

**To:** Michael Lucas [REDACTED]  
**From:** Jeanette McPhee  
**Sent:** Thur 11/10/2018 4:11:34 PM  
**Subject:** FW: Model Trust Accounting Rule - Lawyers Acting in a Representative Capacity

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Hi Michael,

Deb asked for some background, Tina did this analysis that I can send out as information also as I think this would be helpful, what do you think?

Jeanette McPhee, CPA, CA, BBA, CAMS, CRMS  
Chief Financial Officer and Director of Trust Regulation  
The Law Society of British Columbia

[REDACTED]

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**From:** Tina Kaminski  
**Sent:** Tuesday, October 09, 2018 5:48 PM  
**To:** Jeanette McPhee  
**Cc:** Eva Milz  
**Subject:** RE: Model Trust Accounting Rule - Lawyers Acting in a Representative Capacity

Hi Jeanette,

BC appears to be a rebel because our cash rules don't quite align with the Federation's cash rule (model rule requires all refunds to be made in cash if the lawyer accepts \$7,500 or more; LSBC only requires cash if the refund is more than \$1K). There is always the option to not adopt the model rule. Not that I'm advocating for that.

Let's say LSBC reverses the June 2016 rule changes effective tomorrow. Lawyers must immediately put all FP into an FP bank account. According to section 2 of the model rule, a lawyer who is retained by a client to provide legal services must identify the client. Likewise, Section 4 of the model rule, verification applies where a lawyer who has been retained by a client to provide legal services engages in or gives instructions in respect of the receiving, paying or transferring of funds. Since the lawyer was retained to act in a fiduciary capacity and not to provide legal services, according to the model rules lawyers do not have to identify or verify their clients.

Is it the Federation's intent to prohibit lawyers from acting in a fiduciary role? If not, we will need to make some changes to the model rules in order to ensure the lawyers are not facilitating ML when a lawyer has an appointment. There should be a requirement for lawyers to adhere to the CIV rules even when they are acting in a fiduciary role.

**Summary:** LSBC's current CIV rules and the proposed model rules both require lawyers to adhere to the CIV rule when lawyers are retained to provide legal services. If acting in a fiduciary role is not providing legal services, this is a loophole for lawyers to not identify or verify their client.

Thanks,

Tina

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**From:** Jeanette McPhee  
**Sent:** Tuesday, October 09, 2018 4:39 PM  
**To:** Tina Kaminski [REDACTED] >  
**Cc:** Eva Milz [REDACTED] >  
**Subject:** RE: Model Trust Accounting Rule - Lawyers Acting in a Representative Capacity

Thanks Tina,

The issue is that with the new trust account rule, lawyers cannot put FP into trust accounts anymore, as it is not related to legal services.

So the changes made in 2016 would need to be reversed, and they can't use trust accounts for FP anymore. Doesn't have anything to do with what we want banks to do.

Comments?

Jeanette McPhee, CPA, CA, BBA, CAMS, CRMS  
Chief Financial Officer and Director of Trust Regulation  
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**From:** Eva Milz

**Sent:** Tuesday, October 09, 2018 3:58 PM

**To:** Jeanette McPhee <REDACTED>

**Cc:** Tina Kaminski <REDACTED>

**Subject:** FW: Model Trust Accounting Rule - Lawyers Acting in a Representative Capacity

Hi Jeanette

Here are Tina's comments. Unfortunately, I have not yet had a chance to review.

Sorry but I'm sure Tina's comments are very helpful, as they always are 😊

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**From:** Tina Kaminski

**Sent:** Tuesday, October 09, 2018 3:55 PM

**To:** Eva Milz <REDACTED>

**Subject:** RE: Model Trust Accounting Rule - Lawyers Acting in a Representative Capacity

Hi Eva,

Here are my notes and comments. Do you want to discuss it first or send it to Jeanette directly (from the both of us)?

**Prior to March 6, 2015: "FP must go into trust"**

Previously, the rules required lawyers to deposit fiduciary property (FP) into a lawyer's trust account. Trust Funds were defined to include funds received in trust by a lawyer acting as a personal representative of a person or at the request of a person, or as a trustee under a trust established by a person, if the lawyer's appointment derived from a solicitor-client relationship. Since trust funds have to be deposited into a trust account, FP was deposited into the trust account. The Trust Assurance Reform Task Force gave the following reasons:

1. Lawyers must properly handle and account for funds and valuables where the lawyer is acting as executor (or another appointment) or as a lawyer.
2. Appointments must be disclosed on the lawyer's Trust Report and subject to audits.
3. If lawyer ever absconds with the funds, the Part B Insurance could be liable.

However, there were several issues:

1. Inability for lawyers to comply with specific rules: deposited into a designated savings institution, funds withdrawn via cheque, automatic withdrawals not permitted.
2. Disadvantages to transfer all funds into the lawyer's trust account (e.g. PoA is temporary, client is a minor and expected to live many years, lower rate of return in a trust account)

**From March 6, 2015 to June 2016: "FP must go into other"**

The definition of "trust funds" was changed and FP was defined. All FP must be deposited into another account (not trust and not general) and follow the rules listed under Rule 3-48.1 (now 3-55). FP rules are less restrictive than the rules for trust funds.

**Starting June 2016: "FP can be in trust or other"**

The rules were amended to allow lawyers to put FP into a trust account. The lawyers can now deal with FP in two ways:

- a. Deposit FP into a pooled or SIB trust account. The lawyer will have to follow all trust rules which is more restrictive.

b. Deposit FP into another account and follow the rules listed under Rule 3-48.1 (now 3-55). These rules are less restrictive.

**My thoughts**

If we remove the ability of lawyers to put FP in a trust account, I think we would get a bit (not a lot) of pushback. A lot of lawyers put FP into trust so that it gets accounted for properly (e.g. recorded and reconciled in a timely manner and appropriate records maintained). Lawyers who keep FP outside of trust are not as diligent about record-keeping or maintenance.

The potential for ML exists whether the FP is put into the trust account or another account. From what I understand, when funds are deposited into a lawyer's bank account whether it be trust, general or other, banks will not make further inquiries. Banks expect lawyers to do their own due diligence to ensure that they are not facilitating ML/TF. For example, lawyer deposits \$500K cash into his trust or general account. The bank does not file an STR. If the lawyer opens a non-trust bank account using his firm name and deposits FP into that account, my assumption is that the bank will not file STRs for that account either since it is connected with the law practice. If our goal is to have the banks take a closer look at the transactions, the account should not be under the law firm's name and the bank will have to run KYC/CIV procedures on the actual client and the circumstances of opening a new account.

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**From:** Eva Milz

**Sent:** Tuesday, October 09, 2018 10:05 AM

**To:** Jeanette McPhee <REDACTED>

**Cc:** Tina Kaminski <REDACTED>

**Subject:** FW: Model Trust Accounting Rule - Lawyers Acting in a Representative Capacity

**Redacted**

Thanks

Eva

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**From:** Jeanette McPhee

**Sent:** Tuesday, October 09, 2018 9:55 AM

**To:** Eva Milz <REDACTED>

**Subject:** FW: Model Trust Accounting Rule - Lawyers Acting in a Representative Capacity

Hi Eva,

We should discuss this, or you can give it to Tina to review it, although she will need to consult with you on it. We will eventually need to have Policy involved. It is timely as the new trust account rule will be approved this month at Federation.

Jeanette McPhee, CPA, CA, BBA, CAMS, CRMS  
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**From:** Frederica Wilson [mailto:<REDACTED>]

**Sent:** Saturday, October 06, 2018 12:35 AM

**To:** <REDACTED>; Leah Kosokowsky <REDACTED>; Chioma Ufodike <REDACTED>; Deborah Armour, QC <REDACTED>; Jeanette McPhee <REDACTED>; Jim Varro <REDACTED>

**Subject:** Model Trust Accounting Rule - Lawyers Acting in a Representative Capacity

Good morning,

I hope that you are all enjoying the long weekend.

Leah has suggested that we arrange a call of the Working Group members from jurisdictions with rules that permit lawyers who are acting in a representative capacity to deposit into their trust accounts fiduciary property that they receive in that capacity. As you know, the new trust accounting rule does not permit that. The attached memo from Leah sets out the issue.

Can you please let me know if you might be free for a call on one of Wednesday, October 10, Thursday the 11<sup>th</sup>, Friday the 12<sup>th</sup> or Monday the 15<sup>th</sup>?

I know that several of you will be at DAC at the end of the week but Leah and I thought you might be able to find some time for a call while there.

Can I ask that you get back to me as early as possible after Thanksgiving?

Thanks.

**Frederica Wilson**

*Executive Director, Policy and Public Affairs and Deputy CEO /*

*Directrice générale des politiques et affaires publiques, et première dirigeante adjointe*

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