OTS regulations thereunder, and the Community Reinvestment Act (CRA).

Section 5(e) provides that OTS may grant a federal savings association charter only: (1) to persons of good character and responsibility; (2) if, in OTS' judgment, a necessity exists for such an institution in the community to be served; (3) if there is a reasonable probability of its usefulness and success; and (4) if the association can be established without undue injury to properly conducted existing local thrift and financing institutions. In addition, 12 C.F.R. § 563e.29(b) provides that an applicant for a federal thrift charter shall submit with its application a description of how its will meet its CRA objectives. OTS takes this description into account when considering the application and may deny or condition the application on CRA grounds.

With regard to the first standard, good character and responsibility, OTS has reviewed the Operating Subsidiary's management, and has found it to be acceptable. The Savings Bank's management, which is well-rated, will not change as a result of the proposed transaction. With regard to second standard, whether a necessity exists for the institution in the community to be served, the Operating Subsidiary is an established entity that is currently providing services. With regard to the probability of usefulness and success, based on OTS' review of the Savings Bank's business plan and its additional analysis, the OTS concludes the application has demonstrated a reasonable probability of usefulness and success. With regard to whether the institution can be established without undue injury to properly conducted existing local thrift and financing institutions, the Operating Subsidiary is already engaging in the proposed activities, so the Savings Bank's acquisition of the Savings Bank's operations should not harm other

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associations. Accordingly, OTS concludes that the request under Condition 6 satisfies all of the approval standards set forth in section 5(e) of the HOLA.

With respect to the CRA, the Savings Bank will continue to be a “special purpose” savings association, as defined in 12 C.F.R. § 563e.11(c)(2). Accordingly, the Savings Bank will continue to be exempt from the OTS CRA regulations, and the standard in Condition 6 relating to compliance with the CRA is irrelevant in this case.

### **Conclusion**

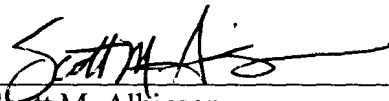
Based on the foregoing, OTS concludes that the operating subsidiary application and the application pursuant to Condition 6 satisfy all applicable approval standards and criteria, provided that the following conditions are complied with in a manner satisfactory to the West Regional Director, or his designee (Regional Director). Accordingly, the applications are hereby approved, subject to the following conditions:

1. The Savings Bank must receive all required regulatory approvals for the transaction prior to consummation of the proposed transaction with copies of all such approvals supplied to the Regional Office;
  2. The proposed transaction must be consummated within 120 calendar days of the date of this Order;
  3. Within 5 business days from the date of consummation of the proposed transaction, the Savings Bank must submit to OTS copies of all executed capital contribution agreements and indemnification agreements, obtained in conjunction with the proposed transaction, substantially in the form of the most recent drafts or copies of such documents submitted to OTS;
  4. On the business day prior to the date of consummation of the proposed transaction, the chief financial officers of the Savings Bank and the Operating Subsidiary must certify in writing to the Regional Director that no material adverse changes have occurred with respect to the financial condition or operation of the Savings Bank and the Operating Subsidiary as disclosed in the application. If additional information having a material adverse bearing on any feature of the application is brought to the attention of the Savings Bank, the Operating Subsidiary, or OTS since the date of the financial statement submitted with the Application, the transaction must not be consummated unless the information is presented to the Regional Director, and the Regional Director provides written nonobjection to consummation of the transaction;
  5. The Savings Bank must advise the Regional Director in writing within 5 calendar days after the effective date of the proposed transactions: (a) of the effective date of the transaction; and (b) that the transaction was consummated in accordance with all applicable laws and regulations, the application, all representations and commitments made by the Savings Bank in connection with OTS’ review of the application, and this Order; and
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6. The Operating Subsidiary must not materially deviate from any of the activities, facts, representations, and commitments, described in the Application, except with the prior written nonobjection of the Regional Director;

The Regional Director may, for good cause, extend for up to 120 calendar days any time period set forth herein.

By order of the Director of the Office of Thrift Supervision, or his designee, effective August 24, 2005.

  
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Scott M. Albinson  
Managing Director  
Office of Examinations, Supervision  
and Consumer Protection