



June 12, 2009

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

Re: South Carolina Bar Foundation's Petition to Amend Rule 412, SCACR

Sir:

We have reviewed the above referenced petition requesting further amendment for Rule 412, Interest on Lawyer Trust Accounts (IOLTA) and offer the following for your consideration:

The IOLTA account structure and pricing has and continues to represent a unique challenge for bankers. Rule 412 effectively creates an interest bearing commercial demand deposit account, a hybrid of sorts, which meets none of a bank's general legal account definitions as set forth by various state and federal laws. Because of this, banks have utilized a variety of approaches in designing and pricing these accounts. Some such products are priced similar to negotiable order of withdrawal accounts (NOW accounts) with low interest rates and a nominal fee, while other institutions have established these accounts in the form of money market fund accounts, either in the form of a money market deposit account (MMDA – with unlimited withdrawals) or as overnight hold-in-custody repurchase agreement sweep accounts. The latter account types paying a higher market rate but with the earnings offset by higher fees as compiled by automated commercial account analysis systems. Many of these products yield reasonable and comparable returns to the S.C. Bar Foundation for its charitable purposes.

IOLTA accounts can and do represent high volume and high maintenance accounts for financial institutions, especially given the need to have collected funds on hand for legal counsel involved in closing transactions. This typically involves the personnel of two or more financial institutions in the preparation of and/or the receipt and disbursement of wire transactions. Such transactions generally represent the majority of a financial institutions wire activity and require the investment of substantial sums in facilities, equipment, and skilled personnel. Banks, of course, also commit substantial resources to the processing of a large volume of disbursement checks, the generation of account statements, images, and account reconciliation services. Other significant costs to financial institutions, not generally charged against IOLTA account earnings or to the related legal firms, include expensive supplies of checks and deposit books, and FDIC premiums—including the current additional charges for unlimited deposit insurance coverage under the FDIC's Temporary Liquidity Guarantee Program.

As IOLTA accounts represent demand deposits, financial institutions have substantially limited options for investing IOLTA account balances in longer term investments in order to generate income as compensation for the interest paid on these accounts. The average market investment rates presented by the S.C. Bar Foundation, which appear reasonable on the surface, have little relevance in the current economy wherein the current Fed Funds Target Rate is .25% per annum and which is the highest rate a bank can currently obtain on overnight funds.

We would expect that interest rates paid on IOLTA accounts are significantly less than those paid only eighteen months ago, since we are presently experiencing a continuing historically low interest rate environment. Additionally, the current level of activity and balances of these accounts are substantially diminished due to the general decline in economic activity and the consequent decline in transaction volumes.

While we understand the desire of the S.C. Bar Foundation to establish a standard for these accounts, we would respectfully request the Court's consideration of our above comments. As well, we would encourage the Court to refrain from providing the S.C. Bar Foundation any power or other authority to establish specific standardized rates for these accounts, since the existence of such authority could diminish the availability of these accounts and impede competition among banks for this business sector.

Respectfully submitted,

THE CONWAY NATIONAL BANK

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President and CEO

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