GLOSSARY OF IOLTA-RELATED FINANCIAL INSTITUTION TERMS
Updated October 2015

ABA Commission on IOLTA/National Association of IOLTA Programs Joint Resource Development/Banking Committee

The following is a "plain language" explanation of certain banking terms that are commonly encountered in the IOLTA community. For a more "legal" definition, consult Title 12 of the US Code or Regulation D, 12 CFR Part 204 for many of the terms. The following are online resources for banking terms:

Account Analysis: Instead of actually charging fees for various_services such as checks paid or deposits made, the financial institution provides a credit based on the average collected balance for the period using an Earnings Credit Rate. Then the bank subtracts fees for account usage from the Earnings Credit amount. The difference (if any) is charged to the customer as an account service charge.

ACH: This means Automated Clearing House. The ACH network is a nationwide clearing and settlement system that provides for the electronic processing of transactions among financial institutions. Instead of using paper checks to carry the necessary information, ACH transactions are transmitted electronically, thereby drastically reducing both the cost and time required to physically handle paper checks. NACHA, the National Automated Clearinghouse Association (www.nacha.org), promulgates operating rules and guidelines that govern these transactions. Many IOLTA programs have found ACH to be a cost effective way to receive their recurring bank payments, and some have used ACH to reduce charges banks assess to the program.

APY: This means annual percentage yield. This is a percentage rate that reflects the total amount of interest paid on an account, including the effect of compounding interest. The APY may also be referred to as the effective annual rate of return. The Truth in Savings Act (implemented by Regulation DD) is part of the FDIC Improvement Act of 1991 that requires institutions to include the APY in their disclosures of interest rates and fees associated with accounts. The purpose is to provide consumers a clear and consistent method of comparing rates.

Availability: The unrestricted access of a depositor to an account balance. The available balance in an account is the amount subject to withdrawal. The Competitive Equality Banking Act of 1987 requires banks to make deposited funds available to customers within specified time limits.

Average Daily Balance: The average amount of money kept on deposit by a customer, determined by adding either all or selected daily balances and dividing by the number of balances taken.

For example, this can be determined by adding the ending balance in the account for each day of the period and dividing that figure by the number of days in the period, e.g. an account that had a daily balance of $1,000 for 15 days of a month, and a daily balance of $3,000 for 15 days of the same month, would have a calculated total of the daily balances of $60,000 for that month. Dividing the calculated total of the daily balances by 30 days yields an Average Daily Balance of $2,000 for the month. This balance can be further specified as Average Collected Balance, or Average Ledger Balance.

Basis points: One basis point (bp) is 1/100th of a percent; ten basis points would be 0.1%.

Benchmark Rate: Jurisdictions which require IOLTA rate comparability may offer financial institutions the option of a "benchmark rate" to comply with comparable rate requirements. A "benchmark rate" reflects overall comparability in that IOLTA program's market. A "benchmark rate" can be expressed as a percent (e.g. 1.25%), or as a percentage of a standard economic indicator, most often the Federal Funds Target Rate. For example: "pay an amount equal to y% of the Federal Funds Target Rate or x%, whichever is higher." Benchmark rates are typically deemed to be already net of allowable fees.

The term "benchmark" in comparability rules, legislation, or guidelines sometimes references only the economic indicator being used such as the Federal Funds Target Rate. More often it is shorthand for the resulting rate, net of fees that reflects overall comparability in that state. "Safe harbor" or "safe harbor rate" are terms sometimes used as synonyms for "benchmark" or "benchmark rate."

Cashier: The title of cashier is not frequently used and has been replaced by Chief Operations Officer (COO) or Chief Financial Officer (CFO).

Check 21: The Check Clearing for the 21st Century Act, which became effective on October 24, 2004, permits financial institutions to process checks electronically, thereby eliminating the dependency on physically transporting checks around the country. It authorizes financial institutions to provide a substitute check or IRD (Image Replacement Document) instead of the original check.

Collected Balance: Deposits, other than cash and equivalents that are made to a bank account may not be made available by the bank until they clear the banking process. As a result, the balance in an account will be made up of deposits that have cleared the banking process (collected balance) and those that have not (uncollected balance). The combination of the two, or the full account balance, is known as the "ledger balance" or "checkbook balance", since it is the balance a customer would typically record in a checkbook register. In reality, any checks written on anything more than the collected

balance in an account are paid at the bank's discretion and may be returned for "uncollected funds".

In addition to availability, banks may use the collected balance to determine the balance on which they pay interest. The Expedited Funds Availability Act requires a depository bank to begin to accrue interest or dividends on funds deposited in an interest-bearing account not later than the business day on which the bank receives credit for the funds. For this purpose, the bank may rely on the availability schedule of its correspondent bank (which might be the Fed) to determine when to start the interest clock ticking. Banks may, and many times do, provide faster collection than the maximum time allowed. For IOLTA programs, it is important to know and understand a banks availability schedule, as it directly impacts the true interest rate paid on an account. Regulations require banks to provide the funds availability schedule upon request.

Comparability: This IOLTA revenue enhancement strategy requires lawyers to place their IOLTA accounts only in financial institutions that pay those accounts the highest interest rate or dividend generally available at the institution to other customers when IOLTA accounts meet the same minimum balance and other qualifications, if any. In order for comparability to be effective, IOLTA rules, statutes, regulations and/or guidelines should permit IOLTA funds to be placed in higher rate products including repurchase agreements (REPOs) and government money market funds.

CRA: The Community Reinvestment Act was enacted by Congress in 1977 to prevent redlining and to encourage banks and thrifts to help meet the credit needs of all segments of their communities, including low and moderate income neighborhoods. The CRA and its implementing regulations require federal financial institution regulators to assess the record of each bank and thrift in helping to fulfill their obligations to the community and to consider that record in evaluating applications for charters or for approval of bank mergers, acquisitions, and branch openings.

Generally, the Office of the Comptroller of the Currency (OCC) conducts a CRA examination of a national bank every three years. Performance criteria includes lending performance and responsiveness but, also the extent to which the bank provides community development services. The general regulations [12 CFR 25.12 (g)] (2) (4) define community development services as community services targeted to low-income individuals that revitalize or stabilize. The OCC defines community development services [12 CFR 25.24 (e)] (1) as the extent to which the bank provides community development services and the innovativeness and responsiveness of the community development services. IOLTA programs around the country have encouraged banks to cite their IOLTA participation and beneficial IOLTA policies (higher rates, lower fees) in their CRA statements, in an effort to provide banks greater incentive for maintaining such policies.

Credit Unions: Similar to banks in the offering of products and services, but very different because they are non-profit, member-owned financial cooperatives. Credit Unions have members, not customers. The deposits made by members are called

"*shares*" and are considered as an ownership interest in the credit union. As not–for-profit organizations, credit unions return any earnings in excess of expenses to the members in the form of dividends and lower cost of services. Credit Unions are federally and state-chartered but are *not* insured by the FDIC. They are insured by the National Credit Union Share Insurance Fund (NCUSIF), which is administered by the National Credit Union Administration (NCUA), an agency of the federal government. Following passage of the Credit Union Share Insurance Fund Parity Act, some states may need to amend their IOLTA Rule or Statute to permit credit unions to hold IOLTA accounts.

Credit Union Share Insurance Fund Parity Act: This law (Public Law 113-252) was enacted on December 18, 2014 to extend NCUSIF insurance coverage to amounts held in an IOLTA account of a credit union member on behalf of another person. IOLTA accounts are considered member accounts for purposes of deposit insurance coverage if the attorney administering the IOLTA account is a member of the insured credit union in which the funds are held. Pass-through share insurance for IOLTA accounts provides for insurance coverage based on the interest of each person on whose behalf funds are held in IOLTA accounts by the attorney administering the IOLTA account. The total amount of insurance coverage is the same as the level provided by the FDIC for IOLTA accounts held at banks ($250,000 of protection per client per institution).

DDA: This stands for Demand Deposit Account. It is an account that allows for withdrawal of deposits at any time, without prior notice to the financial institution. A checking account is the most common type of demand deposit account. The bank may (but rarely does) require the customer to provide seven days advance notice before a withdrawal. The alternative to a demand deposit is a time deposit, such as a certificate of deposit, which imposes heavy penalties for early withdrawal. It should be noted that demand deposit accounts are a type of transaction account (see definition below).

Discount Rate: The discount rate is the interest rate that an eligible depository institution is charged to borrow funds, typically for a short period, directly from a Federal Reserve Bank. By law, the board of directors of each Reserve Bank sets the discount rate independently every fourteen days subject to the approval of the Board of Governors of the Federal Reserve. Originally, each Reserve Bank set its discount rate to reflect the banking and credit conditions in its own District. Over the years, the transition from regional credit markets to a national credit market has gradually produced a national discount rate. As a result, the Federal Reserve maintains a uniform structure of discount rates across all Reserve Banks.

Escrow Account: These accounts are established by an agent, but the funds belong to the beneficiaries. The bank may not know who the "real" owners of the funds are, as in the case of a pooled IOLTA or title company escrow account. However, for an individual escrow account with interest paid to the beneficiary, the bank will require the name and taxpayer identification number of the beneficiary to accurately report the interest.

FDIC Insurance: The Federal Deposit Insurance Corporation is a US government agency that insures depositors up to $250,000 per account ownership category (e.g. single owner,

joint owner, trustee) against loss should the bank fail. Please see *Your Insured Deposits*, which is available online at https://fdic.gov/.

Federal Funds: Banks are required to maintain a certain amount of liquidity with the Federal Reserve. When they have excess funds over their required reserves, these are "fed funds," which can be loaned to another bank that needs the liquidity. The law requires banks to keep a certain percentage of their customer's money on reserve, where the banks earn no interest on it. Consequently, banks try to stay as close to the reserve limit as possible without going under it, lending money back and forth to maintain the proper level.

Federal Funds Target Rate: The Federal Open Market Committee establishes the target rate for trading in the federal funds market. (The federal funds rate is the actual interest rate at which banks and other depository institutions lend money to each other, usually on an overnight basis).

Federal Open Market Committee: The Federal Open Market Committee (FOMC) is the monetary policymaking body of the Federal Reserve System. It is responsible for formulation of a monetary policy designed to promote economic growth, full employment, stable prices, and a sustainable pattern of international trade and payments.

The FOMC sets the target for the federal funds rate at a level it believes will foster financial and monetary conditions consistent with achieving its monetary policy objectives, and it adjusts that target in line with evolving economic developments.

Federal Reserve Bank: There are twelve, regional federal reserve banks around the United States. These institutions regulate and examine state Federal Reserve member banks. But more importantly, they provide check clearing and other functions in assuring the flow of funds. For more information about the Fed, go to: http://www.federalreserve.gov/.

FedWire: A payment service operated by the Federal Reserve System for the transfer of funds between financial institutions that have either reserve or clearing accounts at Federal Reserve banks. Funds transferred over Fedwire are immediate and irrevocable once posted to the customer's account, with the Federal Reserve guaranteeing the payment received by the financial institution. Federal securities, economic statistics, and general administrative information are also transferred over this system, which connects the twelve Regional Federal reserve banks, their 26 branches, and several government offices.

Fees: (1) A charge or payment for services. (2) A fixed amount that a trust institution receives as compensation for its services.

Banks charge fees for various services. These can include things as varied as maintenance or monthly service charges, NSF (insufficient funds), stop payment, check printing, balance inquiry, and ATM fees.

Interest: Any payment to a consumer or to an account for the use of funds in an account, calculated by application of a periodic rate to the balance. Under the Truth in Savings Act, consumers must receive a disclosure that converts this rate into an "annual percentage yield." The APY (see definition above) reflects the effect of the interest rate and the frequency of compounding.

Ledger Balance: A bank's record of the balance in a customer's account. A ledger balance is the balance that appears on a bank statement and differs from the available balance or collected balance by the amount of uncollected funds. The ledger balance is used for customer information and for creation of the banks general ledger.

Money Market Deposit Account ("MMDA"): This is a type of savings account that was created during the de-regulation era to allow banks to compete with mutual funds by offering a higher rate bank account. Under the original Regulation D requirements, the depositor could make no more than 6 transfers per statement cycle (month), of which only 3 could be by check. The remaining three transfers could be made in person or by debit card. While the 3 check limit was eliminated in May 2009, the six per month transfer limit remains.

Money Market Mutual Fund: A mutual fund that buys high-quality, short-term notes, acceptances, or certificates of deposit (usually 60 days or less) of many corporations or governments. The fund thereby diversifies to minimize default risk. The fund sells shares to investors, who receive regular payments of interest. The percentage of interest varies from period to period, based on the interest earned and the expenses paid by the fund during the period. An investor can sell his or her shares back to the fund at any time, usually receiving the exact amount of the original investment plus any accrued, unpaid interest to date. However, should the fund suffer a major loss, the shareholder has no guarantee that his or her account will be fully paid. Most IOLTA comparability rules limit the use of Money Market Mutual Funds to those which are fully invested in US government instruments.

National Bank: A commercial bank operating under a federal charter, supervised by the Comptroller of the Currency. A national bank must belong to the Federal Reserve System and to the FDIC.

NCUSIF Insurance: The National Credit Union Administration (NCUA) is a US Government Agency that administers the National Credit Union Share Insurance Fund, which insures funds deposited in federally insured credit unions up to $250,000 per account ownership category (e.g. single owner, joint owner, trustee) against loss should the credit union fail. Like the FDIC's Deposit Insurance Fund, the NCUSIF is a federal insurance fund backed by the full faith and credit of the United States government. Please see *How Your Accounts are Federally Insured* and *Your Insured Funds* at http://www.mycreditunion.gov/protect/Pages/SI.aspx.

Negative netting: This practice aggregates the earnings of all IOLTA accounts at a bank and subtracts, or nets, the service charges from of all of them against the total interest earned. Example: State National Bank has an account for ABC Firm. ABC Firm earned interest of $5 and is subject to a maintenance fee of $10. State National Bank also has an account for XYZ Firm. XYZ earned interest of $20. State National aggregates the interest for both customers at $25 and their fees at $20. The net interest of $5 is remitted to IOLTA. Without netting, bank would remit $0 on ABC Firm and $10 from XYZ Firm. In this situation, XYZ Firm is subsidizing the fees of ABC.

Non-bank financial institution: A financial institution owned by a nonbanking corporation (for example, a retailing firm, insurance company, or brokerage firm) that avoids being defined as a bank holding company for regulatory purposes by limiting the activity of its bank to only one of the two functions that define a commercial bank (that is, it both accepts demand deposit and makes commercial loans). Such banks can take deposits and extend credit to consumers and thus compete with commercial banks while there parent companies engage in activities forbidden to bank holding companies (such as underwriting corporate securities, underwriting insurance, offering mutual funds, and so on). *Also called* limited-service bank.

NOW Account: Negotiable Order of Withdrawal Account. Functionally, this is an interest bearing checking account. The NOW account was invented by savings banks in the 1970's and eventually embraced by commercial banks as a way to get around the prohibition in the Federal Reserve Act (Reg. Q, see definition below) against paying interest on demand deposits. NOW accounts were subsequently authorized for banks, but only individuals, non-profits, and governmental agencies may have them. IOLTA programs are organized as non-profits or governmental entities and are eligible to receive interest on NOW accounts. There are legal interpretations from the Fed and the FDIC indicating that a lawyer's trust account (which is likely to have money from persons who don't qualify for a NOW account) may nonetheless be set up as a NOW account if the beneficiary of the interest is an IOLTA entity. The attorney can make withdrawals without the 6 transaction limitation that would be applicable to a MMDA. That satisfies the attorney's need to disburse funds from the account.

Reg CC: A Federal Reserve regulation implementing the Expedited Funds Availability Act. (12 CFR part 229) The rules spell out when funds must be made available to the depositor and when there can be holds against them. There are notices required under the act, explaining the bank's policy under Reg CC and other notices required for special holds on funds.

Reg D: The Federal Reserve regulation that imposes uniform reserve requirements on all depository institution against deposits and Eurocurrency liabilities. Regulation D defines such deposits to the Federal Reserve.

Reg DD: This is the Federal Reserve regulation that implements Truth in Savings. (12 CFR part 230) It only applies to consumer accounts. These rules require disclosure of fees and charges as well as APY (see definition of "interest" above).

Reg Q: This Federal Reserve Regulation implemented the statutory prohibition against payment of interest on demand deposits by Federal Reserve member banks. It was repealed July 21, 2011, pursuant to the Dodd Frank Wall Street Reform and Consumer Protection Act. This is included in this glossary for historical reference.

Repurchase Agreements (or "Repos"): A short-term (usually overnight) investment vehicle in which the bank sells securities held in its own investment portfolio to a customer with the agreement to purchase them back (repurchase) from the customer at a fixed price, which equals the original investment amount plus interest. The overnight investment is accomplished through an automated transfer initiated by the bank (see Sweep Account) based on the ending daily balance in the account. US Government or Agency securities are assigned to the customer as collateral, and have a market value equal to or greater than the dollar amount invested and are priced daily to accommodate market fluctuations. At times, interest rates paid on repurchase agreements can be higher than those paid on checking accounts; there is usually a high minimum investment amount required to obtain those higher rates. Thus, depending on bank fees and prevailing interest rates, they may not be economically advantageous at all times. Historically, however, rates on repurchase agreements have usually exceeded those available on traditional IOLTA accounts. Repurchase agreements are most often found at larger commercial banks. Repurchase agreements are not FDIC insured and modifications to IOLTA regulations may be required to allow for this investment.

Sub-Account: Bank sub-account products use a primary or master checking account which (usually) serves as a clearing account for a number of linked interest bearing accounts (sub-accounts). Sub-accounts provide a way for a group of accounts to be associated, or "linked". Each sub-account is a separate, individual bank account bearing the name and Tax I.D. of the client. The master account would be in the name of the attorney or law firm, which opens a sub-account for each client.

Super NOW: A demand deposit account that is interest-bearing and similar to a money market deposit account, but (1) subjects the fund to reserve requirements, (2) is not available to corporations, and (3) has no limit on monthly transaction volume.

These were offered in the early days of deregulation of interest rates on accounts. Typically they offered a higher interest rate but required high minimum balances. While these accounts are still offered, they are usually marketed as "preferred checking" or "bonus checking."

Sweep Account: In this arrangement, the institution agrees to "sweep" or automatically transfer funds from one account to another (or from a deposit account to an investment). These are offered by securities firms as well. Remember the limitation on transfers in MMDAs? It is illegal (under current law) to "sweep" from a savings account or MMDA to a checking account more than 6 times a month. On the other hand, it is perfectly legal to sweep from a checking account into an investment fund (like a mutual fund or overnight repurchase agreements) and back.

Transaction Account: This is a technical term used by Regulation D. These are accounts that permit the account holder to write checks or "negotiable orders of withdrawal" as well as to authorize automatic transfers. The bank may (but usually doesn't) require 7 days advance notice. While these accounts include demand deposits and NOW accounts (see definitions above), they exclude savings and time deposits.

August 2004 — Written by Karen Neeley and Steve Casey

July 2006, July 2008, July 2009, January 2010, June 2011, April 2015, and October 2015 — Updated by the ABA/NAIP Joint Resource Development/Banking Committee