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ALERT

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Trusts and Estates Alert: FDIC Makes Major Changes To Insurance Limits On Most Trust Accounts Effective April 1, 2024

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FDIC Alert:

Beginning on April 1, 2024, new rules adopted by the Federal Deposit Insurance Corporation ("FDIC") will go into effect for "Trust Accounts" which substantially increases the level of insurance coverage for many types of trust deposit accounts. In sum, the new rules provide that most trust owners will be insured up to $250,000 per eligible trust beneficiary, up to a maximum of five beneficiaries, **for total insurance coverage of $1,250,000 per trust per insured bank.**

Given the recent unfortunate news concerning the collapse of several well-known regional banks, we anticipate that these new rules will provide our clients with peace of mind as they plan to implement new estate planning strategies and manage their existing accounts.

Background and Summary of the New Rules for Trusts:

While the rules and regulations surrounding FDIC insurance coverage for individual depositors are relatively simple and straightforward, there has been a lack of clarity with respect to coverage limits for deposit accounts owned by Revocable Living Trusts and Irrevocable Living Trusts. Until now, the FDIC has employed a confusing set of complex regulations which applied different sets of rules to different types of trusts, resulting in uncertainty and inefficiency amongst bankers, consumers, and other interested parties.

In an effort to make the rules easier to understand, the FDIC has amended the current rules to now treat many types of trusts accounts in the same manner for the purposes of determining insurance coverage limits. The FDIC will now apply a common set of simplified rules for following types of trusts: (i) "formal" revocable trusts (i.e., living trust and family trust agreements); (ii) "informal" revocable trusts under (i.e.,

payable-on-death accounts, in-trust-for accounts or Totten Trust accounts), and (iii) irrevocable trusts (including revocable trust agreements which become irrevocable upon the grantor's death).

The new rules provide that a grantor's trust deposits will be insured in an amount up to the standard maximum deposit insurance amount (which, as of the time of this writing is currently $250,000) multiplied by the number of trust beneficiaries named in the Trust, but not to exceed five beneficiaries. Accordingly, the coverage limit per Trust Account is $1,250,000, or maximum coverage of $250,000 per beneficiary for up to five beneficiaries. These streamlined rules for Trust Accounts are "intended to be more straightforward and balance the objectives of simplifying the trust rules, promoting timely payment of deposit insurance, facilitating resolutions, ensuring consistency with the FDI Act, and limiting risk to the [Deposit Insurance Fund]."

Indeed, the new rules eliminate certain technical formalities such as bank titling requirements, eliminate the need to conduct a "contingent" vs. "non-contingent" beneficiary interest analysis, and, for the purposes of determining maximum FDIC insurance coverage, even permit the beneficiaries of the trust to be another trust (i.e., a credit shelter or supplemental needs trust). These changed provide maximum flexibility for individuals to carry out their estate planning objectives while protecting and insuring their generational wealth.

It should be noted that the FDIC has previously explained the common situation where a lifetime beneficiary of a revocable living trust has the right to receive discretionary income or principal during his or her lifetime, and the remaining trust assets pass to remainder beneficiaries upon the lifetime beneficiary's death. If the trust documents are drafted in such a way, the FDIC has previously stated that both the life estate and the remainder beneficiaries are considered primary beneficiaries for purposes of calculating deposit insurance coverage. We expect this rule to remain the same.

Estate Planning Considerations:

With the new FDIC rules and regulations for Trust Accounts going into effect in early 2024, there are several estate planning considerations clients may want to implement:

1. To ensure maximum efficiency in the event it is necessary to file a claim with the FDIC, it would be beneficial if all trusts contained an exhibit setting forth the number of beneficiaries in the trust, as this will likely

streamline the review process for financial institutions when processing claims;

2. Married couples with joint revocable living trusts may want to establish separate, reciprocal trusts for the purposes of maximizing FDIC coverage;

3. Individuals with assets parked in checking accounts, savings accounts, money market deposit accounts, and certificates of deposit accounts may want to transfer these accounts to a revocable living trust which identifies lifetime and remainder beneficiaries to ensure maximum FDIC coverage;

4. Perhaps most importantly, the new FDIC rules for trust coverage will certainly make Revocable Living Trusts more desirable than Wills.

Conclusion:

The implementation of the new FDIC rules is the perfect opportunity for clients to review their current estate plan and/or begin the process of implementing a new wealth management strategy beginning in 2024.

If you believe these new FDIC rules may benefit you, please contact **Louis P. Karol, Esq., LLM, CPA or Michael J. Borger, Esq., LLM** to discuss your unique situation in more depth, or have your accountant or financial advisor reach out to them directly at lkarol@moritthock.com or mborger@moritthock.com.

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