MILLER, MONSON, PESHEL, POLACEK & HOSHAW

A PARTNERSHIP OF PROFESSIONAL LAW CORPORATIONS

NEWSLETTER

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MILLER, MONSON, PESHEL, POLACEK & HOSHAW ANNOUNCES NEW ASSOCIATE

Miller, Monson, Peshel, Polacek & Hoshaw is pleased to announce that DeEtte L. Loeffler has joined the firm as an associate, effective December 2008.

DeEtte focuses her practice on all areas of federal, state, and local tax matters, with an emphasis on estate planning, trust administration and corporate, limited liability company and partnership tax matters. She has advised individuals on estate planning techniques for minimizing gift and estate taxes through the use of trusts and family limited partnerships and has provided estate and trust administration support through tax preparation, accounting, asset management, and distribution.

DeEtte received her Bachelor of Arts degree in English from the University of Washington in 1986, her law degree from Pepperdine University School of Law, *cum laude*, in 1989, and her LL.M in Taxation, at the University of San Diego, summa cum laude, in 2007. She is a member of the State Bar of California and San Diego County Bar Association Tax and Estate Planning sections. Ms. Loeffler is also a member of the United States Army Judge Advocate General's Corps where she has served since 1990.

NEW REGULATIONS INCREASE DEPOSITOR COVERAGE

MARY J. PESHEL, ESQ.

Since its formation in 1933, the goal of the Federal Deposit Insurance Corporation ("FDIC") has been to ensure that depositors do not lose their savings when a bank fails. Coverage is limited to checking and savings accounts, money market deposits and certificates of deposit up to the deposit limit.

On October 3, 2008, Congress passed the *Emergency Economic Stabilization Act of 2008* temporarily increasing the FDIC deposit insurance to $250,000 through December 31, 2009. Under the prior rules, individual accounts were insured for up to $100,000, and joint accounts were insured for up to $200,000.

FDIC insurance covers each depositor with a cumulative amount up to $250,000 in a single bank. If two or more persons own the account and they each have equal rights of access, such as a husband and wife's joint account, they are each deemed to own one-half of the account with insurance limits of $500,000. Therefore, if John and Jane have a $520,000 jointly owned certificate of deposit at an insured bank, the couple is insured up to $500,000. The uninsured amount would be $20,000. In calculating the

amount that is insured, all accounts held at a single bank (including all branches of such bank) are combined. Therefore, if John and Jane have a checking account with $100,000 at XYZ Bank and $450,000 in a savings account at the same bank but at a different branch, the *combined* amount on deposit with XYZ Bank would be $550,000, thus leaving $50,000 uninsured.

Revocable Trust Accounts. Many people have established trusts as the primary tool for their estate plan. The regular FDIC individual insurance limits were difficult to interpret for trusts as trusts often have several beneficial interests. To remedy this difficultly, at least temporarily, on September 26, 2008, the FDIC adopted an interim rule (RIN 3064-AD33, 73 Fed Reg 56706 [2008]), which amends the deposit insurance rules for "revocable trust accounts" (12 CFR §330.10). The rule relates to two types of revocable trust accounts. One type is a "Payable on Death" account, also known as a "POD" account, an "In Trust For" account, an "ITF" account, or a Totten Trust account. The other type of trust account is for Revocable Trusts created for estate planning purposes (such as "living trusts", "family trusts", or similarly titled accounts). Deposits in these two types of accounts are insured to a higher rate.

The FDIC coverage for revocable trust accounts depends on the number of beneficiaries and the amounts each of the beneficiaries would receive if the account owner died on the date of the bank failure. In order to be treated as a beneficiary, the potential distributee must be either an individual (other than the depositor or Trustor) or a charitable organization. Business entities and other trusts, such as an irrevocable gift trust established for children or grandchildren, are not treated as beneficiaries. In the event that a trust has a distributee that is not considered a "beneficiary" under the FDIC rules, the funds corresponding to that distributee's interest are not treated as funds of a revocable trust account. Instead, the funds are treated as individually owned by the depositor/Trustor and the FDIC coverage is determined by the combined single ownership accounts of the depositor/Trustor at that bank (i.e., $250,000 is insured).

The FDIC interim rule solution for revocable trust accounts provides for FDIC coverage of up to $100,000 for each beneficiary who is entitled to receive a distribution from the trust on the depositor's death (even if some of the beneficiaries are entitled to receive less than $100,000). The FDIC is striving to make coverage determinations for revocable trust accounts as simple as possible as long as the potential for abuse does not result in aggregate coverage for such accounts to be in excess of $500,000. However, if a POD account has 10 beneficiaries, the FDIC coverage limitation for the account could be as much as $1,000,000, and in this situation the FDIC has more restrictive rules for claims of larger coverage amounts. If deposits in the revocable trust accounts at a single bank exceed $500,000, there are more than five different beneficiaries, and the bank fails, there will be less than full coverage if any beneficiary has an interest in excess of $100,000.

Joint Trusts. As stated above, if an account has more than one owner, each owner is deemed to have an equal interest in the account and each interest is insured separately. Assuming that a revocable living trust is created by a husband and wife and the bank fails while both Trustors are living, an account or living trust with five beneficiaries may have $1,000,000 in FDIC coverage. There is a six month "grace period" for deceased depositors where the coverage would remain $1,000,000 for six months after death. After that, the deceased owner would cease to be treated as an owner and there could be a decrease in FDIC coverage. Also, when the death of a Trustor causes all or a portion of a revocable trust to become irrevocable, there might also be a reduction in FDIC coverage.

Also keep in mind that if a person (or entity), other than a Trustor, is serving as trustee, the trustee must follow California Probate Code Section 16225. In particular, Section 16225(a) states that the trustee has the power to deposit trust funds at reasonable interest in an *insured* account in a financial institution. Therefore, knowledge of the insurance coverage for each trust account is very important.

Most banks are expected to continue to function normally in the current economic crisis. However, news that major banks such as Washington Mutual and Wachovia have been subject to receivership has caused some concern. To ensure that all of your funds held in banks are protected in the event of bank failure,

you can take a few simple steps to protect your assets:

- Verify that your bank is backed by the FDIC. Online resources, such as Bankrate.com, can help in analyzing each bank.
- Keep your accounts with any one bank slightly below the limit.
- Spread out your investments with several institutions for greater FDIC protection.
- If you have more than $100,000 with a bank, you may want to check the FDIC online deposit insurance estimator at https://www.fdic.gov/EDIE/index.html.
- A number of U.S. banks have formed an association known as the Certificate of Deposit Account Registry Service (CDARS), which allow depositors to maintain FDIC insurance on accounts with balances up to $50 million. This service allows a participating bank to accept a Certificate of Deposit and redeposit some funds in the name of the depositor in other participating banks. Since the FDIC insurance limit is allocated per institution, the depositor's funds are spread among several different banks. This is a convenience for the depositor who has to contact only one bank in order to set up multiple insured CD accounts. CDARS is coordinated through local banks participating in the program. One interest rate is received for all CD investments made through CDARS and the depositor receives one statement every reporting period, although funds may be at several different banks. This service is very attractive for trustees and other fiduciaries who hold large amounts of liquid assets.

Credit Unions. If you bank with a credit union, you should verify that it is insured under the *National Credit Union Insurance Fund*, which provides protections similar to the FDIC for credit union account holders.

Retirement Investments. The FDIC also provides coverage of up to $250,000 for certain retirement accounts, such as IRAs invested in cash that are held in FDIC-insured financial institutions. The FDIC does not insure stocks, bonds, mutual funds, life insurance policies and annuities, even if they were purchased through an insured bank. Therefore, if the IRA holds these types of investments, they would not be insured.

Brokerage Accounts. Many brokerage firms are members of the Securities Investor Protection Corporation ("SIPC") which was created by Congress in 1970 to cover investors for up to $500,000 in the event a brokerage fails or securities are stolen. You can verify if your firm is a member of the SIPC at http://www.sipc.org/who/database.cfm. The SIPC does not guarantee the value of a stock due to drops in the market or bad investments; it is guaranteeing $500,000 against a failure of the company. Investing in stocks and bonds is considered to be a risky endeavor, with benefits and detriments. Some brokerage firms and other agencies also have supplemental insurance for certain investments that are not eligible for FDIC coverage.

Money Market Funds. Money market funds have often been considered a safe haven for stashing liquid funds that one does not want to place in riskier investments. Money market accounts are a bank product and, when held in an FDIC-insured account, are insured against loss of principal by the FDIC up to the limits of that insurance. By contrast, money market mutual funds are not insured investments, however the U. S. Treasury, using a Depression-era fund known as *The Exchange Stabilization Fund* which was established by the Gold Reserve Act of 1934, is temporarily allowing fund providers to buy insurance. More information regarding protection of money market funds can be found at http://www.treas.gov/offices/international-affairs/esf/.

The U.S. Treasury will insure the holdings of any publicly offered eligible money market mutual fund, both retail and institutional, if the fund pays a fee to participate in the program. The insurance program's initial term was for three months, but coverage was recently extended to April 30, 2009, with an option to further extend the insurance to September 19, 2009. The U.S. Treasury's temporary guarantee program for money market funds provides a guarantee based on the number of shares held at the close of business on September 19, 2008. Any increase in the number of shares held in the account after

that will not be guaranteed.

Investing in a money market fund does involve some risk. Funds are often selected based on convenience or yield rather than on the underlying investments. Many money market funds sought higher-yielding investments, such as subprime mortgage-backed securities, which are now a source of financial difficulties. Before investing in any fund, one should read the prospectus, understand the investments in the fund, and remember that money market funds are not insured by the FDIC or the SIPC.

For additional information regarding your accounts and other investments, please contact your banker and/or financial advisor.

If you would like to receive further information regarding the topics in this newsletter, or if you would like to let us know any issues or topics you would like to see addressed in future newsletters, please contact us at (619) 239-7777 or NewsLetter@mmpph.com.

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