

March 21, 2014

William R. Burdette, CEO
Charity Deposits Corp.
2103 Coral Way, Suite 202
Miami, FL 33145

Dear Mr. Burdette:

You have requested advice about the insurance coverage of deposits in the “Charity Deposit Network Program” managed by Charity Deposits Corp. (“CDC”). Specifically, you have asked whether the deposits in this program will be eligible for “pass-through” insurance coverage (*i.e.*, coverage that “passes through” the nominal account holders to the investors in the program). Subject to the qualifications explained in this letter, and assuming that the deposits are placed at insured depository institutions, the deposits would receive “pass-through” insurance coverage. This conclusion is explained in detail below.

The Charity Deposit Network Program

In this program, as described by you in previous letters, the investment of funds into deposit accounts involves several steps. First, investors place funds with an intermediate agent such as a broker-dealer firm, investment advisor, community bank or bankers’ bank. Second, the intermediate agent delivers the funds to a bank or trust company as “Custodian” (in some cases, the investor may place the funds directly with the “Custodian”). Third, the “Custodian” places the funds into deposit accounts (money market accounts and/or certificates of deposit) at various FDIC-insured depository institutions (“Issuers”).

The accounts at the insured depository institutions are titled in the name of an agent (which may be CDC itself) as follows: “[Agent] as agent for others who may be acting as agent for others or assigns.” In some cases, the accounts may be titled simply in the name of the agent “as agent.”

Again, the question is whether the deposits in this program are eligible for “pass-through” insurance coverage (*i.e.*, coverage that “passes through” the various agents and “Custodian” to the investors). This question is addressed below.

“Pass-Through” Insurance Coverage

Under the FDIC’s regulations, “[f]unds owned by a principal or principals and deposited into one or more deposit accounts in the name of an agent, custodian or nominee, shall be insured to the same extent as if deposited in the name of the principal(s).” 12 C.F.R. § 330.7(a).

In other words, the insurance coverage “passes through” the agent or custodian to the actual owners. This means that the funds belonging to each owner are aggregated with any other funds held by the same owner at the same insured depository institution and insured up to the \$250,000 limit.

“Pass-through” insurance coverage as described above is not available unless certain requirements are satisfied. First, the account records of the insured depository institution must disclose the agency relationships among the parties. *See* 12 C.F.R. § 330.5(b)(1); 12 C.F.R. § 330.5(b)(3). Here, the given account titles would be sufficient for this purpose. Second, the interests of the actual owners must be ascertainable either from the account records of the insured depository institution or records maintained in good faith by the agent or other party. *See* 12 C.F.R. § 330.5(b)(2). In this case, you have advised us that the “Custodian” and the intermediate agent(s) will maintain such records through CDC. Third, the agency or custodial relationships must be genuine. Through these relationships, the deposits at the FDIC-insured depository institutions actually must belong to the purported owners and not to the purported agents. *See* 12 C.F.R. § 330.3(h); 12 C.F.R. § 330.5(a)(1). In this case, the third requirement will be satisfied if the investors enter into a principal/agent relationship with the “Custodian” or intermediate agent(s) as opposed to a creditor/debtor relationship. The requirement will not be satisfied if the investors, in placing funds with the “Custodian” or intermediate agent(s), become the owners of interests in an investment trust fund or investment trust company under the securities laws. *See* 12 C.F.R. § 330.11(a)(2). In the event of the failure of one of the insured depository institutions, the FDIC might request a copy of a model “Investor Custody Agreement” to confirm that the relationship between the parties (under this agreement) is an agent/principal relationship and not a debtor/creditor relationship.

Assuming satisfaction of the requirements discussed above, the deposits in this program would be eligible for “pass-through” insurance coverage. Please note that that this conclusion would change if the Securities and Exchange Commission (“SEC”) or appropriate state agency ever determines that the deposits constitute an investment trust fund or investment trust company under the securities laws.

The opinions expressed herein represent the views of the Legal Division staff and should be considered advisory in nature. Staff opinions are not binding upon the FDIC or its Board of Directors. This opinion is based upon the facts presented. Any changes in the facts or circumstances could result in different conclusions.

I hope that this information is useful.

Sincerely,



Christopher L. Hencke
Counsel