Our Perspectives:
Commentary on the economy & regulatory policies affecting financial companies

Barnett Sivon & Natter P.C.
ATTORNEYS at LAW
WASHINGTON, DC

Reviewing Your Deposit Insurance Coverage*

Paul Smith

April, 2011

William Bell's great soul song, "You don't miss your water till the well runs dry," should remind us not to overlook the obvious when it's something important. In this time of over 800 problem banks, federal deposit insurance is one of those things we should not overlook.

Only a few years after I started as a bank regulator (I was appointed state banking attorney for the Louisiana Office of Financial Institutions in 1984), banks and savings associations began to fail in large numbers. One of the Financial Institutions Commissioner's primary concerns was to limit depositor losses, to the extent possible. We soon discovered, however, that most depositors had only the vaguest idea of how their deposits were insured, and, worse, most bankers really didn't have a better idea either. When times are good and banks are healthy, no one cares to learn the intricacies of deposit insurance (the well is not dry), and when banks get in trouble (the well runs dry), bankers do not put a high priority on reviewing their customers' deposit insurance coverage as they are too busy trying to collect delinquent loans and raise capital. As a result, some depositors lost significant amounts of money when we closed banks in Louisiana in the late 1980s, and some customers are losing significant amounts of money now.

I was reminded of this just last year when our firm was retained to consult with a State Treasurer's office on deposit insurance coverage of public deposits of the state, its counties, municipalities, special districts and other political subdivisions. The FDIC's rules governing public deposits are complex, and public entities need a clear understanding of what types of entities qualify for coverage and what limits apply to different types of deposits.

Given our recent experience on behalf of one state, I believe it's time for everyone to review their deposit insurance coverages to be sure that all

*The information contained in this newsletter does not constitute legal advice. This newsletter is intended for educational and informational purposes only.

of their funds in all of their banks, savings associations, and credit unions[1] are insured, and if not, that every person is comfortable with the risk posed to the uninsured funds. Fortunately, it's a lot easier today to get a correct analysis of your deposit insurance coverage than it was back in the 1980s. First, the advent of the Internet has resulted in the FDIC creating an online tool to estimate your deposit insurance coverage: the Electronic Deposit Insurance Estimator or EDIE[2]. According to the FDIC,

> "EDIE lets consumers and bankers know, on a per-bank basis, how the insurance rules and limits apply to a depositor's specific group of deposit accounts — what's insured and what portion (if any) exceeds coverage limits at that bank. EDIE also allows the user to print the report for their records.
>
> "EDIE calculates the insurance coverage for Personal Accounts — deposits held by people in single accounts, joint accounts, POD/ITF accounts, living trust accounts, irrevocable trust accounts, and Individual Retirement Accounts (IRAs); Business Accounts — deposits held by corporations, partnerships, and organizations, both for-profit and not-for-profit; and Government Accounts — deposits held by public units such as school districts, cities, municipalities, counties, and states."

We would note that while for individuals, EDIE is probably sufficient, for governmental accounts held by public units, EDIE requires that the inquirer already knows the Official Custodian, the nature of the account, and whether the public unit is by law qualified for separate deposit insurance. Thus, EDIE begs some of the hardest questions that must be answered in order to determine deposit insurance coverage, and thus may be inadequate for your situation.

We also note that the FDIC appears to be somewhat concerned about the quality of advice on deposit insurance coverage from bankers, since the FDIC has announced in a Financial Institution Letter (FIL-14-2011) dated March 3, 2011, that the FDIC will conduct ten identical telephone seminars for bank officers and employees that will provide comprehensive training on deposit

[1]Credit unions are not insured by the FDIC, but by the National Credit Union Administration. You will need to consult the NCUA regulations to determine if your accounts are fully insured.

[2]https://www.fdic.gov/edie/index.html

insurance coverage rules and regulations. The seminars will be conducted between March 23 and December 7, 2011, and are free to employees and officers of FDIC-insured banks and savings associations. The FDIC suggests routing the FIL to the CEO, the head of Deposit Insurance and Branch Operations, the Chief Compliance Officer, the Training Officer, and Branch Managers.

For lawyers and banking professionals who wish to conduct their own review of their deposit insurance coverage, the FDIC's regulations on coverage are found in 12 CFR Part 330, with additional information in the FDIC's Advisory Opinions under the topic "Deposit Insurance Coverage in Accounts by Right and Capacity" and in relevant Statements of Policy and FDIC's General Counsel Opinions. Fortunately, all of these are readily available to the public on the Web at the FDIC's posting of its Law, Regulations and Related Acts[3]. Of course, if you want assistance in determining whether your personal or corporate funds or public unit funds for which you are an Official Custodian are insured, members of our firm are available to assist in such a review.

Paul Smith is of counsel with the law firm of Barnett Sivon & Natter, P.C.

[3] http://www.fdic.gov/regulations/laws/rules/index.html