

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

In the Matter of:	)	AA-EC-11-38
Western National Bank	)	
Phoenix, Arizona	)	

**CAPITAL DIRECTIVE**

**WHEREAS**, Western National Bank, Phoenix, Arizona (“Bank”) is a national bank subject to the provisions of 12 U.S.C. § 3907 and 12 C.F.R. Part 3; and

**WHEREAS**, the Office of the Comptroller of the Currency (“OCC”) is authorized, pursuant to 12 U.S.C. § 3907 and 12 C.F.R. Part 3, to require a national bank, including the Bank, to achieve and maintain capital at or above minimum ratios established for a national bank, which the OCC, in its discretion, deems to be necessary or appropriate in light of the particular circumstances at the national bank; and

**WHEREAS**, 12 C.F.R. Part 3, Subpart E provides for the OCC’s issuance of directives to a bank that fails to achieve and maintain capital at or above the ratios established for the bank; and

**WHEREAS**, the OCC issued an individual minimum capital ratio (“IMCR”) to the Bank on August 6, 2009, requiring it to achieve and maintain capital at or above certain ratios, which were agreed to by the Bank; and

**WHEREAS**, the Bank is not in compliance with the terms of the IMCR; and

**WHEREAS**, the Bank failed to remedy unsafe or unsound practices or to comply with the terms of the Formal Agreement (“FA”) entered into by the Bank and the OCC, dated July 15, 2009; and

**WHEREAS**, the Bank is less than adequately capitalized for purposes of Prompt Corrective Action, 12 U.S.C. § 1831o and 12 C.F.R. Part 6; and

**WHEREAS**, on February 14, 2011, the OCC issued a Notice of Intent to Issue a Capital Directive to the Bank pursuant to 12 U.S.C. § 3907 and 12 C.F.R. Part 3; and

**WHEREAS**, on March 7, 2011, the Bank submitted a written response to the Notice of Intent to Issue a Capital Directive; and

**WHEREAS**, the OCC has carefully considered the Bank's response to the Notice of Intent to Issue a Capital Directive; and

**WHEREAS**, the OCC has determined that, due to the particular circumstances present at the Bank, it is necessary to issue a Capital Directive requiring the Bank to achieve and maintain capital at or above certain minimum ratios set forth herein;

**NOW THEREFORE**, pursuant to 12 U.S.C. § 3907 and 12 C.F.R. Part 3, the OCC directs the Bank and its Board of Directors ("Board") to do the following:

## **ARTICLE I**

### **HIGHER CAPITAL MINIMUMS**

(1) Not later than May 30, 2011, the Bank shall achieve and thereafter maintain the following minimum capital ratios (as defined in 12 C.F.R. Part 3):

- (a) Total capital at least equal to eleven percent (11%) of risk-weighted assets;
- (b) Tier 1 capital at least equal to nine percent (9%) of adjusted total assets.<sup>1</sup>

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<sup>1</sup> 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 end-of-quarter intangible assets, deferred tax assets, and credit-enhancing interest only-strips, that are deducted from

(2) 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 of Special Supervision (“Director”).

## **ARTICLE II**

### **CAPITAL PLAN AND CAPITAL RESTORATION PLAN**

(1) Not later than April 30, 2011, the Bank shall submit an acceptable Capital Restoration Plan (“CRP”), conforming to 12 U.S.C. § 1831o(e)(2), 12 C.F.R. § 6.5, and the OCC letter dated August 10, 2010.

(2) Not later than April 30, 2011, the Bank shall submit to the Director an acceptable, written Capital Plan, covering at least a three-year period. The Capital Plan shall be consistent with the CRP required by paragraph (1) of this Article. An acceptable Capital Plan must describe the means and the time schedule by which the Bank will achieve the capital ratios required in Article I.

(3) The Capital Plan shall also include:

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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.

- (a) description of the actions that the Bank intends to take in order to achieve and maintain adequate capital, which may in no event be less than the ratios contained in Article I;
  - (b) projections for growth, which will maintain adequate capital, based upon a detailed analysis of the Bank's assets, liabilities, earnings, fixed assets, and off-balance sheet activities;
  - (c) projections of the sources and timing of the addition of capital to meet the Bank's current and future needs;
  - (d) identification of the primary sources from which the Bank will obtain any necessary additional capital in order to maintain an appropriate capital structure to meet the Bank's current and future needs;
  - (e) specific plans detailing how the Bank will comply with restrictions and requirements set forth in this Capital Directive, and in 12 U.S.C. § 1831o and 12 C.F.R. § 6.5;
  - (f) contingency plans that identify alternative methods to strengthen capital, should the primary source(s) of capital under paragraph (d) of this Article not be available;
  - (g) specific plans detailing how the Bank will comply with restrictions or requirements set forth in 12 C.F.R. § 337.6;
- (4) Additionally, a Capital Plan will not be deemed acceptable unless the plan:
- (a) is based on realistic assumptions and is likely to succeed in restoring the Bank's capital; and
  - (b) would not appreciably increase the risk to which the Bank is exposed.

(5) The Bank may pay a dividend or make a capital distribution (as defined in 12 U.S.C. § 1831o(b)(2)(B)) only:

- (a) when the Bank is in compliance with the requirements of this Capital Directive and its approved Capital Plan, and the Bank would remain in compliance with its approved Capital Plan immediately following the payment of any dividend; and
- (b) when the Bank is in compliance with applicable laws and regulations, including 12 U.S.C. §§ 56, 59, and 60, and 12 C.F.R. Part 5; and
- (c) following the prior written determination of no supervisory objection by the Director.

(6) The Capital Plan shall be submitted to the Director for a prior, written determination of no supervisory objection. The Bank shall make any changes to the Capital Plan required by the Director.

(7) At the next Board meeting following receipt of the Director's written determination of no supervisory objection to the Capital Plan, but within twenty (20) days of the Bank's receipt of such determination, the Board shall adopt, approve and implement the Capital Plan. Thereafter, the Bank (subject to Board review and ongoing monitoring) shall implement and ensure adherence to the Capital Plan.

(8) The Board shall review and update the Bank's Capital Plan at least annually, and more frequently if necessary, or if requested by the Director. Revisions to the Bank's Capital Plan shall be submitted to the Director for a prior written determination of no supervisory objection.

## **ARTICLE III**

### **GENERAL PROVISIONS**

(1) This Capital Directive and the approved Capital Plan constitute a final order under 12 U.S.C. § 3907 and is enforceable under 12 U.S.C. § 1818(i).

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

Director  
Special Supervision Division  
250 E Street, S.W.  
Washington, D.C. 20219

(3) If any provision in this Capital 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 OCC, in its sole discretion, determines otherwise.

(4) Each provision of this Capital Directive shall be binding upon the Bank, its directors, officers, employees, agents, successors, assigns, and other persons participating in the affairs of the Bank.

(5) It is expressly and clearly understood that if, at any time, the OCC 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 OCC shall in any way inhibit, estop, bar or otherwise prevent the Comptroller from so doing.

(6) If the Bank determines that: (i) it is unable to comply with any provision of this Capital Directive; (ii) compliance with any provision of this Capital Directive will cause undue hardship to the Bank; or (iii) the Bank requires an extension of any timeframe within this Capital Directive, the Bank shall submit a written request to the Director asking for relief. Any written request submitted pursuant to this Article shall include a statement setting forth in detail the special circumstances that supports the Bank's request. All such requests shall be accompanied by relevant supporting documentation, together with a copy of a Board Resolution authorizing the request. The Director's decision pertaining to the request is final.

(7) The provisions of this Capital Directive are effective upon issuance of this Directive by the OCC, through the Director whose hand appears below, and shall remain effective and enforceable, except to the extent that, and until such time as, any provisions of this Capital Directive shall have been amended, suspended, waived, or terminated in writing by the OCC. This Capital Directive is effective as of the date indicated below.

**IT IS SO ORDERED**, this 4 day of April, 2011.

/Signed/

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Henry Fleming  
Director for Special Supervision