

NOTICE TO THE BAR

IOLTA & Implementation of Reasonable Return Standard

The Supreme Court has regulated the placement of attorney trust and business accounts since 1967. It established New Jersey's IOLTA program as of March 1, 1988. On February 6, 2003, the Supreme Court adopted amendments to the Rules of Court that related to the operation of IOLTA (Income on Non-Interest Bearing Lawyers Trust Accounts). The amendments took effect on March 1, 2003.

At the same time the Court adopted the Rule amendments, it issued an Administrative Determination. In part, that Determination confirmed the responsibility of IOLTA's Trustees to develop and implement a standard that would establish a "reasonable return" for IOLTA accounts. The Court noted its concern that some financial institutions had very low rates of return on IOLTA accounts. It went on to state that it viewed "the IOLTA Fund as a banking customer and consumer in respect of the interest yield on pooled IOLTA accounts."

In February 2004, the Trustees of IOLTA reported to the Court that efforts to generate a reasonable return on pooled IOLTA accounts had been only partially successful. Quoting from their Court-approved Guidelines, the Trustees noted that the "net yield to IOLTA must provide a reasonable return, according to the standard established by the IOLTA Fund from time to time. Rates, therefore, must be both comparable and reasonable." After extensive analysis and consideration, the Trustees proposed a standard that would tie the net yield on IOLTA accounts to a percentage (75%) of the ninety-day Constant Maturity Treasury Rate (the "90-day CMT"). IOLTA received advice from bankers experienced with rate-setting and selling deposit products to bank customers. All agreed that the 90-day CMT would be relevant to deposit instrument pricing and easily used by banks that already may index their rates to Treasuries.

The Trustees proposed giving financial institutions up to one year to implement the new standard, starting the notification process with financial institutions that had had the poorest performance records in respect of IOLTA accounts. IOLTA's Trustees also generally described a deauthorization process that would be necessary for financial institutions that refused to meet the standard.

The Supreme Court approved the recommendations of the IOLTA Trustees. The Trustees immediately began the notification process, which took several months to complete.

In March 2005, the IOLTA Trustees filed a confidential report with the Court. The Trustees reported on comments IOLTA had received from banks and banking associations. They described the steps taken to implement the 90-day CMT standard and identified financial institutions that remain out of compliance. In addition, the Trustees proposed specific steps to be taken before the Court would formally deauthorize a non-compliant financial institution that had been approved under Rule 1:21-6(b). They noted that because not all banks had been given the one-year notice at the same time, the deauthorization process would be implemented over a period of several months.

The Court accepted the report of IOLTA and directed the Trustees to undertake the following in respect of financial institutions that are not in compliance with the Reasonable Return Standard:

1. One month prior to a financial institution's reaching the one-year mark, IOLTA is to send a letter reminding the bank that a) it is not in compliance, b) what must be done to come into compliance, c) absent compliance, the bank's name will be reported to the Supreme Court, and d) the report to the Court will include IOLTA's recommendation that the bank's status as an authorized depository be withdrawn unless and until it comes into compliance.
2. If the financial institution does not come into compliance in a timely manner, IOLTA will forward the name and pertinent specifics to the Clerk of the Supreme Court and the Office of Attorney Ethics. On receipt of IOLTA's report, the Clerk will send a Final Notice to the financial institution indicating that if it does not come into compliance, as certified by IOLTA, within thirty days of the Notice, the bank's name will be withdrawn from the list of approved depositories for attorney trust accounts, and notices will be sent to all affected attorneys by the Office of Attorney Ethics. If a financial institution's authorization is withdrawn by the Court, attorneys will have up to sixty days from that action within which to

transfer their accounts to a Court-authorized financial institution.

3. A financial institution that has been deauthorized will be reinstated on the Court's receipt of a certification from IOLTA that the bank is in compliance with the Standard. As a condition of reinstatement, the financial institution may be required to reimburse the Office of Attorney Ethics for the cost of notifying attorneys who had accounts with the bank at the time of its deauthorization.

The IOLTA Trustees noted the possibility that a financial institution currently in compliance might, at some future date, fall out of compliance. The Court agreed that the Trustees should develop specific procedures to cover that situation.

The Supreme Court views the termination of an attorney's ability to maintain trust and business accounts in a specific financial institution as a last resort, one that has arrived only after extensive and repeated efforts by IOLTA to promote compliance. It is the Court's hope and expectation that all financial institutions authorized to hold attorney trust and business accounts under Rule 1:21-6(b) will comply with IOLTA's Reasonable Return Standard.

Stephen W. Townsend, Esquire
Clerk of the Supreme Court
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