

1844(A)(6)

Spokane file

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ARIZONA CORPORATION COMMISSION

SECURITIES DIVISION
(602) 542-4242

February 22, 1991

44-1844(A)(6)

Mr. David Goldstein, Esq.
Kirkpatrick & Lockhart
South Lobby, 9th Floor
1800 M Street, N.W.
Washington, DC 20036-5891

RE: American Savings & Loan Association of Florida

Dear Mr. Goldstein:

On the basis of the facts set forth in your letter of September 26, 1990 the Securities Division will not recommend enforcement action for violation of the Securities Act of Arizona should the transaction take place as set forth in your letter.

As this position is premised upon the facts set forth in your letter, it should not be relied on for any other set of facts or by any other person. Please also note that this position applies only to the registration requirements of the Act; the anti-fraud provisions of the Act continue to be applicable.

We have enclosed a photocopy of your letter. By doing this we are able to avoid having to recite or summarize the facts set forth therein.

Sincerely,

SANDRA J. FORBES
Assistant Director for Law & Policy

SJF:sw

Enclosure

KIRKPATRICK & LOCKHART

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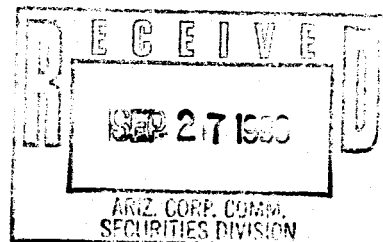
WRITER'S DIRECT DIAL NUMBER

(202) 778-9293

September 26, 1990

BY FEDERAL EXPRESS

Katrina Rogers, Esq.
General Counsel
Corporation Commission,
Securities Division
State of Arizona
1200 W. Washington Street, 2nd Floor
Phoenix, Arizona 85007



Dear Ms. Rogers:

On behalf of American Savings & Loan Association of Florida (the "Issuer") and pursuant to a telephone conversation with Ms. Lynn Naefach of your legal staff, I do hereby request your confirmation that the below described rights and securities to be issued to present and past holders of the Issuer's Series A Cumulative Preferred Stock (the "Preferred Stock") pursuant to a settlement of a pending lawsuit (the "Settlement") are exempt from registration under Title 44, Chapter 12 of the Arizona Revised Statutes (the "Act").^{1/} Enclosed is the required \$200 fee pursuant to Section 44-1861E.

I request that you expedite your response to this letter so we may proceed with the Settlement.

Background

The Issuer is a Florida chartered savings and loan association whose deposits are insured by the Federal Deposit Insurance Corporation ("FDIC") and who is regulated by the FDIC, the Office of Thrift Supervision ("OTS") and the Florida Department of Banking and Finance. One half of the common stock of the Issuer is publicly held and traded on the National Association of Securities Dealers Automatic Quotation System. The Issuer is subject to the reporting requirements of the Securities Exchange Act of 1934 ("1934 Act") and its publicly

^{1/} References to sections refer, unless otherwise noted, to provisions of the Arizona Code.

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held common stock is registered under the 1934 Act. The parties to the subject lawsuit, which is pending before a judge in a Florida Circuit Court, have agreed to and are awaiting court approval of the Settlement.

1. Terms of the Settlement

The substantive terms of the Settlement agreed to by the parties are as follows:

- (i) Persons who currently (as of the date of the Settlement) hold Preferred Stock ("Current Holders") will continue to hold those shares with all current rights and privileges under the statement establishing such rights and privileges;
- (ii) Among the continuing rights of the Current Holders will be the right to obtain from the Issuer \$16.40 per share in cash upon conversion of each share of Preferred Stock;
- (iii) Current Holders also will be permitted to convert their Preferred Stock into shares of the Issuer's common stock at the rate of 2.7312 shares of common stock for each share of Preferred Stock;
- (iv) Members of the Plaintiff Class who, prior to the Settlement, have converted shares of Preferred Stock for \$16.40 will be given 30 days from the order approving the Settlement to repay the \$16.40 to the Issuer and receive shares of the Issuer's common stock at the rate of 2.7312 shares of common stock for each share of Preferred Stock. (Effectively, undoing the prior cash conversion and reconverting at the rate established under the Settlement); and
- (v) Members of the Plaintiff Class will receive, without payment of further consideration, one share of common stock for each 10 shares of Preferred Stock held by them on July 23, 1987.

Members of the Plaintiff Class will be required to submit valid claims, including proof of ownership of Preferred Stock on the class determination date, in order to receive proceeds of the Settlement. The Issuer will assume all reasonable costs associated with notifying the members of the Plaintiff Class and of administering the Settlement and the conversion and

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issuance of shares pursuant to the Settlement. The Settlement will be conditioned on approval of the court and acceptance of the Settlement by not less than 95% of the Plaintiff Class interests.

2. Compliance with Section 3(a)(10) under the Securities Act of 1933

The Settlement will confirm in all respects to the requirements of Section 3(a)(10) of the Securities Act of 1933 ("1933 Act"), which states in relevant part that the following securities are exempt from registration under the 1933 Act:

any security which is issued in exchange for one or more bona fide outstanding securities, claims or property interests, or partly in such exchange and partly for cash, where the terms and conditions of such issuance and exchange are approved, after a hearing upon the fairness of such terms and conditions at which all persons to whom it is proposed to issue securities in such exchange shall have the right to appear, by any court, or by any official or agency of the United States, or by any State or Territorial banking or insurance commission or other governmental authority expressly authorized by law to grant such approval.

Accordingly, all potential recipients of securities (present holders of Preferred Stock and holders of Preferred Stock on July 23, 1987) will be given (i) notice of an opportunity to object to the Settlement at a hearing held by the court and (ii) a hearing on the fairness of the terms and conditions of the Settlement. The decision of the appropriateness of notice will, of course, be made by the court. Although not required by Section 3(a)(10), the Issuer will inform the court that if it approves the Settlement, the securities to be issued will not be registered under the 1933 Act or under the respective securities laws of the various states, including Arizona.

Any information which the court may request, including the Issuer's reports filed pursuant to the 1934 Act during the preceding 12 months, a brief description of the securities being offered, any material changes in the Issuer's affairs not disclosed in these documents shall be presented for the court's review of the fairness of the Settlement. These documents also will be available for review by any person effected by the

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Settlement a reasonable time prior to the judicial hearing. Therefore, in effect, there will be full and fair opportunity for all persons to have full disclosure.

Analysis

For each of the reasons described below I believe that registration of the securities issued pursuant to the Settlement is not required.

Certain transactions similar to the Settlement are exempted from registration pursuant to Section 44-1844. Transactions incident to a judicially approved reorganization are exempted under Section 44-1844.6. The settlement may be deemed to be a partial reorganization and, as noted, will be judicially approved. Indeed, that section does not require the strict oversight by the court as does Section 3(a)(10) of the 1933 Act. Section 44-1844.6 also requires that the transaction be approved by a vote of securities holders pursuant to, among other things, the controlling agreement among securities holders. The Settlement requires the agreement and approval of 95% of the Plaintiff Class. Thus, effectively, the requirements of Section 44-1844.6 should be deemed to be satisfied.

Furthermore, under Section 44-1843.2, securities issued by savings institutions the business of which is supervised and regulated by an agency of the United States, are exempt from registration. The Issuer is a Florida chartered savings and loan association organized under the laws of Florida and supervised and regulated by the Florida Department of Banking and Finance as well as two federal agencies, the OTS and the FDIC. The issuance of any securities of the Issuer is subject to the rules and regulations of each of these three state and federal regulatory agencies.^{2/} Based on these facts, and considering that the Settlement will be made pursuant to court oversight and order, I believe registration of the securities issued pursuant to the Settlement should not be required pursuant to Section 44-1843.2.

Lastly, registration should not be required for the securities issued pursuant to the Settlement because the policy

^{2/} With the passage of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 and the new stringent regulation of all savings institutions, the need for strict state securities regulation of the registration of securities of out-of-state chartered savings and loan associations has been lessened.

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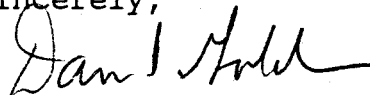
considerations of the Act indicate that registration is not required. The stringent judicial oversight of the Settlement alleviates any concern that the purposes of registration -- disclosure and the prevention of fraud -- will be thwarted by the Settlement. Complete and full disclosure is required to be made to the court and all participants in the lawsuit will have this information made available to them. The Court (as well as the attorneys for the Plaintiff Class) must determine that the Settlement is fair, therefore, preventing any overreaching or other fraudulent actions on behalf of the Issuer.

Conclusion

For each of the above reasons, registration of the securities issued by the Issuer pursuant to the Settlement should not be required. Therefore, I request your confirmation that the above described change in rights of the Preferred Stock and issuance of the common stock of the Issuer are not subject to registration in the State of Arizona. Alternatively, I request your confirmation that the securities to be issued pursuant to the Settlement are exempt from registration under the Act under any other applicable provision.

If you need further information, I can be reached at (202) 778-9293. I request that before the issuance of any order or letter in which you do not agree with the availability of an exemption from registration, you please contact me to discuss possible further action on the part of the Issuer.

Sincerely,



David I. Goldstein

cc: Lynn Naefach, Esq.
J. Lynn Taylor
Kirkpatrick & Lockhart