WEIGHTLIFTING

by Steve Brown

Yesterday, we began our Olympic weightlifting with a clean and jerk of 300lbs, as we pressed the combined weight of single and joint account titling for FDIC insurance. Today, we continue our lifting by increasing the weight to 400lbs, as we focus our energies on FDIC insurance for business accounts.

The most basic business account falls under what the FDIC terms a corporation, partnership or unincorporated association account (we will call that a "business account" here). Business accounts are insured up to $100k at a single bank, but insured separately from the personal accounts of the business' stockholders, partners or members.

To qualify as a business account, certain rules apply. First, the business must be operated primarily for some purpose other than to increase insurance coverage. Second, a business with separate divisions or units that are not separately incorporated would not be separately insured (the key to the insurance is separate incorporation). Third, the number of partners, members, etc. of the business does not affect coverage in any way. Having more people in the business in and of itself does not increase insurance. Finally, as stated yesterday, sole proprietorships do not fall under this category (they would be added to single accounts held by the owner), so flagging such accounts properly on systems is critical to make certain FDIC insurance is accurately tracked and reported.

Another way businesses can increase FDIC insurance is by using an irrevocable trust account. These accounts are established by a written agreement in which the grantor contributes deposits and gives up all power to cancel or change the trust. In this structure, beneficiaries do not have to be related to the grantor to obtain insurance coverage.

There are some key things to do for an irrevocable trust to qualify for FDIC insurance on a per beneficiary basis. To begin, it must name the beneficiaries and have a way to identify each one. Structures that do not do this would not qualify for FDIC insurance. Next, the trust agreement must allow beneficiaries to receive assets without having to meet any preconditions. Again, structures that require beneficiaries to satisfy conditions before receiving assets would only be insured up to $100k. Third, the trust agreement cannot allow the trustee to invade the principal of the trust, reducing the assets available for other beneficiaries. Finally, the trust agreement cannot allow a trustee to exercise discretion in allocating assets among the beneficiaries. In short, if the trust contains conditions that allow the trustee to invade the principal, or affect the interests of the beneficiaries, insurance would be limited to $100k only, so care must be taken.

In addition to the above requirements, irrevocable trust accounts must also disclose the trust relationship in the bank's deposit account records, beneficiaries must be identifiable, beneficiary interests must not be contingent and the trust must be valid under state laws in which the bank is operating. The account title is critical, so a careful review and proper training of bank employees is important.

When it gets down to it, in a takeover situation the FDIC assumes deposits are owned as shown on the records of the insured institution. These records can include account ledgers, signature cards, CDs, passbooks and some computer records; but they do not include account statements, deposit slips or cancelled checks.

Finally, we close with some takeaways we find interesting on this subject: deposits held within the Internet division of an insured bank are considered the same deposits as those held with the brick-and-mortar part of the bank (even if the internet bank has a different name), unless it has a separate charter; deposits made in two banks with a common holding company (but separately chartered), would be separately insured; deposits from an assumed bank in a merger continue to be insured separately for a minimum of 6 months after the merger (to allow depositors an opportunity to restructure accounts); and deposits of several owners can be pooled into one account and be insured, as long as the rules are satisfied.

If you are still straining under the Olympic weight of FDIC insurance, you can learn more by going to any of these links: www.fdic.gov/consumers/consumer/

information/fdiciorn.html

www.fdic.gov/deposit/deposits/financial/index.html

www.fdic.gov/deposit/deposits/insuringdeposits/

index.html

BANK NEWS

Credit Card Fraud

11 people were charged with the theft and sale of more than 40mm credit/debit card numbers between 2003 and 2008. Those charged hacked into wireless computer networks of major retailers (TJ Maxx, DSW, BJ's Wholesale, etc.) and captured numbers and passwords. This is the largest prosecuted card theft in history.

Paperless

Banks are beginning to introduce online-only accounts that do not offer paper statements in an effort to match consumer preferences, reduce costs and increase security. Savings are estimated at $7 an account per period.

Direct Mail

Financial service companies cut direct mailing efforts by 10% in the 1Q, compared to the 4Q. Despite the drop, more than 4.2B pieces of direct mail were still sent out.