

Commercially Reasonable Security for Electronic Transactions

SCR 20:1.15(f)(1) states:

Security of transactions. A lawyer is responsible for the security of each transaction in the lawyer's trust account and shall not conduct or authorize transactions for which the lawyer does not have **commercially reasonable security measures** in place. A lawyer shall establish and maintain safeguards to assure that each disbursement from a trust account has been authorized by the lawyer and that each disbursement is made to the appropriate payee. Only a lawyer admitted to practice law in this jurisdiction or a person under the supervision of a lawyer having responsibility under SCR 20:5.3 shall have signatory and transfer authority for a trust account. (Emphasis added).

This new rule requires lawyers to communicate with their financial institution as to what is "commercially reasonable" based upon the specific types of e-banking that a lawyer plans to use. It is very likely that security measures will evolve over time in response to the evolution of cyber threats and that minimum security requirements for the lawyer or law firm to follow will be identified in an agreement with the financial institution. At this time, commercially reasonable security measures may include some or all of the following:

- 1) A dedicated computer for e-banking that is not connected to the firm's server that has software protection against malware, spyware, and viruses;
- 2) Education of lawyers and law firm staff on corporate account takeover, social engineering techniques, and other cyber threats;
- 3) ACH Debit blocks;
- 4) ACH Positive pay;
- 5) On-line review of account activity at least daily;
- 6) Security Tokens for two factor authentication (Tokens are small hardware devices with a PIN number and a time sensitive code to conduct transactions);
- 7) Dual controls (Two people must authorize a transfer); and
- 8) Creation of a contingency plan to mitigate and/or recover unauthorized transfers in the event of a cyberattack or corporate account takeover.