June 12, 2009

The Honorable Daniel E. Shearouse
Clerk of Court
Supreme Court of South Carolina
Post Office Box 11330
Columbia, South Carolina 29211

Re: Proposed amendment to Rule 412, SCACR

Dear Honorable Justices of the South Carolina Supreme Court:

First Citizens Bank recently received a copy of the South Carolina Bar Foundation's petition regarding the above-referenced proposed amendment. Representatives of our bank have actively participated in the discussions facilitated by the Bar Foundation and the South Carolina Bankers Association. These discussions have raised material issues impacting banks that need serious consideration before implementation.

During the recent credit crisis and publicity related to the risk of bank failures, new and significant IOLTA accounts were established at First Citizens due to our conservative balance sheet philosophy and our commitment to safety and soundness. The deposits in these accounts indirectly provide an important source of funding to meet the credit needs of our customers and communities. First Citizens was recently given a Community Reinvestment Act grade of "Outstanding," which evidences our commitment to the community. We want to work with the Bar Foundation to resolve its concerns. However, we also have concerns regarding how the current proposals would impact our ability to transact business and affect the needs of our customers.

In particular, we would like to raise the following issues:

1. The Bar Foundation has proposed two options from which banks can choose to set interest rates in the future. One option is to use 65% of the Federal Funds Rate as an index going forward, with a floor rate (minimum interest rate) being paid of not less than 75 basis points ("Option A"). We are unaware of any other bank product that establishes a pre-determined floor rate of return which is unrelated to market conditions.

   The index chosen to represent market rates (the Federal Funds Rate) is currently significantly below the proposed floor rate of 75 basis points. This means that banks would be required to pay interest on IOLTA accounts at a much higher rate than banks would earn investing the money overnight, thus incurring a financial

loss on the accounts. This is an example of why a minimum interest rate floor on this option should not be adopted.

At the present time, a range of interest rates are paid on IOLTA accounts based on the individual funding needs of banks. These needs change from time to time based on many factors that are unique to the individual banks offering the accounts. We recognize that some states have established a rate based on a specific percentage of the Federal Funds Rate. These percentages were likely established during more stable economic times. This percentage should change as the business cycle changes and the individual circumstances change at banks offering IOLTA accounts.

Consequently, we respectfully submit that banks, at their discretion, should operate within a range of 45-65% of the 30 day average Federal Funds Rate and pay interest on collected balances. In addition to the reasons stated in the previous paragraph, establishing a range would allow banks to compete for the funds based on their unique circumstances.

2. The second option is to allow banks to choose an acceptable standard that would pay interest on IOLTA accounts at the same rates being paid to other customers with comparable accounts ("Option B").

   We view this option as problematic given that individual customer characteristics often vary significantly, making this option difficult to implement from a practical standpoint. Banks cannot contemplate all of these variables up-front to establish pricing that would be considered fair to "comparable" parties. In addition, this could potentially add another layer of regulatory complexity for banks.

   We would respectfully request that banks be given the choice to adopt Option A or Option B and be given the flexibility to switch payment methods over time based on the market conditions and their individual balance sheet needs. Banks should be allowed to switch between these options no more than once per calendar quarter.

3. The IOLTA system currently allows for certain "reasonable fees" to be deducted from the interest earned by the IOLTA accounts. The rules allow for all other fees, including wires and all cash management services used by the law firms, to be charged to the law firm. While this sounds simple, it is not for the following reasons:

   (A) Many bank billing software systems are presently unable to bill some fees to one entity and then bill other fees on the same account to a completely different entity. As a result, many banks have made the decision to waive all fees on IOLTA accounts other than a maintenance fee. That decision was made due to the difficulty of implementing dual billing, which would require new system programming at a substantial cost to the bank.

In addition, banks view the entire IOLTA system as one relationship with the Bar Foundation for interest rate purposes. If the primary focus becomes paying the highest rate possible on the accounts, then the costs currently being absorbed by the bank would increase and need to be passed on to the attorneys.

(B) The purpose of IOLTA accounts is to hold client money in trust. Attorneys have ethical guidelines in place where they are not permitted to use the money in the IOLTA accounts for their own purposes. If the banks directly bill an IOLTA account for the additional fees incurred, then these ethical standards could possibly be compromised.

The Bar Foundation suggested that attorneys could either create a "cushion amount" to cover future fees within the IOLTA accounts or that they might have to open "shadow accounts" at every bank where they have established an IOLTA account, for the sole purpose of absorbing these fees. Normally, all commercial fees are simply charged to the account or to a related account that is part of the same commercial entity.

Many law firms have established IOLTA accounts at several banks for professional marketing reasons, but have their working account at only one institution. Since the money in IOLTA accounts is not owned by the law firm, the collection of the other bank fees could prove to be, not only difficult to properly segregate the billing of these fees by the banks, but could also potentially create inadvertent breaches of the attorneys' ethical requirements in administering the payment/accounting of these fees.

(C) Another issue that arises is: How will banks manage unprofitable accounts if these interest rates are adjusted? How will accounts which carry small balances, but significant fees (costs), be handled, since the fees would, arguably, be more than the amount of interest earned by the account? The Bar Foundation represented that banks could choose to close unprofitable IOLTA accounts if banks were unable to recoup their fees. The Bar Foundation also spoke about their ability to issue "exempt" status on certain accounts in the future.

However, the Bar Foundation also expressed concern about the difficulty some law firms could have in locating a bank to handle their IOLTA accounts due to the unprofitable nature of their account. Until now, many banks have serviced all IOLTA accounts because of the overall relationship with the Bar Foundation, knowing that many accounts would be unprofitable. If banks are required to pay the higher interest rates on these accounts, higher maintenance fees would be required to be assessed, and make banks reluctant to continue to absorb these losses on those unprofitable IOLTA accounts.

(D) These proposed changes would impose further constraints on banks which are already struggling during the worst credit crisis this country has seen since the

Great Depression. Banks price deposits based on their individual balance sheet needs, a variety of demands for their funds, and management of their own unique business circumstances. These deposit pricing activities are continuous and are conducted under fluctuating economic and credit cycles. Implementing these proposals now would only compound issues banks are facing in this period of economic uncertainty.

Due to the complexity of these issues and others, and their implementation on a practical level, we would respectfully request that the Court appoint a joint task force, comprised of a broad spectrum of members nominated by the South Carolina Bar Foundation and the South Carolina Bankers Association, whose goal would be to conduct a thorough discussion of the issues involved, analyze the reasonable practicality, from the banks' perspective, of the implementation of the various options, and present a new petition to the Court with a compromise solution to these and other issues raised.

Respectfully submitted,

FIRST CITIZENS BANK

By:______________________________

Peter M. Bristow

Its: President and COO