



# **Trust Accounts and Electronic Banking**

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## Can a law firm operate a trust account using electronic banking?

- **Yes – law firms can operate a trust account using electronic banking**

We regulate legal services in Nova Scotia in a manner that is risk-focused, **proactive, principled and proportionate**. We embed this “**Triple P**” approach of being proactive, principled and proportionate in all of our activities.

**Principled: We set a regulatory framework that is aspirational and focused on our public interest mandate rather than based solely on narrowly prescriptive rules.**

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.



# Electronic Methods of Transferring Funds

- Not all electronic transfers are the same
  - Different clearing rules
  - Different timeframes
  - Different risk factors
- Examples of Electronic Methods of Transferring Funds:
  - ACH transfers (EFTs) (direct deposits / direct payments)
  - E-transfers / Email transfers
  - Wire transfers
- 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?



## Regulation 10.2 *Receipt of Trust Property - Deposits*

- For the audit trail, for all transactions, you usually need three source documents to validate each transaction:
  1. An agreement or contract, that substantiates the legal purpose of the funds being deposited.
  2. The trust account bank statement showing the deposit.
  3. Detailed deposit slip.



## Regulation 10.3 *Withdrawal from a Trust Account- Withdrawals*

- For the audit trail, for all transactions, you usually need three source documents to validate each transaction:
  1. An invoice, or agreement, or letter that validates the legal purpose of the withdrawal.
  2. A copy of the negotiated cheque or the electronic funds transfer confirmation
  3. The trust account bank statement showing when the transaction cleared.



## Remote Deposit Capture

- Consider the holding period on cheques deposited through remote deposit capture
- Risk of duplicate cheque presentment
- Incorrect amount deposited (scanner error)

*The recommended control to reduce risk, is to review your bank account daily. The technology is not perfect, and mistakes happen.*



# 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 misappropriate.
  - 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.



# 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 supposedly from the client but in fact from a 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.





# 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](mailto:trustaccounts@nsbs.org)