

## Financial Institution IOLTA Participation Certification

June 1, 2010 to May 31, 2011

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### PARTICIPATION CERTIFICATION

Execution of this Participation Certification constitutes an agreement to participate with the Arizona Foundation for Legal Services and Education (“the Foundation”) and State Bar of Arizona in the Arizona IOLTA program and to adhere to the regulations set forth herein, under Rule 43 of the Arizona Supreme Court (ATTACHMENT A), and the September 1, 2009, Attorney General Opinion 109-005(ATTACHMENT B). This Certification shall apply to all branches or units of the Financial Institution holding Arizona IOLTA accounts.

#### I. Interest Payments and Service Charges

- A. Financial Institutions<sup>1</sup> shall remit the sum total of all interest earned on the aggregate IOLTA account balances minus the allowed charges against the interest. In order to accommodate the standard accounting practices of each partnering bank, three methods of calculating the interest and allowed charges are offered. Each bank must indicate the selection of one of the following to be used in complying with the IOLTA regulations. If no selection is indicated the Foundation will use I. A. (1) as the default choice:
1. \_\_\_ Financial Institutions shall remit the sum total of all interest earned on the aggregate IOLTA account balances minus the allowed charges against the interest. The allowed charges will not be greater than an amount calculated, under a good faith effort, to be equal to 10% of the gross interest earned on such aggregate account balances during the applicable reporting period held by that Financial Institution.<sup>2</sup> The remittance will be sent directly to the Foundation in one single payment, for each reporting period by ACH, check or wire transfer.
  2. \_\_\_ Financial Institutions shall remit the sum total of all interest earned on the aggregate IOLTA account balances, equal to the rate that is offered to their Money Market deposits, and shall not charge additional fees against the IOLTA interest remittance. The remittance will be sent directly to the Foundation in one single payment, for each reporting period by ACH, check or wire transfer.
  3. \_\_\_ Financial Institutions shall remit the sum total of all interest earned on the aggregate IOLTA account balances, based upon a relation to a current deposit interest product that is mutually agreed upon by both the Foundation and Financial institution, and shall not charge additional fees against the IOLTA interest remittance beyond those agreed to in the identified product association. The Financial Institution shall agree to verify quarterly, upon request, that the chosen product association meets the guidelines under Rule 43 and the Attorney General Opinion 109-005. The remittance will be sent directly to the Foundation in one single payment, for each reporting period by ACH, check or wire transfer.

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<sup>1</sup> “Financial Institution” means any bank or savings and loan association authorized by federal or state laws to do business in Arizona and insured by the Federal Deposit Insurance Corporation or any successor insurance corporation(s) established by federal or state laws, or any open-end investment company registered with the Securities and Exchange Commission and authorized by federal or state laws to do business in Arizona, all of which must meet the requirements set out in Rule 43.

<sup>2</sup> For any percentage of the allowed 10% charge which is not retained by the Financial Institution, the Foundation will work with the Financial Institution toward recognition as a contribution and/or Community Reinvestment Act inclusion as regulators permit.

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- B. Financial Institutions may only impose limited and reasonable service charges on such accounts in the following manner and subject to the following limitations:
1. The Financial Institution may include in charges to the attorney, as holder of the account, for the reports and records required by Rule 43 in maintaining an IOLTA account.
  2. The Financial Institution will not retain, from the interest earned, greater than an amount calculated, under a good faith effort, to be equal to 10% of the gross interest earned on such aggregate accounts during a reporting period.
  3. The Financial Institution shall not deduct recording and reporting charges from the interest earned on the IOLTA trust account if the inclusion of such charges causes the total service charge to exceed the agreed upon amount.
- C. Financial Institutions may remit interest payments to the Foundation on a monthly basis, but shall remit at least on a quarterly basis.

### **II. Required Reporting**

- A. Financial Institutions shall submit the required data reporting, covering the period relating to the interest payment remitted to the Foundation, no later than fifteen (15) days after making such interest payment to the Foundation pursuant to the terms hereof.
- B. Financial Institutions shall complete and submit their data report as outlined in ATTACHMENT C.

### **III. Operation Compliance**

- A. In the event that any properly payable instrument is presented for payment against an attorney's trust account containing insufficient funds, uncollectible funds, or a negative available balance, and regardless of whether the Financial Institution honors the instrument or not, the Financial Institution must send notification of such event to the Chief Bar Counsel of the State Bar of Arizona at the following address:

**Chief Bar Counsel  
State Bar of Arizona  
4201 N. 24th St., Suite 200  
Phoenix, AZ 85016**

- B. Financial Institutions shall not offer credits or other incentives relative to IOLTA that in any manner directly or indirectly benefit the attorney, as the holder of the account.
- C. If the Financial Institution receives a subpoena duces tecum issued pursuant to Arizona Supreme Court Rule 47(h), requesting documents pertaining to an attorney's IOLTA account with the Financial Institution, the Financial Institution shall, pursuant to 15 U.S.C. §6802(e)(8), provide the documents specified in the subpoena duces tecum. The State Bar of Arizona shall pay the reasonable costs associated with producing the requested documents.

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### IV. Revocation and Termination

- A. The State Bar of Arizona and the Foundation each have the right to initiate recommendations to the other for the revocation and termination of a Financial Institution as a qualified participant in the Arizona IOLTA program, assuming the following has occurred:
  - 1. Identification and documentation of the Financial Institution's deficiency in meeting the requirements of Rule 43 of the Arizona Supreme Court (ATTACHMENT A), evidencing a breach of any provision of this Participation Certification and the Financial Institution's failure to respond and make mutually agreed upon arrangements to correct the breach within the sixty (60) days allowed after receipt of the written notice.
  - 2. The Financial Institution has been notified of the intent to recommend revocation and termination and has been allowed thirty days to provide a written appeal to be reviewed by both the Foundation and State Bar of Arizona.
- B. The Financial Institution may withdraw from the Arizona IOLTA program with thirty days written notice. The Financial Institution shall be required to follow the regulations committed to in this Certification until all Arizona IOLTA funds have been transferred from said Financial Institution.

### V. Further Understanding

- A. The Foundation is not subject to any interest withholding requirements and pursuant to Internal Revenue Service (IRS) regulations does not need to file an exemption certificate. The Financial Institution shall not issue an IRS Form 1099 to the Foundation on any interest earned and paid on IOLTA accounts to the Foundation. Financial Institutions should use the Foundation's taxpayer identification number: 95-3351710 for any reports to taxing authorities.
- B. This "Participation Certification" constitutes a commitment to abide by the regulations set forth herein governing the approval and termination of approval status for Financial Institutions pursuant to Rule 43.
- C. The Foundation, the State Bar, and Financial Institution understand that confidential information will be shared and the parties shall use the confidential information solely for the purposes contemplated by Rule 43 and the regulations set forth herein and shall not disclose confidential information to any third party except as necessary under the Arizona IOLTA program.
- D. The Foundation, the State Bar, and Financial Institution agree to maintain appropriate administrative, technical and physical safeguards for all confidential information in accordance with applicable law.

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By signing below, the undersigned acknowledges that he/she has reviewed and understands the regulations set forth in this Certification and Attachments and agrees to abide by the terms and conditions stated herein. This Participation Certification is effective from June 1, 2010 until May 31, 2011. The State Bar of Arizona and the Foundation have the right to enforce the regulations set forth herein.

\_\_\_\_\_  
Financial Institution name

**AUTHORIZED REPRESENTATIVE**

\_\_\_\_\_  
**Authorized Representative Signature**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Printed / Typed Name**

\_\_\_\_\_  
**Printed / Typed Title**

\_\_\_\_\_  
**Address**

\_\_\_\_\_  
**City, State, Zip**

\_\_\_\_\_  
**E-Mail**

\_\_\_\_\_  
**Phone**

**IOLTA REPORT CONTACT**

\_\_\_\_\_  
**IOLTA Report Contact Signature**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Printed / Typed IOLTA Report Contact**

\_\_\_\_\_  
**Printed / Typed Title**

\_\_\_\_\_  
**Address**

\_\_\_\_\_  
**City, State, Zip**

\_\_\_\_\_  
**E-Mail**

\_\_\_\_\_  
**Phone**

Signed IOLTA Certification should be returned to:

Arizona Foundation for Legal Services and Education  
ATTN: IOLTA Administrator  
4201 N. 24<sup>th</sup> Street, Ste 210  
Phoenix, AZ 85016  
Or by fax to:  
(602) 773-3160