



NOVA SCOTIA
BARRISTERS' SOCIETY

Trust Accounts and Electronic Banking

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What We are Seeing

- Covid-19 and remote working has been a driver in adoption of technology for banking and funds movement.
- Lots of Questions on what you can or can't do.
- Today I will be talking about:
 - Electronic Banking platforms.
 - Electronic transfers of funds.
 - Receiving funds.
 - Some common potential frauds to look out for.



Regulations on Electronic Banking & Transfers

- Regulations are based on principles, not specific systems/products.
- Are you able to meet the regulations using specific technologies and the related processes.
 - Does it allow for proper documentation of transactions?
 - Does it ensure proper authorization of transactions?
 - Are there appropriate access controls in place?
- Trust Account Regulations (Part 10) are the minimum requirements; each firm is responsible for putting in place the internal controls that are appropriate to their own situation.
- Combination of technology, appropriate processes and internal controls.

Electronic Banking Systems

- Not all online banking systems are equal
 - Basic online banking systems are essentially like your home banking system. One user with access to all of the features.
- Business electronic banking systems feature:
 - Two factor authentication.
 - Multiple users with different security/access levels.
 - Ability for dual authorization.
 - Initiate transfers and payment functions, additional reporting capabilities etc.
- Combination of technology and internal controls.



Electronic Transfers

- Not all electronic transfers are the same
 - Different clearing rules
 - Different timeframes
 - Different risk factors
- Wire transfers through LVTS
- ACH transfers
- e-transfers



Electronic Transfers

- “LVTS wire transfers are supported by a strong legal framework which enables the sending of near real-time, irrevocable payments. This certainty allows recipients to use the funds the moment they become available, with full confidence that the payment will not be reversed for any reason.” Source: Payments Canada
- ACH (Automated Clearing House) transfers. Less expensive, slower (batch process), may be **revocable** for 3 days or more. Can be reversed out of your account.
- E-transfers also may be revocable.

Email Transfers

- Permitted, but understand the risks.
 - Anyone with access to e-mail account and knowledge of security question can deposit funds in any account.
 - Operating account rather than trust account, or inappropriate.
 - E-mail being hacked.
 - Don't e-transfer to an email account then email the answer to the security question to the same email
 - Autodeposit may be more secure, but everything goes into one account.
 - Audit trail may be poor – need to ensure proper documentation.
 - Malicious emails that look like an e-transfer can be inadvertently opened by the firm, causing exposure to ransomware, phishing, and key loggers.



Authorization of transfers – audit trail

- May wish to use electronic transfer authorization form for documentation. (NSBS Website)
 - Allows lawyer with knowledge of file to document authorization of transfer.



Deposits into your account

- Can you accept a direct deposit to your trust account by a client or a third party? Are deposits by way of electronic or wire transfer permitted?
 - Not prohibited, but understand the risks.
 - Must get and keep documentation from the financial institution that funds have been deposited.
- Risks:
 - Could they make unexpected future deposits that may facilitate Money Laundering?
 - No opportunity to validate cheques/drafts or to control amount of cash.
 - Does the information you give out provide an opportunity for 3rd party to withdraw funds?
 - Consider the appropriate clearance period to apply before disbursing from these funds?



Unexpected Deposits into your account

- Recommended that you ask your bank to confirm who was the originator of the deposit and how it was made (LVTS/electronic payment/cash or bank draft)
- Fraud risk: You receive funds in your account, then are contacted by someone asking that it be refunded to them before the funds have cleared.
 - Never write a cheque back or other type of repayment if someone says they have deposited to your account in error. Sender should initiate correction through their bank



Fraud risks

Common Social engineering fraud

Payment instructions were initially received from the client, then before wiring the funds to the client the firm received an email purportedly from the client but in fact from the fraudster, directing that the funds be wired to a different account, controlled by the fraudster.

- Email address may be identical to clients (eg email hacked)
- Any time a payment of trust funds is imminent, assume that a hacker is also aware. Any client's or lawyer's email account can get hacked allowing a fraudster to perpetrate a social engineering fraud on the lawyer. Establish due diligence protocols for transferring funds and ensure all staff receive training and adhere to them.
- Take appropriate steps to confirm that emailed instructions are correct, eg by phone.
- Note: Social engineering fraud is unlikely to be covered under cyber insurance, and may not be covered under professional liability insurance.

Questions / Further information

- Questions?
- Further information:
 - NSBS Website, Trust Account Regulation FAQ's
 - Includes a section on Electronic Banking
- Contact our Trust Accounts team
 - trustaccounts@nsbs.org