Comptroller of the Currency
Administrator of National Banks

Washington, DC 20219

Conditional Approval #819
October 2007

September 7, 2007

Martin F. Shea, Jr., Esq.
Senior Vice President and Counsel
First Tennessee Bank, National Association.
845 Crossover Lane, Suite 150
Memphis, Tennessee 38117

Re: Application by First Tennessee Bank, National Association, Memphis, Tennessee, to establish a subsidiary and to hold a limited equity investment in connection with its investment management activities
Application Control Number: 2007-WO-08-0003

Dear Mr. Shea:

This responds to the application filed by First Tennessee Bank, National Association, Memphis, Tennessee, ("Bank"), requesting approval for the establishment of a new indirect wholly-owned subsidiary, FTN New Pathways, LLC ("LLC"), that will serve as the general partner to a newly formed private investment fund, and for LLC's holding for limited periods of time an interest in the fund for which LLC or its parent subsidiary will serve as investment manager.[1] Based on the representations and commitments made by the Bank, and prior OCC precedent, the application is approved subject to the conditions described herein.[2]

A. Background

The Bank proposes to establish a new third-tier subsidiary, LLC. The Bank already directly holds and wholly-owns FTN Midwest Securities Corporation ("Broker-Dealer"), a financial subsidiary that is a registered broker-dealer with the Securities and Exchange

[1] The application, certification, and notice along with various supplemental materials were filed with the OCC to comply with the financial subsidiary requirements set forth in 12 C.F.R. § 5.39 and, as cross-referenced in § 5.39, the requirements set forth in 12 C.F.R. § 5.34(e)(5) (all materials collectively are referred to as the "application").

[2] We note that the OCC previously has concluded that a national bank's operating subsidiary may hold limited interests in private investment funds for which the operating subsidiary serves as investment manager. *See, e.g.*, Conditional Approval No. 755 (Aug. 25, 2006); Conditional Approval No. 643 (June 16, 2004); and Conditional Approval No. 578 (Feb. 27, 2003).

Commission ("SEC"), and engages in underwriting and dealing activities permissible for a financial subsidiary of a national bank. The Broker-Dealer in turn wholly-owns a financial subsidiary, FTN Midwest Asset Management Corporation ("Adviser"), which is a registered investment adviser that engages in investment advisory activities.[3] The Adviser is proposing to establish the new subsidiary, LLC, as a limited liability company that will serve as the general partner of a newly formed private investment fund, FTN New Pathways Fund, L.P. ("Fund").[4] Because LLC will be a direct subsidiary of Adviser, it constitutes a new activity of Adviser, and thus is considered a financial subsidiary as well. The Bank's application provides the appropriate representations concerning qualification as a financial subsidiary, including that the combined assets of LLC and the existing Bank financial subsidiaries will be substantially less than (i) 45% of the Bank's consolidated total assets or (ii) $50 billion.

As the general partner, the LLC may make a nominal capital investment (e.g., $1,000 or less) in the Fund as evidence of its ownership interest ("nominal interest").[5] The Bank represents that the LLC will have no other financial interest in the Fund. The LLC also will have the authority to manage the Fund, however, the LLC is contracting with Adviser to provide the Fund's investment management services.[6] The LLC may provide certain additional services of a ministerial nature to the Fund, such as admitting new investors. The Broker-Dealer will act as placement agent for sales of limited partnership interests in the Fund.[7]

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[3] *See* OCC Licensing Letter, Control No. 2006 SO 08 0017 (Aug. 21, 2006) (acknowledgement of FTN Midwest Asset Management Corp.'s financial subsidiary certification and notice). Adviser did not meet the SEC's assets under management minimum threshold for registering with the SEC as an investment adviser within the required period of time after initial registration, thus Adviser currently is registered with the State of New York as an investment adviser. Under the applicable legal framework, however, Adviser still is subject to SEC enforcement jurisdiction and certain examination authority, and may qualify in the future for direct SEC registration.

[4] The Fund is a Delaware limited partnership, and the Bank represents that the Fund will constitute an affiliate for purposes of sections 23A and B of the Federal Reserve Act. The Bank represents it is not making any direct investment in and does not contemplate conducting any specific operations related to the Fund.

[5] The Bank represents that Adviser will make an equity investment of approximately $1,000 in LLC, and will account for the investment under the equity or cost method of accounting. The investment in LLC will represent only a nominal percentage of the Bank's capital, and the Bank states any additional capital contributions will be in compliance with all applicable laws and prudent banking practices.

[6] The Bank represents that LLC, the general partner, will have control of the Fund pursuant to the terms of the limited partnership agreement, and will engage Adviser to act as investment adviser, and organize and manage the Fund. The Fund will be structured as a partnership for federal income tax purposes. The LLC is contracting with an unaffiliated entity to provide administrative services to the Fund.

[7] The Bank represents that any placement agent fees will be paid on market terms pursuant to a placement agent agreement. The Bank indicates it does not expect the Broker-Dealer to perform any other activities for the Fund.

The Fund's investment strategy will be as a "fund of funds" and it will invest substantially all of its assets in a diversified group of private investment funds and other alternative investment vehicles. The Fund's investment strategy will not target a specific industry but will focus on investments in smaller private investment funds managed by "Emerging Managers" with assets under management between $25-250 million and established 1 to 5 year track records.[8] The Fund falls within an exemption from the definition of investment company under the Investment Company Act of 1940,[9] and will not register with the SEC.

The LLC will not receive management fees or performance-based compensation directly from the Fund. The proposal seeks to eliminate the typical double layer of management and incentive fees prevalent in current fund of funds structures. Rather, the LLC plans to enter into revenue sharing agreements with the general partner of each underlying fund. The fund managers of the underlying funds will receive incentive and management fees and accordingly the portion of those fees allocable to the Fund will be paid by the underlying fund manager to the LLC. The Bank represents that the management fee received by the LLC from the underlying funds will be assigned to the Adviser in consideration of its investment management services.[10]

The Fund will be offered through a private placement and each investor must represent that it is a "qualified purchaser" as defined in the Investment Company Act of 1940 ("1940 Act").[11] The Bank represents that the Fund's potential investors will receive a private placement memorandum and a copy of Part II of Adviser's Form ADV, as filed for investment adviser registration. The Bank does not anticipate investing any customers' funds held by the Bank in a fiduciary capacity in the Fund, and there are no plans to direct marketing efforts towards current customers of the Bank.[12]

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[8] The Bank represents that Adviser will select funds based on factors such as market and macroeconomic indicators, qualitative and quantitative on and off site due diligence, funds' managers demonstrating definable strategies and track records, strong integrity and risk management policies and legal review. The underlying funds may invest in various types of equity or debt securities or derivative instruments. The Bank represents that the Fund will not invest in real estate or personal property, however, it is possible the underlying funds could have those investments. The Fund may invest idle cash in high-quality money market and U.S. Treasury securities as deemed appropriate by the Adviser.

[9] *See* 15 U.S.C. §§ 80a-3(c)(7)(A).

[10] In addition, a separate tiered annual administrative fee will be charged each limited partner.

[11] *See* 15 U.S.C. §§ 80a-1 to 80a-64. Qualified purchasers under the 1940 Act are natural persons and certain trusts having at least $5,000,000 in investments and an institutional investor that has at least $25,000,000 in investments, in each case net of any debt incurred to acquire such investments. 15 U.S.C. § 80a-2(a)(51)(A). The Bank represents that the minimum initial capital contribution to the Fund by an investor generally will be $500,000, subject to waiver in the sole discretion of the LLC.

[12] The Bank provides that it is possible that a division of the Bank may act as an additional placement agent, and if so, it may seek to place interests with existing capital markets customers who meet the requisite qualifications.

The Bank represents that it is not guaranteeing any liabilities of the Fund or the LLC, and will not participate in any losses suffered by the Fund. Pursuant to the terms of the limited partnership agreement, the LLC will not be liable for any loss arising out of or in connection with any activity undertaken in connection with the Fund, except for any liability caused by its gross negligence, willful misconduct, or violations of applicable law. The Bank states that demand for a fund of funds investment product remains strong, and believes that the expertise of Adviser's planned investment committee, the use of quantitative methodology in the selection of funds, and the single layer fee structure are factors that will attract investors and distinguish the Fund from its competitors.

B. Analysis

Twelve U.S.C. § 24(a) authorizes financial subsidiaries to engage in (i) activities which are "financial in nature" or incidental to such activities, and (ii) activities that are permitted for national banks to engage in directly.[13] The Bank's proposal involves the formation of a new subsidiary of an existing financial subsidiary to act as a general partner in a limited partnership (referred to as the Fund) that will engage in investments that are not permissible for a national bank. The subsidiary, or its direct parent subsidiary, will act as the Fund's investment adviser, and may hold a limited interest in the Fund for the time it acts as adviser. Because the new subsidiary, LLC, is a subsidiary of an existing financial subsidiary, establishment of LLC is effectively the commencement of a new activity by its financial subsidiary parent. Furthermore, because of this structure, LLC is also considered a financial subsidiary even though its proposed activities, taken alone, would be permissible for an operating subsidiary of a national bank. While the OCC has not previously approved the formation of a financial subsidiary to engage in the proposed activities, the proposal is substantively analogous to previous OCC precedent involving operating subsidiaries, and is similarly permissible here.[14]

The OCC has long held that a national bank's operating subsidiary may act as the general partner of a limited partnership.[15] The OCC also has held that a national bank and its subsidiaries may provide investment management services as part of the business of banking authorized under 12 U.S.C. § 24(Seventh) and pursuant to their fiduciary powers

[13] 12 U.S.C. § 24a. *See supra* footnote 4 (concerning the approval procedures under 12 C.F.R. § 5.39, the OCC's financial subsidiary regulation).

[14] *See, e.g.*, Conditional Approval No. 755 (Aug. 25, 2006); Conditional Approval No. 643 (Jun. 16, 2004); Conditional Approval No. 578 (Feb. 27, 2003); Interpretive Letter No. 940 (May 24, 2002); and Corporate Decision No. 2000-07 (May 10, 2000).

[15] *See, e.g.*, Corp. Decision No. 2000-07, *supra* (corporate veil of the subsidiary corporation protects the bank from the potentially open-ended exposure associated with a direct partnership investment); Conditional Approval No. 243 (May 9, 1997); and Interpretive Letter No. 411 (Jan. 20, 1988). *See also* Interpretive Letter No. 1071 (Sept. 6, 2006) (direct membership interest is permissible in a context where numerous safeguards and controls limit the risk of liability to the bank membership).

under 12 U.S.C. § 92a.[16] More recently, the OCC has found that a subsidiary may hold a limited equity interest in connection with its investment management activities relating to the operation of private investment funds.[17]

The LLC will be engaged in activities permissible for a national bank, which also are permissible for a financial subsidiary.[18] The proposed fund of funds investment strategy and the management compensation structure are distinct features of this Fund, but are consistent with existing precedent and industry developments.[19] Accordingly, under the applicable legal framework and OCC precedent, the establishment of LLC as the general partner to the Fund, the LLC's holding of a nominal interest in the Fund, and the proposed investment management activities, are within well-recognized bank permissible activities.

C. Conclusion

Based on a review of the information you provided, including the representations and commitments made in your application, and for the reasons discussed above, we conclude that the Bank, through Adviser, may establish LLC as a third tier financial subsidiary, and that Adviser and LLC may engage in the investment management activities described, including holding a nominal interest in the Fund. This approval is subject to the following conditions:

1. Prior to Adviser establishing the LLC, the Bank shall adopt and implement an appropriate risk management process, acceptable to the OCC Examiner-in-Charge, to monitor the described activities and the nominal interest. The risk management process shall be comprehensive and shall include:

    (i) Adoption and implementation of a conflict of interest policy addressing all inherent conflicts associated with the LLC's activities and the holding of the nominal interest in the Fund; and

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[16] *See, e.g.,* Interpretive Letter No. 897 (Oct. 23, 2000); Interpretive Letter No. 851 (Dec. 8, 1999); Interpretive Letter No. 871 (Oct. 14, 1999); Conditional Approval Letter No. 164 (Dec. 9, 1994); Interpretive Letter No. 648 (May 4, 1994); Interpretive Letter No. 622 (Apr. 9, 1993); and Interpretive Letter No. 403 (Dec. 9, 1987).

[17] *See, e.g.,* Conditional Approval No. 755, *supra* (operating subsidiary may hold limited interests in private investment funds for which it serves as investment manager); Conditional Approval No. 643, *supra* (holding of the limited interest is convenient and useful in order for the subsidiary to conduct its investment management business); and Conditional Approval No. 578, *supra*.

[18] As described earlier, as general partner LLC will be responsible for the overall management of the Fund, including investment advisory services and various administrative duties.

[19] *See* Corp. Decision 2000-07, *supra* (recognizing use of fund of funds structure). With the exception of the nominal investment in the Fund, discussed above, the Bank has no financial interest for its own account in these investments. The LLC's and Adviser's compensation arrangements will be disclosed in the governing documents, and as a practical matter, are simply a variant on management and incentive fee arrangements already existing in the marketplace, and as previously recognized by the OCC as permissible. *See, e.g., id.*; Interpretive Letter No. 578, *supra.*

(ii) Adoption and implementation of risk management policies and procedures for monitoring Adviser's and LLC's activities, the nominal interest, and the associated risks, taking into account relevant factors noted in OCC guidance (e.g., OCC Banking Circular 277 (BC-277) (Oct. 1993); Supplemental Guidance 1 to BC-277 (Jan. 1999); and the Handbook for National Bank Examiners, Risk Management of Financial Derivatives (Jan. 1997).

(iii) The Bank shall provide the OCC with copies of the policies and procedures described in (i) and (ii) prior to Adviser's establishment of the LLC.

(iv) The Bank shall establish an appropriate governance structure including bank management participation to supervise ongoing activities prior to formation of the LLC.

2. The Bank, through Adviser or LLC, shall not receive nominal interests in funds other than funds that invest in securities and financial instruments, and shall not invest in any fund that directly holds real estate or tangible personal property.

3. The Bank shall make reports and other information readily available to OCC supervisory staff as necessary for the OCC to determine compliance with these conditions.

4. For GAAP accounting purposes pursuant to Fin 46R, the Bank will not consolidate the Fund.

5. The Fund shall constitute an "affiliate" of the Bank and its subsidiaries and affiliates for purposes of Sections 23A and 23B of the Federal Reserve Act.

6. The Bank, through Adviser and LLC, shall hold the nominal interest in the Fund only when, and only for so long as, Adviser or LLC is providing investment management services to the Fund.

7. The Bank, through Adviser, LLC, and its other subsidiaries and affiliates as applicable, is subject to the restrictions and guidelines outlined in OCC Bulletin 2004-2, concerning the provision of financial support to investment funds advised by a bank, its subsidiaries or affiliates.

8. The Bank shall provide its Examiner-in-Charge ten days notice before Adviser or LLC receives more than a nominal interest in the Fund, or in any other fund.

The conditions of this approval are conditions imposed in writing by the agency in connection with the granting of an application or other request within the meaning of 12 U.S.C. § 1818. As such, the conditions are enforceable under 12 U.S.C. § 1818.

This approval, and the activities and communications by OCC employees in connection with the filing, do not constitute a contract, express or implied, or any other obligation

binding upon the OCC, the United States, any agency or entity of the United States, or any officer or employee of the United States, and do not affect the ability of the OCC to exercise its supervisory, regulatory and examination authorities under applicable laws and regulations. The foregoing may not be waived or modified by any employee or agent of the OCC or the United States.

If you have any questions concerning this letter, please contact Senior Licensing Analyst, Licensing Activities, Crystal Maddox at (202) 874-5060.

Sincerely,

Lawrence E. Beard

Lawrence E. Beard
Deputy Comptroller, Licensing