
UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-Q

(Mark One)

☒ **QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the quarterly period ended March 31, 2021

OR

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the transition period from _____ to _____

Commission file number 001-34580

FIRST AMERICAN FINANCIAL CORPORATION

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of
incorporation or organization)

1 First American Way, Santa Ana, California
(Address of principal executive offices)

26-1911571

(I.R.S. Employer
Identification No.)

92707-5913
(Zip Code)

(714) 250-3000

(Registrant's telephone number, including area code)

(Former name, former address and former fiscal year, if changed since last report)

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common stock, \$0.00001 par value	FAF	New York Stock Exchange

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes ☒ No ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act

Large accelerated filer ☒ Accelerated filer ☐

Non-accelerated filer ☐ Smaller reporting company ☐

Emerging growth company ☐

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☐

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes ☐ No ☒

Indicate the number of shares outstanding of each of the issuer's classes of common stock, as of the latest practicable date.

On April 19, 2021 there were 109,741,163 shares of common stock outstanding.

FIRST AMERICAN FINANCIAL CORPORATION
AND SUBSIDIARY COMPANIES
INFORMATION INCLUDED IN REPORT

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Items 3 and 4 of Part II have been omitted because they are not applicable with respect to the current reporting period.

THIS QUARTERLY REPORT ON FORM 10-Q CONTAINS FORWARD-LOOKING STATEMENTS WITHIN THE MEANING OF SECTION 27A OF THE SECURITIES ACT OF 1933, AS AMENDED, AND SECTION 21E OF THE SECURITIES EXCHANGE ACT OF 1934, AS AMENDED. THESE FORWARD-LOOKING STATEMENTS CAN BE IDENTIFIED BY THE FACT THAT THEY DO NOT RELATE STRICTLY TO HISTORICAL OR CURRENT FACTS AND MAY CONTAIN THE WORDS “BELIEVE,” “ANTICIPATE,” “EXPECT,” “INTEND,” “PLAN,” “PREDICT,” “ESTIMATE,” “PROJECT,” “WILL BE,” “WILL CONTINUE,” “WILL LIKELY RESULT,” OR OTHER SIMILAR WORDS AND PHRASES OR FUTURE OR CONDITIONAL VERBS SUCH AS “WILL,” “MAY,” “MIGHT,” “SHOULD,” “WOULD,” OR “COULD.” THESE FORWARD-LOOKING STATEMENTS INCLUDE, WITHOUT LIMITATION, STATEMENTS REGARDING FUTURE OPERATIONS, PERFORMANCE, FINANCIAL CONDITION, PROSPECTS, PLANS AND STRATEGIES. THESE FORWARD-LOOKING STATEMENTS ARE BASED ON CURRENT EXPECTATIONS AND ASSUMPTIONS THAT MAY PROVE TO BE INCORRECT.

RISKS AND UNCERTAINTIES EXIST THAT MAY CAUSE RESULTS TO DIFFER MATERIALLY FROM THOSE SET FORTH IN THESE FORWARD-LOOKING STATEMENTS. FACTORS THAT COULD CAUSE THE ANTICIPATED RESULTS TO DIFFER FROM THOSE DESCRIBED IN THE FORWARD-LOOKING STATEMENTS INCLUDE, WITHOUT LIMITATION:

- INTEREST RATE FLUCTUATIONS;
- CHANGES IN THE PERFORMANCE OF THE REAL ESTATE MARKETS;
- VOLATILITY IN THE CAPITAL MARKETS;
- UNFAVORABLE ECONOMIC CONDITIONS;
- THE CORONAVIRUS PANDEMIC AND RESPONSES THERETO;
- IMPAIRMENTS IN THE COMPANY’S GOODWILL OR OTHER INTANGIBLE ASSETS;
- UNCERTAINTY FROM THE EXPECTED DISCONTINUANCE OF LIBOR AND TRANSITION TO ANY OTHER INTEREST RATE BENCHMARK;
- FAILURES AT FINANCIAL INSTITUTIONS WHERE THE COMPANY DEPOSITS FUNDS;
- REGULATORY OVERSIGHT AND CHANGES IN APPLICABLE LAWS AND GOVERNMENT REGULATIONS, INCLUDING PRIVACY AND DATA PROTECTION LAWS;
- HEIGHTENED SCRUTINY BY LEGISLATORS AND REGULATORS OF THE COMPANY’S TITLE INSURANCE AND SERVICES SEGMENT AND CERTAIN OTHER OF THE COMPANY’S BUSINESSES;
- REGULATION OF TITLE INSURANCE RATES;
- LIMITATIONS ON ACCESS TO PUBLIC RECORDS AND OTHER DATA;
- CLIMATE CHANGE, HEALTH CRISES, SEVERE WEATHER CONDITIONS AND OTHER CATASTROPHE EVENTS;
- CHANGES IN RELATIONSHIPS WITH LARGE MORTGAGE LENDERS AND GOVERNMENT-SPONSORED ENTERPRISES;
- CHANGES IN MEASURES OF THE STRENGTH OF THE COMPANY’S TITLE INSURANCE UNDERWRITERS, INCLUDING RATINGS AND STATUTORY CAPITAL AND SURPLUS;
- LOSSES IN THE COMPANY’S INVESTMENT PORTFOLIO OR OTHER INVESTMENTS;
- MATERIAL VARIANCE BETWEEN ACTUAL AND EXPECTED CLAIMS EXPERIENCE;
- DEFALCATIONS, INCREASED CLAIMS OR OTHER COSTS AND EXPENSES ATTRIBUTABLE TO THE COMPANY’S USE OF TITLE AGENTS;
- ANY INADEQUACY IN THE COMPANY’S RISK MANAGEMENT FRAMEWORK;
- SYSTEMS DAMAGE, FAILURES, INTERRUPTIONS, CYBERATTACKS AND INTRUSIONS, OR UNAUTHORIZED DATA DISCLOSURES;

- *INNOVATION EFFORTS OF THE COMPANY AND OTHER INDUSTRY PARTICIPANTS AND ANY RELATED MARKET DISRUPTION;*
- *ERRORS AND FRAUD INVOLVING THE TRANSFER OF FUNDS;*
- *THE COMPANY'S USE OF A GLOBAL WORKFORCE;*
- *INABILITY OF THE COMPANY'S SUBSIDIARIES TO PAY DIVIDENDS OR REPAY FUNDS; AND*
- *OTHER FACTORS DESCRIBED IN THIS QUARTERLY REPORT ON FORM 10-Q, INCLUDING UNDER THE CAPTION "RISK FACTORS" IN ITEM 1A OF PART II.*

THE FORWARD-LOOKING STATEMENTS SPEAK ONLY AS OF THE DATE THEY ARE MADE. THE COMPANY DOES NOT UNDERTAKE TO UPDATE FORWARD-LOOKING STATEMENTS TO REFLECT CIRCUMSTANCES OR EVENTS THAT OCCUR AFTER THE DATE THE FORWARD-LOOKING STATEMENTS ARE MADE.

PART I: FINANCIAL INFORMATION

Item 1. Financial Statements.

FIRST AMERICAN FINANCIAL CORPORATION AND SUBSIDIARY COMPANIES

Condensed Consolidated Balance Sheets (in thousands, except par values) (unaudited)

	March 31, 2021	December 31, 2020
Assets		
Cash and cash equivalents	\$ 2,026,024	\$ 1,275,466
Accounts and accrued income receivable, less allowances of \$12,924 and \$13,994	404,441	385,086
Income taxes receivable	1,581	951
Investments:		
Deposits with banks	45,359	45,856
Debt securities, includes pledged securities of \$92,784 and \$93,586 (amortized cost \$7,109,478 and \$6,121,004; allowance for credit losses of \$109 and \$132)	7,211,498	6,354,822
Equity securities	419,606	464,126
Other investments	424,767	350,016
	<u>8,101,230</u>	<u>7,214,820</u>
Secured financings receivable	745,813	748,312
Property and equipment, net	445,378	445,132
Operating lease assets	255,065	265,963
Title plants and other indexes	590,401	584,785
Deferred income taxes	14,484	14,484
Goodwill	1,371,712	1,378,628
Other intangible assets, net	186,515	194,474
Other assets	289,259	287,887
	<u>\$ 14,431,903</u>	<u>\$ 12,795,988</u>
Liabilities and Equity		
Deposits	\$ 4,580,528	\$ 3,276,949
Accounts payable and accrued liabilities	1,113,351	979,733
Deferred revenue	252,665	271,977
Reserve for known and incurred but not reported claims	1,203,169	1,178,004
Income taxes payable	87,107	53,784
Deferred income taxes	291,220	291,220
Operating lease liabilities	283,211	295,762
Secured financings payable	645,530	516,155
Notes and contracts payable	1,009,447	1,010,756
	<u>9,466,228</u>	<u>7,874,340</u>
Commitments and contingencies (Note 16)		
Stockholders' equity:		
Preferred stock, \$0.00001 par value; Authorized—500 shares; Outstanding—none	—	—
Common stock, \$0.00001 par value; Authorized—300,000 shares; Outstanding—109,741 shares and 110,353 shares	1	1
Additional paid-in capital	2,173,859	2,214,935
Retained earnings	2,837,241	2,655,495
Accumulated other comprehensive (loss) income	(55,828)	39,541
Total stockholders' equity	<u>4,955,273</u>	<u>4,909,972</u>
Noncontrolling interests	10,402	11,676
Total equity	<u>4,965,675</u>	<u>4,921,648</u>
	<u>\$ 14,431,903</u>	<u>\$ 12,795,988</u>

See notes to condensed consolidated financial statements.

FIRST AMERICAN FINANCIAL CORPORATION
AND SUBSIDIARY COMPANIES

Condensed Consolidated Statements of Income
(in thousands, except per share amounts)
(unaudited)

	Three Months Ended March 31,	
	2021	2020
Revenues		
Direct premiums and escrow fees	\$ 785,675	\$ 620,637
Agent premiums	845,292	599,682
Information and other	278,892	211,512
Net investment income	49,053	45,874
Net realized investment gains (losses)	66,833	(64,762)
	<u>2,025,745</u>	<u>1,412,943</u>
Expenses		
Personnel costs	535,182	429,660
Premiums retained by agents	671,301	475,381
Other operating expenses	295,403	257,240
Provision for policy losses and other claims	140,447	117,477
Depreciation and amortization	38,298	31,449
Premium taxes	22,586	17,315
Interest	16,506	12,097
	<u>1,719,723</u>	<u>1,340,619</u>
Income before income taxes	306,022	72,324
Income taxes	71,564	8,478
Net income	234,458	63,846
Less: Net income attributable to noncontrolling interests	842	642
Net income attributable to the Company	<u>\$ 233,616</u>	<u>\$ 63,204</u>
Net income per share attributable to the Company's stockholders (Note 10):		
Basic	<u>\$ 2.10</u>	<u>\$ 0.56</u>
Diluted	<u>\$ 2.10</u>	<u>\$ 0.55</u>
Cash dividends declared per share	<u>\$ 0.46</u>	<u>\$ 0.44</u>
Weighted-average common shares outstanding (Note 10):		
Basic	<u>111,113</u>	<u>113,556</u>
Diluted	<u>111,414</u>	<u>113,959</u>

See notes to condensed consolidated financial statements.

FIRST AMERICAN FINANCIAL CORPORATION
AND SUBSIDIARY COMPANIES

Condensed Consolidated Statements of Comprehensive Income
(in thousands)
(unaudited)

	Three Months Ended March 31,	
	2021	2020
Net income	\$ 234,458	\$ 63,846
Other comprehensive income (loss), net of tax:		
Unrealized (losses) gains on debt securities	(99,453)	12,619
Unrealized (losses) gains on debt securities for which credit-related portion was recognized in earnings	(293)	85
Foreign currency translation adjustment	3,374	(33,556)
Pension benefit adjustment	1,002	399
Total other comprehensive loss, net of tax	(95,370)	(20,453)
Comprehensive income	139,088	43,393
Less: Comprehensive income attributable to noncontrolling interests	841	642
Comprehensive income attributable to the Company	\$ 138,247	\$ 42,751

See notes to condensed consolidated financial statements.

FIRST AMERICAN FINANCIAL CORPORATION
AND SUBSIDIARY COMPANIES

Condensed Consolidated Statements of Stockholders' Equity
(in thousands)
(unaudited)

	First American Financial Corporation Stockholders								
	Shares	Common stock	Additional paid-in capital	Retained earnings	Accumulated other comprehensive income (loss)	Total stockholders' equity	Noncontrolling interests	Total	
Balance at December 31, 2020	110,353	\$ 1	\$ 2,214,935	\$ 2,655,495	\$ 39,541	\$ 4,909,972	\$ 11,676	\$ 4,921,648	
Net income for three months ended March 31, 2021	—	—	—	233,616	—	233,616	842	234,458	
Dividends on common shares	—	—	—	(50,985)	—	(50,985)	—	(50,985)	
Purchase of Company shares	(1,226)	—	(64,786)	—	—	(64,786)	—	(64,786)	
Shares issued in connection with share-based compensation	614	—	(7,493)	(885)	—	(8,378)	—	(8,378)	
Share-based compensation	—	—	31,203	—	—	31,203	—	31,203	
Net activity related to noncontrolling interests	—	—	—	—	—	—	(2,115)	(2,115)	
Other comprehensive loss	—	—	—	—	(95,369)	(95,369)	(1)	(95,370)	
Balance at March 31, 2021	<u>109,741</u>	<u>\$ 1</u>	<u>\$ 2,173,859</u>	<u>\$ 2,837,241</u>	<u>\$ (55,828)</u>	<u>\$ 4,955,273</u>	<u>\$ 10,402</u>	<u>\$ 4,965,675</u>	

See notes to condensed consolidated financial statements.

FIRST AMERICAN FINANCIAL CORPORATION
AND SUBSIDIARY COMPANIES

Condensed Consolidated Statements of Stockholders' Equity – (Continued)
(in thousands)
(unaudited)

	First American Financial Corporation Stockholders								
	Shares	Common stock	Additional paid-in capital	Retained earnings	Accumulated other comprehensive loss	Total stockholders' equity	Noncontrolling interests	Total	
Balance at December 31, 2019	112,476	\$ 1	\$ 2,300,926	\$ 2,161,049	\$ (41,492)	\$ 4,420,484	\$ 4,518	\$ 4,425,002	
Net income for three months ended March 31, 2020	—	—	—	63,204	—	63,204	642	63,846	
Dividends on common shares	—	—	—	(49,702)	—	(49,702)	—	(49,702)	
Purchase of Company shares	(1,703)	—	(65,785)	—	—	(65,785)	—	(65,785)	
Shares issued in connection with share-based compensation	644	—	(13,547)	(831)	—	(14,378)	—	(14,378)	
Share-based compensation	—	—	25,903	—	—	25,903	—	25,903	
Net activity related to noncontrolling interests	—	—	72	—	—	72	4,417	4,489	
Other comprehensive loss	—	—	—	—	(20,453)	(20,453)	—	(20,453)	
Balance at March 31, 2020	<u>111,417</u>	<u>\$ 1</u>	<u>\$ 2,247,569</u>	<u>\$ 2,173,720</u>	<u>\$ (61,945)</u>	<u>\$ 4,359,345</u>	<u>\$ 9,577</u>	<u>\$ 4,368,922</u>	

See notes to condensed consolidated financial statements.

FIRST AMERICAN FINANCIAL CORPORATION
AND SUBSIDIARY COMPANIES

Condensed Consolidated Statements of Cash Flows
(in thousands)
(unaudited)

	Three Months Ended March 31,	
	2021	2020
Cash flows from operating activities:		
Net income	\$ 234,458	\$ 63,846
Adjustments to reconcile net income to cash provided by operating activities:		
Provision for policy losses and other claims	140,447	117,477
Depreciation and amortization	38,298	31,449
Amortization of premiums and accretion of discounts on debt securities, net	11,251	9,952
Net realized investment (gains) losses	(66,833)	64,762
Share-based compensation	31,203	25,903
Equity in (earnings) losses of equity method investments, net	(1,088)	228
Dividends from equity method investments	2,795	1,402
Changes in assets and liabilities excluding effects of acquisitions and noncash transactions:		
Claims paid, including assets acquired, net of recoveries	(118,208)	(108,538)
Net change in income tax accounts	64,092	5,181
Increase in accounts and accrued income receivable	(7,825)	(45,747)
Decrease in accounts payable and accrued liabilities	(81,789)	(149,960)
Decrease in deferred revenue	(19,310)	(15,753)
Other, net	(3,582)	23,952
Cash provided by operating activities	223,909	24,154
Cash flows from investing activities:		
Net cash effect of acquisitions/dispositions	—	(386,231)
Net (increase) decrease in deposits with banks	(295)	2,095
Purchases of debt and equity securities	(1,411,674)	(588,327)
Proceeds from sales of debt and equity securities	259,503	211,370
Proceeds from maturities of debt securities	432,159	320,523
Investments in unconsolidated entities	(14,928)	(44,795)
Net change in other investments	(19,414)	298
Advances under secured financing agreements	(6,282,240)	(3,028,490)
Collections of secured financings receivable	6,284,739	2,835,789
Capital expenditures	(28,582)	(29,213)
Proceeds from sales of property and equipment	688	14,141
Proceeds from insurance settlement	754	—
Cash used for investing activities	(779,290)	(692,840)
Cash flows from financing activities:		
Net change in deposits	1,303,579	93,916
Borrowings under secured financing agreements	5,234,634	2,998,687
Repayments of secured financings payable	(5,105,259)	(2,835,442)
Borrowings under unsecured credit facility	—	120,000
Repayments of notes and contracts payable	(1,599)	(1,338)
Net activity related to noncontrolling interests	(2,095)	(1,328)
Net payments in connection with share-based compensation	(8,378)	(14,378)
Repurchases of Company shares	(64,786)	(65,785)
Payments of cash dividends	(50,985)	(49,702)
Cash provided by financing activities	1,305,111	244,630
Effect of exchange rate changes on cash	828	(11,918)
Net increase (decrease) in cash and cash equivalents	750,558	(435,974)
Cash and cash equivalents—Beginning of period	1,275,466	1,485,959
Cash and cash equivalents—End of period	<u>\$ 2,026,024</u>	<u>\$ 1,049,985</u>
Supplemental information:		
Cash paid during the period for:		
Interest	\$ 10,803	\$ 9,462
Premium taxes	\$ 29,400	\$ 25,049
Income taxes, less refunds of \$114 and \$71	\$ 7,470	\$ 3,239

See notes to condensed consolidated financial statements.

FIRST AMERICAN FINANCIAL CORPORATION
AND SUBSIDIARY COMPANIES
Notes to Condensed Consolidated Financial Statements
(unaudited)

Note 1 – Basis of Condensed Consolidated Financial Statements

Basis of Presentation

The condensed consolidated financial information included in this report has been prepared in accordance with U.S. generally accepted accounting principles (“GAAP”) for interim financial information and Article 10 of Securities and Exchange Commission (“SEC”) Regulation S-X. The principles for condensed interim financial information do not require the inclusion of all the information and footnotes required by GAAP for complete financial statements. Therefore, these financial statements should be read in conjunction with the First American Financial Corporation (the “Company”) Annual Report on Form 10-K for the year ended December 31, 2020. The condensed consolidated financial statements included herein are unaudited; however, in the opinion of management, they contain all normal recurring adjustments necessary for a fair statement of the consolidated results for the interim periods. All material intercompany transactions and balances have been eliminated upon consolidation.

Recently Adopted Accounting Pronouncements

In December 2019, the FASB issued updated guidance intended to simplify and improve the accounting for income taxes. The updated guidance eliminates certain exceptions and clarifies and amends certain areas of the guidance. The updated guidance is effective for interim and annual reporting periods beginning after December 15, 2020. The adoption of this guidance on a prospective basis, effective January 1, 2021, did not have a material impact on its condensed consolidated financial statements.

Note 2 – Exit of Property and Casualty Insurance Business

During 2020, the Company initiated a plan to exit its property and casualty insurance business. In January 2021, the Company entered into book transfer agreements with two third party insurers, which will provide qualifying agents and customers of the Company an opportunity to transfer their policies. The Company expects the transfers to be completed by the end of the third quarter of 2022. The Company will seek to non-renew policies that are not transferred and, except in certain limited circumstances, is no longer issuing new policies.

Note 3 – Escrow Deposits, Like-kind Exchange Deposits and Trust Assets

The Company administers escrow deposits and trust assets as a service to its customers. Escrow deposits totaled \$9.2 billion and \$7.1 billion at March 31, 2021 and December 31, 2020, respectively, of which \$4.4 billion and \$3.1 billion, respectively, were held at First American Trust, FSB. The escrow deposits held at First American Trust, FSB are temporarily invested in cash and cash equivalents and debt securities, with offsetting liabilities included in deposits in the accompanying condensed consolidated balance sheets. The remaining escrow deposits were held at third-party financial institutions.

Trust assets held or managed by First American Trust, FSB totaled \$4.4 billion at March 31, 2021 and December 31, 2020. Escrow deposits held at third-party financial institutions and trust assets are not considered assets of the Company and, therefore, are not included in the accompanying condensed consolidated balance sheets. All such amounts are placed in deposit accounts insured, up to applicable limits, by the Federal Deposit Insurance Corporation. The Company could be held contingently liable for the disposition of these assets.

In conducting its operations, the Company often holds customers’ assets in escrow, pending completion of real estate transactions and, as a result, the Company has ongoing programs for realizing economic benefits with various financial institutions. The results from these programs are included as income or a reduction in expense, as appropriate, in the consolidated statements of income based on the nature of the arrangement and benefit received.

FIRST AMERICAN FINANCIAL CORPORATION
AND SUBSIDIARY COMPANIES
Notes to Condensed Consolidated Financial Statements – (Continued)
(unaudited)

The Company facilitates tax-deferred property exchanges for customers pursuant to Section 1031 of the Internal Revenue Code and tax-deferred reverse exchanges pursuant to Revenue Procedure 2000-37. As a facilitator and intermediary, the Company holds the proceeds from sales transactions and takes temporary title to property identified by the customer to be acquired with such proceeds. Upon the completion of each such exchange, the identified property is transferred to the customer or, if the exchange does not take place, an amount equal to the sales proceeds or, in the case of a reverse exchange, title to the property held by the Company is transferred to the customer. Like-kind exchange funds held by the Company totaled \$3.0 billion and \$2.9 billion at March 31, 2021 and December 31, 2020, respectively. The like-kind exchange deposits are held at third-party financial institutions and, due to the structure utilized to facilitate these transactions, the proceeds and property are not considered assets of the Company and, therefore, are not included in the accompanying condensed consolidated balance sheets. All such amounts are placed in deposit accounts insured, up to applicable limits, by the Federal Deposit Insurance Corporation. The Company could be held contingently liable to the customer for the transfers of property, disbursements of proceeds and the returns on such proceeds.

Note 4 – Debt and Equity Securities

Investments in debt securities, classified as available-for-sale, are as follows:

(in thousands)	Amortized cost	Allowance for credit losses	Gross unrealized		Estimated fair value
			Gains	Losses	
March 31, 2021					
U.S. Treasury bonds	\$ 158,348	\$ —	\$ 519	\$ (2,750)	\$ 156,117
Municipal bonds	1,406,091	—	65,205	(17,678)	1,453,618
Foreign government bonds	206,289	—	2,604	(3,601)	205,292
Governmental agency bonds	299,347	—	6,189	(2,031)	303,505
Governmental agency mortgage-backed securities	3,993,429	—	56,030	(33,609)	4,015,850
U.S. corporate debt securities	638,875	(104)	26,746	(5,183)	660,334
Foreign corporate debt securities	407,099	(5)	13,813	(4,125)	416,782
	<u>\$ 7,109,478</u>	<u>\$ (109)</u>	<u>\$ 171,106</u>	<u>\$ (68,977)</u>	<u>\$ 7,211,498</u>
December 31, 2020					
U.S. Treasury bonds	\$ 80,172	\$ —	\$ 778	\$ (104)	\$ 80,846
Municipal bonds	1,168,425	—	80,953	(570)	1,248,808
Foreign government bonds	194,042	—	6,004	(516)	199,530
Governmental agency bonds	254,248	—	9,869	(195)	263,922
Governmental agency mortgage-backed securities	3,401,737	—	74,549	(1,668)	3,474,618
U.S. corporate debt securities	637,808	(119)	43,505	(497)	680,697
Foreign corporate debt securities	384,572	(13)	22,078	(236)	406,401
	<u>\$ 6,121,004</u>	<u>\$ (132)</u>	<u>\$ 237,736</u>	<u>\$ (3,786)</u>	<u>\$ 6,354,822</u>

Sales of debt securities resulted in realized gains of \$5.1 million and \$6.2 million, realized losses of \$0.4 million and \$1.3 million, and proceeds of \$191.4 million and \$209.4 million for the three months ended March 31, 2021 and 2020, respectively.

FIRST AMERICAN FINANCIAL CORPORATION
AND SUBSIDIARY COMPANIES
Notes to Condensed Consolidated Financial Statements – (Continued)
(unaudited)

Investments in debt securities in an unrealized loss position, based on length of time, are as follows:

(in thousands)	Less than 12 months		12 months or longer		Total	
	Estimated fair value	Unrealized losses	Estimated fair value	Unrealized losses	Estimated fair value	Unrealized losses
March 31, 2021						
U.S. Treasury bonds	\$ 109,133	\$ (2,750)	\$ —	\$ —	\$ 109,133	\$ (2,750)
Municipal bonds	466,304	(17,569)	2,391	(109)	468,695	(17,678)
Foreign government bonds	91,324	(3,601)	—	—	91,324	(3,601)
Governmental agency bonds	69,387	(2,031)	—	—	69,387	(2,031)
Governmental agency mortgage-backed securities	1,896,533	(33,607)	709	(2)	1,897,242	(33,609)
U.S. corporate debt securities	165,797	(5,009)	6,198	(174)	171,995	(5,183)
Foreign corporate debt securities	113,406	(4,075)	3,372	(50)	116,778	(4,125)
	<u>\$ 2,911,884</u>	<u>\$ (68,642)</u>	<u>\$ 12,670</u>	<u>\$ (335)</u>	<u>\$ 2,924,554</u>	<u>\$ (68,977)</u>
December 31, 2020						
U.S. Treasury bonds	\$ 7,744	\$ (104)	\$ —	\$ —	\$ 7,744	\$ (104)
Municipal bonds	74,045	(570)	—	—	74,045	(570)
Foreign government bonds	67,094	(516)	—	—	67,094	(516)
Governmental agency bonds	15,353	(195)	—	—	15,353	(195)
Governmental agency mortgage-backed securities	287,947	(1,089)	100,473	(579)	388,420	(1,668)
U.S. corporate debt securities	42,508	(484)	1,357	(13)	43,865	(497)
Foreign corporate debt securities	19,042	(232)	276	(4)	19,318	(236)
	<u>\$ 513,733</u>	<u>\$ (3,190)</u>	<u>\$ 102,106</u>	<u>\$ (596)</u>	<u>\$ 615,839</u>	<u>\$ (3,786)</u>

Based on the Company's review of its debt securities in an unrealized loss position for which an allowance for credit losses has not been recorded, it determined that the losses were due to non-credit factors. As such, the Company does not consider these securities to be credit impaired at March 31, 2021.

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Activity in the allowance for credit losses on debt securities for the three months ended March 31, 2021 and 2020, is summarized as follows:

(in thousands)	Three Months Ended March 31,	
	2021	2020
Balance at beginning of period	\$ (132)	\$ —
Credit losses recognized during the period	—	(7,493)
Net decreases to credit losses previously recognized	7	—
Reductions for securities sold/matured	16	—
Balance at end of period	<u>\$ (109)</u>	<u>\$ (7,493)</u>

Investments in debt securities at March 31, 2021, by contractual maturities, are as follows:

(in thousands)	Due in one year or less	Due after one through five years	Due after five through ten years	Due after ten years	Total
U.S. Treasury bonds					
Amortized cost	\$ 44,026	\$ 73,336	\$ 24,774	\$ 16,212	\$ 158,348
Estimated fair value	\$ 44,451	\$ 73,186	\$ 23,789	\$ 14,691	\$ 156,117
Municipal bonds					
Amortized cost	37,990	105,276	540,808	722,017	1,406,091
Estimated fair value	38,272	110,007	562,538	742,801	1,453,618
Foreign government bonds					
Amortized cost	39,784	74,345	77,959	14,201	206,289
Estimated fair value	39,813	75,496	75,807	14,176	205,292
Governmental agency bonds					
Amortized cost	23,877	143,684	52,930	78,856	299,347
Estimated fair value	24,068	146,765	53,574	79,098	303,505
U.S. corporate debt securities					
Amortized cost	11,474	329,634	230,522	67,245	638,875
Estimated fair value	11,547	347,060	233,607	68,120	660,334
Foreign corporate debt securities					
Amortized cost	12,807	223,422	124,604	46,266	407,099
Estimated fair value	12,927	232,283	125,873	45,699	416,782
Total debt securities excluding mortgage-backed securities					
Amortized cost	\$ 169,958	\$ 949,697	\$ 1,051,597	\$ 944,797	\$ 3,116,049
Estimated fair value	\$ 171,078	\$ 984,797	\$ 1,075,188	\$ 964,585	\$ 3,195,648
Total mortgage-backed securities					
Amortized cost					3,993,429
Estimated fair value					4,015,850
Total debt securities					
Amortized cost					\$ 7,109,478
Estimated fair value					\$ 7,211,498

Mortgage-backed securities, which include contractual terms to maturity, are not categorized by contractual maturity as borrowers may have the right to call or prepay obligations with, or without, call or prepayment penalties.

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Investments in equity securities are as follows:

(in thousands)	Cost	Estimated fair value
March 31, 2021		
Preferred stocks	\$ 21,803	\$ 20,920
Common stocks	308,752	398,686
	<u>\$ 330,555</u>	<u>\$ 419,606</u>
December 31, 2020		
Preferred stocks	\$ 22,163	\$ 19,479
Common stocks	354,157	444,647
	<u>\$ 376,320</u>	<u>\$ 464,126</u>

Net gains (realized and unrealized) of \$19.1 million and net losses (realized and unrealized) of \$82.5 million were recognized for the three months ended March 31, 2021 and 2020, respectively, as a result of changes in the fair values of equity securities. Included in net gains during the three months ended March 31, 2021 were net unrealized gains of \$17.9 million related to equity securities still held at March 31, 2021, and included in net losses during the three months ended March 31, 2020 were net unrealized losses of \$82.4 million related to equity securities still held at March 31, 2020.

The composition of the investment portfolio at March 31, 2021, by credit rating, is as follows:

(in thousands, except percentages)	A- or higher		BBB+ to BBB-		Non-Investment Grade		Total	
	Estimated fair value	Percentage	Estimated fair value	Percentage	Estimated fair value	Percentage	Estimated fair value	Percentage
Debt securities:								
U.S. Treasury bonds	\$ 156,117	100.0	\$ —	—	\$ —	—	\$ 156,117	100.0
Municipal bonds	1,406,205	96.7	44,833	3.1	2,580	0.2	1,453,618	100.0
Foreign government bonds	190,399	92.7	12,069	5.9	2,824	1.4	205,292	100.0
Governmental agency bonds	303,505	100.0	—	—	—	—	303,505	100.0
Governmental agency mortgage-backed securities	4,015,850	100.0	—	—	—	—	4,015,850	100.0
U.S. corporate debt securities	246,251	37.3	336,566	51.0	77,517	11.7	660,334	100.0
Foreign corporate debt securities	147,967	35.5	236,995	56.9	31,820	7.6	416,782	100.0
Total debt securities	6,466,294	89.7	630,463	8.7	114,741	1.6	7,211,498	100.0
Preferred stocks	59	0.3	19,368	92.6	1,493	7.1	20,920	100.0
Total	<u>\$ 6,466,353</u>	<u>89.4</u>	<u>\$ 649,831</u>	<u>9.0</u>	<u>\$ 116,234</u>	<u>1.6</u>	<u>\$ 7,232,418</u>	<u>100.0</u>

Included in debt securities at March 31, 2021, were bank loans totaling \$62.0 million, of which \$58.2 million were non-investment grade; high yield corporate debt securities totaling \$47.0 million, all of which were non-investment grade; and emerging market debt securities totaling \$70.2 million, of which \$7.0 million were non-investment grade.

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The composition of the debt securities portfolio in an unrealized loss position at March 31, 2021, by credit rating, is as follows:

(in thousands, except percentages)	A- or higher		BBB+ to BBB-		Non-Investment Grade		Total	
	Estimated fair value	Percentage	Estimated fair value	Percentage	Estimated fair value	Percentage	Estimated fair value	Percentage
U.S. Treasury bonds	\$ 109,133	100.0	\$ —	—	\$ —	—	\$ 109,133	100.0
Municipal bonds	462,004	98.6	6,691	1.4	—	—	468,695	100.0
Foreign government bonds	89,161	97.6	612	0.7	1,551	1.7	91,324	100.0
Governmental agency bonds	69,387	100.0	—	—	—	—	69,387	100.0
Governmental agency mortgage-backed securities	1,897,242	100.0	—	—	—	—	1,897,242	100.0
U.S. corporate debt securities	48,707	28.3	80,898	47.1	42,390	24.6	171,995	100.0
Foreign corporate debt securities	52,118	44.6	53,618	45.9	11,042	9.5	116,778	100.0
Total	<u>\$ 2,727,752</u>	<u>93.3</u>	<u>\$ 141,819</u>	<u>4.8</u>	<u>\$ 54,983</u>	<u>1.9</u>	<u>\$ 2,924,554</u>	<u>100.0</u>

Debt securities in an unrealized loss position at March 31, 2021, included bank loans totaling \$32.9 million, of which \$31.2 million were non-investment grade; high yield corporate debt securities totaling \$21.5 million, all of which were non-investment grade; and emerging market debt securities totaling \$15.4 million, of which \$2.3 million were non-investment grade.

The credit ratings in the above tables reflect published ratings obtained from globally recognized securities rating agencies. If a security was rated differently among the rating agencies, the lowest rating was selected. Governmental agency mortgage-backed securities are not rated by any of the ratings agencies; however, these securities have been included in the above table in the “A- or higher” rating category because the payments of principal and interest are guaranteed by the governmental agency that issued the security.

Note 5 – Allowance for Credit Losses – Accounts Receivable

Activity in the allowance for credit losses on accounts receivable is summarized as follows:

(in thousands)	Three Months Ended March 31,	
	2021	2020
Balance at beginning of period	\$ (13,994)	\$ (12,676)
Provision for expected credit losses	(139)	(1,003)
Write-offs/recoveries	1,209	2,103
Balance at end of period	<u>\$ (12,924)</u>	<u>\$ (11,576)</u>

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Note 6 – Goodwill

A summary of the changes in the carrying amount of goodwill, by reportable segment, for the three months ended March 31, 2021, is as follows:

<u>(in thousands)</u>	<u>Title Insurance and Services</u>	<u>Specialty Insurance</u>	<u>Total</u>
Balance at December 31, 2020			
Goodwill	\$ 1,366,041	\$ 46,765	\$ 1,412,806
Accumulated impairment losses	—	(34,178)	(34,178)
	<u>\$ 1,366,041</u>	<u>\$ 12,587</u>	<u>\$ 1,378,628</u>
Acquisitions	(7,597)	—	(7,597)
Foreign currency translation	681	—	681
Balance at March 31, 2021			
Goodwill	\$ 1,359,125	\$ 46,765	\$ 1,405,890
Accumulated impairment losses	—	(34,178)	(34,178)
	<u>\$ 1,359,125</u>	<u>\$ 12,587</u>	<u>\$ 1,371,712</u>

Note 7 – Other Intangible Assets

Other intangible assets are summarized as follows:

<u>(in thousands)</u>	<u>March 31, 2021</u>	<u>December 31, 2020</u>
Finite-lived intangible assets:		
Customer relationships	\$ 172,582	\$ 172,851
Noncompete agreements	37,358	38,310
Trademarks	24,377	24,370
Internal-use software licenses	21,755	21,605
Patents	2,840	2,840
	<u>258,912</u>	<u>259,976</u>
Accumulated amortization	(89,275)	(82,380)
	<u>169,637</u>	<u>177,596</u>
Indefinite-lived intangible assets:		
Licenses	16,878	16,878
	<u>\$ 186,515</u>	<u>\$ 194,474</u>

Amortization expense for finite-lived intangible assets was \$11.9 million and \$6.3 million for the three months ended March 31, 2021 and 2020, respectively.

Estimated amortization expense for finite-lived intangible assets for the next five years is as follows:

<u>Year</u>	<u>(in thousands)</u>
Remainder of 2021	\$ 31,888
2022	\$ 34,872
2023	\$ 31,796
2024	\$ 24,531
2025	\$ 18,322
2026	\$ 18,041

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Note 8 – Reserve for Known and Incurred But Not Reported Claims

Activity in the reserve for known and incurred but not reported claims is summarized as follows:

<u>(in thousands)</u>	Three Months Ended March 31,	
	2021	2020
Balance at beginning of period	\$ 1,178,004	\$ 1,063,044
Provision related to:		
Current year	134,820	103,213
Prior years	5,627	14,264
	<u>140,447</u>	<u>117,477</u>
Payments, net of recoveries, related to:		
Current year	38,384	32,685
Prior years	79,824	75,853
	<u>118,208</u>	<u>108,538</u>
Other	2,926	(14,445)
Balance at end of period	<u>\$ 1,203,169</u>	<u>\$ 1,057,538</u>

The provision for title insurance losses, expressed as a percentage of title insurance premiums and escrow fees, was 4.0% and 5.0% for the three months ended March 31, 2021 and 2020, respectively. The current quarter rate of 4.0% reflects the ultimate loss rate for the current policy year and no change in the loss reserve estimates for prior policy years. The 5.0% rate for the first quarter of 2020 reflected an ultimate loss rate of 4.5% for the 2020 policy year and a net increase in the loss reserve estimates for prior policy years of 0.5%, or \$5.5 million.

A summary of the Company's loss reserves is as follows:

<u>(in thousands, except percentages)</u>	March 31, 2021		December 31, 2020	
Known title claims	\$ 62,884	5.2%	\$ 64,601	5.5%
Incurred but not reported claims	1,049,835	87.3%	1,025,761	87.1%
Total title claims	<u>1,112,719</u>	<u>92.5%</u>	<u>1,090,362</u>	<u>92.6%</u>
Non-title claims	90,450	7.5%	87,642	7.4%
Total loss reserves	<u>\$ 1,203,169</u>	<u>100.0%</u>	<u>\$ 1,178,004</u>	<u>100.0%</u>

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Note 9 – Income Taxes

The Company's effective income tax rates (income tax expense as a percentage of income before income taxes) were 23.4% and 11.7% for the three months ended March 31, 2021 and 2020, respectively. The effective tax rates differ from the federal statutory rate as a result of state and foreign income taxes for which the Company is liable, as well as permanent differences between amounts reported for financial statement purposes and amounts reported for income tax purposes, including the recognition of excess tax benefits or tax deficiencies associated with share-based payment transactions through income tax expense. In addition, the rates for 2021 and 2020 reflect benefits related to foreign tax law changes.

The Company evaluates the realizability of its deferred tax assets by assessing the valuation allowance and makes adjustments to the allowance as necessary. The factors used by the Company to assess the likelihood of realization include its forecast of future taxable income and available tax planning strategies that could be implemented to realize its deferred tax assets. The Company's ability or inability to achieve forecasted taxable income in the applicable taxing jurisdictions could affect the ultimate realization of its deferred tax assets. Based on future operating results in certain jurisdictions, it is possible that the current valuation allowance positions of those jurisdictions could be adjusted during the next 12 months.

As of March 31, 2021 and December 31, 2020, the liability for income taxes associated with uncertain tax positions was \$7.4 million and \$7.2 million, respectively. The liability as of March 31, 2021 and December 31, 2020, could be reduced by \$2.5 million and \$2.1 million, respectively, due to offsetting tax benefits associated with the correlative effects of potential adjustments, including timing adjustments, and state income taxes. The net liability, if recognized, would favorably affect the Company's effective income tax rate.

The Company's continuing practice is to recognize interest and penalties, if any, related to uncertain tax positions in income tax expense. Accrued interest and penalties, net of tax benefits, related to uncertain tax positions were not material as of March 31, 2021 and December 31, 2020.

It is reasonably possible that the amount of the unrecognized benefit with respect to certain of the Company's unrecognized tax positions may increase or decrease within the next 12 months. Any such change may be the result of ongoing audits or the expiration of federal and state statutes of limitations for the assessment of taxes.

The Company, or one of its subsidiaries, files income tax returns in the U.S. federal jurisdiction, various state jurisdictions and various non-U.S. jurisdictions. The primary non-federal jurisdictions are California, Canada, India and the United Kingdom. As of March 31, 2021, the Company is generally no longer subject to income tax examinations for U.S. federal, state and non-U.S. jurisdictions for years prior to 2017, 2016, and 2014, respectively.

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Note 10 – Earnings Per Share

The computation of basic and diluted earnings per share is as follows:

<u>(in thousands, except per share amounts)</u>	Three Months Ended March 31,	
	2021	2020
Numerator		
Net income attributable to the Company	\$ 233,616	\$ 63,204
Denominator		
Basic weighted-average shares	111,113	113,556
Effect of dilutive restricted stock units (“RSUs”)	301	403
Diluted weighted-average shares	111,414	113,959
Net income per share attributable to the Company’s stockholders		
Basic	\$ 2.10	\$ 0.56
Diluted	\$ 2.10	\$ 0.55

For the three months ended March 31, 2021 and 2020, 219 thousand and 192 thousand RSUs, respectively, were excluded from diluted weighted-average common shares outstanding due to their antidilutive effect.

Note 11 – Employee Benefit Plans

Net periodic cost related to the Company’s unfunded supplemental benefit plans includes the following components:

<u>(in thousands)</u>	Three Months Ended March 31,	
	2021	2020
Expense:		
Service costs	\$ 43	\$ 45
Interest costs	1,239	1,781
Amortization of net actuarial loss	1,690	1,320
Amortization of prior service credit	(326)	(777)
	\$ 2,646	\$ 2,369

The Company contributed \$3.6 million to its unfunded supplemental benefit plans during the three months ended March 31, 2021 and expects to contribute an additional \$11.8 million during the remainder of 2021.

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Note 12 – Fair Value Measurements

Certain of the Company's assets are carried at fair value. Fair value is defined as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date.

The Company categorizes its assets and liabilities carried at fair value using a three-level hierarchy for fair value measurements that distinguishes between market participant assumptions developed based on market data obtained from sources independent of the Company (observable inputs) and the Company's own assumptions about market participant assumptions developed based on the best information available in the circumstances (unobservable inputs). The hierarchy for inputs used in determining fair value maximizes the use of observable inputs and minimizes the use of unobservable inputs by requiring that observable inputs be used when available. The hierarchy level assigned to the assets and liabilities is based on management's assessment of the transparency and reliability of the inputs used to estimate the fair values at the measurement date. The three hierarchy levels are defined as follows:

Level 1—Valuations based on unadjusted quoted market prices in active markets for identical assets or liabilities.

Level 2—Valuations based on observable inputs (other than Level 1 prices), such as quoted prices for similar assets or liabilities at the measurement date; quoted prices in markets that are not active; or other inputs that are observable, either directly or indirectly.

Level 3—Valuations based on inputs that are unobservable and significant to the overall fair value measurement and involve management judgment.

If the inputs used to measure fair value fall into different levels of the fair value hierarchy, the hierarchy level assigned is based upon the lowest level of input that is significant to the fair value measurement.

Assets measured at fair value on a recurring basis

The valuation techniques and inputs used by the Company to estimate the fair value of assets measured on a recurring basis are summarized as follows:

Debt securities

The fair values of debt securities were based on the market values obtained from independent pricing services that were evaluated using pricing models that vary by asset class and incorporate available trade, bid and other market information and price quotes from well-established, independent broker-dealers. The independent pricing services monitor market indicators, industry and economic events, and for broker-quoted only securities, obtain quotes from market makers or broker-dealers that they recognize to be market participants. The pricing services utilize the market approach in determining the fair values of the debt securities held by the Company. The Company obtains an understanding of the valuation models and assumptions utilized by the services and has controls in place to determine that the values provided represent fair values. The Company's validation procedures include comparing prices received from the pricing services to quotes received from other third-party sources for certain securities with market prices that are readily verifiable. If the price comparison results in differences over a predefined threshold, the Company will assess the reasonableness of the changes relative to prior periods given the prevailing market conditions and assess changes in the issuers' credit worthiness, performance of any underlying collateral and prices of the instrument relative to similar issuances. To date, the Company has not made any material adjustments to the fair value measurements provided by the pricing services.

Typical inputs and assumptions to pricing models used to value the Company's debt securities include, but are not limited to, benchmark yields, reported trades, broker-dealer quotes, credit spreads, credit ratings, bond insurance (if applicable), benchmark securities, bids, offers, reference data and industry and economic events. For mortgage-backed securities, inputs and assumptions may also include the structure of issuance, characteristics of the issuer, collateral attributes and prepayment speeds.

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Equity securities

The fair values of equity securities, including preferred and common stocks, were based on quoted market prices for identical assets that are readily and regularly available in an active market.

The following tables present the fair values of the Company's assets, measured on a recurring basis, as of March 31, 2021 and December 31, 2020:

(in thousands)	Total	Level 1	Level 2	Level 3
March 31, 2021				
Debt securities:				
U.S. Treasury bonds	\$ 156,117	\$ —	\$ 156,117	\$ —
Municipal bonds	1,453,618	—	1,453,618	—
Foreign government bonds	205,292	—	205,292	—
Governmental agency bonds	303,505	—	303,505	—
Governmental agency mortgage-backed securities	4,015,850	—	4,015,850	—
U.S. corporate debt securities	660,334	—	660,334	—
Foreign corporate debt securities	416,782	—	416,782	—
	<u>7,211,498</u>	<u>—</u>	<u>7,211,498</u>	<u>—</u>
Equity securities:				
Preferred stocks	20,920	20,920	—	—
Common stocks	398,686	398,686	—	—
	<u>419,606</u>	<u>419,606</u>	<u>—</u>	<u>—</u>
Total assets	<u>\$ 7,631,104</u>	<u>\$ 419,606</u>	<u>\$ 7,211,498</u>	<u>\$ —</u>
December 31, 2020				
Debt securities:				
U.S. Treasury bonds	\$ 80,846	\$ —	\$ 80,846	\$ —
Municipal bonds	1,248,808	—	1,248,808	—
Foreign government bonds	199,530	—	199,530	—
Governmental agency bonds	263,922	—	263,922	—
Governmental agency mortgage-backed securities	3,474,618	—	3,474,618	—
U.S. corporate debt securities	680,697	—	680,697	—
Foreign corporate debt securities	406,401	—	406,401	—
	<u>6,354,822</u>	<u>—</u>	<u>6,354,822</u>	<u>—</u>
Equity securities:				
Preferred stocks	19,479	19,479	—	—
Common stocks	444,647	444,647	—	—
	<u>464,126</u>	<u>464,126</u>	<u>—</u>	<u>—</u>
Total assets	<u>\$ 6,818,948</u>	<u>\$ 464,126</u>	<u>\$ 6,354,822</u>	<u>\$ —</u>

There were no transfers between Levels 1, 2 and 3 during the three months ended March 31, 2021 and 2020.

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Financial instruments not measured at fair value

In estimating the fair values of its financial instruments not measured at fair value, the Company used the following methods and assumptions:

Cash and cash equivalents

The carrying amount for cash and cash equivalents approximates fair value due to the short-term maturity of these investments.

Deposits with banks

The fair value of deposits with banks is estimated based on rates currently offered for deposits of similar remaining maturities, where applicable.

Notes receivable, net

The fair value of notes receivable, net is estimated based on current market rates offered for notes with similar maturities and credit quality.

Secured financings receivable

The carrying amount of secured financings receivable approximates fair value due to the short-term nature of these assets.

Secured financings payable

The carrying amount of secured financings payable approximates fair value due to the short-term nature of these liabilities.

Notes and contracts payable

The fair value of notes and contracts payable is estimated based on current rates offered for debt of similar remaining maturities.

The following table presents the carrying amounts and estimated fair values of the Company's financial instruments not measured at fair value as of March 31, 2021 and December 31, 2020:

(in thousands)	Carrying Amount	Estimated fair value			
		Total	Level 1	Level 2	Level 3
March 31, 2021					
Assets:					
Cash and cash equivalents	\$ 2,026,024	\$ 2,026,024	\$ 2,026,024	\$ —	\$ —
Deposits with banks	\$ 45,359	\$ 45,947	\$ 6,092	\$ 39,855	\$ —
Notes receivable, net	\$ 39,355	\$ 39,613	\$ —	\$ —	\$ 39,613
Secured financings receivable	\$ 745,813	\$ 745,813	\$ —	\$ 745,813	\$ —
Liabilities:					
Secured financings payable	\$ 645,530	\$ 645,530	\$ —	\$ 645,530	\$ —
Notes and contracts payable	\$ 1,009,447	\$ 1,102,170	\$ —	\$ 1,096,598	\$ 5,572

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(in thousands)	Carrying Amount	Estimated fair value			
		Total	Level 1	Level 2	Level 3
December 31, 2020					
Assets:					
Cash and cash equivalents	\$ 1,275,466	\$ 1,275,466	\$ 1,275,466	\$ —	\$ —
Deposits with banks	\$ 45,856	\$ 45,947	\$ 6,092	\$ 39,855	\$ —
Notes receivable, net	\$ 29,912	\$ 30,279	\$ —	\$ —	\$ 30,279
Secured financings receivable	\$ 748,312	\$ 748,312	\$ —	\$ 748,312	\$ —
Liabilities:					
Secured financings payable	\$ 516,155	\$ 516,155	\$ —	\$ 516,155	\$ —
Notes and contracts payable	\$ 1,010,756	\$ 1,131,356	\$ —	\$ 1,125,128	\$ 6,228

Note 13 – Share-Based Compensation

The following table presents costs associated with the Company's share-based compensation plans:

(in thousands)	Three Months Ended March 31,	
	2021	2020
Expense:		
RSUs	\$ 29,229	\$ 24,658
Employee stock purchase plan	1,974	1,245
	<u>\$ 31,203</u>	<u>\$ 25,903</u>

The following table summarizes RSU activity for the three months ended March 31, 2021:

(in thousands, except weighted-average grant-date fair value)	Shares	Weighted-average grant-date fair value
Unvested at December 31, 2020	905	\$ 57.24
Granted during 2021	816	\$ 56.29
Vested during 2021	(761)	\$ 55.91
Forfeited during 2021	(19)	\$ 57.23
Unvested at March 31, 2021	<u>941</u>	<u>\$ 57.49</u>

Note 14 – Stockholders' Equity

The Company maintains a stock repurchase plan with authorization up to \$300.0 million, of which \$177.2 million remained as of March 31, 2021. Purchases may be made from time to time by the Company in the open market at prevailing market prices or in privately negotiated transactions. During the three months ended March 31, 2021, the Company repurchased and retired 1.2 million shares of its common stock for a total purchase price of \$64.8 million and, as of March 31, 2021, had repurchased and retired 2.4 million shares of its common stock under the current authorization for a total purchase price of \$122.8 million.

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Note 15 – Accumulated Other Comprehensive Income (Loss) (“AOCI”)

The following table presents a summary of the changes in each component of AOCI for the three months ended March 31, 2021:

(in thousands)	First American Financial Corporation				NCI	Balance
	Unrealized gains (losses) on debt securities	Foreign currency translation adjustment	Pension benefit adjustment	Accumulated other comprehensive income (loss)	Accumulated other comprehensive income (loss)	
Balance at December 31, 2020	\$ 171,752	\$ (37,990)	\$ (94,221)	\$ 39,541	\$ 1	\$ 39,542
Change in unrealized gains (losses) on debt securities	(131,433)	—	—	(131,433)	(1)	(131,434)
Change in unrealized gains (losses) on debt securities for which credit-related portion was recognized in earnings	(387)	—	—	(387)	—	(387)
Change in foreign currency translation adjustment	—	3,532	—	3,532	—	3,532
Amortization of net actuarial loss	—	—	1,690	1,690	—	1,690
Amortization of prior service credit	—	—	(326)	(326)	—	(326)
Tax effect	32,075	(158)	(362)	31,555	—	31,555
Balance at March 31, 2021	<u>\$ 72,007</u>	<u>\$ (34,616)</u>	<u>\$ (93,219)</u>	<u>\$ (55,828)</u>	<u>\$ —</u>	<u>\$ (55,828)</u>

The following table presents the other comprehensive income (loss) reclassification adjustments for the three months ended March 31, 2021 and 2020:

(in thousands)	Unrealized gains (losses) on debt securities	Foreign currency translation adjustment	Pension benefit adjustment	Total other comprehensive income (loss)
Three Months Ended March 31, 2021				
Pretax change before reclassifications	\$ (127,206)	\$ 3,532	\$ —	\$ (123,674)
Reclassifications out of AOCI	(4,615)	—	1,364	(3,251)
Tax effect	32,075	(158)	(362)	31,555
Total other comprehensive income (loss), net of tax	<u>\$ (99,746)</u>	<u>\$ 3,374</u>	<u>\$ 1,002</u>	<u>\$ (95,370)</u>
Three Months Ended March 31, 2020				
Pretax change before reclassifications	\$ 15,396	\$ (34,688)	\$ —	\$ (19,292)
Reclassifications out of AOCI	2,822	—	543	3,365
Tax effect	(5,514)	1,132	(144)	(4,526)
Total other comprehensive income (loss), net of tax	<u>\$ 12,704</u>	<u>\$ (33,556)</u>	<u>\$ 399</u>	<u>\$ (20,453)</u>

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The following table presents the effects of the reclassifications out of AOCI on the respective line items in the condensed consolidated statements of income:

(in thousands)	Three Months Ended March 31,		Affected line items
	2021	2020	
Unrealized gains (losses) on debt securities:			
Net realized gains (losses) on sales of debt securities	\$ 4,655	\$ 4,671	Net realized investment gains (losses)
Credit losses recognized on debt securities	(40)	(7,493)	Net realized investment gains (losses)
Pretax total	\$ 4,615	\$ (2,822)	
Tax effect	\$ (1,123)	\$ 854	
Pension benefit adjustment (1):			
Amortization of net actuarial loss	\$ (1,690)	\$ (1,320)	Other operating expenses
Amortization of prior service credit	326	777	Other operating expenses
Pretax total	\$ (1,364)	\$ (543)	
Tax effect	\$ 362	\$ 224	

(1) Amounts are components of net periodic cost. See Note 11 Employee Benefit Plans for additional details.

Note 16 – Litigation and Regulatory Contingencies

The Company and its subsidiaries are parties to a number of non-ordinary course lawsuits. These lawsuits frequently are similar in nature to other lawsuits pending against the Company's competitors.

For those non-ordinary course lawsuits where the Company has determined that a loss is both probable and reasonably estimable, a liability representing the best estimate of the Company's financial exposure based on known facts has been recorded. Actual losses may materially differ from the amounts recorded.

It is, however, often not possible to assess the probability of loss. Lawsuits that are putative class actions require a plaintiff to satisfy a number of procedural requirements before proceeding to trial. These requirements include, among others, demonstration to a court that the law proscribes in some manner the Company's activities, the making of factual allegations sufficient to suggest that the Company's activities exceeded the limits of the law and a determination by the court—known as class certification—that the law permits a group of individuals to pursue the case together as a class. In certain instances, the Company may also be able to compel the plaintiff to arbitrate its claim on an individual basis. If these procedural requirements are not met, either the lawsuit cannot proceed or, as is the case with class certification or compelled arbitration, the plaintiffs lose the financial incentive to proceed with the case (or the amount at issue effectively becomes de minimis). Frequently, a court's determination as to these procedural requirements is subject to appeal to a higher court. As a result of, among other factors, ambiguities and inconsistencies in the laws applicable to the Company's business and the uniqueness of the factual issues presented in any given lawsuit, the Company often cannot determine the probability of loss until a court has finally determined that a plaintiff has satisfied applicable procedural requirements.

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Furthermore, for putative class actions, it is often impossible to estimate the possible loss or a range of loss amounts, even where the Company has determined that a loss is reasonably possible. Generally class actions involve a large number of people and the effort to determine which people satisfy the requirements to become plaintiffs—or class members—is often time consuming and burdensome. Moreover, these lawsuits raise complex factual issues which result in uncertainty as to their outcome and, ultimately, make it difficult for the Company to estimate the amount of damages which a plaintiff might successfully prove. In addition, many of the Company's businesses are regulated by various federal, state, local and foreign governmental agencies and are subject to numerous statutory guidelines. These regulations and statutory guidelines often are complex, inconsistent or ambiguous, which results in additional uncertainty as to the outcome of a given lawsuit—including the amount of damages a plaintiff might be afforded—or makes it difficult to analogize experience in one case or jurisdiction to another case or jurisdiction.

Most of the non-ordinary course lawsuits to which the Company and its subsidiaries are parties challenge practices in the Company's title insurance business, though a limited number of cases also pertain to the Company's other businesses. These lawsuits include, among others, cases alleging, among other assertions, that the Company or one of its subsidiaries improperly charged fees for products and services, improperly performed debt collection practices, improperly handled property and casualty claims and gave items of value to builders as inducements to refer business in violation of certain laws, such as consumer protection laws and laws generally prohibiting unfair business practices, and certain obligations, including:

- Seymour vs. First American Title Insurance Company, et al., filed on January 12, 2021 and pending in the Superior Court of the State of California, County of Santa Barbara,
- Tenefufu vs. First American Specialty Insurance Company, filed on June 1, 2017 and pending in the Superior Court of the State of California, County of Sacramento, and
- Wilmot vs. First American Financial Corporation, et al., filed on April 20, 2007 and pending in the Superior Court of the State of California, County of Los Angeles.

Seymour and Tenefufu are putative class actions for which a class has not been certified. A class has been certified in Wilmot. For the reasons described above, the Company has not yet been able to assess the probability of loss or estimate the possible loss or the range of loss.

The Company and/or its subsidiaries are also parties to consumer class actions and a securities class action in connection with the information security incident that occurred during the second quarter of 2019. All of these lawsuits are putative class actions for which a class has not been certified. For the reasons described above, the Company has not yet been able to assess the probability of loss or estimate the possible loss or the range of loss.

While some of the lawsuits described above may be material to the Company's financial results in any particular period if an unfavorable outcome results, the Company does not believe that any of these lawsuits will have a material adverse effect on the Company's overall financial condition, results of operations or cash flows.

In addition, the Company and its board of directors and certain executives are parties to a shareholder derivative action, Hollett vs. Gilmore, et al., filed on November 25, 2020 and pending in the United States District Court for the Central District of California. The allegations arise out of the information security incident that occurred during the second quarter of 2019 and the resulting legal proceedings and disclosures made at the time of the incident. While the ultimate disposition is not yet determinable, the Company does not believe it will have a material adverse effect on the Company's financial condition, results of operations or cash flows.

The Company also is a party to non-ordinary course lawsuits other than those described above. With respect to these lawsuits, the Company has determined either that a loss is not reasonably possible or that the estimated loss or range of loss, if any, will not have a material adverse effect on the Company's financial condition, results of operations or cash flows.

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The Company's title insurance, property and casualty insurance, home warranty, banking, thrift, trust and wealth management businesses are regulated by various federal, state and local governmental agencies. Many of the Company's other businesses operate within statutory guidelines. Consequently, the Company may from time to time be subject to examination or investigation by such governmental agencies. Currently, governmental agencies are examining or investigating certain of the Company's operations. These exams and investigations include an inquiry by the New York Attorney General and the Massachusetts Attorney General into competitive practices in the title insurance industry. With respect to matters where the Company has determined that a loss is both probable and reasonably estimable, the Company records a liability representing its best estimate of the financial exposure based on known facts. While the ultimate disposition of each such exam or investigation is not yet determinable, the Company does not believe that individually or in the aggregate they will have a material adverse effect on the Company's financial condition, results of operations or cash flows. Some of these exams or investigations could, however, result in changes to the Company's business practices which could ultimately have a material adverse impact on the Company's financial condition, results of operations or cash flows.

Furthermore, these exams and investigations include two investigations initiated in connection with the information security incident that occurred during the second quarter of 2019, one being conducted by the Securities and Exchange Commission ("SEC") enforcement staff and the other by the New York Department of Financial Services. The SEC enforcement staff is questioning the adequacy of disclosures the Company made at the time of the incident and the adequacy of its disclosure controls. In September 2020, the Company received a Wells Notice informing the Company that the enforcement staff has made a preliminary determination to recommend a filing of an enforcement action by the SEC against the Company. The Company believes that its disclosures and disclosure controls complied with the securities laws and has availed itself of the opportunity to provide a response to convince the SEC that an enforcement action is inappropriate under the circumstances. The New York Department of Financial Services has alleged violations of its cyber security requirements for financial services companies and filed a statement of charges on July 22, 2020, as amended on March 10, 2021, and scheduled an administrative hearing in connection therewith. While the ultimate dispositions of the SEC and New York Department of Financial Services matters are not yet determinable, the Company does not believe that individually or in the aggregate they will have a material adverse effect on the Company's financial condition, results of operations or cash flows.

The Company's Canadian operations provide certain services to lenders which it believes to be exempt from excise tax under applicable Canadian tax laws. However, in October 2014, the Canadian taxing authority provided internal guidance that the services in question should be subject to the excise tax. During July 2019, the Company received an assessment from the Canadian taxing authority. The amount of the assessment is \$16.1 million, which is based on the exchange rate as of, and includes interest charges through, March 31, 2021. As the Company does not believe that the services in question are subject to excise tax, it intends to avail itself of avenues of appeal, and it believes it is reasonably likely that the Company will prevail on the merits. Accordingly, the Company filed a notice of appeal with the Canadian taxing authority in March 2020. Based on the current facts and circumstances, the Company does not believe a loss is probable, therefore no liability has been recorded.

The Company and its subsidiaries also are involved in numerous ongoing routine legal and regulatory proceedings related to their operations. With respect to each of these proceedings, the Company has determined either that a loss is not reasonably possible or that the estimated loss or range of loss, if any, is not material to the condensed consolidated financial statements as a whole.

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Note 17 – Segment Information

The Company consists of the following reportable segments and a corporate function:

- The Company's title insurance and services segment issues title insurance policies on residential and commercial property in the United States and offers similar or related products and services internationally. This segment also provides closing and/or escrow services; accommodates tax-deferred exchanges of real estate; provides products, services and solutions designed to mitigate risk or otherwise facilitate real estate transactions; maintains, manages and provides access to title plant data and records; provides appraisals and other valuation-related products and services; provides lien release, document custodial and default-related products and services; and provides warehouse lending services and banking, trust and wealth management services. The Company, through its principal title insurance subsidiary and such subsidiary's affiliates, transacts its title insurance business through a network of direct operations and agents. Through this network, the Company issues policies in the 49 states that permit the issuance of title insurance policies, the District of Columbia and certain United States territories. The Company also offers title insurance, closing services and similar or related products and services, either directly or through third parties in other countries, including Canada, the United Kingdom, Australia, South Korea and various other established and emerging markets.
- The Company's specialty insurance segment issues property and casualty insurance policies and sells home warranty products. The property and casualty insurance business provides insurance coverage to residential homeowners and renters for liability losses and typical hazards such as fire, theft, vandalism and other types of property damage. This business is licensed to issue policies in all 50 states and the District of Columbia. The majority of policy liability is in the western United States, including approximately 59% in California. During 2020, the Company initiated a plan to exit its property and casualty insurance business. In January 2021, the Company entered into book transfer agreements with two third-party insurers, which will provide qualifying agents and customers of the Company an opportunity to transfer their policies. The Company expects the transfers to be completed by the end of the third quarter of 2022. The Company will seek to non-renew policies that are not transferred and, except in certain limited circumstances, is no longer issuing new policies.

The home warranty business provides residential service contracts that cover residential systems, such as heating and air conditioning systems, and certain appliances against failures that occur as the result of normal usage during the coverage period. This business currently operates in 35 states and the District of Columbia.

The corporate function consists primarily of certain financing facilities as well as the corporate services that support the Company's business operations.

Selected financial information about the Company's operations, by segment, is as follows:

For the three months ended March 31, 2021:

<u>(in thousands)</u>	<u>Revenues</u>	<u>Income (loss) before income taxes</u>	<u>Depreciation and amortization</u>	<u>Capital expenditures</u>
Title Insurance and Services	\$ 1,885,058	\$ 321,630	\$ 36,713	\$ 30,469
Specialty Insurance	136,480	6,261	1,549	530
Corporate	5,066	(21,869)	36	—
Eliminations	(859)	—	—	—
	<u>\$ 2,025,745</u>	<u>\$ 306,022</u>	<u>\$ 38,298</u>	<u>\$ 30,999</u>

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(in thousands)	Direct premiums and escrow fees	Agent premiums	Information and other	Net investment income	Net realized investment gains (losses)	Total Revenues
Title Insurance and Services	\$ 657,497	\$ 845,292	\$ 275,404	\$ 42,652	\$ 64,213	\$ 1,885,058
Specialty Insurance	128,178	—	3,748	1,934	2,620	136,480
	<u>\$ 785,675</u>	<u>\$ 845,292</u>	<u>\$ 279,152</u>	<u>\$ 44,586</u>	<u>\$ 66,833</u>	<u>\$ 2,021,538</u>

For the three months ended March 31, 2020:

(in thousands)	Revenues	Income (loss) before income taxes	Depreciation and amortization	Capital expenditures
Title Insurance and Services	\$ 1,300,625	\$ 72,976	\$ 29,517	\$ 28,423
Specialty Insurance	121,969	12,857	1,894	2,801
Corporate	(9,311)	(13,509)	38	—
Eliminations	(340)	—	—	—
	<u>\$ 1,412,943</u>	<u>\$ 72,324</u>	<u>\$ 31,449</u>	<u>\$ 31,224</u>

(in thousands)	Direct premiums and escrow fees	Agent premiums	Information and other	Net investment income	Net realized investment gains (losses)	Total Revenues
Title Insurance and Services	\$ 501,301	\$ 599,682	\$ 208,273	\$ 59,668	\$ (68,299)	\$ 1,300,625
Specialty Insurance	119,336	—	3,439	2,584	(3,390)	121,969
	<u>\$ 620,637</u>	<u>\$ 599,682</u>	<u>\$ 211,712</u>	<u>\$ 62,252</u>	<u>\$ (71,689)</u>	<u>\$ 1,422,594</u>

Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations.

CERTAIN STATEMENTS IN THIS QUARTERLY REPORT ON FORM 10-Q ARE FORWARD-LOOKING STATEMENTS WITHIN THE MEANING OF SECTION 27A OF THE SECURITIES ACT OF 1933, AS AMENDED, AND SECTION 21E OF THE SECURITIES EXCHANGE ACT OF 1934, AS AMENDED. THESE FORWARD-LOOKING STATEMENTS MAY CONTAIN THE WORDS "BELIEVE," "ANTICIPATE," "EXPECT," "INTEND," "PLAN," "PREDICT," "ESTIMATE," "PROJECT," "WILL BE," "WILL CONTINUE," "WILL LIKELY RESULT," OR OTHER SIMILAR WORDS AND PHRASES.

RISKS AND UNCERTAINTIES EXIST THAT MAY CAUSE RESULTS TO DIFFER MATERIALLY FROM THOSE SET FORTH IN THESE FORWARD-LOOKING STATEMENTS. FACTORS THAT COULD CAUSE THE ANTICIPATED RESULTS TO DIFFER FROM THOSE DESCRIBED IN THE FORWARD-LOOKING STATEMENTS INCLUDE THE FACTORS SET FORTH ON PAGES 3-4 OF THIS QUARTERLY REPORT. THE FORWARD-LOOKING STATEMENTS SPEAK ONLY AS OF THE DATE THEY ARE MADE. THE COMPANY DOES NOT UNDERTAKE TO UPDATE FORWARD-LOOKING STATEMENTS TO REFLECT CIRCUMSTANCES OR EVENTS THAT OCCUR AFTER THE DATE THE FORWARD-LOOKING STATEMENTS ARE MADE.

This Management's Discussion and Analysis contains the financial measure adjusted debt to capitalization ratio that is not presented in accordance with generally accepted accounting principles ("GAAP"), as it excludes the effect of secured financings payable. The Company is presenting this non-GAAP financial measure because it provides the Company's management and readers of this Quarterly Report on Form 10-Q with additional insight into the financial leverage of the Company. The Company does not intend for this non-GAAP financial measure to be a substitute for any GAAP financial information. In this Quarterly Report on Form 10-Q, this non-GAAP financial measure has been presented with, and reconciled to, the most directly comparable GAAP financial measure. Readers of this Quarterly Report on Form 10-Q should use this non-GAAP financial measure only in conjunction with the comparable GAAP financial measure.

CRITICAL ACCOUNTING ESTIMATES

A summary of the Company's significant accounting policies that it considers to be the most dependent on the application of estimates and assumptions can be found in the Management's Discussion and Analysis section of the Company's Annual Report on Form 10-K for the year ended December 31, 2020.

Recently Adopted Accounting Pronouncements

In December 2019, the FASB issued updated guidance intended to simplify and improve the accounting for income taxes. The updated guidance eliminates certain exceptions and clarifies and amends certain areas of the guidance. The updated guidance is effective for interim and annual reporting periods beginning after December 15, 2020. The adoption of this guidance on a prospective basis, effective January 1, 2021, did not have a material impact on its condensed consolidated financial statements.

Results of Operations

Summary of First Quarter

A substantial portion of the revenues for the Company's title insurance and services segment results from the sale and refinancing of residential and commercial real estate. In the Company's specialty insurance segment, revenues associated with the initial year of coverage in both the home warranty and property and casualty operations are impacted by volatility in residential purchase transactions. Traditionally, the greatest volume of real estate activity, particularly residential purchase activity, has occurred in the spring and summer months. However, changes in interest rates, as well as other changes in general economic conditions in the United States and abroad, can cause fluctuations in the traditional pattern of real estate activity.

The Company's total revenues increased \$612.8 million, or 43.4%, in the first quarter of 2021 when compared with the first quarter of 2020. This increase was primarily attributable to increases in agent premiums of \$245.6 million, or 41.0%, direct premiums and escrow fees of \$165.0 million, or 26.6%, and an increase in net realized investment gains and losses of \$131.6 million. Direct premiums and escrow fees in the title insurance and services segment from domestic residential refinance, purchase and commercial transactions increased \$82.9 million, \$54.8 million, and \$3.9 million, or 79.1%, 27.4% and 2.5%, respectively.

According to the Mortgage Bankers Association's April 22, 2021 Mortgage Finance Forecast (the "MBA Forecast"), residential mortgage originations in the United States (based on the total dollar value of the transactions) increased 94.3% in the first quarter of 2021 when compared with the first quarter of 2020. According to the MBA Forecast, the dollar amount of purchase originations increased 24.5% and refinance originations increased 152.9%. This volume of domestic residential mortgage origination activity contributed to increases in direct premiums and escrow fees for the Company's direct title operations of 27.4% from domestic residential purchase transactions and 79.1% from domestic refinance transactions in the first quarter of 2021 when compared with the first quarter of 2020.

During the first quarter of 2021, the level of domestic title orders opened per day by the Company's direct title operations increased 4.2% when compared with the first quarter of 2020. Residential purchase and commercial opened orders per day increased 15.0% and 5.3%, respectively, offset by a decline of 8.0% in residential refinance opened orders when compared to the first quarter of 2020.

The Company recorded net realized investment gains of \$66.8 million in the first quarter of 2021. The current quarter gains included \$42.1 million related to the Company's investments in private companies where recent fund raising provided observable price changes, which resulted in an increase in the carrying values of these investments. The Company's investments in certain private companies, including those that subsequently go public, are expected to cause fluctuations in the Company's quarterly results of operations due to the recognition of gains or losses in connection with external events, such as liquidity events, subsequent equity sales, or price changes in investments that begin trading publicly. One of the Company's private company investments is in Offerpad Inc. ("Offerpad"), a leading tech-enabled real estate solutions platform. On March 18, 2021, Offerpad announced that it entered into a definitive merger agreement with Supernova Partners Acquisition Company, Inc. ("Supernova"), a publicly traded special purpose acquisition company. In a current report on Form 8-K, Supernova announced that the value of the aggregate equity consideration to be paid to Offerpad's stockholders and optionholders will be equal to \$2.25 billion. If the transaction is consummated at that value, the Company will recognize a gain of approximately \$237 million.

During 2020, the Company initiated a plan to exit its property and casualty insurance business. In January 2021, the Company entered into book transfer agreements with two third-party insurers, which will provide qualifying agents and customers of the Company an opportunity to transfer their policies. The Company expects the transfers to be completed by the end of the third quarter of 2022. The Company will seek to non-renew policies that are not transferred and, except in certain limited circumstances, is no longer issuing new policies.

Coronavirus Pandemic

At the outset of the coronavirus pandemic, the Company's residential purchase business experienced a decline in April 2020 with purchase orders opened by the Company's direct title operations down significantly compared to April 2019. Government responses to the pandemic, however, resulted in low mortgage interest rates that stimulated residential refinance activity and improved housing affordability, leading to an elevated number of closed orders for both residential purchase and refinance transactions later in 2020. The Company expects this elevated level of activity for purchase transactions to continue well into 2021. Orders opened for residential refinance activity, as noted above, have declined in the first quarter of 2021 compared to the first quarter of 2020 due to increasing interest rates during the current quarter.

The Company's commercial business experienced a more persistent decline in order volumes beginning in April 2020, however, in the fourth quarter of 2020 activity returned to historical levels, which continued in the first quarter of 2021, with the recovery varying by asset class.

Title Insurance and Services

(in thousands, except percentages)	Three Months Ended March 31,			
	2021	2020	\$ Change	% Change
Revenues				
Direct premiums and escrow fees	\$ 657,497	\$ 501,301	\$ 156,196	31.2%
Agent premiums	845,292	599,682	245,610	41.0
Information and other	275,404	208,273	67,131	32.2
Net investment income	42,652	59,668	(17,016)	(28.5)
Net realized investment gains (losses)	64,213	(68,299)	132,512	194.0
	<u>1,885,058</u>	<u>1,300,625</u>	<u>584,433</u>	<u>44.9</u>
Expenses				
Personnel costs	504,143	421,615	82,528	19.6
Premiums retained by agents	671,301	475,381	195,920	41.2
Other operating expenses	264,487	226,595	37,892	16.7
Provision for policy losses and other claims	60,111	55,049	5,062	9.2
Depreciation and amortization	36,713	29,517	7,196	24.4
Premium taxes	20,818	15,519	5,299	34.1
Interest	5,855	3,973	1,882	47.4
	<u>1,563,428</u>	<u>1,227,649</u>	<u>335,779</u>	<u>27.4</u>
Income before income taxes	<u>\$ 321,630</u>	<u>\$ 72,976</u>	<u>\$ 248,654</u>	<u>340.7%</u>
Margins	<u>17.1%</u>	<u>5.6%</u>	<u>11.5%</u>	<u>205.4%</u>

Direct premiums and escrow fees were \$657.5 million for the three months ended March 31, 2021, an increase of \$156.2 million, or 31.2%, when compared with the same period of the prior year. The increase was primarily due to an increase in the number of domestic title orders closed by the Company's direct title operations, partially offset by a decrease in the average domestic revenues per order closed. The domestic average revenues per order closed was \$2,118 for the three months ended March 31, 2021, a decrease of 8.5% when compared with \$2,315 for the three months ended March 31, 2020 due to a shift in mix from higher premium commercial and purchase transactions to lower premium residential refinance transactions, partially offset by higher average revenues per order from residential products due to higher residential real estate values. The Company's direct title operations closed 287,600 domestic title orders during the three months ended March 31, 2021, an increase of 41.9% when compared with 202,700 domestic title orders closed during the same period of the prior year, which was generally consistent with the changes in residential mortgage origination activity in the United States as reported in the MBA Forecast. Domestic residential refinance orders closed per day increased by 72.7% and domestic residential purchase orders closed per day increased by 17.1%.

Agent premiums were \$845.3 million for the three months ended March 31, 2021, an increase of \$245.6 million, or 41.0%, when compared with the same period of the prior year. Agent premiums are recorded when notice of issuance is received from the agent, which is generally when cash payment is received by the Company. As a result, there is generally a delay between the agent's issuance of a title policy and the Company's recognition of agent premiums. Therefore, current quarter agent premiums typically reflect prior quarter mortgage origination activity. The increase in agent premiums for the three months ended March 31, 2021 is generally consistent with the 24.1% increase in the Company's direct premiums and escrow fees in the fourth quarter of 2020 as compared with the fourth quarter of 2019.

Information and other revenues primarily consist of revenues generated from fees associated with title search and related reports, title and other real property records and images, other non-insured settlement services, and risk mitigation products and services. These revenues generally trend with direct premiums and escrow fees but are typically less volatile since a portion of the revenues are subscription based and do not fluctuate with transaction volumes.

Information and other revenues were \$275.4 million for the three months ended March 31, 2021, an increase of \$67.1 million, or 32.2%, when compared with the same period of the prior year. The increase was primarily attributable to growth in mortgage origination activity that led to higher demand for the Company's title information products and the added revenues from an acquisition that closed in March of 2020.

Net investment income totaled \$42.7 million for the three months ended March 31, 2021, a decrease of \$17.0 million, or 28.5%, when compared with the same period of the prior year. The decrease was primarily attributable to lower short-term interest rates, which drove lower income from the Company's cash and investment portfolio, escrow balances, and tax-deferred property exchange business, partially offset by an increase in interest income from the Company's warehouse lending business.

Net realized investment gains totaled \$64.2 million for the three months ended March 31, 2021 and were primarily attributable to gains recognized on certain non-marketable investments and increase in the fair values of equity securities. Net realized investment losses totaled \$68.3 million for the three months ended March 31, 2020 and were primarily from the decrease in the fair values of equity securities.

The title insurance and services segment (primarily direct operations) is labor intensive; accordingly, a major expense component is personnel costs. This expense component is affected by two primary factors: the need to monitor personnel changes to match the level of corresponding or anticipated new orders and the need to provide quality service.

Personnel costs were \$504.1 million for the three months ended March 31, 2021, an increase of \$82.5 million, or 19.6%, when compared with the same period of the prior year. The increase was primarily due to higher incentive compensation, salary, employee benefit expense, overtime, temporary labor, and payroll tax expense. The increase in incentive compensation expense was due to higher revenues and profitability. The increase in overtime and temporary labor expense was due to higher volumes. The increase in employee benefit expense was primarily due to the impact of higher expense related to the Company's 401(k) saving plan match.

Agents retained \$671.3 million of title premiums generated by agency operations for the three months ended March 31, 2021, which compares with \$475.4 million for the same period of the prior year. The percentage of title premiums retained by agents was 79.4% and 79.3% for the three months ended March 31, 2021 and 2020, respectively.

Other operating expenses for the title insurance and services segment were \$264.5 million for the three months ended March 31, 2021, an increase of \$37.9 million, or 16.7%, when compared with the same period of the prior year. The increase was primarily attributable to higher production related costs due to increased transaction volumes and higher software expense, partially offset by lower travel and entertainment expense.

The provision for policy losses and other claims, expressed as a percentage of title premiums and escrow fees, was 4.0% and 5.0% for the three months ended March 31, 2021 and 2020, respectively. The current quarter rate of 4.0% reflects the ultimate loss rate for the current policy year and no change in the loss reserve estimates for prior policy years. The 5.0% rate for the first quarter of 2020 reflected an ultimate loss rate of 4.5% for the 2020 policy year and a net increase in the loss reserve estimates for prior policy years of 0.5%, or \$5.5 million.

Title claims generally increase when economic conditions deteriorate and foreclosure activity increases. The Company increased its calendar year loss rate from 4.0% in 2019 to 5.0% in 2020 in anticipation of higher claims due to the economic impact of the coronavirus pandemic. However, the Company has not experienced an increase in title claims as a result of the pandemic, but rather claims have been significantly below the Company's actuarial expectation. As a result, and in anticipation of lower claims due to a generally strengthening economy, high levels of home equity and ongoing foreclosure moratoriums, the Company lowered the current quarter loss rate to 4.0%. The Company will continue to monitor economic conditions and actual claims experience and will consider this information, among other factors, when determining the appropriate loss rate and reserve balance for incurred but not reported claims in future periods.

Depreciation and amortization expense was \$36.7 million for the three months ended March 31, 2021, an increase of \$7.2 million, or 24.4%, when compared with the same period of the prior year. The increase was primarily attributable to higher amortization of software and other intangible assets related to recent acquisitions.

Premium taxes were \$20.8 million and \$15.5 million for the three months ended March 31, 2021 and 2020, respectively. Premium taxes as a percentage of title insurance premiums and escrow fees was 1.4% for the three months ended March 31, 2021 and 2020.

Interest expense was \$5.9 million for the three months ended March 31, 2021, an increase of \$1.9 million, or 47.4%, when compared with the same period of the prior year.

The profit margins for the title insurance business reflect the high cost of performing the essential services required before insuring title, whereas the corresponding revenues are subject to regulatory and competitive pricing restraints. Due to the relatively high proportion of fixed costs, title insurance profit margins generally improve as closed order volumes increase. Title insurance profit margins are also impacted by the segment's net investment income and net realized investment gains or losses, which may not move in the same direction as closed order volumes. Title insurance profit margins are affected by the composition (residential or commercial) and type (resale, refinancing or new construction) of real estate activity. Title insurance profit margins are also affected by the percentage of title insurance premiums generated by agency operations. Profit margins from direct operations are generally higher than from agency operations due primarily to the large portion of the premium that is retained by the agent. The pretax margins for the three months ended March 31, 2021 and 2020 were 17.1% and 5.6%, respectively.

Specialty Insurance

(in thousands, except percentages)	Three Months Ended March 31,			
	2021	2020	\$ Change	% Change
Revenues				
Direct premiums	\$ 128,178	\$ 119,336	\$ 8,842	7.4%
Information and other	3,748	3,439	309	9.0
Net investment income	1,934	2,584	(650)	(25.2)
Net realized investment gains (losses)	2,620	(3,390)	6,010	177.3
	<u>136,480</u>	<u>121,969</u>	<u>14,511</u>	<u>11.9</u>
Expenses				
Personnel costs	23,927	21,446	2,481	11.6
Other operating expenses	22,639	21,548	1,091	5.1
Provision for policy losses and other claims	80,336	62,428	17,908	28.7
Depreciation and amortization	1,549	1,894	(345)	(18.2)
Premium taxes	1,768	1,796	(28)	(1.6)
	<u>130,219</u>	<u>109,112</u>	<u>21,107</u>	<u>19.3</u>
Income before income taxes	\$ 6,261	\$ 12,857	\$ (6,596)	(51.3)%
Margins	<u>4.6%</u>	<u>10.5%</u>	<u>(5.9)%</u>	<u>(56.2)%</u>

Direct premiums were \$128.2 million for the three months ended March 31, 2021, an increase of \$8.8 million, or 7.4%, when compared with the same period of the prior year. The increase was primarily attributable to higher premiums earned in the home warranty business.

Net realized investment gains for the specialty insurance segment totaled \$2.6 million for the three months ended March 31, 2021 and were primarily from equity securities. Net realized investment losses for the specialty insurance segment totaled \$3.4 million for the three months ended March 31, 2020 and were primarily from the decrease in the fair values of equity securities, partially offset by a gain from the sale of real estate.

Personnel costs and other operating expenses were \$46.6 million and \$43.0 million for the three months ended March 31, 2021 and 2020, respectively, an increase of \$3.6 million, or 8.3%. The increase was primarily attributable to an increase in deferred policy acquisition expense in the property and casualty business, higher salary expense due to higher average salaries, and higher incentive compensation, offset by lower agent commissions.

The provision for home warranty claims, expressed as a percentage of home warranty premiums, was 53.9% and 42.3% for the three months ended March 31, 2021 and 2020, respectively. The increase in the claims rate was primarily attributable to higher claims frequency and severity partially due to higher claims in the appliance and plumbing trades likely due to people spending more time at home. The provision for property and casualty claims, expressed as a percentage of property and casualty insurance premiums, was 89.6% and 81.0% for the three months ended March 31, 2021 and 2020, respectively. The increase in the claims rate was primarily attributable to higher coded losses due primarily to weather events in the Western U.S.

Premium taxes were \$1.8 million for the three months ended March 31, 2021 and 2020. Premium taxes as a percentage of specialty insurance segment premiums were 1.4% and 1.5% for the three months ended March 31, 2021 and 2020, respectively.

A large part of the revenues for the specialty insurance businesses are generated by renewals and are not dependent on the level of real estate activity in the year of renewal. However, in January 2021, the Company entered into book transfer agreements with two third-party insurers related to its property and casualty insurance business and will seek to non-renew policies that are not transferred and, accordingly, we expect an approximate 60% reduction in policies in force by the end 2021 and decreasing revenues over time. With the exception of loss expense, the majority of the expenses for this segment are variable in nature and therefore generally fluctuate consistent with revenue fluctuations. Accordingly, profit margins for this segment (before loss expense) are relatively constant, although as a result of some fixed expenses, profit margins (before loss expense) should nominally improve as premium revenues increase. Specialty insurance profit margins are also impacted by the segment's net investment income and net realized investment gains or losses, which may not move in the same direction as premium revenues. The pretax margins for the three months ended March 31, 2021 and 2020 were 4.6% and 10.5%, respectively.

Corporate

(in thousands, except percentages)	Three Months Ended March 31,			
	2021	2020	\$ Change	% Change
Revenues				
Net investment income (losses)	\$ 5,066	\$ (16,238)	\$ 21,304	131.2%
Net realized investment gains	—	6,927	(6,927)	(100.0)
	5,066	(9,311)	14,377	154.4
Expenses				
Personnel costs	7,112	(13,401)	20,513	153.1
Other operating expenses	8,537	9,297	(760)	(8.2)
Depreciation and amortization	36	38	(2)	(5.3)
Interest	11,250	8,264	2,986	36.1
	26,935	4,198	22,737	541.6
Loss before income taxes	\$ (21,869)	\$ (13,509)	\$ (8,360)	(61.9)%

Net investment income totaled \$5.1 million and net investment losses totaled \$16.2 million for the three months ended March 31, 2021 and 2020, respectively. The increase in net investment income for the three months ended March 31, 2021 was primarily attributable to higher earnings on investments associated with the Company's deferred compensation plan when compared to the same period of 2020.

There were no realized investment gains or losses for the corporate segment for the three months ended March 31, 2021. Net realized investment gains for the corporate segment totaled \$6.9 million for the three months ended March 31, 2020 and were from the sale of real estate.

Corporate personnel costs and other operating expenses were an expense of \$15.6 million and a benefit of \$4.1 million for the three months ended March 31, 2021 and 2020, respectively. The increase was primarily attributable to higher expense related to the Company's deferred compensation plan.

Interest expense was \$11.3 million for the three months ended March 31, 2021, an increase of \$3.0 million, or 36.1%, when compared with the prior year. The increase is attributable to the interest accrued on the \$450.0 million of 4.00% 10-year senior unsecured notes that the company issued in May 2020.

Eliminations

The Company's inter-segment eliminations were not material for the three months ended March 31, 2021 and 2020.

INCOME TAXES

The Company's effective income tax rates (income tax expense as a percentage of income before income taxes) were 23.4% and 11.7% for the three months ended March 31, 2021 and 2020, respectively. The difference in the effective tax rates is primarily due to benefits related to foreign tax law changes and the recognition of additional excess tax benefits associated with share-based payment transactions in the prior year.

The Company evaluates the realizability of its deferred tax assets by assessing the valuation allowance and makes adjustments to the allowance as necessary. The factors used by the Company to assess the likelihood of realization include its forecast of future taxable income and available tax planning strategies that could be implemented to realize its deferred tax assets. The Company's ability or inability to achieve forecasted taxable income in the applicable taxing jurisdictions could affect the ultimate realization of its deferred tax assets. Based on future operating results in certain jurisdictions, it is possible that the current valuation allowance positions of those jurisdictions could be adjusted during the next 12 months.

NET INCOME AND NET INCOME ATTRIBUTABLE TO THE COMPANY

Net income for the three months ended March 31, 2021 and 2020 was \$234.5 million and \$63.8 million, respectively. Net income attributable to the Company for the three months ended March 31, 2021 and 2020 was \$233.6 million and \$63.2 million, or \$2.10 and \$0.55 per diluted share, respectively.

LIQUIDITY AND CAPITAL RESOURCES

Cash requirements. The Company generates cash primarily from the sale of its products and services and investment income. The Company's current cash requirements include operating expenses, taxes, payments of principal and interest on its debt, capital expenditures, dividends on its common stock, and may include business acquisitions, investments in unconsolidated entities and repurchases of its common stock. Management forecasts the cash needs of the holding company and its primary subsidiaries and regularly reviews their short-term and long-term projected sources and uses of funds, as well as the asset, liability, investment and cash flow assumptions underlying such forecasts. Based on the Company's ability to generate cash flows from operations, its liquid-asset position and amounts available on its revolving credit facility, management believes that its resources are sufficient to satisfy its anticipated operational cash requirements and obligations for at least the next twelve months. In making this assessment, management considered the impact that the coronavirus pandemic and related responses have had, or are expected to have, on the Company's liquidity and capital resources, such as uncertainty related to cash flows from operations and potential volatility in the Company's investment portfolio, among other factors.

The substantial majority of the Company's business is dependent upon activity in the real estate and mortgage markets, which are cyclical and seasonal. Periods of increasing interest rates and reduced mortgage financing availability generally have an adverse effect on residential real estate activity and therefore typically decrease the Company's revenues. In contrast, periods of declining interest rates and increased mortgage financing availability generally have a positive effect on residential real estate activity, which typically increases the Company's revenues. Residential purchase activity is typically slower in the winter months with increased volumes in the spring and summer months. Residential refinance activity is typically more volatile than purchase activity and is highly impacted by changes in interest rates. Commercial real estate volumes are less sensitive to changes in interest rates but fluctuate based on local supply and demand conditions for space and mortgage financing availability.

Cash provided by operating activities totaled \$223.9 million and \$24.2 million for the three months ended March 31, 2021 and 2020, respectively, after claim payments, net of recoveries, of \$118.2 million and \$108.5 million, respectively. The principal nonoperating uses of cash and cash equivalents for the three months ended March 31, 2021 and 2020 were advances and repayments related to secured financing transactions, purchases of debt and equity securities, repurchases of Company shares, dividends to common stockholders, and for the three months ended March 31, 2020, business acquisitions. The principal nonoperating sources of cash and cash equivalents for the three months ended March 31, 2021 and 2020 were borrowings and collections related to secured financing transactions, proceeds from the sales and maturities of debt and equity securities, increases in the deposit balances at the Company's banking operations, and for the three months ended March 31, 2020, borrowings under the unsecured credit agreement. The net effect of all activities on cash and cash

equivalents was an increase of \$750.6 million for the three months ended March 31, 2021 and a decrease of \$436.0 million for the three months ended March 31, 2020.

The Company continually assesses its capital allocation strategy, including decisions relating to dividends, stock repurchases, capital expenditures, acquisitions and investments. In March 2021, the Company paid a first quarter cash dividend of 46 cents per common share. Management expects that the Company will continue to pay quarterly cash dividends at or above the current level. The timing, declaration and payment of future dividends, however, falls within the discretion of the Company's board of directors and will depend upon many factors, including the Company's financial condition and earnings, the capital requirements of the Company's businesses, restrictions imposed by applicable law and any other factors the board of directors deems relevant from time to time.

The Company maintains a stock repurchase plan with authorization up to \$300.0 million, of which \$177.2 million remained as of March 31, 2021. Purchases may be made from time to time by the Company in the open market at prevailing market prices or in privately negotiated transactions. During the three months ended March 31, 2021, the Company repurchased and retired 1.2 million shares of its common stock for a total purchase price of \$64.8 million and, as of March 31, 2021, had repurchased and retired 2.4 million shares of its common stock under the current authorization for a total purchase price of \$122.8 million.

Holding Company. First American Financial Corporation is a holding company that conducts all of its operations through its subsidiaries. The holding company's current cash requirements include payments of principal and interest on its debt, taxes, payments in connection with employee benefit plans, dividends on its common stock and other expenses. The holding company is dependent upon dividends and other payments from its operating subsidiaries to meet its cash requirements. The Company's target is to maintain a cash balance at the holding company equal to at least twelve months of estimated cash requirements. At certain points in time, the actual cash balance at the holding company may vary from this target due to, among other factors, the timing and amount of cash payments made and dividend payments received. Pursuant to insurance and other regulations under which the Company's insurance subsidiaries operate, the amount of dividends, loans and advances available to the holding company is limited, principally for the protection of policyholders. As of March 31, 2021, under such regulations, the maximum amount available to the holding company from its insurance subsidiaries for the remainder of 2021, without prior approval from applicable regulators, was dividends of \$531.2 million and loans and advances of \$116.3 million. However, the timing and amount of dividends paid by the Company's insurance subsidiaries to the holding company falls within the discretion of each insurance subsidiary's board of directors and will depend upon many factors, including the level of total statutory capital and surplus required to support minimum financial strength ratings by certain rating agencies. Such restrictions have not had, nor are they expected to have, an impact on the holding company's ability to meet its cash obligations.

As of March 31, 2021, the holding company's sources of liquidity included \$388.9 million of cash and cash equivalents and \$700.0 million available on the Company's revolving credit facility. Management believes that liquidity at the holding company is sufficient to satisfy anticipated cash requirements and obligations for at least the next twelve months.

Financing. The Company maintains a credit agreement with JPMorgan Chase Bank, N.A. in its capacity as administrative agent and the lenders party thereto. The credit agreement, which is comprised of a \$700.0 million revolving credit facility, includes an expansion option that permits the Company, subject to satisfaction of certain conditions, to increase the revolving commitments and/or add term loan tranches in an aggregate amount not to exceed \$350.0 million. Unless terminated earlier, the credit agreement will terminate on April 30, 2024. The obligations of the Company under the credit agreement are neither secured nor guaranteed. Proceeds under the credit agreement may be used for general corporate purposes. At March 31, 2021, the Company had no outstanding borrowings under the facility.

At the Company's election, borrowings of revolving loans under the credit agreement bear interest at (a) the Alternate Base Rate plus the applicable spread or (b) the Adjusted LIBOR rate plus the applicable spread (in each case as defined in the credit agreement). The Company may select interest periods of one, two, three or six months or (if agreed to by all lenders) such other number of months for Eurodollar borrowings of loans. The applicable spread varies depending upon the debt rating assigned by Moody's Investor Service, Inc., Standard & Poor's Rating Services and/or Fitch Ratings Inc. The minimum applicable spread for Alternate Base Rate borrowings is 0.25% and the maximum is 1.00%. The minimum applicable spread for Adjusted LIBOR rate borrowings is 1.25% and the maximum is 2.00%. The rate of interest on any term loans incurred in connection with the expansion option will be established at or about the time such loans are made and may differ from the rate of interest on revolving loans.

The credit agreement includes representations and warranties, reporting covenants, affirmative covenants, negative covenants, financial covenants and events of default customary for financings of this type. Upon the occurrence of an event of default the lenders may accelerate the loans. Upon the occurrence of certain insolvency and bankruptcy events of default the loans will automatically accelerate. As of March 31, 2021, the Company was in compliance with the financial covenants under the credit agreement.

In addition to amounts available under its credit facility, certain subsidiaries of the Company maintain separate financing arrangements. The primary financing arrangements maintained by subsidiaries of the Company are as follows:

- SUSA Financial, Inc. (dba FirstFunding, Inc.), a specialized warehouse lender to correspondent mortgage lenders, maintains secured warehouse lending facilities with several banking institutions. At March 31, 2021, outstanding borrowings under these facilities totaled \$645.5 million.
- First American Trust, FSB, a federal savings bank, maintains a secured line of credit with the Federal Home Loan Bank and federal funds lines of credit with certain correspondent institutions. In addition, First American Trust, FSB is a party to master repurchase agreements under which securities may be loaned or sold. At March 31, 2021, no amounts were outstanding under any of these facilities.
- First Canadian Title Company Limited, a Canadian title insurance and services company, maintains credit facilities with certain Canadian banking institutions. At March 31, 2021, no amounts were outstanding under these facilities.

The Company's debt to capitalization ratios were 25.0% and 23.7% at March 31, 2021 and December 31, 2020, respectively. The Company's adjusted debt to capitalization ratios, excluding secured financings payable of \$645.5 million and \$516.2 million at March 31, 2021 and December 31, 2020, were 16.9% and 17.0%, respectively.

Investment Portfolio. The Company maintains a high quality, liquid investment portfolio that is primarily held at its insurance and banking subsidiaries. As of March 31, 2021, 95% of the Company's investment portfolio consisted of debt securities, of which 66% were either United States government-backed or rated AAA and 98% were either rated or classified as investment grade. Percentages are based on the estimated fair values of the securities. Credit ratings reflect published ratings obtained from globally recognized securities rating agencies. If a security was rated differently among the rating agencies, the lowest rating was selected. For further information on the credit quality of the Company's investment portfolio at March 31, 2021, see Note 4 Debt and Equity Securities to the condensed consolidated financial statements.

In addition to its debt and equity securities portfolio, the Company maintains certain money-market and other short-term investments.

Off-balance sheet arrangements. The Company administers escrow deposits and trust assets as a service to its customers. Escrow deposits totaled \$9.2 billion and \$7.1 billion at March 31, 2021 and December 31, 2020, respectively, of which \$4.4 billion and \$3.1 billion, respectively, were held at First American Trust, FSB. The escrow deposits held at First American Trust, FSB are temporarily invested in cash and cash equivalents and debt securities, with offsetting liabilities included in deposits in the accompanying condensed consolidated balance sheets. The remaining escrow deposits were held at third-party financial institutions.

Trust assets held or managed by First American Trust, FSB totaled \$4.4 billion at March 31, 2021 and December 31, 2020. Escrow deposits held at third-party financial institutions and trust assets are not considered assets of the Company and, therefore, are not included in the accompanying condensed consolidated balance sheets. All such amounts are placed in deposit accounts insured, up to applicable limits, by the Federal Deposit Insurance Corporation. The Company could be held contingently liable for the disposition of these assets.

In conducting its operations, the Company often holds customers' assets in escrow, pending completion of real estate transactions and, as a result, the Company has ongoing programs for realizing economic benefits with various financial institutions. The results from these programs are included as income or a reduction in expense, as appropriate, in the consolidated statements of income based on the nature of the arrangement and benefit received.

The Company facilitates tax-deferred property exchanges for customers pursuant to Section 1031 of the Internal Revenue Code and tax-deferred reverse exchanges pursuant to Revenue Procedure 2000-37. As a facilitator and intermediary, the Company holds the proceeds from sales transactions and takes temporary title to property identified by the customer to be acquired with such proceeds. Upon the completion of each such exchange, the identified property is transferred to the customer or, if the exchange does not take place, an amount equal to the sales proceeds or, in the case of a reverse exchange, title to the property held by the Company is transferred to the customer. Like-kind exchange funds held by the Company totaled \$3.0 billion and \$2.9 billion at March 31, 2021 and December 31, 2020, respectively. The like-kind exchange deposits are held at third-party financial institutions and, due to the structure utilized to facilitate these transactions, the proceeds and property are not considered assets of the Company and, therefore, are not included in the accompanying condensed consolidated balance sheets. All such amounts are placed in deposit accounts insured, up to applicable limits, by the Federal Deposit Insurance Corporation. The Company could be held contingently liable to the customer for the transfers of property, disbursements of proceeds and the returns on such proceeds.

Item 3. Quantitative and Qualitative Disclosures About Market Risk.

The Company's primary exposure to market risk relates to interest rate risk associated with certain financial instruments. Although the Company monitors its risk associated with fluctuations in interest rates, it does not currently use derivative financial instruments on any significant scale to hedge these risks.

There have been no material changes in the Company's market risks since the filing of its Annual Report on Form 10-K for the year ended December 31, 2020.

Item 4. Controls and Procedures.

Evaluation of Disclosure Controls and Procedures

The Company's chief executive officer and chief financial officer have concluded that, as of March 31, 2021, the end of the quarterly period covered by this Quarterly Report on Form 10-Q, the Company's disclosure controls and procedures, as defined in Rule 13a-15(e) of the Securities Exchange Act of 1934, as amended, were effective, based on the evaluation of these controls and procedures required by Rule 13a-15(b) thereunder.

Changes in Internal Control Over Financial Reporting

There was no change in the Company's internal control over financial reporting during the quarter ended March 31, 2021, that has materially affected, or is reasonably likely to materially affect, the Company's internal control over financial reporting.

PART II: OTHER INFORMATION

Item 1. Legal Proceedings.

The Company and its subsidiaries are parties to a number of non-ordinary course lawsuits. These lawsuits frequently are similar in nature to other lawsuits pending against the Company's competitors.

For those non-ordinary course lawsuits where the Company has determined that a loss is both probable and reasonably estimable, a liability representing the best estimate of the Company's financial exposure based on known facts has been recorded. Actual losses may materially differ from the amounts recorded.

It is, however, often not possible to assess the probability of loss. Lawsuits that are putative class actions require a plaintiff to satisfy a number of procedural requirements before proceeding to trial. These requirements include, among others, demonstration to a court that the law proscribes in some manner the Company's activities, the making of factual allegations sufficient to suggest that the Company's activities exceeded the limits of the law and a determination by the court—known as class certification—that the law permits a group of individuals to pursue the case together as a class. In certain instances, the Company may also be able to compel the plaintiff to arbitrate its claim on an individual basis. If these procedural requirements are not met, either the lawsuit cannot proceed or, as is the case with class certification or compelled arbitration, the plaintiffs lose the financial incentive to proceed with the case (or the amount at issue effectively becomes de minimis). Frequently, a court's determination as to these procedural requirements is subject to appeal to a higher court. As a result of, among other factors, ambiguities and inconsistencies in the laws applicable to the Company's business and the uniqueness of the factual issues presented in any given lawsuit, the Company often cannot determine the probability of loss until a court has finally determined that a plaintiff has satisfied applicable procedural requirements.

Furthermore, for putative class actions, it is often impossible to estimate the possible loss or a range of loss amounts, even where the Company has determined that a loss is reasonably possible. Generally class actions involve a large number of people and the effort to determine which people satisfy the requirements to become plaintiffs—or class members—is often time consuming and burdensome. Moreover, these lawsuits raise complex factual issues which result in uncertainty as to their outcome and, ultimately, make it difficult for the Company to estimate the amount of damages which a plaintiff might successfully prove. In addition, many of the Company's businesses are regulated by various federal, state, local and foreign governmental agencies and are subject to numerous statutory guidelines. These regulations and statutory guidelines often are complex, inconsistent or ambiguous, which results in additional uncertainty as to the outcome of a given lawsuit—including the amount of damages a plaintiff might be afforded—or makes it difficult to analogize experience in one case or jurisdiction to another case or jurisdiction.

Most of the non-ordinary course lawsuits to which the Company and its subsidiaries are parties challenge practices in the Company's title insurance business, though a limited number of cases also pertain to the Company's other businesses. These lawsuits include, among others, cases alleging, among other assertions, that the Company or one of its subsidiaries improperly charged fees for products and services, improperly performed debt collection practices, improperly handled property and casualty claims and gave items of value to builders as inducements to refer business in violation of certain laws, such as consumer protection laws and laws generally prohibiting unfair business practices, and certain obligations, including:

- Seymour vs. First American Title Insurance Company, et al., filed on January 12, 2021 and pending in the Superior Court of the State of California, County of Santa Barbara,
- Tenefufu vs. First American Specialty Insurance Company, filed on June 1, 2017 and pending in the Superior Court of the State of California, County of Sacramento, and
- Wilmot vs. First American Financial Corporation, et al., filed on April 20, 2007 and pending in the Superior Court of the State of California, County of Los Angeles.

Seymour and Tenefufu are putative class actions for which a class has not been certified. A class has been certified in Wilmot. For the reasons described above, the Company has not yet been able to assess the probability of loss or estimate the possible loss or the range of loss.

The Company and/or its subsidiaries are also parties to consumer class actions and a securities class action in connection with the information security incident that occurred during the second quarter of 2019. All of these lawsuits are putative class actions for which a class has not been certified. For the reasons described above, the Company has not yet been able to assess the probability of loss or estimate the possible loss or the range of loss.

While some of the lawsuits described above may be material to the Company's financial results in any particular period if an unfavorable outcome results, the Company does not believe that any of these lawsuits will have a material adverse effect on the Company's overall financial condition, results of operations or cash flows.

In addition, the Company and its board of directors and certain executives are parties to a shareholder derivative action, *Hollett vs. Gilmore, et al.*, filed on November 25, 2020 and pending in the United States District Court for the Central District of California. The allegations arise out of the information security incident that occurred during the second quarter of 2019 and the resulting legal proceedings and disclosures made at the time of the incident. While the ultimate disposition is not yet determinable, the Company does not believe it will have a material adverse effect on the Company's financial condition, results of operations or cash flows.

The Company also is a party to non-ordinary course lawsuits other than those described above. With respect to these lawsuits, the Company has determined either that a loss is not reasonably possible or that the estimated loss or range of loss, if any, will not have a material adverse effect on the Company's financial condition, results of operations or cash flows.

The Company's title insurance, property and casualty insurance, home warranty, banking, thrift, trust and wealth management businesses are regulated by various federal, state and local governmental agencies. Many of the Company's other businesses operate within statutory guidelines. Consequently, the Company may from time to time be subject to examination or investigation by such governmental agencies. Currently, governmental agencies are examining or investigating certain of the Company's operations. These exams and investigations include an inquiry by the New York Attorney General and the Massachusetts Attorney General into competitive practices in the title insurance industry. With respect to matters where the Company has determined that a loss is both probable and reasonably estimable, the Company records a liability representing its best estimate of the financial exposure based on known facts. While the ultimate disposition of each such exam or investigation is not yet determinable, the Company does not believe that individually or in the aggregate they will have a material adverse effect on the Company's financial condition, results of operations or cash flows. Some of these exams or investigations could, however, result in changes to the Company's business practices which could ultimately have a material adverse impact on the Company's financial condition, results of operations or cash flows.

Furthermore, these exams and investigations include two investigations initiated in connection with the information security incident that occurred during the second quarter of 2019, one being conducted by the Securities and Exchange Commission ("SEC") enforcement staff and the other by the New York Department of Financial Services. The SEC enforcement staff is questioning the adequacy of disclosures the Company made at the time of the incident and the adequacy of its disclosure controls. In September 2020, the Company received a Wells Notice informing the Company that the enforcement staff has made a preliminary determination to recommend a filing of an enforcement action by the SEC against the Company. The Company believes that its disclosures and disclosure controls complied with the securities laws and has availed itself of the opportunity to provide a response to convince the SEC that an enforcement action is inappropriate under the circumstances. The New York Department of Financial Services has alleged violations of its cyber security requirements for financial services companies and filed a statement of charges on July 22, 2020, as amended on March 10, 2021, and scheduled an administrative hearing in connection therewith. While the ultimate dispositions of the SEC and New York Department of Financial Services matters are not yet determinable, the Company does not believe that individually or in the aggregate they will have a material adverse effect on the Company's financial condition, results of operations or cash flows.

The Company's Canadian operations provide certain services to lenders which it believes to be exempt from excise tax under applicable Canadian tax laws. However, in October 2014, the Canadian taxing authority provided internal guidance that the services in question should be subject to the excise tax. During July 2019, the Company received an assessment from the Canadian taxing authority. The amount of the assessment is \$16.1 million, which is based on the exchange rate as of, and includes interest charges through, March 31, 2021. As the Company does not believe that the services in question are subject to excise tax, it intends to avail itself of avenues of appeal, and it believes it is reasonably likely that the Company will prevail on the merits. Accordingly, the Company filed a notice of appeal with the Canadian taxing authority in March 2020. Based on the current facts and circumstances, the Company does not believe a loss is probable, therefore no liability has been recorded.

The Company and its subsidiaries also are involved in numerous ongoing routine legal and regulatory proceedings related to their operations. With respect to each of these proceedings, the Company has determined either that a loss is not reasonably possible or that the estimated loss or range of loss, if any, is not material to the condensed consolidated financial statements as a whole.

Item 1A. Risk Factors.

The following “risk factors” could materially and adversely affect the Company’s business, operations, reputation, financial position or future financial performance. You should carefully consider each of the following risk factors and the other information contained in this Quarterly Report on Form 10-Q. The Company faces risks other than those listed here, including those that are unknown to the Company and others of which the Company may be aware but, at present, considers immaterial. Because of the following factors, as well as other variables affecting the Company’s operating results, past financial performance may not be a reliable indicator of future performance, and historical trends should not be used to anticipate results or trends in future periods.

STRATEGIC RISK FACTORS***1. The Company’s risk management framework could prove inadequate, which could adversely affect the Company***

The Company’s risk management framework is designed to identify, monitor and mitigate risks that could have a negative impact on the Company’s financial condition or reputation. This framework includes departments or groups dedicated to enterprise risk management, information security, disaster recovery and other information technology-related risks, business continuity, legal and compliance, compensation structures and other human resources matters, vendor management and internal audit, among others. Many of the processes overseen by these departments function at the enterprise level, but many also function through, or rely to a certain degree upon, risk mitigation efforts in local operating groups. Similarly, with respect to the risks the Company assumes in the ordinary course of its business through the issuance of title insurance policies and the provision of related products and services, the Company employs localized as well as centralized risk mitigation efforts. These efforts include the implementation of underwriting policies and procedures, automated risk-decisioning tools and other mechanisms for assessing and managing risk. Underwriting title insurance policies and making other risk-assumption decisions frequently involves a substantial degree of individual judgment and, accordingly, underwriters are maintained at the state, regional, divisional, and corporate levels with varying degrees of underwriting authority. These individuals may be encouraged by customers or others to assume risks or to expeditiously make risk determinations. If the Company’s risk mitigation efforts prove inadequate, the Company could be adversely affected.

2. The Company is pursuing various innovative initiatives, which could result in increased title claims or otherwise adversely affect the Company

In an effort to speed the delivery of its products, increase efficiency, improve quality, improve the customer experience and decrease risk, the Company is increasingly utilizing innovative technologies, processes and techniques in the creation of its products and services. These efforts include streamlining the closing process by converting certain manual processes into automated ones, which the Company believes will improve the customer experience by simplifying and reducing the time it takes to close a transaction, reducing risk and improving communication. The Company increasingly is employing advanced technologies to automate various processes, including various processes related to the building, maintaining and updating of title plants and other data assets, as well as the search and examination of information in connection with the issuance of title insurance policies. In connection with the increase in orders during 2020, the Company expanded the use of certain of these advanced technologies in order to facilitate the processing of those orders and expects to continue the expanded use of these technologies. Risks from these and other innovative initiatives include those associated with potential defects in the design and development of the technologies used to automate processes, misapplication of technologies, the reliance on data that may prove inadequate, and failure to meet customer expectations, among others. As a result of these risks, the Company could experience increased claims, reputational damage or other adverse effects, which could be material to the Company.

3. *Potentially disruptive innovation in the real estate industry and/or the Company's participation in these efforts could adversely affect the Company*

In addition to the Company's innovative activities, other participants in the real estate industry are seeking to innovate in ways that could adversely impact the Company's businesses. These participants include certain of the Company's sources of business, competitors and ultimate customers. Innovations by these participants may change the demand for the Company's products and services, the manner in which the Company's products and services are ordered or fulfilled and the revenue or profitability derived from the products and services. The Company has made and will likely continue to make high-risk, illiquid investments in some of these participants, typically during their early- and growth-stages. If any of these companies do not succeed, the Company could lose and/or be required to impair all or part of its investment in the unsuccessful company. The risk of such impairment is generally greater during periods of economic uncertainty, such as that currently being experienced in the United States. The prospects of these investments also depend on a number of factors in addition to the condition of the general economy, including the general availability of capital, the performance of and volatility in the public markets, the condition of the real estate industry, the competitive environment for such participants and the operational and financial performance of such participants. These investments could also facilitate efforts that ultimately disrupt the Company's business or enable competitors. Accordingly, the Company's efforts to anticipate and participate in these transformations could require significant additional investment and management attention and may not succeed. These innovative efforts by third parties, and the manner in which the Company, its agents and other industry participants respond to them, could therefore have an adverse effect on the Company.

4. *The coronavirus pandemic and the responses thereto could adversely affect the Company*

The coronavirus pandemic and responses to it have created significant volatility, uncertainty and disruption in the broader economy. The extent to which the coronavirus pandemic impacts the Company's business, operations and financial results will depend on numerous factors that the Company may not be able to accurately predict, including: the duration and scope of the pandemic and restrictions and responses to it; governmental, business and individual actions that have been and continue to be taken in response to the pandemic; the ongoing impact of the pandemic on economic activity and actions taken in response, including the efficacy of governmental relief efforts; the availability and efficacy of vaccines; and the effect on participants in real estate transactions and the demand for the Company's products and services. The Company is also taking certain underwriting risks that could result in increased claims. In addition, the Company has made changes to certain of its production processes that also could result in increased claims. While the Company is unable to predict the ultimate impact the coronavirus pandemic and related responses will have on its businesses, these events adversely affected the Company early in the pandemic, and still could adversely affect, its business and results of operations and, if prolonged, could materially adversely affect the Company's financial condition. The impacts of the coronavirus pandemic may also exacerbate the risks discussed elsewhere in Part II, Item 1A of this Quarterly Report.

OPERATIONAL RISK FACTORS

5. *Conditions in the real estate market generally impact the demand for a substantial portion of the Company's products and services and the Company's claims experience*

Demand for a substantial portion of the Company's products and services generally decreases as the number of real estate transactions in which its products and services are purchased decreases. The number of real estate transactions in which the Company's products and services are purchased decreases in the following situations, among others:

- when mortgage interest rates are high or rising;
- when the availability of credit, including commercial and residential mortgage funding, is limited; and
- when real estate affordability is declining.

These circumstances, particularly when combined with declining real estate values and the increase in foreclosures that often results therefrom, also tend to adversely impact the Company's title claims experience.

6. *Unfavorable economic conditions adversely affect the Company*

Historically, uncertainty and negative trends in general economic conditions in the United States and abroad, including significant tightening of credit markets and a general decline in the value of real property, have created a difficult operating environment for the Company's core title and settlement businesses. Uncertainty and a deterioration in economic conditions in connection with the coronavirus pandemic adversely affected the Company early in the pandemic. These conditions also tend to negatively impact the amount of funds the Company receives from third parties to be held in trust pending the closing of commercial and residential real estate transactions. The Company deposits a substantial portion of these funds, as well as its own funds, with the federal savings bank it owns. The Company's bank invests those funds and any realized losses incurred on those investments will be reflected in the Company's consolidated results. The likelihood of such losses, which generally would not occur if the Company were to deposit these funds in an unaffiliated entity, increases when economic conditions are unfavorable. Moreover, during periods of unfavorable economic conditions, the return on these funds deposited at the Company's bank, as well as funds the Company deposits with third party financial institutions, tends to decline. Certain rules promulgated in connection with the coronavirus pandemic allow certain borrowers to request forbearance of the payment of their mortgages. In certain circumstances, if a borrower requests forbearance on a mortgage originated through the Company's warehouse lender before that mortgage is sold to a third party, the Company's warehouse lender may have to retain that loan. In addition, the Company holds investments in entities, such as title agencies and settlement service providers, some of which have been negatively impacted by these conditions, as well as other securities in its investment portfolio, which also may be, and recently have been, negatively impacted by these conditions. Depending upon the ultimate severity and duration of any economic downturn, the resulting effects on the Company could be materially adverse, including a significant reduction in revenues, earnings and cash flows, challenges to the Company's ability to satisfy covenants or otherwise meet its obligations under debt facilities, difficulties in obtaining access to capital, challenges to the Company's ability to pay dividends at currently anticipated levels, deterioration in the value of or return on its investments and increased credit risk from customers and others with obligations to the Company.

7. *Climate change, severe weather conditions, health crises and other catastrophe events could adversely affect the Company*

Climate change, global or extensive health crises, severe weather and other catastrophe events could adversely affect the Company. These include impacts on the results of the Company's property and casualty insurance business due to any increase in the frequency and severity of wildfires, hurricanes, floods, earthquakes or other catastrophe or severe weather events, as well as increased claims in the Company's home warranty business. Home warranty claims, including those pertaining to climate control units, tend to rise as temperatures become extreme, especially in geographies where extreme temperatures are infrequent, and as people spend more time at home, such as during the coronavirus pandemic. In addition, the Company manages its financial exposure for losses in its title insurance business and in its property and casualty insurance business with third-party reinsurance. Catastrophic events could adversely affect the cost and availability of that reinsurance. Moreover, to the extent climate change, health crises, severe weather conditions and other catastrophe events impact companies or municipalities whose securities the Company invests in, the value of its investment portfolio may also decrease due to these factors. In addition, these factors may impact real estate markets and the broader economy, which could also impact the Company. The frequency, severity, duration, and geographic location and scope of such health crises, catastrophe and severe weather events are inherently unpredictable, and, therefore, the Company is unable to predict the ultimate impact climate change and such events will have on its businesses.

8. *The Company may find it difficult to acquire necessary data*

Certain data used and supplied by the Company are subject to regulation by various federal, state and local regulatory authorities. Compliance with existing federal, state and local laws and regulations with respect to such data has not had a material adverse effect on the Company's results of operations to date. Nonetheless, federal, state and local laws and regulations in the United States designed to protect the public from the misuse of personal information in the marketplace and adverse publicity or potential litigation concerning the commercial use of such information may affect the Company's operations and could result in substantial regulatory compliance expense, litigation expense and a loss of revenue. The suppliers of data to the Company face similar burdens. As a result of these and other factors, the Company may find it financially burdensome to acquire necessary data.

9. *Changes in the Company's relationships with large mortgage lenders or government-sponsored enterprises could adversely affect the Company*

Large mortgage lenders and government-sponsored enterprises, because of their significant role in the mortgage process, have significant influence over the Company and other service providers. Changes in the Company's relationship with any of these lenders or government-sponsored enterprises, the loss of all or a portion of the business the Company derives from these parties, any refusal of these parties to accept the Company's products and services, the modification of the government-sponsored enterprises' requirement for title insurance in connection with mortgages they purchase or the use of alternatives to the Company's products and services, could have a material adverse effect on the Company.

10. *A downgrade by ratings agencies, reductions in statutory capital and surplus maintained by the Company's title insurance underwriters or a deterioration in other measures of financial strength could adversely affect the Company*

Certain of the Company's customers use measurements of the financial strength of the Company's title insurance underwriters, including, among others, ratings provided by ratings agencies and levels of statutory capital and surplus maintained by those underwriters, in determining the amount of a policy they will accept and the amount of reinsurance required. Each of the major ratings agencies currently rates the Company's title insurance operations. The Company's principal title insurance underwriter's financial strength ratings are "A2" by Moody's Investor Services, Inc., "A" by Fitch Ratings, Inc., "A-" by Standard & Poor's Ratings Services and "A" by A.M. Best Company, Inc. These ratings provide the agencies' perspectives on the financial strength, operating performance and cash generating ability of those operations. These agencies continually review these ratings and the ratings are subject to change. Statutory capital and surplus, or the amount by which statutory assets exceed statutory liabilities, is also a measure of financial strength. The Company's principal title insurance underwriter maintained \$1.5 billion of total statutory capital and surplus as of December 31, 2020. Accordingly, if the ratings or statutory capital and surplus of these title insurance underwriters are reduced from their current levels, or if there is a deterioration in other measures of financial strength, the Company's results of operations, competitive position and liquidity could be adversely affected.

11. *The issuance of the Company's title insurance policies and related activities by title agents, which operate with substantial independence from the Company, could adversely affect the Company*

The Company's title insurance subsidiaries issue a significant portion of their policies through title agents that operate largely independent of the Company. There is no guarantee that these title agents will fulfill their contractual obligations to the Company, which contracts include limitations that are designed to limit the Company's risk with respect to their activities. In addition, regulators are increasingly seeking to hold the Company responsible for the actions of these title agents and, under certain circumstances, the Company may be held liable directly to third parties for actions (including defalcations) or omissions of these agents. Case law in certain states also suggests that the Company is liable for the actions or omissions of its agents in those states, regardless of contractual limitations. As a result, the Company's use of title agents could result in increased claims on the Company's policies issued through agents and an increase in other costs and expenses.

12. *Systems damage, failures, interruptions, cyberattacks and intrusions, and unauthorized data disclosures by the Company or its service providers may disrupt the Company's business, harm the Company's reputation, result in material claims for damages or otherwise adversely affect the Company*

The Company uses computer systems and other technologies (collectively referred to as "systems"), some of which it owns and manages and some of which are owned and/or managed by third parties, including providers of distributed computing infrastructure platforms commonly known as the "cloud." The Company and its agents, suppliers, service providers, and customers use these systems to receive, process, store and transmit business information, including non-public personal information as well as data from suppliers and other information upon which the Company's business relies. The Company also uses these systems to manage substantial cash, investment assets, bank deposits, trust assets and escrow account balances on behalf of itself and its customers, among other activities. Many of the Company's products, services and solutions involving the use of real property related data are fully reliant on these systems and are only available electronically. Accordingly, for a variety of reasons, the integrity of these systems and the protection of the information that resides thereon are critically important to the Company's successful operation.

These systems have been subject to, and are likely to continue to be the target of, computer viruses, cyberattacks, phishing attacks and other malicious activity. These attacks have increased in frequency and sophistication, including in the wake of the coronavirus pandemic. The Company's employees working remotely are more susceptible to social engineering attacks, intrusions and other malicious activity, and this risk has increased given that a substantial number of the Company's employees are working from home as a result of the coronavirus pandemic. The Company's applications and infrastructure also have known and unknown vulnerabilities. Once identified, the Company's information technology and information security personnel seek to remediate these vulnerabilities based on the level of risk presented. For a number of reasons, including the introduction of new vulnerabilities, resource constraints, competing business demands and dependence on third parties, a number of unremediated vulnerabilities will always exist. Remediation of some vulnerabilities are outside of the control of the Company and third-party remediation efforts may not be timely provided or implemented, even when the level of risk is critical or high. Further, certain other potential causes of system damage or other negative system-related events are wholly or partially beyond the Company's control, such as natural disasters, vendor failures to satisfy service level requirements and power or telecommunications failures. These circumstances could expose the Company to system-related damages, failures, interruptions, cyberattacks and other negative events or could otherwise disrupt the Company's business and could also result in the loss or unauthorized release, gathering, monitoring or destruction of confidential, proprietary and other information pertaining to the Company, its customers, employees, agents or suppliers.

In conducting its business and delivering its products and services, the Company also utilizes service providers. These service providers and the systems they utilize are typically subject to similar types of system- and information security-related risks that the Company faces. The Company provides certain of these service providers with data, including nonpublic personal information. There is no guarantee that the Company's due diligence or ongoing vendor oversight will be sufficient to ensure the integrity and security of the systems utilized by these service providers or the protection of the information that resides thereon. Adverse consequences for the Company in the event of a significant event involving the systems of its service providers or the information residing thereon include, among others, delays in the delivery of the Company's products and services, direct or indirect financial loss, loss of business and reputational damage.

During the third quarter of 2019, the Company concluded an investigation regarding unauthorized access to non-public personal information as a result of a vulnerability in one of the Company's applications. The investigation identified imaged documents containing non-public personal information pertaining to 32 consumers that likely were accessed without authorization. These 32 consumers were notified and offered complimentary credit monitoring services. This incident triggered numerous federal and state governmental inquiries as well as private lawsuits against the Company. While the incident is not expected to have a material impact on the Company's business, it increases the risk associated with any future incidents, particularly the risk of damage to the Company's reputation.

Certain laws and contracts the Company has entered into require it to notify various parties, including consumers or customers, in the event of certain actual or potential data breaches or systems failures, including those of the Company's service providers. These notifications can result, among other things, in the loss of customers, lawsuits, adverse publicity, diversion of management's time and energy, the attention of regulatory authorities, fines and disruptions in sales. Further, the Company's financial institution customers have obligations to safeguard their systems and sensitive information and the Company may be bound contractually and/or by regulation to comply with the same requirements. If the Company or its service providers fail to comply with applicable regulations and contractual requirements, the Company could be exposed to lawsuits, governmental proceedings or the imposition of fines, among other consequences.

Any inability to prevent or adequately respond to the issues described above could disrupt the Company's business, inhibit its ability to retain existing customers or attract new customers, otherwise harm its reputation and/or result in financial losses, litigation, increased costs or other adverse consequences that could be material to the Company.

13. *Errors and fraud involving the transfer of funds may adversely affect the Company*

The Company relies on its systems, employees and domestic and international banks to transfer its own funds and the funds of third parties. In addition to relying on third-party banks to transfer these funds, the Company's federal savings bank subsidiary transfers funds on behalf of the Company as well as title agents that are not affiliates of the Company. These transfers are susceptible to user input error, fraud, system interruptions, incorrect processing and similar errors that from time to time result in lost funds or delayed transactions. The Company's email and computer systems and systems used by its agents, customers and other parties involved in a transaction have been subject to, and are likely to continue to be the target of, fraudulent attacks, including attempts to cause the Company or its agents to improperly transfer funds. These attacks have increased in frequency and sophistication. Funds transferred to a fraudulent recipient are often not recoverable. In certain instances the Company may be liable for those unrecovered funds. The controls and procedures used by the Company to prevent transfer errors and fraud may prove inadequate, resulting in financial losses, reputational harm, loss of customers or other adverse consequences which could be material to the Company.

14. *The Company's use of a global workforce involves risks that could adversely affect the Company*

The Company utilizes lower cost labor in countries such as India and the Philippines, among others. These countries are subject to relatively high degrees of political and social instability and may lack the infrastructure to withstand natural disasters, health crises and other catastrophe events. Such disruptions could decrease efficiency and increase the Company's costs, which the Company has experienced during the coronavirus pandemic. Weakness of the United States dollar in relation to the currencies used in these countries may also reduce the savings achievable through this strategy. Furthermore, the practice of utilizing labor based in other countries is subject to heightened scrutiny in the United States and, as a result, the Company could face pressure to decrease its use of labor based outside the United States. Laws or regulations that require the Company to use labor based in the United States or effectively increase the Company's labor costs abroad also could be enacted. The Company may not be able to pass on these increased costs to its customers.

LEGAL AND COMPLIANCE RISK FACTORS

15. *Regulatory oversight and changes in government regulation could require the Company to raise capital, make it more difficult to deploy capital, including dividends to shareholders and repurchases of the Company's shares, prohibit or limit the Company's operations, make it more costly or burdensome to conduct such operations, result in decreased demand for the Company's products and services or otherwise adversely affect the Company*

Many of the Company's businesses, including its title insurance, property and casualty insurance, home warranty, banking, trust and wealth management businesses, are regulated by various federal, state, local and foreign governmental agencies. These and other of the Company's businesses also operate within statutory guidelines. The industry in which the Company operates and the markets into which it sells its products are also regulated and subject to statutory guidelines. In general, in recent years, the Company experienced increasing regulatory oversight and became subject to increasingly complex statutory guidelines.

Regulatory oversight could require the Company to raise capital, and/or make it more difficult to deploy capital, including dividends to shareholders and repurchases of the Company's shares. For example, regulatory capital requirements for the Company have historically applied only at the subsidiary level, specifically to the Company's federal savings bank subsidiary and the Company's insurance underwriter subsidiaries. However, both the National Association of Insurance Commissioners and the Board of Governors of the Federal Reserve System have issued proposals for group capital calculations. These proposals, if finalized and adopted in their current forms, would apply to the Company at the group level and would be in addition to existing subsidiary-level capital requirements. It is possible that the requirements, particularly in an economic downturn, could have the effect of requiring the Company to raise capital and/or making it more difficult to otherwise deploy capital, including dividends to shareholders and repurchases of the Company's shares.

An increasing number of federal, state, and international laws and regulations apply to the collection, use, retention, protection, disclosure, transfer, and other processing of personal data, including the California Consumer Privacy Act, the California Privacy Rights Act and the European Union General Data Protection Regulation. The effects of these privacy and data protection laws, including the cost of compliance and required changes in the manner in which the Company conducts its business, are not fully known and are potentially significant, and the failure to comply could adversely affect the Company. The Company has incurred costs to comply with these laws and to respond to inquiries about its compliance with them.

In addition, changes in the applicable regulatory environment, statutory guidelines or interpretations of existing regulations or statutes; reform of government-sponsored enterprises such as the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac); enhanced governmental oversight or efforts by governmental agencies to cause customers to refrain from using the Company's products or services could prohibit or limit its future operations or make it more costly or burdensome to conduct such operations or result in decreased demand for the Company's products and services or a change in its competitive position. The impact of these changes would be more significant if they involve jurisdictions in which the Company generates a greater portion of its title premiums, such as the states of Arizona, California, Florida, Michigan, New York, Ohio, Pennsylvania and Texas. These changes may compel the Company to reduce its prices, may restrict its ability to implement price increases or acquire assets or businesses, may limit the manner in which the Company conducts its business or otherwise may have a negative impact on its ability to generate revenues, earnings and cash flows.

16. *Scrutiny of the Company's businesses and the industries in which it operates by governmental entities and others could adversely affect the Company*

The real estate settlement services industry, an industry in which the Company generates a substantial portion of its revenue and earnings, is subject to continuous scrutiny by regulators, legislators, the media and plaintiffs' attorneys. Though often directed at the industry generally, these groups also focus their attention directly on the Company's businesses from time to time. In either case, this scrutiny may result in changes which could adversely affect the Company's operations and, therefore, its financial condition and liquidity.

Governmental entities have routinely inquired into certain practices in the real estate settlement services industry to determine whether certain of the Company's businesses or its competitors have violated applicable laws, which include, among others, the insurance codes of the various jurisdictions and the Real Estate Settlement Procedures Act and similar state, federal and foreign laws. The Consumer Financial Protection Bureau ("CFPB"), for example, has actively utilized its regulatory authority over the mortgage and real estate markets by bringing enforcement actions against various participants in the mortgage and settlement industries and we expect that such enforcement activity will intensify. Departments of insurance in the various states, the CFPB and other federal regulators and applicable regulators in international jurisdictions, either separately or together, also periodically conduct targeted inquiries into the practices of title insurance companies and other settlement services providers in their respective jurisdictions. Currently, the Company is the subject of a number of regulatory inquiries.

Further, from time to time plaintiffs' lawyers have targeted, and are expected to continue to target, the Company and other members of the Company's industry with lawsuits claiming legal violations or other wrongful conduct. These lawsuits often involve large groups of plaintiffs and claims for substantial damages. These types of inquiries or proceedings have from time to time resulted, and may in the future result, in findings of a violation of the law or other wrongful conduct and the payment of fines or damages or the imposition of restrictions on the Company's conduct. This could impact the Company's operations and financial condition. Moreover, these laws and standards of conduct often are ambiguous and, thus, it may be difficult to ensure compliance. This ambiguity may force the Company to mitigate its risk by settling claims or by ending practices that generate revenues, earnings and cash flows. Currently the Company is a party to a number of class action lawsuits.

17. *Regulation of title insurance rates could adversely affect the Company*

Title insurance rates are subject to extensive regulation, which varies from state to state. In many states the approval of the applicable state insurance regulator is required prior to implementing a rate change. These regulations could hinder the Company's ability to promptly adapt to changing market dynamics through price adjustments, which could adversely affect its results of operations, particularly in a rapidly declining market.

FINANCIAL RISK FACTORS

18. *Failures at financial institutions at which the Company deposits funds could adversely affect the Company*

The Company deposits substantial funds in financial institutions. These funds include amounts owned by third parties, such as escrow deposits and like-kind exchange deposits. Should one or more of the financial institutions at which deposits are maintained fail, there is no guarantee that the Company would recover the funds deposited, whether through Federal Deposit Insurance Corporation coverage or otherwise. In the event of any such failure, the Company also could be held liable for the funds owned by third parties.

19. *Unfavorable economic or other conditions could cause the Company to write off a portion of its goodwill and other intangible assets*

The Company performs an impairment test of the carrying value of goodwill and other indefinite-lived intangible assets annually in the fourth quarter, or sooner if circumstances indicate a possible impairment. Finite-lived intangible assets are subject to impairment tests on a periodic basis. Factors that may be considered in connection with this review include, without limitation, underperformance relative to historical or projected future operating results, reductions in the Company's stock price and market capitalization, increased cost of capital and negative macroeconomic, industry and company-specific trends. These and other factors could lead to a conclusion that goodwill or other intangible assets are impaired, in which case the Company would be required to write off the portion believed to be impaired. In the third quarter of 2020, the Company committed to a plan to sell its property and casualty insurance business, which triggered goodwill and other intangible assets impairment tests. Based on the results of the impairment tests, the Company recorded pretax impairment losses to goodwill and other intangible assets of \$34.2 million and \$3.2 million, respectively, for the third quarter of 2020. Total goodwill and other intangible assets reflected on the Company's condensed consolidated balance sheet as of March 31, 2021 are \$1.6 billion. Any substantial goodwill and other intangible asset impairments that may be required could have a material adverse effect on the Company's results of operations and financial condition.

20. *Uncertainty from the expected discontinuance of LIBOR and transition to any other interest rate benchmark may affect the Company's cost of capital and net investment*

On March 5, 2021, the ICE Benchmark Administration, the administrator of LIBOR, announced that it will stop publishing certain LIBOR rates after December 31, 2021 and all of these widely used reference rates will no longer be available after June 30, 2023. The Company has exposure to LIBOR-based financial instruments, such as LIBOR-based securities held in its investment portfolio. Borrowings under the Company's \$700.0 million senior unsecured credit facility and some of its warehouse credit facilities also are LIBOR-based, although each allows for the use of an unspecified alternative benchmark rate if LIBOR is no longer available. The discontinuance of LIBOR, as well as uncertainty related to the establishment of any alternative reference rate, may adversely affect the Company's cost of capital and the market for LIBOR-based securities, which could have an adverse impact on the earnings from or value of the Company's investment portfolio. At this time, the Company cannot predict the overall effect of the discontinuation of LIBOR or the establishment of any alternative benchmark rate.

21. *The Company's investment portfolio and certain other investments are subject to certain risks and could experience losses*

The Company maintains a substantial investment portfolio, primarily consisting of fixed income debt securities. The investment portfolio also includes adjustable-rate debt securities, common and preferred stock, as well as money-market and other short-term investments. Securities in the Company's investment portfolio are subject to certain economic and financial market risks, such as credit risk, interest rate (including call, prepayment and extension) risk and/or liquidity risk. The risk of loss associated with the portfolio is increased during periods of instability in credit markets and economic conditions, including during the current pandemic. Debt and equity securities are carried at fair value on the Company's balance sheet. Changes in the fair value of debt securities is recorded as a component of accumulated other comprehensive income/loss on the balance sheet. For debt securities in an unrealized loss position, where the loss is determined to be due to credit-related factors, the Company records the loss in earnings. Changes in the fair value of equity securities are recognized in earnings. Changes in the fair values of securities in the Company's investment portfolio have had an adverse impact on the Company and could have a material adverse effect on the Company's results of operations, statutory surplus, financial condition and cash flow.

The Company also invests, independent of the management of its investment portfolio, in the equity of private companies, including venture-stage companies. These positions are concentrated in a small number of holdings and are high-risk investments. Even if one of these private companies is successful, the Company's ability to realize the value of its investment may take a significant amount of time and may be dependent on the occurrence of a liquidity event, such as an initial public offering or the sale of the company. Even when a liquidity event occurs, the Company may be subject to restrictions on resale or may choose to continue to hold the investment for strategic or other reasons and, as a result, the Company may not monetize the value of its investment during periods in which it could be advantageous to sell the investment. These investments may cause material fluctuations in the Company's quarterly results of operations due to the recognition of gains or losses in connection with external events, such as liquidity events, subsequent equity sales, or price changes in investments that begin trading publicly, which changes can be volatile. These fluctuations may have a material adverse effect on the Company's results of operations.

22. *Actual claims experience could materially vary from the expected claims experience reflected in the Company's reserve for incurred but not reported claims*

The Company maintains a reserve for incurred but not reported ("IBNR") claims pertaining to its title, escrow and other insurance and guarantee products. The majority of this reserve pertains to title insurance policies, which are long-duration contracts with the majority of the claims reported within the first few years following the issuance of the policy. Generally, 70% to 80% of claim amounts become known in the first six years of the policy life, and the majority of IBNR reserves relate to the six most recent policy years. Changes in expected ultimate losses and corresponding loss rates for recent policy years are considered likely and could result in a material adjustment to the IBNR reserves. Based on historical experience, management believes a 50 basis point change to the loss rates for recent policy years, positive or negative, is reasonably likely given the long duration nature of a title insurance policy. In uncertain economic times, such as those experienced as a result of the coronavirus pandemic, an even larger change is more likely. As examples, if the expected ultimate losses for each of the last six policy years increased or decreased by 50 basis points, the resulting impact on the Company's IBNR reserve would be an increase or decrease, as the case may be, of \$137.5 million, and if expected ultimate losses for those same years were to fluctuate by 100 basis points, the resulting impact would be \$275.1 million. A material change in expected ultimate losses and corresponding loss rates for older policy years is also possible, particularly for policy years with loss ratios exceeding historical norms. The estimates made by management in determining the appropriate level of IBNR reserves could ultimately prove to be materially different from actual claims experience.

Changes in laws or regulations impacting real estate, particularly when applied retroactively, may cause a material change in expected ultimate losses and corresponding loss rates for recent and/or older policy years. For example, the 2020 United States Supreme Court decision in *McGirt v. Oklahoma* calls into question the governing authority for certain real estate-related matters in Native American reservations once thought to have been disestablished. To the extent the Company, in those areas, underwrote title insurance policies or closed real estate transactions in conformity with authority that ultimately proves inapplicable, expected ultimate losses arising from those policies and transactions could change materially and could result in a material change to loss rates.

23. *As a holding company, the Company depends on distributions from its subsidiaries, and if distributions from its subsidiaries are materially impaired, the Company's ability to declare and pay dividends may be adversely affected; in addition, insurance and other regulations limit the amount of dividends, loans and advances available from the Company's insurance subsidiaries*

The Company is a holding company whose primary assets are investments in its operating subsidiaries. The Company's ability to pay dividends is dependent on the ability of its subsidiaries to pay dividends or repay funds. If the Company's operating subsidiaries are not able to pay dividends or repay funds, the Company may not be able to fulfill parent company obligations and/or declare and pay dividends to its stockholders. Moreover, pursuant to insurance and other regulations under which the Company's insurance subsidiaries operate, the amount of dividends, loans and advances available is limited. As of March 31, 2021, under such regulations, the maximum amount available in 2021 from these insurance subsidiaries, without prior approval from applicable regulators, was dividends of \$531.2 million and loans and advances of \$116.3 million.

GENERAL RISK FACTORS

24. Certain provisions of the Company's bylaws and certificate of incorporation may reduce the likelihood of any unsolicited acquisition proposal or potential change of control that the Company's stockholders might consider favorable

The Company's bylaws and certificate of incorporation contain provisions that could be considered "anti-takeover" provisions because they make it harder for a third-party to acquire the Company without the consent of the Company's incumbent board of directors. Under these provisions:

- election of the Company's board of directors is staggered such that only one-third of the directors are elected by the stockholders each year and the directors serve three year terms prior to reelection;
- stockholders may not remove directors without cause, change the size of the board of directors or, except as may be provided for in the terms of preferred stock the Company issues in the future, fill vacancies on the board of directors;
- stockholders may act only at stockholder meetings and not by written consent;
- stockholders must comply with advance notice provisions for nominating directors or presenting other proposals at stockholder meetings; and
- the Company's board of directors may without stockholder approval issue preferred shares and determine their rights and terms, including voting rights, or adopt a stockholder rights plan.

While the Company believes that they are appropriate, these provisions, which may only be amended by the affirmative vote of the holders of approximately 67% of the Company's issued voting shares, could have the effect of discouraging an unsolicited acquisition proposal or delaying, deferring or preventing a change of control transaction that might involve a premium price or otherwise be considered favorably by the Company's stockholders.

Item 2. Unregistered Sales of Equity Securities and Use of Proceeds.**Unregistered Sales of Equity Securities**

During the quarter ended March 31, 2021, the Company did not issue any unregistered common stock.

Purchases of Equity Securities by the Issuer and Affiliated Purchasers

Pursuant to the share repurchase program initially announced by the Company on November 4, 2020, which program has no expiration date, the Company may repurchase up to \$300.0 million of the Company's issued and outstanding common stock. The following table describes purchases by the Company under the share repurchase program that settled during each period set forth in the table. Prices in column (b) include commissions. Cumulatively, as of March 31, 2021, the Company had repurchased \$122.8 million (including commissions) of its shares authorized under the program and had the authority to repurchase an additional \$177.2 million (including commissions) under that program.

<u>Period</u>	(a) Total Number of Shares Purchased	(b) Average Price Paid per Share	(c) Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs	(d) Maximum Approximate Dollar Value of Shares that May Yet Be Purchased Under the Plans or Programs
January 1, 2021 to January 31, 2021	369,898	\$ 52.90	369,898	\$ 222,428,248
February 1, 2021 to February 28, 2021	143,810	53.15	143,810	214,784,562
March 1, 2021 to March 31, 2021	711,855	52.79	711,855	177,208,200
Total	1,225,563	\$ 52.86	1,225,563	\$ 177,208,200

Item 5. Other Information.

On April 20, 2021, the Company's board of directors approved an amendment to the Company's bylaws (as amended, the "Bylaws") to implement a federal forum selection bylaw (the "Bylaw Amendment"). The Bylaw Amendment provides that, unless the Company consents in writing to the selection of an alternative forum, the federal district courts of the United States of America shall be the exclusive forum for the resolution of any complaint asserting a cause of action arising under the Securities Act of 1933, as amended. The amendment to the Bylaws was effective immediately.

The foregoing summary is qualified in its entirety by reference to the full text of the Bylaws, filed as Exhibit 3.2 to this Quarterly Report on Form 10-Q and incorporated by reference herein.

Item 6. Exhibits.

Each management contract or compensatory plan or arrangement in which any director or named executive officer of First American Financial Corporation, as defined by Item 402(a)(3) of Regulation S-K (17 C.F.R. §229.402(a)(3)), participates that is included among the exhibits listed on the Exhibit Index is identified on the Exhibit Index by an asterisk (*).

Exhibit No.	Description	Location
3.1	<u>Amended and Restated Certificate of Incorporation of First American Financial Corporation dated May 28, 2010.</u>	Incorporated by reference herein to Exhibit 3.1 to the Current Report on Form 8-K filed June 1, 2010.
3.2	<u>Bylaws of First American Financial Corporation, effective as of April 20, 2021.</u>	Attached.
31(a)	<u>Certification by Chief Executive Officer Pursuant to Rule 13a-14(a) under the Securities Exchange Act of 1934.</u>	Attached.
31(b)	<u>Certification by Chief Financial Officer Pursuant to Rule 13a-14(a) under the Securities Exchange Act of 1934.</u>	Attached.
32(a)	<u>Certification by Chief Executive Officer Pursuant to 18 U.S.C. Section 1350.</u>	Attached.
32(b)	<u>Certification by Chief Financial Officer Pursuant to 18 U.S.C. Section 1350.</u>	Attached.
101.INS	Inline XBRL Instance Document. The instance document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document.	N/A.
101.SCH	Inline XBRL Taxonomy Extension Schema Document.	Attached.
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase Document.	Attached.
101.DEF	Inline XBRL Taxonomy Extension Definition Linkbase Document.	Attached.
101.LAB	Inline XBRL Taxonomy Extension Label Linkbase Document.	Attached.
101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase Document.	Attached.
104	Cover Page Interactive Data File (formatted as Inline XBRL and contained in Exhibit 101).	N/A.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

FIRST AMERICAN FINANCIAL CORPORATION
(Registrant)

Date: April 22, 2021

By /s/ Dennis J. Gilmore
Dennis J. Gilmore
Chief Executive Officer
(Principal Executive Officer)

Date: April 22, 2021

By /s/ Mark E. Seaton
Mark E. Seaton
Executive Vice President,
Chief Financial Officer
(Principal Financial Officer)

BYLAWS

OF

First American Financial Corporation
(a Delaware corporation)

ARTICLE I CORPORATE OFFICES

Section 1.1
the Certificate of Incorporation of the Corporation.

Registered Office. The registered office of the Corporation shall be fixed in

Section 1.2 Other Offices. The Corporation may also have an office or offices, and keep the books and records of the Corporation, except as may otherwise be required by law, at such other place or places, either within or without the State of Delaware, as the Board of Directors may from time to time determine or the business of the Corporation may require.

ARTICLE II MEETINGS OF STOCKHOLDERS

Section 2.1 Annual Meeting. The annual meeting of stockholders, for the election of directors to succeed those whose terms expire and for the transaction of such other business as may properly come before the meeting, shall be held at such place, if any, on such date, and at such time as may be determined by the Board of Directors.

Section 2.2 Special Meeting. A special meeting of the stockholders may be called at any time only by the Board of Directors, or by the Chairman of the Board of Directors or the Chief Executive Officer with the concurrence of a majority of the Board of Directors.

Section 2.3 Notice of Stockholders' Meetings.

(a) Notice of the place, if any, date, and time of all meetings of the stockholders, and the means of remote communications, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such meeting, shall be given, not less than ten (10) nor more than sixty (60) days before the date on which the meeting is to be held, to each stockholder entitled to vote at such meeting as of the record date for determining the stockholders entitled to notice of the meeting, except as otherwise provided herein or required by law. Each such notice shall state the place, if any, date and hour of the meeting and, in the case of a special meeting, the purpose or purposes for which the meeting is called. Notice may be given personally, by mail or by electronic transmission in accordance with Section 232 of the General Corporation Law of the State of Delaware (the "DGCL"). If mailed, such notice shall be deemed given when deposited in the United States mail, postage prepaid, directed to each stockholder at such stockholder's address appearing on the books of the Corporation or given by the stockholder for such purpose. Notice by electronic transmission shall be deemed given as provided in Section 232 of the DGCL. An affidavit of the mailing or other means of giving any notice of any stockholders' meeting, executed by the Secretary, Assistant Secretary or

any transfer agent of the Corporation giving the notice, shall be prima facie evidence of the giving of such notice or report. Notice shall be deemed to have been given to all stockholders of record who share an address if notice is given in accordance with the "householding" rules set forth in Rule 14a-3(e) under the Securities Exchange Act of 1934, as amended ("Exchange Act") and Section 233 of the DGCL.

(b) When a meeting is adjourned to another time or place, notice need not be given of the adjourned meeting if the place, if any, date and time thereof, and the means of remote communications, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such adjourned meeting are announced at the meeting at which the adjournment is taken; provided, however, that if the date of any adjourned meeting is more than thirty (30) days after the date for which the meeting was originally called, notice of the place, if any, date, and time of the adjourned meeting and the means of remote communications, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such adjourned meeting shall be given in conformity herewith to each stockholder entitled to vote at the meeting. If after the adjournment a new record date for stockholders entitled to vote is fixed for the adjourned meeting, the Board of Directors shall fix a new record date for notice of such adjourned meeting in conformity herewith, and notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at such adjourned meeting as of the record date fixed for notice of such adjourned meeting.

(c) Notice of the time, place and purpose of any meeting of stockholders may be waived in writing or by electronic transmission, either before or after the meeting, and to the extent permitted by law, will be waived by any stockholder by attendance thereat, in person or by proxy, except when the person objects at the beginning of the meeting to the transaction of any business because the meeting is not lawfully called or convened.

Section 2.4

Organization.

(a) Meetings of stockholders shall be presided over by the Chairman of the Board of Directors, if any, or in his or her absence by a person designated by the Board of Directors, or in the absence of a person so designated by the Board of Directors, by a Chairman chosen at the meeting by the holders of a majority in voting power of the stock entitled to vote thereat, present in person or represented by proxy. The Secretary, or in his or her absence, an Assistant Secretary, or in the absence of the Secretary and all Assistant Secretaries, a person whom the Chairman of the meeting shall appoint, shall act as Secretary of the meeting and keep a record of the proceedings thereof.

(b) The Board of Directors shall be entitled to make such rules or regulations for the conduct of meetings of stockholders as it shall deem necessary, appropriate or convenient. Subject to such rules and regulations of the Board of Directors, if any, the Chairman of the meeting shall have the right and authority to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such Chairman, are necessary, appropriate or convenient for the proper conduct of the meeting, including, without limitation, establishing an agenda or order of business for the meeting, rules and procedures for maintaining order at the meeting and the safety of those present, limitations on participation in the meeting to stockholders of record of the Corporation, their duly authorized and constituted proxies and such

other persons as the Chairman shall permit, restrictions on entry to the meeting after the time fixed for the commencement thereof, limitations on the time allotted to questions or comments by participants and regulation of the opening and closing of the polls for balloting and matters which are to be voted on by ballot. Subject to any rules and regulations adopted by the Board of Directors, the Chairman of the meeting may convene and, for any reason, from time to time, adjourn and/or recess any meeting of stockholders.

Section 2.5

Section 2.5 List of Stockholders. A complete list of stockholders entitled to vote at any meeting of stockholders, arranged in alphabetical order for each class of stock and showing the address of each such stockholder and the number of shares registered in such stockholder's name, shall be prepared by the Corporation at least ten (10) days before the meeting of stockholders; provided, however, that if the record date for determining the stockholders entitled to vote is less than ten (10) days before the date of the meeting, the list shall reflect the stockholders entitled to vote as of the tenth (10th) day before the meeting date. The stockholder list shall be open to the examination of any stockholder for a period of at least ten (10) days prior to the meeting in the manner provided by law. The stockholder list shall also be open to the examination of any stockholder during the whole time of the meeting as provided by law. Such list shall presumptively determine the identity of the stockholders entitled to vote in person or by proxy at the meeting and entitled to examine the list required by this Section 2.5.

Section 2.6

Section 2.6 Quorum. At any meeting of stockholders, the holders of a majority in voting power of all issued and outstanding stock entitled to vote thereat, present in person or represented by proxy, shall constitute a quorum for the transaction of business; provided that where a separate vote by a class or series is required, the holders of a majority in voting power of all issued and outstanding stock of such class or series entitled to vote on such matter, present in person or represented by proxy, shall constitute a quorum entitled to take action with respect to such matter. If a quorum is not present or represented at any meeting of stockholders, then the Chairman of the meeting or the holders of a majority in voting power of the stock entitled to vote thereat, present in person or represented by proxy, shall have power to adjourn the meeting from time to time in accordance with Section 2.7, without notice other than announcement at the meeting and except as provided in Section 2.3(b), until a quorum is present or represented. If a quorum initially is present at any meeting of stockholders, the stockholders may continue to transact business until adjournment, notwithstanding the withdrawal of enough stockholders to leave less than a quorum, but if a quorum is not present at least initially, no business other than adjournment may be transacted.

Section 2.7

Section 2.7 **Adjourned or Recessed Meeting.** Any annual or special meeting of stockholders, whether or not a quorum is present, may be adjourned or recessed for any reason from time to time by the Chairman of the meeting, subject to any rules and regulations adopted by the Board of Directors pursuant to Section 2.4(b). Any such meeting may be adjourned for any reason (and may be recessed if a quorum is not present or represented) from time to time by the holders of a majority of the voting power of the outstanding shares of stock present in person or represented by proxy at the meeting and entitled to vote thereat. At any such adjourned or recessed meeting at which a quorum may be present, any business may be transacted that might have been transacted at the meeting as originally called.

Section 2.8

Voting; Proxies.

(a) Except as otherwise provided by law or the Certificate of Incorporation, each holder of stock of the Corporation shall be entitled to one (1) vote for each share of such stock held of record by such holder on all matters submitted to a vote of stockholders of the Corporation.

(b) At each meeting of stockholders at which a quorum is present, all corporate actions to be taken by vote of the stockholders shall, unless a different or minimum vote is required by the Certificate of Incorporation, these Bylaws, or the rules and regulations of any stock exchange applicable to the Corporation or its securities, in which case such different or minimum vote shall be the applicable vote on the matter, be authorized by the affirmative vote of the holders of a majority in voting power of the stock entitled to vote thereon, present in person or represented by proxy, and where a separate vote by class or series is required, if a quorum of such class or series is present, such act shall be authorized by the affirmative vote of the holders of a majority in voting power of the stock of such class or series entitled to vote thereon, present in person or represented by proxy.

(c) Proxies. Every person entitled to vote for directors, or on any other matter, shall have the right to do so either in person or by one or more agents authorized by a written proxy, which may be in the form of a telegram, cablegram or other means of electronic transmission, signed by the person and filed with the Secretary of the Corporation, but no such proxy shall be voted or acted upon after three (3) years from its date, unless the proxy provides for a longer period. A proxy shall be deemed signed if the stockholder's name is placed on the proxy by the stockholder or the stockholder's attorney-in-fact. A duly executed proxy shall be irrevocable if it states that it is irrevocable and if, and only as long as, it is coupled with an interest sufficient in law to support an irrevocable power. A stockholder may revoke any proxy which is not irrevocable by attending the meeting and voting in person or by filing an instrument revoking the proxy or by filing another duly executed proxy bearing a later date with the Secretary of the Corporation. A proxy is not revoked by the death or incapacity of the maker unless, before the vote is counted, written notice of such death or incapacity is received by the Corporation.

Section 2.9

Submission of Information by Director Nominees.

(a) To be eligible to be a nominee for election or re-election as a director of the Corporation, a person must deliver to the Secretary of the Corporation at the principal executive offices of the Corporation the following information:

(i) a written representation and agreement, which shall be signed by such person and pursuant to which such person shall represent and agree that such person: (A) consents to serving as a director if elected and to being named in the Corporation's proxy statement and form of proxy as a nominee, and currently intends to serve as a director for the full term for which such person is standing for election; (B) is not and will not become a party to any agreement, arrangement or understanding with, and has not given any commitment or assurance to, any person or entity: (1) as to how the person, if elected as a director, will act or vote on any issue or question, where such

agreement, arrangement or understanding has not been disclosed to the Corporation; or (2) that could limit or interfere with the person's ability to comply, if elected as a director, with such person's fiduciary duties under applicable law; (C) is not and will not become a party to any agreement, arrangement or understanding that has not been disclosed to the Corporation with any person or entity other than the Corporation with respect to any direct or indirect compensation, reimbursement or indemnification in connection with service or action as a director or nominee; and (D) if elected as a director, will comply with all of the Corporation's corporate governance, conflict of interest, confidentiality, and stock ownership and trading policies and guidelines, and any other Corporation policies and guidelines applicable to directors (which will be provided to such person promptly following a request therefor to the Secretary of the Corporation); and

(ii) all completed and signed questionnaires required of the Corporation's directors (which will be provided to such person promptly following a request therefor to the Secretary of the Corporation).

(b) A nominee for election or re-election as a director of the Corporation shall also provide to the Corporation such other information as the Corporation may reasonably request. The Corporation may request such additional information as necessary to permit the Board of Directors to determine the eligibility of such person to serve as a director of the Corporation, including information relevant to a determination whether such person can be considered an independent director.

(c) All written and signed representations and agreements and all completed and signed questionnaires required pursuant to Section 2.9(a) above, and the additional information described in Section 2.9(b) above, shall be considered timely for a nominee for election or re-election as a director of the Corporation under Section 2.10 or Section 2.14 if provided to the Corporation by the deadlines specified in Section 2.10 or Section 2.14, as applicable. All information provided pursuant to this Section 2.9 by a nominee for election or re-election as a director of the Corporation under Section 2.10 or Section 2.14 shall be deemed part of the stockholder's notice submitted pursuant to Section 2.10 or a Stockholder Notice (as defined in Section 2.14 below), as applicable.

Section 2.10

Notice of Stockholder Business and Nominations.

(a) Annual Meeting.

(i) Nominations of persons for election to the Board of Directors of the Corporation and the proposal of business other than nominations to be considered by the stockholders may be made at an annual meeting of stockholders only (A) pursuant to the Corporation's notice of meeting (or any supplement thereto), (B) by or at the direction of the Board of Directors, (C) by any stockholder of the Corporation who is a stockholder of record at the time the notice provided for in this Section 2.10(a) is delivered to the Secretary of the Corporation, who is entitled to vote at the meeting and who complies with the notice procedures set forth in this Section 2.10(a) or (D) by any Eligible Stockholder (as defined in Section 2.14 below) whose Stockholder Nominee (as defined in Section 2.14 below) is included in the Corporation's proxy materials for the relevant

annual meeting. For the avoidance of doubt, the foregoing clauses (C) and (D) shall be the exclusive means for a stockholder to make director nominations and the foregoing clause (C) shall be the exclusive means for a stockholder to propose any other business (other than a proposal included in the Corporation's proxy statement pursuant to and in compliance with Rule 14a-8 under the Exchange Act) at an annual meeting of stockholders.

(ii) For nominations or other business to be properly brought before an annual meeting by a stockholder pursuant to clause (C) of the foregoing paragraph, the stockholder must have given timely notice thereof in writing to the Secretary of the Corporation and, in the case of business other than nominations, such business must be a proper subject for stockholder action. To be timely, a stockholder's notice must be delivered to the Secretary at the principal executive offices of the Corporation not later than the close of business (as defined in Section 2.10(c)(ii) below) on the ninetieth (90th) day nor earlier than the close of business on the one hundred twentieth (120th) day prior to the first anniversary of the preceding year's annual meeting; provided, however, that in the event that the date of the annual meeting is more than thirty (30) days before or more than seventy (70) days after such anniversary date, or if no annual meeting was held in the preceding year, notice by the stockholder to be timely must be so delivered not earlier than the close of business on the one hundred twentieth (120th) day prior to such annual meeting and not later than the close of business on the later of the ninetieth (90th) day prior to such annual meeting or the tenth (10th) day following the date on which public announcement (as defined in Section 2.10(c)(ii) below) of the date of such meeting is first made by the Corporation. In no event shall an adjournment, postponement or recess of an annual meeting commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above. Such stockholder's notice shall set forth:

(A) as to each person whom the stockholder proposes to nominate for election or re-election as a director (1) all information relating to such person that is required to be disclosed in solicitations of proxies for election of directors in an election contest, or is otherwise required, in each case pursuant to and in accordance with Regulation 14A under the Exchange Act, and (2) all written and signed representations and agreements and all completed and signed questionnaires required pursuant to Section 2.9(a) above; provided, however, that, in addition to the information required in the stockholder's notice pursuant to this Section 2.10(a)(ii), such person shall also provide the Corporation such other information as the Corporation may reasonably request and that is necessary to permit the Board of Directors to determine the eligibility of such proposed nominee to serve as a director of the Corporation and such information shall be considered timely if provided to the Corporation promptly upon request by the Corporation but in any event within five (5) business days after such request;

(B) as to any other business that the stockholder proposes to bring before the meeting, a brief description of the business desired to be brought before the meeting, the text of the proposal or business (including the text of any resolutions proposed for consideration and in the event that such business

includes a proposal to amend the Bylaws of the Corporation, the language of the proposed amendment), the reasons for conducting such business at the meeting and any substantial interest (within the meaning of Item 5 of Schedule 14A under the Exchange Act) in such business of such stockholder and the beneficial owner (within the meaning of Section 13(d) of the Exchange Act), if any, on whose behalf the proposal is made;

(C) as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination is made or the other business is proposed:

(1) the name and address of such stockholder, as they appear on the Corporation's books, and the name and address of such beneficial owner,

(2) the class or series and number of shares of capital stock of the Corporation which are owned of record by such stockholder and such beneficial owner as of the date of the notice, and a representation that the stockholder will notify the Corporation in writing within five (5) business days after the record date for such meeting of the class or series and number of shares of capital stock of the Corporation owned of record by the stockholder and such beneficial owner as of the record date for the meeting, and

(3) a representation that the stockholder (or a qualified representative of the stockholder) intends to appear at the meeting to make such nomination or propose such business;

(D) as to the stockholder giving the notice or, if the notice is given on behalf of a beneficial owner on whose behalf the nomination is made or the other business is proposed, as to such beneficial owner, and if such stockholder or beneficial owner is an entity, as to each director, executive, managing member or control person of such entity (any such individual or control person, a "control person"):

(1) the class or series and number of shares of capital stock of the Corporation which are beneficially owned (as defined in Section 2.10(c)(ii) below) by such stockholder or beneficial owner and by any control person as of the date of the notice, and a representation that the stockholder will notify the Corporation in writing within five (5) business days after the record date for such meeting of the class or series and number of shares of capital stock of the Corporation beneficially owned by such stockholder or beneficial owner and by any control person as of the record date for the meeting,

(2) a description of any agreement, arrangement or understanding with respect to the nomination or other business between or

among such stockholder, beneficial owner or control person and any other person, including without limitation any agreements that would be required to be disclosed pursuant to Item 5 or Item 6 of Exchange Act Schedule 13D (regardless of whether the requirement to file a Schedule 13D is applicable) and a representation that the stockholder will notify the Corporation in writing within five (5) business days after the record date for such meeting of any such agreement, arrangement or understanding in effect as of the record date for the meeting,

(3) a description of any agreement, arrangement or understanding (including, without limitation, any derivative or short positions, profit interests, options, hedging transactions, and borrowed or loaned shares) that has been entered into as of the date of the stockholder's notice by, or on behalf of, such stockholder, beneficial owner or control person, the effect or intent of which is to mitigate loss, manage risk or benefit from changes in the share price of any class of the Corporation's capital stock, or maintain, increase or decrease the voting power of the stockholder, beneficial owner or control person with respect to securities of the Corporation, and a representation that the stockholder will notify the Corporation in writing within five (5) business days after the record date for such meeting of any such agreement, arrangement or understanding in effect as of the record date for the meeting,

(4) a representation whether the stockholder or the beneficial owner, if any, will engage in a solicitation (within the meaning of Exchange Act Rule 14a-1(l)) with respect to the nomination or other business and, if so, the name of each participant (as defined in Item 4 of Schedule 14A under the Exchange Act) in such solicitation and whether such person intends or is part of a group which intends to deliver a proxy statement and/or form of proxy to holders of shares representing at least 50% of the voting power of the stock entitled to vote generally in the election of directors in the case of a nomination, or holders of at least the percentage of the Corporation's outstanding capital stock required to approve or adopt the business to be proposed in the case of other business.

(iii) All information provided pursuant to this Section 2.10(a) shall be deemed part of a stockholder's notice for purposes of this Section 2.10(a). Notwithstanding anything in Section 2.10(a)(ii) above or Section 2.10(b) below to the contrary, if the record date for determining the stockholders entitled to vote at any meeting of stockholders is different from the record date for determining the stockholders entitled to notice of the meeting, a stockholder's notice required by this Section 2.10 shall set forth a representation that the stockholder will notify the Corporation in writing within five (5) business days after the record date for determining the stockholders entitled to vote at the meeting, or by the opening of business on the date of the meeting (whichever is earlier), of the information required under clauses (ii)(C)(2) and (ii)(D)(1)-(3) of this Section 2.10(a), and such information when provided to the Corporation shall

be current as of the record date for determining the stockholders entitled to vote at the meeting.

(iv) This Section 2.10(a) shall not apply to a proposal proposed to be made by a stockholder if the stockholder has notified the Corporation of his or her intention to present the proposal at an annual meeting only pursuant to and in compliance with Rule 14a-8 under the Exchange Act and such proposal has been included in a proxy statement that has been prepared by the Corporation to solicit proxies for such meeting.

(b) Special Meeting. Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting by or at the direction of the Board of Directors. Nominations of persons for election to the Board of Directors may be made at a special meeting of stockholders at which directors are to be elected pursuant to the Corporation's notice of meeting (i) by or at the direction of the Board of Directors or (ii) provided that one or more directors are to be elected at such meeting, by any stockholder of the Corporation who is a stockholder of record at the time the notice provided for in this Section 2.10(b) is delivered to the Secretary of the Corporation, who is entitled to vote at the meeting and upon such election and who delivers notice thereof in writing setting forth the information required by Section 2.10(a) above. In the event the Corporation calls a special meeting of stockholders for the purpose of electing one or more directors to the Board of Directors, any such stockholder entitled to vote in such election of directors may nominate a person or persons (as the case may be) for election to such position(s) as specified in the Corporation's notice of meeting, if the notice required by this Section 2.10(b) shall be delivered to the Secretary at the principal executive offices of the Corporation not earlier than the close of business on the one hundred twentieth (120th) day prior to such special meeting and not later than the close of business on the later of the ninetieth (90th) day prior to such special meeting or the tenth (10th) day following the date on which public announcement of the date of the special meeting and of the nominees proposed by the Board of Directors to be elected at such meeting is first made by the Corporation. In no event shall an adjournment, recess or postponement of a special meeting commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above.

(c) General.

(i) Except as otherwise required by law, only such persons who are nominated in accordance with the procedures set forth in this Section 2.10 or, with respect to annual meetings only, Section 2.14 shall be eligible to be elected at any meeting of stockholders of the Corporation to serve as directors and only such other business shall be conducted at an annual meeting of stockholders as shall have been brought before the meeting in accordance with the procedures set forth in this Section 2.10. Except as otherwise required by law, the Chairman of the Board of Directors shall have the power to determine whether a nomination or any other business proposed to be brought before the meeting was made or proposed, as the case may be, in accordance with the procedures set forth in this Section 2.10 (including whether a stockholder or beneficial owner solicited (or is part of a group which solicited) or did not so solicit, as the case may be, proxies in compliance with such stockholder's representation as required by clause (a)(ii) (D)(4) of this Section 2.10). If any proposed

nomination or other business is not in compliance with this Section 2.10, then except as otherwise required by law, the Chairman of the meeting shall have the power to declare that such nomination shall be disregarded or that such other business shall not be transacted. Notwithstanding the foregoing provisions of this Section 2.10, unless otherwise required by law or otherwise determined by the Chairman of the meeting, if the stockholder does not provide the information required under clauses (a)(ii)(A), (a)(ii)(C)(2) and (a)(ii)(D)(1)-(3) of this Section 2.10 to the Corporation within the time frames specified herein or if the stockholder (or a qualified representative of the stockholder) does not appear at the annual or special meeting of stockholders of the Corporation to present a nomination or other business, such nomination shall be disregarded and such other business shall not be transacted, notwithstanding that proxies in respect of such vote may have been received by the Corporation. For purposes of this Section 2.10, to be considered a qualified representative of a stockholder, a person must be a duly authorized officer, manager or partner of such stockholder or authorized by a writing executed by such stockholder (or a reliable reproduction or electronic transmission of the writing) delivered to the Corporation prior to the making of such nomination or proposal at such meeting stating that such person is authorized to act for such stockholder as proxy at the meeting of stockholders.

(ii) For purposes of this Section 2.10, the "close of business" shall mean 6:00 p.m. local time at the principal executive offices of the Corporation on any calendar day, whether or not the day is a business day, and a "public announcement" shall mean disclosure in a press release reported by the Dow Jones News Service, Associated Press or a comparable national news service or in a document publicly filed by the Corporation with the Securities and Exchange Commission ("SEC") pursuant to Sections 13, 14 or 15(d) of the Exchange Act. For purposes of clause (a)(ii)(D)(1) of this Section 2.10, shares shall be treated as "beneficially owned" by a person if the person beneficially owns such shares, directly or indirectly, for purposes of Section 13(d) of the Exchange Act and Regulations 13D and 13G thereunder or has or shares pursuant to any agreement, arrangement or understanding (whether or not in writing): (A) the right to acquire such shares (whether such right is exercisable immediately or only after the passage of time or the fulfillment of a condition or both); (B) the right to vote such shares, alone or in concert with others; provided, however, that a person shall not be deemed to beneficially own any shares, if the right to vote such shares arises solely from a revocable proxy or consent given to such person in response to a public proxy or consent solicitation made, pursuant to, and in accordance with, the applicable rules and regulations promulgated under the Exchange Act; and/or (C) investment power with respect to such shares, including the power to dispose of, or to direct the disposition of, such shares.

(iii) Nothing in this Section 2.10 shall be deemed to affect any rights of the holders of any series of Preferred Stock to elect directors pursuant to any applicable provisions of the Certificate of Incorporation.

Any action required or permitted to be taken by the stockholders of the Corporation must be effected at a duly held meeting of stockholders of the Corporation at which a quorum is present or represented, and may not be effected by any consent in writing by such stockholders.

Section 2.12

Inspectors of Election. Before any meeting of stockholders, the Board of Directors shall appoint one or more inspectors of election to act at the meeting or its adjournment. If any person appointed as inspector fails to appear or fails or refuses to act, then the Chairman of the meeting may, and upon the request of any stockholder or a stockholder's proxy shall, appoint a person to fill that vacancy. Inspectors need not be stockholders. No director or nominee for the office of director shall be appointed such an inspector.

Such inspectors shall:

- (a) determine the number of shares outstanding and the voting power of each, the number of shares represented at the meeting, the existence of a quorum, and the authenticity, validity, and effect of proxies;
- (b) receive votes and ballots;
- (c) count and tabulate all votes and ballots;
- (d) determine the result; and
- (e) do any other acts as required by law.

The inspectors of election shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of their ability. Any report or certificate made by the inspectors of election shall be prima facie evidence of the facts stated therein.

Section 2.13

Meetings by Remote Communications. The Board of Directors may, in its sole discretion, determine that a meeting of stockholders shall not be held at any place, but may instead be held solely by means of remote communication in accordance with Section 211(a)(2) of the DGCL. If authorized by the Board of Directors in its sole discretion, and subject to such guidelines and procedures as the Board of Directors may adopt, stockholders and proxyholders not physically present at a meeting of stockholders may, by means of remote communication (a) participate in a meeting of stockholders and (b) be deemed present in person and vote at a meeting of stockholders whether such meeting is to be held at a designated place or solely by means of remote communication, provided that (i) the Corporation shall implement reasonable measures to verify that each person deemed present and permitted to vote at the meeting by means of remote communication is a stockholder or proxyholder; (ii) the Corporation shall implement reasonable measures to provide such stockholders and proxyholders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the stockholders, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with such proceedings; and (iii) if any stockholder or proxyholder

votes or takes other action at the meeting by means of remote communication, a record of such vote or other action shall be maintained by the Corporation.

Section 2.14

Proxy Access for Director Nominations.

(a) Eligibility. Subject to the terms and conditions of these Bylaws, in connection with an annual meeting of stockholders at which directors are to be elected, the Corporation (i) shall include in its proxy statement, on its form of proxy and on any ballot distributed at the annual meeting, in addition to any person nominated for election by the Board, the names of, and (ii) shall include in its proxy statement the "Additional Information" (as defined below) relating to, up to a number of nominees specified pursuant to Section 2.14(b)(i) (the "Authorized Number") for election to the Board of Directors submitted pursuant to this Section 2.14 (each, a "Stockholder Nominee"), if:

(A) the Stockholder Nominee satisfies the eligibility requirements in this Section 2.14;

(B) the Stockholder Nominee is identified in a timely notice (the "Stockholder Notice") that satisfies this Section 2.14 and is delivered by a stockholder that qualifies as, or is acting on behalf of, an Eligible Stockholder (as defined below);

(C) the Eligible Stockholder satisfies the requirements in this Section 2.14 and expressly elects at the time of the delivery of the Stockholder Notice to have the Stockholder Nominee included in the Corporation's proxy materials; and

(D) the additional requirements of these Bylaws are met.

(b) Definitions.

(i) The maximum number of Stockholder Nominees appearing in the Corporation's proxy materials with respect to an annual meeting of stockholders (the "Authorized Number") shall not exceed twenty percent (20%) of the number of directors in office as of the last day on which a Stockholder Notice may be delivered pursuant to this Section 2.14 with respect to the annual meeting, or if such amount is not a whole number, the closest whole number (rounding down) below twenty percent (20%); provided that the Authorized Number shall be reduced (A) by any Stockholder Nominee whose name was submitted for inclusion in the Corporation's proxy materials pursuant to this Section 2.14 but either is subsequently withdrawn or that the Board of Directors decides to nominate as a Board nominee, (B) by any directors in office or director nominees that in either case shall be included in the Corporation's proxy materials with respect to the annual meeting as an unopposed (by the Corporation) nominee pursuant to an agreement, arrangement or other understanding between the Corporation and a stockholder or group of stockholders (other than any such agreement, arrangement or understanding entered into in connection with an acquisition of capital stock, by the stockholder or group of stockholders, from the Corporation), (C) by any directors currently serving on the Board of Directors who were Stockholder Nominees at any of

the preceding two (2) annual meetings, (D) by any directors currently serving on the Board of Directors who were Stockholder Nominees at the third preceding annual meeting and who the Board of Directors decides to nominate as a Board nominee at the upcoming annual meeting, and (E) by any Stockholder Nominee who is not included in the Corporation's proxy materials or is not submitted for director election for any reason, in accordance with the last sentence of Section 2.14(d)(ii). In the event that one or more vacancies for any reason occurs after the date of the Stockholder Notice but before the annual meeting and the Board of Directors resolves to reduce the size of the Board of Directors in connection therewith, the Authorized Number shall be calculated based on the number of directors in office as so reduced.

(ii) To qualify as an "Eligible Stockholder," a stockholder or a group as described in this Section 2.14 must:

(A) Own and have Owned (as defined below), continuously for at least three (3) years as of the date of the Stockholder Notice, a number of shares (as adjusted to account for any stock dividend, stock split, subdivision, combination, reclassification or recapitalization of shares of issued and outstanding stock entitled to vote generally in the election of directors) that represents at least three percent (3%) of the issued and outstanding stock entitled to vote generally in the election of directors as of the date of the Stockholder Notice (the "Required Shares"); and

(B) thereafter continue to Own the Required Shares through such annual meeting of stockholders.

For purposes of satisfying the ownership requirements of this Section 2.14(b)(ii), a group of not more than twenty (20) stockholders and/or beneficial owners may aggregate the number of shares of issued and outstanding stock entitled to vote generally in the election of directors that each group member has individually Owned continuously for at least three (3) years as of the date of the Stockholder Notice if all other requirements and obligations for an Eligible Stockholder set forth in this Section 2.14 are satisfied by and as to each stockholder or beneficial owner comprising the group whose shares are aggregated. No shares may be attributed to more than one Eligible Stockholder, and no stockholder or beneficial owner, alone or together with any of its affiliates, may individually or as a member of a group qualify as or constitute more than one Eligible Stockholder under this Section 2.14. A group of any two (2) or more funds shall be treated as only one stockholder or beneficial owner for this purpose if they are part of a family of funds, meaning a group of publicly offered funds that are part of the same family of funds (whether organized in the U.S. or outside the U.S.) that hold themselves out to investors as related companies for purposes of investment and investor services. For purposes of this Section 2.14, the term "affiliate" or "affiliates" shall have the meanings ascribed thereto under the rules and regulations promulgated under the Exchange Act.

(iii)

For purposes of this Section 2.14:

(A)

A stockholder or beneficial owner is deemed to "Own" only those shares of issued and outstanding stock entitled to vote generally in the election of directors as to which the person possesses both (1) the full voting and investment rights pertaining to the shares and (2) the full economic interest in (including the opportunity for profit and risk of loss on) such shares, except that the number of shares calculated in accordance with clauses (1) and (2) shall not include any shares (a) sold by such person in any transaction that has not been settled or closed, (b) borrowed by the person for any purposes or purchased by the person pursuant to an agreement to resell, or (c) subject to any option, warrant, forward contract, swap, contract of sale, or other derivative or similar agreement entered into by the person, whether the instrument or agreement is to be settled with shares or with cash based on the notional amount or value of shares of issued and outstanding stock entitled to vote generally in the election of directors, if the instrument or agreement has, or is intended to have, or if exercised would have, the purpose or effect of (x) reducing in any manner, to any extent or at any time in the future, the person's full right to vote or direct the voting of the shares, and/or (y) hedging, offsetting or altering to any degree any gain or loss arising from the full economic ownership of the shares by the person. The terms "Owned," "Owning" and other variations of the word "Own," when used with respect to a stockholder or beneficial owner, have correlative meanings. For purposes of clauses (a) through (c) the term "person" includes its affiliates.

(B)

A stockholder or beneficial owner "Owns" shares held in the name of a nominee or other intermediary so long as the person retains both (1) the full voting and investment rights pertaining to the shares and (2) the full economic interest in the shares. The person's Ownership of shares is deemed to continue during any period in which the person has delegated any voting power by means of a proxy, power of attorney, or other instrument or arrangement that is revocable at any time by the stockholder.

(C)

A stockholder or beneficial owner's Ownership of shares shall be deemed to continue during any period in which the person has loaned the shares if the person has the power to recall the loaned shares on not more than five (5) business days' notice and (1) the person recalls the loaned shares within five (5) business days of being notified that its Stockholder Nominee shall be included in the Corporation's proxy materials for the relevant annual meeting, and (2) the person holds the recalled shares through the annual meeting.

(iv)

For purposes of this Section 2.14, the "Additional Information" referred to in Section 2.14(a) that the Corporation will include in its proxy statement is:

(A)

the information set forth in the Schedule 14N provided with the Stockholder Notice concerning each Stockholder Nominee and the Eligible Stockholder that is required to be disclosed in the Corporation's proxy statement

by the applicable requirements of the Exchange Act and the rules and regulations thereunder; and

(B) if the Eligible Stockholder so elects, a written statement of the Eligible Stockholder (or, in the case of a group, a written statement of the group), not to exceed five hundred (500) words, in support of its Stockholder Nominee(s), which must be provided at the same time as the Stockholder Notice for inclusion in the Corporation's proxy statement for the annual meeting (the "Statement").

Notwithstanding anything to the contrary contained in this Section 2.14, the Corporation may omit from its proxy materials any information or Statement that it, in good faith, believes is untrue in any material respect (or omits a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading) or would violate any applicable law, rule, regulation or listing standard. Nothing in this Section 2.14 shall limit the Corporation's ability to solicit against and include in its proxy materials its own statements relating to any Eligible Stockholder or Stockholder Nominee.

(c) Stockholder Notice and Other Informational Requirements.

(i) The Stockholder Notice shall set forth all information, representations and agreements required under Section 2.10(a)(ii) above, including the information required with respect to any nominee for election as a director, any stockholder giving notice of an intent to nominate a candidate for election, and any stockholder, beneficial owner or other person on whose behalf the nomination is made under this Section 2.14. In addition, such Stockholder Notice shall include:

(A) a copy of the Schedule 14N that has been or concurrently is filed with the SEC under the Exchange Act;

(B) a written statement of the Eligible Stockholder (and in the case of a group, the written statement of each stockholder or beneficial owner whose shares are aggregated for purposes of constituting an Eligible Stockholder), which statement(s) shall also be included in the Schedule 14N filed with the SEC: (1) setting forth and certifying to the number of shares of issued and outstanding stock entitled to vote generally in the election of directors the Eligible Stockholder Owns and has Owned (as defined in Section 2.14(b)(iii) of these Bylaws) continuously for at least three (3) years as of the date of the Stockholder Notice, (2) agreeing to continue to Own such shares through the annual meeting, and (3) regarding whether or not it intends to maintain Ownership of the Required Shares for at least one year following the annual meeting other than any changes in Ownership that would occur because of a change in the index or indices that include the Corporation's securities;

(C) the written agreement of the Eligible Stockholder (and in the case of a group, the written agreement of each stockholder or beneficial owner whose shares are aggregated for purposes of constituting an Eligible Stockholder)

addressed to the Corporation, setting forth the following additional agreements, representations, and warranties:

(1) it shall provide (a) within five (5) business days after the date of the Stockholder Notice, one or more written statements from the record holder(s) of the Required Shares and from each intermediary through which the Required Shares are or have been held, in each case during the requisite three (3)-year holding period, specifying the number of shares that the Eligible Stockholder Owns, and has Owned continuously in compliance with this Section 2.14, (b) within five (5) business days after the record date for determining the stockholders entitled to vote at the annual meeting both the information required under Sections 2.10(a)(ii)(C) and 2.10(a)(ii)(D)(1)-(3) and written statements from the record holder and intermediaries as required under clause (1)(a) verifying the Eligible Stockholder's continuous Ownership of the Required Shares, in each case, as of such date, and (c) immediate notice to the Corporation if the Eligible Stockholder ceases to own any of the Required Shares prior to the annual meeting;

(2) it (a) acquired the Required Shares in the ordinary course of business and not with the intent to change or influence control at the Corporation, and does not presently have this intent, (b) has not nominated and shall not nominate for election to the Board of Directors at the annual meeting any person other than the Stockholder Nominee(s) being nominated pursuant to this Section 2.14, (c) has not engaged and shall not engage in, and has not been and shall not be a participant (as defined in Item 4 of Exchange Act Schedule 14A) in, a solicitation within the meaning of Exchange Act Rule 14a-1(l), in support of the election of any individual as a director at the annual meeting other than its Stockholder Nominee(s) or any nominee(s) of the Board of Directors, and (d) shall not distribute to any stockholder any form of proxy for the annual meeting other than the form distributed by the Corporation; and

(3) it will (a) assume all liability stemming from any legal or regulatory violation arising out of the Eligible Stockholder's communications with the stockholders of the Corporation or out of the information that the Eligible Stockholder provided to the Corporation, (b) indemnify and hold harmless the Corporation and each of its directors, officers and employees individually against any liability, loss or damages in connection with any threatened or pending action, suit or proceeding, whether legal, administrative or investigative, against the Corporation or any of its directors, officers or employees arising out of the nomination or solicitation process pursuant to this Section 2.14, (c) comply with all laws, rules, regulations and listing standards applicable to its nomination or any solicitation in connection with the annual meeting, (d) file with the SEC any solicitation or other communication by or on behalf of the Eligible Stockholder relating to the Corporation's annual meeting of stockholders,

one or more of the Corporation's directors or director nominees or any Stockholder Nominee, regardless of whether the filing is required under Exchange Act Regulation 14A, or whether any exemption from filing is available for the materials under Exchange Act Regulation 14A, and (e) at the request of the Corporation, promptly, but in any event within five (5) business days after such request (or by the day prior to the day of the annual meeting, if earlier), provide to the Corporation such additional information as reasonably requested by the Corporation; and

(D) in the case of a nomination by a group, the designation by all group members of one group member that is authorized to act on behalf of all members of the group with respect to the nomination and matters related thereto, including withdrawal of the nomination, and the written agreement, representation, and warranty of the Eligible Stockholder that it shall provide, within five (5) business days after the date of the Stockholder Notice, documentation reasonably satisfactory to the Corporation demonstrating that the number of stockholders and/or beneficial owners within such group does not exceed twenty (20), including whether a group of funds qualifies as one stockholder or beneficial owner within the meaning of Section 2.14(b)(ii).

(ii) To be timely under this Section 2.14, the Stockholder Notice must be delivered by a stockholder to the Secretary of the Corporation at the principal executive offices of the Corporation not later than the close of business (as defined in Section 2.10(c)(ii) above) on the one hundred twentieth (120th) day nor earlier than the close of business on the one hundred fiftieth (150th) day prior to the first anniversary of the date (as stated in the Corporation's proxy materials) the definitive proxy statement was first released to stockholders in connection with the preceding year's annual meeting of stockholders; provided, however, that in the event the annual meeting is more than thirty (30) days before or after the anniversary of the previous year's annual meeting, or if no annual meeting was held in the preceding year, to be timely, the Stockholder Notice must be so delivered not earlier than the close of business on the one hundred fiftieth (150th) day prior to such annual meeting and not later than the close of business on the later of the one hundred twentieth (120th) day prior to such annual meeting or the tenth (10th) day following the day on which public announcement (as defined in Section 2.10(c)(ii) above) of the date of such meeting is first made by the Corporation. In no event shall an adjournment, postponement or recess of an annual meeting commence a new time period (or extend any time period) for the giving of a Stockholder Notice.

(iii) The Stockholder Notice shall include, for each Stockholder Nominee, all written and signed representations and agreements and all completed and signed questionnaires required pursuant to Section 2.9(a) above. At the request of the Corporation, the Stockholder Nominee must promptly, but in any event within five (5) business days after such request, provide to the Corporation such other information as it may reasonably request. The Corporation may request such additional information as necessary to permit the Board of Directors to determine if each Stockholder Nominee satisfies the requirements of this Section 2.14.

(iv) In the event that any information or communications provided by the Eligible Stockholder or any Stockholder Nominees to the Corporation or its stockholders is not, when provided, or thereafter ceases to be, true, correct and complete in all material respects (including omitting a material fact necessary to make the statements made, in light of the circumstances under which they were made, not misleading), such Eligible Stockholder or Stockholder Nominee, as the case may be, shall promptly notify the Secretary and provide the information that is required to make such information or communication true, correct, complete and not misleading; it being understood that providing any such notification shall not be deemed to cure any defect or limit the Corporation's right to omit a Stockholder Nominee from its proxy materials as provided in this Section 2.14.

(v) All information provided pursuant to this Section 2.14(c) shall be deemed part of the Stockholder Notice for purposes of this Section 2.14.

(d) Proxy Access Procedures.

(i) Notwithstanding anything to the contrary contained in this Section 2.14, the Corporation may omit from its proxy materials any Stockholder Nominee, and such nomination shall be disregarded and no vote on such Stockholder Nominee shall occur, notwithstanding that proxies in respect of such vote may have been received by the Corporation, if:

(A) the Eligible Stockholder or Stockholder Nominee breaches any of its agreements, representations or warranties set forth in the Stockholder Notice or otherwise submitted pursuant to this Section 2.14, any of the information in the Stockholder Notice or otherwise submitted pursuant to this Section 2.14 was not, when provided, true, correct and complete, or the Eligible Stockholder or applicable Stockholder Nominee otherwise fails to comply with its obligations pursuant to these Bylaws, including, but not limited to, its obligations under this Section 2.14;

(B) the Stockholder Nominee (1) is not independent under any applicable listing standards, any applicable rules of the SEC and any publicly disclosed standards used by the Board of Directors in determining and disclosing the independence of the Corporation's directors, (2) is or has been, within the past three (3) years, an officer or director of a competitor, as defined for purposes of Section 8 of the Clayton Antitrust Act of 1914, as amended, (3) is a named subject of a pending criminal proceeding (excluding traffic violations and other minor offenses) or has been convicted in a criminal proceeding (excluding traffic violations and other minor offenses) within the past ten (10) years, (4) does not satisfy, or is in violation of, any insurance, banking or other regulatory requirements applicable to the Corporation's lines of business, or (5) is subject to any order of the type specified in Rule 506(d) of Regulation D promulgated under the Securities Act of 1933, as amended;

(C) the Corporation has received a notice (whether or not subsequently withdrawn) that a stockholder intends to nominate any candidate for election to the Board of Directors pursuant to the advance notice requirements for stockholder nominees for director in Section 2.10; or

(D) the election of the Stockholder Nominee to the Board of Directors would cause the Corporation to violate the Certificate of Incorporation of the Corporation, these Bylaws, or any applicable law, rule, regulation or listing standard.

(ii) An Eligible Stockholder submitting more than one Stockholder Nominee for inclusion in the Corporation's proxy materials pursuant to this Section 2.14 shall rank such Stockholder Nominees based on the order that the Eligible Stockholder desires such Stockholder Nominees to be selected for inclusion in the Corporation's proxy materials and include such assigned rank in its Stockholder Notice submitted to the Corporation. In the event that the number of Stockholder Nominees submitted by Eligible Stockholders pursuant to this Section 2.14 exceeds the Authorized Number, the Stockholder Nominees to be included in the Corporation's proxy materials shall be determined in accordance with the following provisions: one Stockholder Nominee who satisfies the eligibility requirements in this Section 2.14 shall be selected from each Eligible Stockholder for inclusion in the Corporation's proxy materials until the Authorized Number is reached, going in order of the amount (largest to smallest) of shares of the Corporation each Eligible Stockholder disclosed as Owned in its Stockholder Notice submitted to the Corporation and going in the order of the rank (highest to lowest) assigned to each Stockholder Nominee by such Eligible Stockholder. If the Authorized Number is not reached after one Stockholder Nominee who satisfies the eligibility requirements in this Section 2.14 has been selected from each Eligible Stockholder, this selection process shall continue as many times as necessary, following the same order each time, until the Authorized Number is reached. Following such determination, if any Stockholder Nominee who satisfies the eligibility requirements in this Section 2.14 thereafter is nominated by the Board of Directors, thereafter is not included in the Corporation's proxy materials or thereafter is not submitted for director election for any reason (including the Eligible Stockholder's or Stockholder Nominee's failure to comply with this Section 2.14), no other nominee or nominees shall be included in the Corporation's proxy materials or otherwise submitted for election as a director at the applicable annual meeting in substitution for such Stockholder Nominee.

(iii) Any Stockholder Nominee who is included in the Corporation's proxy materials for a particular annual meeting of stockholders but either (A) withdraws from or becomes ineligible or unavailable for election at the annual meeting for any reason, including for the failure to comply with any provision of these Bylaws (provided that in no event shall any such withdrawal, ineligibility or unavailability commence a new time period (or extend any time period) for the giving of a Stockholder Notice) or (B) does not receive a number of votes cast in favor of his or her election that is at least equal to twenty-five percent (25%) of the shares present in person or represented by proxy and entitled to vote generally in the election of directors, shall be ineligible to be a Stockholder Nominee pursuant to this Section 2.14 for the next two (2) annual meetings.

(iv) Notwithstanding the foregoing provisions of this Section 2.14, unless otherwise required by law or otherwise determined by the chairman of the meeting or the Board of Directors, if the stockholder delivering the Stockholder Notice (or a qualified representative of the stockholder, as defined in Section 2.10(c)(ii)) does not appear at the annual meeting of stockholders of the Corporation to present its Stockholder Nominee or Stockholder Nominees, such nomination or nominations shall be disregarded, notwithstanding that proxies in respect of the election of the Stockholder Nominee or Stockholder Nominees may have been received by the Corporation. Without limiting the Board's power and authority to interpret any other provisions of these Bylaws, the Board (and any other person or body authorized by the Board) shall have the power and authority to interpret this Section 2.14 and to make any and all determinations necessary or advisable to apply this Section 2.14 to any persons, facts or circumstances. This Section 2.14 shall be the exclusive method for stockholders to include nominees for director election in the Corporation's proxy materials.

ARTICLE III DIRECTORS

Section 3.1 Powers. Subject to the provisions of the DGCL and to any limitations in the Certificate of Incorporation relating to action required to be approved by the stockholders, the business and affairs of the Corporation shall be managed and shall be exercised by or under the direction of the Board of Directors. In addition to the powers and authorities these Bylaws expressly confer upon them, the Board of Directors may exercise all such powers of the Corporation and do all such lawful acts and things as are not by law, the Certificate of Incorporation or these Bylaws required to be exercised or done by the stockholders.

Section 3.2 Number, Term of Office and Election.

(a) The number of directors shall be established in the manner set forth in the Corporation's Certificate of Incorporation. Except as provided in Section 3.3, directors shall be elected by a plurality of the votes cast at the stockholders' annual meeting.

(b) In an uncontested election (i.e., where the number of nominees does not exceed the number of directors to be elected), any nominee for director who receives a greater number of "withhold" votes than votes "for" his or her election will promptly tender his or her resignation as a director. The Nominating and Corporate Governance Committee (the "Committee") will evaluate any such resignation offer and recommend to the Board of Directors whether to accept or reject the resignation offer, or whether other action should be taken. In determining whether to recommend that the Board of Directors accept any resignation offer, the Committee may consider all factors believed relevant by the Committee. The Board of Directors will act on the Committee's recommendation within ninety (90) days following certification of the stockholder vote. In deciding whether to accept the resignation offer, the Board of Directors may consider the factors considered by the Committee and any additional information and factors that the Board of Directors believes to be relevant. If the Board of Directors accepts a director's resignation offer, the Committee will recommend to the Board of Directors and the Board of Directors will thereafter determine whether to fill such vacancy or reduce the size of the Board of Directors. Any director who tenders his or her resignation pursuant to this provision

may not participate in the proceedings of either the Committee or the Board of Directors with respect to his or her own resignation offer.

(c) Directors need not be stockholders unless so required by the Certificate of Incorporation or these Bylaws, wherein other qualifications for directors may be prescribed.

Section 3.3 Vacancies. Subject to the rights of the holders of any one or more series of Preferred Stock then outstanding, newly created directorships resulting from any increase in the authorized number of directors or any vacancies in the Board of Directors resulting from death, resignation, retirement, disqualification, removal from office or other cause shall, unless otherwise provided by law, be filled solely by the affirmative vote of a majority of the remaining directors then in office, though less than a quorum, and directors so chosen shall hold office until the expiration of the term of office of the director whom he or she has replaced or until his or her successor shall be elected and qualified. No decrease in the authorized number of directors shall shorten the term of any incumbent director.

Section 3.4 Resignations and Removal.

(a) Any director may resign at any time upon notice given in writing or by electronic transmission to the Board of Directors, the Chairman of the Board of Directors or the Secretary. Such resignation shall take effect at the time specified in such notice or, if the time be not specified, upon receipt thereof by the Board of Directors, the Chairman of the Board of Directors or the Secretary, as the case may be. Unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

(b) Except for such additional directors, if any, as are elected by the holders of any series of Preferred Stock as provided for or fixed pursuant to the provisions of Article IV of the Certificate of Incorporation, any director, or the entire Board of Directors, may be removed from office at any time, but only for cause and only by the affirmative vote of at least 66⅔% of the total voting power of the outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class.

Section 3.5 Regular Meetings. Regular meetings of the Board of Directors shall be held at such place or places, on such date or dates and at such time or times, as shall have been established by the Board of Directors and publicized among all directors; provided that no fewer than one regular meeting per year shall be held. A notice of each regular meeting shall not be required.

Section 3.6 Special Meetings. Special meetings of the Board of Directors for any purpose or purposes may be called at any time by the Chairman of the Board of Directors, the Chief Executive Officer or a majority of the Board of Directors then in office. The person or persons authorized to call special meetings of the Board of Directors may fix the place and time of such meetings. Notice of each such meeting shall be given to each director, if by mail, addressed to such director as his or her residence or usual place of business, at least five (5) days before the day on which such meeting is to be held, or shall be sent to such director at such place by telecopy, telegraph, electronic transmission or other form of recorded communication, or be delivered personally or by telephone, in each case at least twenty-four (24) hours prior to the

time set for such meeting. Notice of any meeting need not be given to any director who shall, either before or after the meeting, submit a waiver of such notice or who shall attend such meeting without protesting, prior to or at its commencement, the lack of notice to such director. A notice of special meeting need not state the purpose of such meeting, and, unless indicated in the notice thereof, any and all business may be transacted at a special meeting.

Section 3.7 Participation in Meetings by Conference Telephone. Members of the Board of Directors, or of any committee thereof, may participate in a meeting of such Board of Directors or committee by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and such participation shall constitute presence in person at such meeting.

Section 3.8 Quorum. Except as otherwise provided by law, the Certificate of Incorporation or these Bylaws, a majority of the authorized number of directors shall constitute a quorum for the transaction of business at any meeting of the Board of Directors, and the vote of a majority of the directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board of Directors. The Chairman of the meeting or a majority of the directors present may adjourn the meeting to another time and place whether or not a quorum is present. At any adjourned meeting at which a quorum is present, any business may be transacted which might have been transacted at the meeting as originally called.

Section 3.9 Board of Directors Action by Written Consent Without a Meeting. Any action required or permitted to be taken by the Board of Directors may be taken without a meeting, provided that all members of the Board of Directors consent in writing or by electronic transmission to such action, and the writing or writings or electronic transmission or transmissions are filed with the minutes or proceedings of the Board of Directors. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form. Such action by written consent shall have the same force and effect as a unanimous vote of the Board of Directors.

Section 3.10 Rules and Regulations. The Board of Directors shall adopt such rules and regulations not inconsistent with the provisions of law, the Certificate of Incorporation or these Bylaws for the conduct of its meetings and management of the affairs of the Corporation as the Board of Directors shall deem proper.

Section 3.11 Fees and Compensation of Directors. Directors and members of committees may receive such compensation, if any, for their services and such reimbursement of expenses as may be fixed or determined by resolution of the Board of Directors. This Section 3.11 shall not be construed to preclude any director from serving the Corporation in any other capacity as an officer, agent, employee or otherwise and receiving compensation for those services.

Section 3.12 **Emergency Bylaws.** In the event of any emergency, disaster or catastrophe, as referred to in Section 110 of the DGCL, or other similar emergency condition, as a result of which a quorum of the Board of Directors or a standing committee of the Board of Directors cannot readily be convened for action, then the director or directors in attendance at the meeting shall constitute a quorum. Such director or directors in attendance may further take

action to appoint one or more of themselves or other directors to membership on any standing or temporary committees of the Board of Directors as they shall deem necessary and appropriate.

ARTICLE IV COMMITTEES

Section 4.1 Committees of the Board of Directors. The Board of Directors may, by resolution, designate one or more committees, including but not limited to an Executive Committee and an Audit Committee, each such committee to consist of one or more of the directors of the Corporation. The Board of Directors may designate one or more directors as alternate members of any committee to replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of a committee, the member or members present at any meeting and not disqualified from voting, whether or not he, she or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member. Any such committee, to the extent provided in the resolution of the Board of Directors establishing such committee, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers which may require it; but no such committee shall have the power or authority in reference to the following matters: (a) approving or adopting, or recommending to the stockholders, any action or matter (other than the election or removal of directors) expressly required by the DGCL to be submitted to stockholders for approval or (b) adopting, amending or repealing any bylaw of the Corporation. All committees of the Board of Directors shall keep minutes of their meetings and shall report their proceedings to the Board of Directors when requested or required by the Board of Directors.

Section 4.2 Meetings and Action of Committees. Any committee of the Board may adopt such rules and regulations not inconsistent with the provisions of law, the Certificate of Incorporation or these Bylaws for the conduct of its meetings as such committee may deem proper.

ARTICLE V OFFICERS

Section 5.1 **Officers.** The officers of the Corporation shall consist of a Chairman of the Board of Directors, a Chief Executive Officer, a Chief Financial Officer, one or more Vice Presidents, a Secretary, a Treasurer and such other officers as the Board of Directors may from time to time determine, each of whom shall be elected by the Board of Directors, each to have such authority, functions or duties as set forth in these Bylaws or as determined by the Board of Directors. Each officer shall be chosen by the Board of Directors and shall hold office for such term as may be prescribed by the Board of Directors and until such person's successor shall have been duly chosen and qualified, or until such person's earlier death, disqualification, resignation or removal. Any two (2) of such offices may be held by the same person; provided, however, that no officer shall execute, acknowledge or verify any instrument in more than one capacity if such instrument is required by law, the Certificate of Incorporation or these Bylaws to be executed, acknowledged or verified by two (2) or more officers.

execution of which on behalf of the Corporation under its seal is duly authorized in accordance with the provisions of these Bylaws; (iv) to have charge of the books, records and papers of the Corporation and see that the reports, statements and other documents required by law to be kept and filed are properly kept and filed; and (v) to perform all of the duties incident to the office of Secretary. The Secretary shall, when requested, counsel with and advise the other officers of the Corporation and shall perform such other duties as such officer may agree with the Chief Executive Officer or as the Board of Directors may from time to time determine.

Section 5.9 Additional Matters. The Chief Executive Officer of the Corporation shall have the authority to designate employees of the Corporation to have the title of Vice President, Assistant Vice President, Assistant Treasurer or Assistant Secretary. Any employee so designated shall have the powers and duties determined by the officer making such designation. The persons upon whom such titles are conferred shall not be deemed officers of the Corporation unless elected by the Board of Directors.

Section 5.10 Checks; Drafts; Evidences of Indebtedness. From time to time, the Board of Directors shall determine by resolution which person or persons may sign or endorse all checks, drafts, other orders for payment of money, notes, bonds, debentures or other evidences of indebtedness that are issued in the name of or payable by the Corporation, and only the persons so authorized shall sign or endorse such instruments.

Section 5.11 Corporate Contracts and Instruments; How Executed. Except as otherwise provided in these Bylaws, the Board of Directors may authorize any officer or officers, employee or employees, or agent or agents, to enter into any contract or execute any instrument in the name of and on behalf of the Corporation. Such authority may be general or confined to specific instances. Unless so authorized or ratified by the Board of Directors or within the agency power of an officer, no officer, agent or employee shall have any power or authority to bind the Corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or for any amount.

Section 5.12 Action with Respect to Securities of Other Corporations. The Chief Executive Officer or any other officer of the Corporation authorized by the Board of Directors or the Chief Executive Officer is authorized to vote, represent, and exercise on behalf of the Corporation all rights incident to any and all securities of any other corporation or entity standing in the name of the Corporation. The authority herein granted may be exercised either by such person directly or by any other person authorized to do so by proxy or power of attorney duly executed by the person having such authority.

ARTICLE VI INDEMNIFICATION

Section 6.1 Right to Indemnification. Each person who was or is made a party or is threatened to be made a party to or is otherwise involved in any action, suit, arbitration, alternative dispute mechanism, inquiry, administrative or legislative hearing, investigation or any other actual, threatened or completed proceeding, including any and all appeals, whether civil, criminal, administrative or investigative (hereinafter a "proceeding"), by reason of the fact that he or she is or was a director or an officer of the Corporation or while a director or officer of the

Corporation is or was serving at the request of the Corporation as a director, officer, employee, agent or trustee of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to an employee benefit plan (hereinafter an "indemnitee"), whether the basis of such proceeding is alleged action in an official capacity as a director, officer, employee, agent or trustee or in any other capacity while serving as a director, officer, employee, agent or trustee, shall be indemnified and held harmless by the Corporation to the fullest extent authorized by the DGCL, as the same exists or may hereafter be amended, against all expense, liability and loss (including attorneys' fees, judgments, fines, ERISA excise taxes or penalties and amounts paid in settlement) reasonably incurred or suffered by such indemnitee in connection therewith; provided, however, that, except as provided in Section 6.3 with respect to proceedings to enforce rights to indemnification, the Corporation shall indemnify any such indemnitee in connection with a proceeding (or part thereof) initiated by such indemnitee only if such proceeding (or part thereof) was authorized or ratified by the Board of Directors of the Corporation.

Section 6.2 Right to Advancement of Expenses. In addition to the right to indemnification conferred in Section 6.1, an indemnitee shall, to the fullest extent not prohibited by law, also have the right to be paid by the Corporation the expenses (including attorneys' fees) incurred in defending any such proceeding in advance of its final disposition (hereinafter an "advancement of expenses"); provided, however, that, if the DGCL requires, an advancement of expenses incurred by an indemnitee in his or her capacity as a director or officer (and not in any other capacity in which service was or is rendered by such indemnitee, including, without limitation, service to an employee benefit plan) shall be made only upon delivery to the Corporation of an undertaking (hereinafter an "undertaking"), by or on behalf of such indemnitee, to repay all amounts so advanced if it shall ultimately be determined by final judicial decision from which there is no further right to appeal (hereinafter a "final adjudication") that such indemnitee is not entitled to be indemnified for such expenses under this Section 6.2 or otherwise.

Section 6.3 Right of Indemnitee to Bring Suit. If a claim under Section 6.1 or 6.2 of this Article VI is not paid in full by the Corporation within 60 days after a written claim has been received by the Corporation, except in the case of a claim for an advancement of expenses, in which case the applicable period shall be 20 days, the indemnitee may at any time thereafter bring suit against the Corporation in a court of competent jurisdiction in the State of Delaware to recover the unpaid amount of the claim. If successful in whole or in part in any such suit, or in a suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the indemnitee shall be entitled to be paid also the expense of prosecuting or defending such suit. In (a) any suit brought by the indemnitee to enforce a right to indemnification hereunder (but not in a suit brought by the indemnitee to enforce a right to an advancement of expenses) it shall be a defense that, and (b) any suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the Corporation shall be entitled to recover such expenses upon a final adjudication that, the indemnitee has not met any applicable standard for indemnification set forth in the DGCL. Neither the failure of the Corporation (including its directors who are not parties to such action, a committee of such directors, independent legal counsel, or its stockholders) to have made a determination prior to the commencement of such suit that indemnification of the indemnitee is proper in the circumstances because the indemnitee has met the applicable standard of conduct set forth in the DGCL, nor an actual determination by the Corporation

(including its directors who are not parties to such action, a committee of such directors, independent legal counsel, or its stockholders) that the indemnitee has not met such applicable standard of conduct, shall create a presumption that the indemnitee has not met the applicable standard of conduct or, in the case of such a suit brought by the indemnitee, be a defense to such suit. In any suit brought by the indemnitee to enforce a right to indemnification or to an advancement of expenses hereunder, or brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the burden of proving that the indemnitee is not entitled to be indemnified, or to such advancement of expenses, under this Article VI or otherwise shall be on the Corporation.

Section 6.4 Non-Exclusivity of Rights. The rights to indemnification and to the advancement of expenses conferred in this Article VI shall not be exclusive of any other right which any person may have or hereafter acquire under any law, agreement, vote of stockholders or directors, provisions of the Certificate of Incorporation or these Bylaws or otherwise.

Section 6.5

Insurance. The Corporation may maintain insurance, at its expense, to protect itself and any director, officer, employee or agent of the Corporation or another corporation, partnership, joint venture, trust or other enterprise against any expense, liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under the DGCL.

Section 6.6 **Indemnification of Employees and Agents of the Corporation.** The Corporation may, to the extent authorized from time to time by the Board of Directors, grant rights to indemnification and to the advancement of expenses to any employee or agent of the Corporation to the fullest extent of the provisions of this Article VI with respect to the indemnification and advancement of expenses of directors and officers of the Corporation.

Section 6.7

Nature of Rights. All rights granted pursuant to this Article VI shall vest at the time a person becomes a director or officer of the Corporation and shall be deemed to be provided by a contract between the Corporation and each director or officer who serves in such capacity at any time while this Article VI is in effect. Any repeal or modification of the provisions of this Article VI shall be prospective only and shall not adversely affect the rights of any director or officer in effect hereunder at the time of any act or omission occurring prior to such repeal or modification. The rights granted pursuant to this Article VI shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be a director or officer and shall inure to the benefit of the heirs, executors and administrators of such a person.

Section 6.8

Settlement of Claims. To the fullest extent permitted by law, the Corporation shall not be liable to indemnify any indemnitee under this Article VI for any amounts paid in settlement of any action or claim effected without the Corporation's written consent, which consent shall not be unreasonably withheld, or for any judicial award if the Corporation was not given a reasonable and timely opportunity, at its expense, to participate in the defense of such action.

Section 6.9 Subrogation. In the event of payment under this Article VI, the Corporation shall be subrogated to the extent of such payment to all of the rights of recovery of

Section 6.10 **Procedures for Submission of Claims.** The Board of Directors may establish reasonable procedures for the submission of claims for indemnification pursuant to this Article VI, determination of the entitlement of any person thereto and review of any such determination. Such procedures shall be set forth in an appendix to these Bylaws and shall be deemed for all purposes to be a part hereof.

Section 7.1

Certificates of Stock. The shares of the Corporation shall be represented by certificates, provided that the Board of Directors may provide by resolution or resolutions that some or all of any or all classes or series of stock shall be uncertificated shares. Any such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the Corporation. Every holder of stock represented by certificates shall be entitled to have a certificate signed by or in the name of the Corporation by two (2) authorized officers of the Corporation, including, but not limited to, the Chairman of the Board of Directors, a Vice President, the Treasurer, an Assistant Treasurer, the Secretary or an Assistant Secretary, of the Corporation certifying the number of shares owned by such holder in the Corporation. Any or all such signatures may be facsimiles. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate has ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if such person were such officer, transfer agent or registrar at the date of issue.

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rights. Except as otherwise expressly provided by law, the rights and obligations of the holders of uncertificated stock and the rights and obligations of the holders of certificates representing stock of the same class and series shall be identical.

Section 7.3 Transfers of Stock. Transfers of shares of stock of the Corporation shall be made only on the books of the Corporation upon authorization by the registered holder thereof or by such holder's attorney thereunto authorized by a power of attorney duly executed and filed with the Secretary or a transfer agent for such stock, and if such shares are represented by a certificate, upon surrender of the certificate or certificates for such shares properly endorsed or accompanied by a duly executed stock transfer power and the payment of any taxes thereon; provided, however, that the Corporation shall be entitled to recognize and enforce any lawful restriction on transfer.

Section 7.4 Lost Certificates. The Corporation may issue a new share certificate for any security in the place of any certificate theretofore issued by it, alleged to have been lost, stolen or destroyed, and the Corporation may require the owner of the lost, stolen or destroyed certificate or the owner's legal representative to give the Corporation a bond (or other adequate security) sufficient to indemnify it against any claim that may be made against it (including any expense or liability) on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate. The Board of Directors may adopt such other provisions and restrictions with reference to lost certificates, not inconsistent with applicable law, as it shall in its discretion deem appropriate.

Section 7.5 **Addresses of Stockholders.** Each stockholder shall designate to the Secretary an address at which notices of meetings and all other corporate notices may be served or mailed to such stockholder and, if any stockholder shall fail to so designate such an address, corporate notices may be served upon such stockholder by mail directed to the mailing address, if any, as the same appears in the stock ledger of the Corporation or at the last known mailing address of such stockholder.

Section 7.6 Registered Stockholders. The Corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise provided by law.

Section 7.7 Record Date for Determining Stockholders.

(a) In order that the Corporation may determine the stockholders entitled to notice of any meeting of stockholders or any adjournment thereof, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall, unless otherwise required by law, not be more than sixty (60) nor less than ten (10) days before the date of such meeting. If the Board of Directors so fixes a date, such date shall also be the record date for determining the stockholders entitled to vote at such meeting unless the Board of Directors determines, at the time it fixes such record date, that a later date on or before the date of the meeting shall be the date for making such determination. If no record date is fixed by the Board

of Directors, the record date for determining stockholders entitled to notice of and to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjourned meeting; provided, however, that the Board of Directors may fix a new record date for the determination of stockholders entitled to vote at the adjourned meeting, and in such case shall also fix as the record date for stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote in accordance herewith at the adjourned meeting.

(b) In order that the Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall not be more than sixty (60) days prior to such action. If no such record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

Section 7.8 Regulations. Subject to applicable law, the Board of Directors may make such additional rules and regulations as it may deem expedient concerning the issue, transfer and registration of shares of stock of the Corporation.

ARTICLE VIII GENERAL MATTERS

Section 8.1 Fiscal Year. The fiscal year of the Corporation shall begin on the first day of January of each year and end on the last day of December of the same year, or such other 12 consecutive months as the Board of Directors may designate.

Section 8.2 Corporate Seal. The Board of Directors may provide a suitable seal, containing the name of the Corporation, which seal shall be in the charge of the Secretary. If and when so directed by the Board of Directors or a committee thereof, duplicates of the seal may be kept and used by the Treasurer or by an Assistant Secretary or Assistant Treasurer.

Section 8.3 Maintenance of Records. The Corporation shall, either at its principal executive office or at such place or places as designated by the Board of Directors, keep a record of its stockholders listing their names and addresses and the number and class or series of shares held by each stockholder, a copy of these Bylaws as amended to date, accounting books and other records.

Section 8.4 Reliance Upon Books, Reports and Records. Each director and each member of any committee designated by the Board of Directors shall, in the performance of his or her duties, be fully protected in relying in good faith upon the books of account or other records of the Corporation and upon such information, opinions, reports or statements presented

Section 8.5 Subject to Law and Certificate of Incorporation. All powers, duties and responsibilities provided for in these Bylaws, whether or not explicitly so qualified, are qualified by the Certificate of Incorporation and applicable law.

Section 9.1 Forum. Unless the Corporation consents in writing to the selection of an alternative forum, to the fullest extent permitted by law, the sole and exclusive forum for any stockholder (including any beneficial owner) to bring: (a) any derivative action or proceeding brought on behalf of the Corporation, (b) any action asserting a claim of breach of a fiduciary duty owed by any current or former director, officer or employee of the Corporation to the Corporation or the Corporation's stockholders, (c) any action asserting a claim arising pursuant to any provisions of the DGCL or the Certificate of Incorporation or Bylaws or as to which the DGCL confers jurisdiction on the Court of Chancery of the State of Delaware, or (d) any action asserting a claim governed by the internal affairs doctrine shall be the Court of Chancery of the State of Delaware (or, if the Court of Chancery does not have jurisdiction, the federal district court for the District of Delaware), in all cases subject to the court's having personal jurisdiction over the indispensable parties named as defendants.

Any person or entity purchasing or otherwise acquiring or holding any interest in shares of stock of the Corporation shall be deemed to have notice of and consented to the provisions of this Article IX.

ARTICLE X

AMENDMENTS

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adopt, amend or repeal these Bylaws. In addition to any requirements of law and any other provision of these Bylaws or the Certificate of Incorporation, and notwithstanding any other provision of these Bylaws, the Certificate of Incorporation or any provision of law which might otherwise permit a lesser vote or no vote, the affirmative vote of the holders of at least 66⅔% in voting power of the issued and outstanding stock entitled to vote generally in the election of directors, voting together as a single class, shall be required for the stockholders to amend or repeal, or adopt any provision inconsistent with, any provision of these Bylaws.

The foregoing Bylaws were adopted by the Board of Directors on August 5, 2009 and amended on February 20, 2015, August 16, 2017 and April 20, 2021.

CERTIFICATIONS

I, Dennis J. Gilmore, certify that:

1. I have reviewed this quarterly report on Form 10-Q of First American Financial Corporation;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: April 22, 2021

/s/ Dennis J. Gilmore

Dennis J. Gilmore

Chief Executive Officer

(Principal Executive Officer)

CERTIFICATIONS

I, Mark E. Seaton, certify that:

1. I have reviewed this quarterly report on Form 10-Q of First American Financial Corporation;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: April 22, 2021

/s/ Mark E. Seaton

Mark E. Seaton

Executive Vice President, Chief Financial Officer

(Principal Financial Officer)

Certification pursuant to 18 U.S.C. Section 1350,
as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002

In connection with the Form 10-Q of First American Financial Corporation (the “Company”) for the period ended March 31, 2021, as filed with the Securities and Exchange Commission on the date hereof (the “Report”), I, Dennis J. Gilmore, chief executive officer of the Company, certify, pursuant to 18 U.S.C. §1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) the Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and
- (2) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

A signed original of this statement has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.

/s/ Dennis J. Gilmore

Dennis J. Gilmore
Chief Executive Officer
April 22, 2021

The foregoing certification is being furnished solely to accompany the Report pursuant to 18 U.S.C. §1350, and is not being filed for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, and is not to be incorporated by reference into any filing of the Company, whether made before or after the date hereof, regardless of any general incorporation language in such filing.

Certification pursuant to 18 U.S.C. Section 1350,
as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002

In connection with the Form 10-Q of First American Financial Corporation (the “Company”) for the period ended March 31, 2021, as filed with the Securities and Exchange Commission on the date hereof (the “Report”), I, Mark E. Seaton, chief financial officer of the Company, certify, pursuant to 18 U.S.C. §1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) the Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and
- (2) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

A signed original of this statement has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.

/s/ Mark E. Seaton

Mark E. Seaton

Executive Vice President, Chief Financial Officer

April 22, 2021

The foregoing certification is being furnished solely to accompany the Report pursuant to 18 U.S.C. §1350, and is not being filed for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, and is not to be incorporated by reference into any filing of the Company, whether made before or after the date hereof, regardless of any general incorporation language in such filing.