



**GUIDELINES FOR APPROVAL OF FINANCIAL INSTITUTIONS
TO SERVE AS A DEPOSITORY FOR LAWYER TRUST ACCOUNTS
(IOLTA and non-IOLTA Trust Accounts)**

Purpose

The Michigan Supreme Court adopted MRPC 1.15A (Michigan Rule of Professional Conduct 1.15A), also known as the Trust Account Overdraft Notification (“TAON”) rule, which requires lawyers to keep their client or third person trust accounts in financial institutions approved by the State Bar of Michigan (“SBM”) to serve as a depository for lawyer trust accounts. The TAON rule is intended to provide early warning of unethical activity in a lawyer trust account.

To obtain SBM approval to serve as a depository for lawyer trust accounts, including both IOLTA and non-IOLTA lawyer trust accounts as defined by MRPC 1.15(a) (“approved status”), financial institutions must execute a Trust Account Overdraft Notification Agreement (“TAON Agreement”), a form provided by the SBM, committing to provide overdraft reports to the account holder and the Grievance Administrator (“GA”) of the Attorney Grievance Commission (“AGC”), a component of Michigan’s attorney discipline system, for all lawyer trust accounts that it holds. The purpose of the AGC is to maintain and promote the integrity of the legal profession and to protect the public, the courts, and the legal profession. To fulfill its purpose, the AGC investigates and prosecutes allegations of professional misconduct regarding attorneys licensed or otherwise permitted to practice law in Michigan.

Michigan lawyers are required by the TAON rule to identify non-IOLTA trust accounts to their financial institutions in writing. Preexisting IOLTA trust accounts are already properly identified via the IOLTA Notice to Eligible Financial Institutions form. That form will also automatically properly identify any new IOLTA account when it is used to establish the account.

These guidelines explain the SBM process for determining, terminating, and revoking “approved status” of financial institutions. The SBM will publish a list of approved financial institutions (“Approved List”) by posting on its website at <http://www.michbar.org/opinions/TAON.cfm>. The SBM will periodically update the Approved List as financial institutions are added or removed.

Before the TAON rule becomes effective on September 15, 2010, lawyers practicing and licensed to practice in Michigan will be required to confirm by review of the Approved List that the financial institution holding their trust accounts has obtained “approved status,” and therefore, may serve as a depository for lawyer trust accounts. Lawyers establishing new trust accounts must place those accounts in financial institutions on the Approved List. Lawyers with trust accounts in non-approved financial institutions after September 15, 2010, will be required to move them to a financial institution on the Approved List.

Financial institutions obtaining “approved status” under MRPC 1.15A must still comply with the “eligible financial institution” criteria under MRPC 1.15(a)(2) to serve as a depository for IOLTA accounts. Thus, financial institutions must meet both the SBM “approved status” and the “eligible financial institution” status to hold IOLTA accounts. Forms and additional information regarding the TAON program are available on the SBM’s website at <http://www.michbar.org/opinions/TAON.cfm>. Forms and additional information regarding



IOLTA accounts are available on the Michigan State Bar Foundation's ("MSBF") website at www.msbf.org.

BEFORE SEPTEMBER 15, 2010: The implementation process stated in paragraphs A through G will be performed.

A. Financial Institution Submission Procedure for TAON Agreements

1. No later than May 31, 2010, the SBM will communicate with financial institutions doing business in Michigan, of which the SBM is aware, inviting them to complete the TAON Agreement and to submit it to the SBM as soon as possible to obtain "approved status" and to be added to the Approved List.
2. Financial institutions may deliver the TAON Agreement to the SBM by any of the following methods:
 - Email addressed to TAON@mail.michbar.org
 - Facsimile to State Bar of Michigan, Professional Standards Division - TAON @ 517-367-6433
 - First class mail or delivery to: State Bar of Michigan, Professional Standards Division – TAON, 306 Townsend Street, Lansing, MI 48933. First class mail will be deemed delivered to the SBM upon its receipt by the SBM.
3. All notices or other communication from the financial institution to the SBM as described in these guidelines or otherwise relating to the TAON program may be delivered to the SBM by any method described in paragraph A2. **Special note:** SBM approved participating financial institutions must submit overdraft reports to the GA not to the SBM. The contact information for the GA is: Grievance Administrator – TAON, 243 W. Congress Street, Suite 256, Detroit, MI 48826, phone (313) 961-6585, facsimile (313) 961-5819 (ATTN: TAON), E-mail, TAON@agcmi.com.
4. The executed TAON Agreement will apply to all locations of the financial institution in Michigan and cannot be cancelled except on 120 days notice in writing to the SBM delivered by a method described in paragraph A2 above.
5. Within five (5) business days after receipt of the fully executed TAON Agreement, the SBM will send a communication to the contact designated on the TAON Agreement that the financial institution has received "approved status" and has been added to the Approved List.

6. By September 7, 2010, all financial institutions doing business in Michigan interested in serving as a depository for lawyer trust accounts on or after September 15, 2010, the effective date of the TAON rule, must have submitted a fully executed TAON Agreement to the SBM.
7. Signed TAON Agreements received by the SBM after September 7, 2010, will be processed by the SBM at its earliest convenience, but the financial institution's name may not be placed on the Approved List by September 15, 2010.

B. “Approved Status” Notification Procedure for Participating Financial Institutions

1. The SBM will advise the designated financial institution contact person within five (5) business days after receipt of the TAON Agreement that the financial institution has obtained “approved status” and has been added to the Approved List.
2. The SBM will also send follow-up communication to the designated contact within five (5) business days to provide notification of insufficiency of a signed TAON Agreement or other administrative issues resulting in non-approval of a financial institution. Unless another time period is approved by the SBM, the financial institution must respond within ten (10) business days to correct the administrative deficiencies. Failure to timely respond may result in a delay in approval and may prevent the financial institution's name from being placed on the Approved List by September 15, 2010.
3. The Approved List will be posted on the SBM's website at <http://www.michbar.org/opinions/TAON.cfm>, as signed TAON agreements are received from financial institutions. The SBM will routinely update and post the updated Approved List at least weekly from May 2010 through September 10, 2010.

C. Notification to Member Lawyers

1. No later than June 30, 2010, the SBM will communicate with member lawyers to notify them: (1) of the effective date of the TAON rule; (2) of the requirements of the TAON rule for member lawyers and financial institutions serving as depository for lawyer trust accounts; (3) that the SBM has already communicated with financial institutions doing business in Michigan regarding the TAON rule and inviting them to submit a signed TAON Agreement; (4) of their duty to provide written notification to their financial institution of their non-IOLTA client or third party trust accounts and providing the link to the non-IOLTA Lawyer Trust Account Notice to Financial Institution Form which they may use for this purpose; (5) that no further written notice to their financial institution is required for preexisting IOLTA accounts because the Notice to Eligible Financial Institution form used to establish the account serves this purpose; (6) of the links to the SBM webpage to view the Approved List and other information regarding the TAON program; (7) that they should regularly and routinely check the SBM's website from June 2010 through September 15 for announcements and information regarding the TAON program; and (8) of their ethical obligation to diligently safeguard



client or third party funds, including avoiding overdrafts and the potential consequences for failing to do so.

2. The SBM will continue to communicate with member lawyers from June through August 2010 about the TAON rule to educate them about the requirements of the TAON rule and the ethical implications for non-compliance.

D. General Notification About TAON

1. Beginning in April 2010, the SBM will publish information on its website about the TAON rule, its requirements, guidelines developed by the SBM to assist financial institutions and member lawyers regarding the TAON program implementation processes, and to encourage early compliance.
2. If the SBM becomes aware of new financial institutions doing business in Michigan with which it has not previously communicated regarding the TAON program, the SBM will seek a signed TAON Agreement from those institutions.

E. Posting and Distribution of Final Approval List

1. On September 15, 2010, the effective date of MRPC 1.15A, the SBM will post the final Approved List.
2. On September 15, 2010, the SBM will provide the Grievance Administrator, the Michigan Bankers Association, the Michigan Association of Community Banks, the Office of Financial & Insurance Regulation, the Michigan Credit Union League, and the Michigan State Bar Foundation with a link to the final Approved List.

F. Notification to Non-participating Financial Institutions

1. If a financial institution, with which the SBM has communicated with per paragraph A1 above, does not deliver a fully executed TAON Agreement to the SBM by September 7, 2010, the SBM will send a certified letter notifying the financial institution that it has not been included on the Approved List, and thus has not been approved to serve as a depository for lawyer trust accounts.
2. The SBM's action in not approving a financial institution and in not including a financial institution on the Approved List due to its failure or refusal to submit a fully executed TAON agreement is final and not subject to challenge.
3. The SBM will allow non-participating financial institutions to seek approval after September 7, 2010, but cannot guarantee that the financial institution's name will be placed on the Approved List by September 15, 2010.

G. Notification to Member Lawyers of Non-Participating Financial Institutions

1. The SBM will notify the MSBF of non-participating financial institutions by September 15, 2010, and lawyers who have IOLTA trust accounts at non-participating financial institutions will be notified that they must move their IOLTA trust accounts to a financial institution on the Approved List within 60 days or no later than November 15, 2010, whichever occurs first, to comply with MRPC 1.15A.
2. On September 15, 2010, the SBM will post a notice on its website at <http://www.michbar.org/opinions/TAON.cfm> to generally notify member lawyers that if their account is not at a financial institution on the Approved List, they must move their client or third party trust accounts to a financial institution on the Approved List within 60 days or no later than November 15, 2010, whichever occurs first, to comply with MRPC 1.15A.
3. No later than October 30, 2010, the SBM will send an e-blast or other electronic communication to member lawyers to notify them that if their account is not at a financial institution on the Approved List, they must move their client or third party trust accounts to a financial institution on the Approved List no later than November 15, 2010, to comply with MRPC 1.15A.

ON AND AFTER SEPTEMBER 15, 2010: The procedures stated in paragraphs H to L, pertaining to maintenance of the TAON program, take effect.

H. Approved List Update Procedure

1. After the final Approved List is posted on the SBM's website on September 15, 2010, the SBM will regularly update and post the updated Approved List as needed to add or remove financial institutions. The SBM will electronically notify the GA and the MSBF when a revised Approved List is posted.
2. Non-participating financial institutions may submit a fully executed TAON Agreement for consideration at any time. The SBM will advise the designated contact within five (5) business days after receipt of the TAON Agreement that the financial institution has obtained "approved status" and has been added to the Approved List.

I. Annual Update of Contact Information for Financial Institutions

1. On an annual basis, the SBM will communicate with financial institutions having "approved status" to obtain updated contact information, if any. Financial institutions have an ongoing duty as provided in the TAON agreement to provide updated contact information to the SBM as it becomes available.

J. Cancellation of TAON Agreement by Financial Institution

1. A financial institution seeking to cancel a TAON Agreement must give a 120 day advance written notice to the SBM. The notice must be delivered in a manner described under paragraph A2.
2. At least 90 days before its approved status is terminated, the financial institution must notify all holders of lawyer trusts accounts, including both IOLTA and non-IOLTA lawyer trust accounts, that its approved status will be terminated. This notice must state the effective date that the financial institution's approved status will be terminated.
3. The financial institution must deliver a copy of the notices to the SBM as they are issued.

K. Termination of "Approved Status" by the SBM

1. If a financial institution gives the SBM notice of cancellation, the SBM will provide written acknowledgment of the notice within five (5) business days after receipt and confirm the date that the financial institution will become unapproved and removed from the Approved List.
2. On the effective date of termination, the SBM will post the updated Approval List and will provide notification to the GA and MSBF as previously described in these guidelines.

L. Revocation of "Approved Status" by the SBM

1. If the SBM becomes aware that a participating institution has not complied with its TAON Agreement, the SBM will contact the financial institution requesting that within ten (10) business days the financial institution provide in writing a full explanation of the reason for its noncompliance; written confirmation of corrective action that will allow full compliance going forward; and reconfirmation that the financial institution will comply with its TAON Agreement. Failure to timely respond may result in revocation of "approved status" and removal from the Approved List.
2. Upon receipt of the written, timely response by the financial institution or in the absence of a written, timely response by the financial institution, the SBM in its sole discretion may determine that: (1) the explanation provided was acceptable and compliance with its TAON Agreement was not an issue; (2) the explanation for noncompliance was acceptable and corrective action demonstrates full compliance by the financial institution with its TAON Agreement to maintain approved status; (3) the explanation for noncompliance was acceptable and the corrective action indicates a good faith effort at compliance, but that the financial institution should be placed on "provisional" approved status for a period of up to one year and required to respond to the SBM's periodic requests for confirmation of continued compliance; (4) the explanation for noncompliance was unacceptable and the corrective action, if any, is insufficient and that



- the financial institution will be unapproved and removed from the Approved List in 45 days; (5) the explanation for noncompliance is unacceptable and a financial institution has engaged in a pattern of neglect or acted in bad faith in not complying with its TAON Agreement and that the financial institution will be unapproved and removed from the Approved List in 45 days; or (6) the financial institution has provided no response and that the financial institution will be unapproved and removed from the Approved List in 45 days.
3. The SBM shall provide written notice to the financial institution of its decision regarding noncompliance as soon practicable after it becomes available. The SBM's decision regarding provisional approved status or revocation of "approved status" is final and not subject to challenge.
 4. Within five (5) business days after issuing its decision, the SBM will notify member lawyers with trust accounts of the date that the financial institution's "approved status" will be revoked and removed from the Approved List and advising them that they must move their trust accounts to financial institution on the Approved List within 30 days.
 5. The SBM will also post a notice on its website at <http://www.michbar.org/opinions/TAON.cfm> and send a link of the notice to the GA and the MSBF.
 6. After the SBM revokes the "approved status" of a financial institution, the financial institution may not seek reinstatement to "approved status" for a period of six months after the effective date of the revocation of approval. Financial institutions revoked on grounds of bad faith or a pattern of neglect may not seek reinstatement to "approved status" for 12 months.
 7. After the required nonparticipation period has expired, the financial institution may seek reinstatement to "approved status" by submitting a fully executed TAON Agreement, along with detailed information showing corrective action that resolved prior noncompliance resulting in revocation of its "approved status."

Questions may be directed to the following persons:

Questions regarding these guidelines or the TAON program may be directed to Danon D. Goodrum-Garland, Professional Standards Division Investigative Counsel, at (517) 346-6333 or email at dgarland@mail.michbar.org.

Questions regarding overdraft reports that must be submitted to the Grievance Administrator of the Attorney Grievance Commission may be directed to Rhonda Spencer Pozehl, Associate Counsel, at (313) 742-0248 or email at TAON@agcmi.com.

Questions regarding IOLTA accounts and "eligible financial institution" status may be directed to Linda Rexer, Executive Director of the Michigan State Bar Foundation, (517) 346-6400 or email at Linda@mshf.org.