



**Comptroller of the Currency
Administrator of National Banks**

Washington, DC 20219

**Conditional Approval #869
August 2008**

July 22, 2008

C. La Mar Gemberling
Senior Vice President
The Frost National Bank
P. O. Box 1600
San Antonio, Texas 78296-1600

Re: Establishment of Frost 1031 Exchange, LLC by The Frost National Bank, San Antonio, Texas; CAIS #2007-SO-08-0032.

Dear Mr. Gemberling:

This is in response to your operating subsidiary application, filed on behalf of The Frost National Bank, San Antonio, Texas (the "Bank") dated October 22, 2007, along with supplemental information dated January 31, 2008 and May 16, 2008. The Bank proposes to establish an operating subsidiary to engage in certain permissible activities. Based on a thorough review of all information available, including the representations and commitments made in the application and by the Bank's representatives, I conclude that the activities of Frost 1031 Exchange, LLC ("Frost Exchange") are legally permissible for national banks and their operating subsidiaries. Therefore, for the reasons discussed below and subject to the conditions set forth herein, I conclude that the Bank may establish Frost Exchange.

A. Background

1) *Qualification as an Operating Subsidiary:*

In general, the Office of the Comptroller of the Currency ("OCC") regulations state that a national bank may invest in a corporation, limited liability company, or similar entity if the bank owns at least 50 percent of the voting (or similar type of controlling) interest of the entity. 12 C.F.R. § 5.34(e)(2). The Bank will own 100 percent of Frost Exchange; therefore, Frost Exchange qualifies as a subsidiary of the Bank.

2) *Activities of the Operating Subsidiary:*

Frost Exchange will offer various services for Customers interested in engaging in capital gains tax-deferred exchanges of real and personal business or investment property under the Internal Revenue Code, 26 U.S.C. § 1031 (“section 1031”). Such transactions are called like-kind exchanges. For Customers considering engaging in a like-kind exchange, the Frost Exchange will provide financial and advisory services, including reviewing a Customer’s portfolio, advising the Customer on the structure of potential like-kind exchange transactions, and referring the Customer to third-party providers (e.g. real estate brokers). Frost Exchange will not provide tax advice or accounting advice to its Customers. Customers will be advised to obtain tax and accounting advice from their own attorneys and accountants.

Once a Customer has decided to engage in a like-kind exchange, the nature of Frost Exchange’s services will depend upon the type of exchange. In simultaneous and forward exchanges, the Customer may contract with a qualified intermediary (“QI”) to provide services facilitating the exchange of interests in the relinquished and replacement property and holding the proceeds of the exchange. Frost Exchange will act as a QI for like-kind exchanges when a Customer wishes to use one of these structures to complete an exchange.

In a reverse exchange, the replacement property is identified and must be acquired before the relinquished property can be sold. For these exchanges, the Customer may use an exchange accommodation titleholder (“EAT”) to acquire and hold qualified indicia of ownership in the replacement property pending the sale of the relinquished property. Frost Exchange will serve as an EAT (the “EAT Services”) for such exchanges that meet the requirements of I.R.S. Revenue Procedure 2000-37 (Sept. 15, 2000).¹

Finally, a build-to-suit exchange allows the taxpayer to build on, or make improvements to, the replacement property by using the exchange proceeds received from the sale of the relinquished property. For these exchanges, the Customer may use an EAT to acquire and hold qualified indicia of ownership in the replacement property pending the improvements made to the replacement property.² As with reverse exchanges, Frost Exchange will provide EAT Services for build-to-suit exchanges that meet the requirements of Revenue Procedure 2000-37.

¹ Revenue Procedure 2000-37 provides a safe harbor for certain reverse like-kind transactions. If a transaction satisfies the requirements of Revenue Procedure, then the I.R.S. will not challenge deferred tax treatment for that transaction. The Bank represents that the EAT Services, and the reverse like-kind exchange transactions for which the EAT Services are provided, will be conducted in conformance with Revenue Procedures.

² While Frost Exchange will hold qualified indicia of ownership in the replacement property, all rights to improve, and obligations and costs arising from improvement of, the replacement property will reside with the Customer.

Frost Exchange represents that it will not initially engage in like-kind exchanges that do not qualify for the safe harbor established by Revenue Procedure 2000-37; tenant-in-common exchanges; “UPREIT or DOWNREIT” transactions pursuant to Section 721 of the Internal Revenue Code 26 U.S.C. § 721; or foreign exchanges.

Frost Exchange will have three officers: President C. La Mar Gemberling, a Vice President, and a Secretary. The initial staff of Frost Exchange will consist of President Gemberling, an Assistant to the President and an Administrative Assistant.

B. Legal Analysis

A national bank “may conduct in an operating subsidiary, activities that are permissible for a national bank to engage in directly either as part of, or incidental to, the business of banking, as determined by the OCC, or otherwise under statutory authority.” 12 C.F.R. § 5.34(e).

The OCC previously has approved each of the activities proposed by Frost Exchange. Financial and investment advisory services are permissible for national banks and their operating subsidiaries;³ and the referral of Customers to third-party providers is a permissible finder activity.⁴ In addition, the OCC has previously permitted national banks to serve as QI or EAT to Customers that wished to engage in tax-deferred, like-kind exchanges. The provision of these services is considered incidental to the business of banking, and therefore, are legally permissible for national banks and their operating subsidiaries.⁵ Therefore, Frost Exchange may engage in the proposed real and personal property like-kind exchange services.

C. Conclusion

Based upon the foregoing, and the representations and commitments made in the application and by the Bank’s representatives, we find that the activities of Frost Exchange are permissible for national banks and their operating subsidiaries and, therefore, the Bank is legally authorized to establish Frost Exchange subject to the following conditions:

- (1) Prior to engaging in any exchanges, other than simultaneous, forward and safe harbor reverse exchanges, Frost Bank must receive written prior approval from the OCC.
- (2) Prior to engaging in any exchanges, other than simultaneous, forward and safe harbor reverse exchanges, Frost Exchange should ensure that an individual with relative experience

³ Conditional Approval No. 706 (Oct. 6, 2005); *See, e.g.* Interpretive Letter No. 880 (Dec. 16, 1999).

⁴ Conditional Approval No. 706, *supra*; Corporate Decision No. 2003-10 (June 27, 2003); Interpretive Letter No. 824 (Feb. 27, 1998).

⁵ Conditional Approval No. 706, *supra*; Corporate Decision No. 2001-30 (Oct. 10, 2001).

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is on staff to assist Mr. Gemberling. Prior written approval of the proposed individual must be obtained from Frost Bank's examiner-in-charge.⁶

(3) Frost Exchange at all times must maintain, to the satisfaction of its examiner-in-charge, risk mitigation policies, procedures, and controls for these activities.

(4) At all times, the EAT Services conducted by Frost Exchange must qualify for agency accounting under GAAP.

Please be advised that the above conditions of this approval shall be deemed to be "conditions imposed in writing by the agency in connection with the granting of any application or other request" within the meaning of 12 U.S.C. § 1818(b)(1).

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 ("U.S."), any agency or entity of the U.S., or any officer or employee of the U.S., and do not affect the ability of the OCC to exercise its supervisory, regulatory and examination authorities under applicable law and regulations. The foregoing may not be waived or modified by any employee or agent of the OCC or the U.S.

A separate letter is enclosed requesting your feedback on how we handled the referenced application. We would appreciate your response so we may improve our service. If you have any questions, please contact Senior Licensing Analyst Brenda E. McNeese at (214) 720-7052. The referenced CAIS control number should be included in all correspondence.

Yours truly,

signed

Lawrence E. Beard
Deputy Comptroller for Licensing

Enclosure: Survey Letter

⁶ The purpose of this condition is to have someone on staff, with relative experience, to handle the increasing workload as the volume of transactions expands, oversee the activities of the subsidiary in Mr. Gemberling's absence, and provide for management succession in case of Mr. Gemberling's departure or retirement.