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Comptroller of the Currency  
Administrator of National Banks

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Washington, DC 20219

January 28, 2005

**Interpretive Letter #1017**  
**February 2005**  
**12 USC 24(7)**

Re: Pennsylvania Interest on Lawyers Trust Account Board/NOW Accounts

Dear [            ]:

This is in response to your letter to Daniel Stipano, Acting Chief Counsel, requesting the OCC's concurrence with your opinion that interest-bearing negotiable order of withdrawal ("NOW") accounts may be established at national banks for the purpose of receiving and holding qualified trust funds deposited under the Pennsylvania Supreme Court's Interest on Trust Account Program for the Minor Judiciary (the "MJ-IOTA Program").

As you have explained, the MJ-IOTA Program is very similar to another program, also governing the maintenance of qualified trust funds, for which you previously requested OCC review. In 1996, the OCC advised you that attorney trust funds could permissibly be deposited in NOW accounts maintained at national banks under the Pennsylvania Interest on Lawyers Trust Account ("IOLTA") Program. (Letter from Peter Liebesman, Assistant Director (November 26, 1996)). The primary difference between these two programs is that the IOLTA Program governs qualified funds received by attorneys while the newer MJ-IOTA Program governs qualified funds received by judges, magistrates and district justices. In all other material respects, the two programs appear nearly identical.

The IOLTA Program was established pursuant to an order of the Pennsylvania Supreme Court dated July 17, 1996 (the "1996 Order"), which amended Rule 1.15 of the Pennsylvania Rules of Professional Conduct. The 1996 Order directed the Interest on Lawyers Trust Account ("IOLTA") Board to administer the IOLTA Program. The IOLTA Board is an unincorporated nonprofit entity exempt from federal tax pursuant to section 501(c)(3) of the Internal Revenue Code. It is also tax-exempt as an instrumentality of the Commonwealth of Pennsylvania.

On August 3, 2004, the Pennsylvania Supreme Court issued another order (the "2004 Order") establishing the MJ-IOTA Program and directing the IOLTA Board to administer this new program "to the extent practicable as a supplement to the IOLTA Program..."

Annex "A" to the 2004 Order ("Annex") provides that a judicial official (defined as a judge, magistrate or district judge) shall place all qualified funds in a MJ-IOTA account. Qualified funds are defined in the Order as funds received by a judicial official in a custodial capacity that are considered nominal in

amount or are reasonably expected to be held for such a short period of time that sufficient interest income will not be generated to justify the expense of administering a segregated account.

A MJ-IOTA account (like the IOLTA accounts the OCC reviewed in 1996) is an unsegregated interest bearing account maintained at a depository institution for the deposit of qualified funds by a judicial official. Interest earned on these accounts is to be remitted directly by the depository institution to the IOLTA Board, which will expend and disburse the funds for certain specified purposes.<sup>1</sup> The Annex further provides that the rate of interest payable on MJ-IOTA accounts shall be not less than the rate paid by the depository institution on NOW accounts.

The eligibility requirements for NOW accounts are provided by federal law. The relevant provisions are found at 12 U.S.C. § 1832(a). A NOW account must consist solely of funds in which the entire beneficial interest is held by one or more individuals, by a governmental unit, or by an organization that is operated primarily for religious, philanthropic, charitable, educational, political, or other similar purposes and which is not operated for profit.

The Annex provides that the IOLTA Board shall hold the beneficial interest in MJ-IOTA funds. In this, it mirrors Rule 1.15, which expressly provides that the IOLTA Board shall hold the beneficial interest in trust accounts participating in the IOLTA Program. In 1996, you provided the OCC with an opinion from the Pennsylvania Attorney General concluding that the IOLTA Board held the entire beneficial interest of an IOLTA account. You have now furnished a similar opinion from the Pennsylvania Attorney General, dated November 1, 2004, concluding that the IOLTA Board holds the entire beneficial interest in MJ-IOTA accounts within the meaning of 12 U.S.C. § 1832(a)(2).

Current federal regulations with respect to eligibility for NOW accounts are located at 12 C.F.R. § 204.130, and expressly permit nonprofit organizations qualifying under section 501(c)(3) of the Internal Revenue Code to open NOW accounts. 12 C.F.R. § 204.130(c)(1)(i). Governmental units are also permitted to open NOW accounts. 12 C.F.R. § 204.130(d). As noted above, the IOLTA Board is exempt from federal tax both as a nonprofit entity and as an instrumentality of the Commonwealth of Pennsylvania and therefore qualifies under both these provisions.

Since the IOLTA Board is a nonprofit entity, and in reliance on the opinion from the Pennsylvania Attorney General that the IOLTA Board holds the beneficial interest in MJ-IOTA accounts, it is my conclusion that funds deposited in such accounts pursuant to the MJ-IOTA Program may be deposited in NOW accounts held at national banks.

Please contact Sue E. Auerbach, Counsel, at 202-874-4662 if you have further questions.

Sincerely,

*/s/ Eric Thompson*

Eric Thompson  
Director  
Bank Activities and Structure Division

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<sup>1</sup> The Annex limits the use of MJ-IOTA funds to (1) educational clinical programs and internships administered by law schools located in Pennsylvania; (2) delivery of legal services to the poor and disadvantaged in Pennsylvania by nonprofit corporations; and (3) administration and development of the MJ-IOTA Program.