

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR FOUNDATION RE
PETITION TO AMEND RULES
REGULATING THE FLORIDA BAR

CASE NO. 89,552

FILED

SIDA WHITE

JAN 16 1997

CLERK, SUPREME COURT
By _____
Chief Deputy Clerk

OPPOSITION TO PETITION TO AMEND RULES
REGULATING THE FLORIDA BAR

In accordance with the procedures set forth in Rule 1-12.1(g) Rules Regulating the Florida Bar, the undersigned Respondent objects to the proposed amendment set forth in the Petition and requests that any action thereon be postponed, suspended or abated with directions to the Foundation to more thoroughly investigate alternative investments that would better accomplish the purposes stated in paragraph four (4) of the Petition.

As grounds therefor, Respondent states the following:

1. The proposed amendment unreasonably restricts the investment vehicle into which IOTA account balances may be "swept" to bank Repurchase (loan) Agreements ¹, (REPOS),

1. Repurchase (loan) Agreements (REPOS), are negotiated contracts which provide bond holders (i.e., a bank or other institutional holder) with the ability to finance the purchase and retention of its bond inventory or portfolio. These instruments are not necessarily "daily" in term. They can be negotiated for any period of time, typically less than one year.

General Note:

Audited data is available to support all statements herein concerning net alternate yield instruments referenced herein.

ignoring other competitive, less risky, higher yielding investment vehicles available from major financially sound institutions, other than banks, which have developed more sophisticated efficient cash management vehicles.

2. The Foundation has failed to disclose to the Court and to the Board of Governors of the Foundation, the serious drawbacks and risky features of bank REPOS, which information has been given to the Foundation.

3. Losses in principal and income exceeding \$100 million have been sustained by certain large American governmental agencies on their usage of REPOS. In consequence of these experiences, these bodies no longer use such instruments.

4. The amendment to the IOTA rule proposed by the Foundation does not incorporate appropriate safeguards to protect the IOTA account holders utilizing bank REPOS from the bank's, or undisclosed bank client's, inability to perform. Such safeguards should include the following:

(a) All collateral involved in such proposed loan investments (REPOS), should be held by a third party custodian, not by the bank or other institution from which the REPO instrument is purchased.

(b) Such custodian should be willing to certify that it does not and will not have any cross-collateralized loan or other collateral claim upon the REPO collateral that is

involved in each specific REPO instrument.

(c) Since REPO instruments are actually financial devices to enable the seller to finance and carry bond inventory, it should be required that either the seller (if a bank) unconditionally guarantee the timely scheduled repurchase thereof, or if being sold by a bank for the benefit of a client, the bank should be required to disclose the name of such client; in the latter instance (the absence of a bank guarantee) the buyer IOTA account holder must be prepared to evaluate the credit quality of such proposed repurchaser. The quality of the securities, U.S. government in this case, is not the issue, but rather the assurance that the repurchaser will be able to repurchase the securities involved in the REPO.

5. Further, the method proposed for REPO usage is archaic and unnecessarily cumbersome, which, in turn will produce operational costs, on the part of the vendor (seller) bank, which will materially reduce the effective yield by amounts not analyzed or provided to the honorable court for its consideration. To wit the petition calls for a "sweep" of IOTA balances over \$30,000 into a REPO agreement overnight only and then a re-sweep of the entire balance back into the IOTA accounts the next day without regard for need of part or all of such balances against disbursements presented for payment, if any.

6. Of the material facts not disclosed by the petitioner, but clearly in their possession, is the information that improvement in cash management and resultant yield for the IOTA accounts and hence for the Foundation, is available by means of a "sweep" arrangement into an S.E.C. registered institutional money market instrument trust directly

investing in U.S. government securities. With this device, similar to those already available for fiduciary banks', thrifts' and local governments' usage the yield for IOTA would have been approximately triple the rate it has been receiving without any undisclosed operational fees or expenses, in contrast to the rate the IOTA accounts have been experiencing.

7. It is possible to utilize a "sweep" methodology into a money market trust of account balances without any \$30,000 threshold; but more importantly, only those monies necessary to meet checks presented for payment would be "swept" back each day, thereby substantially reducing operational steps and hence expense which would otherwise be charged by the depository banks. The proposed \$30,000 threshold benefits the banks and not the Foundation.

8. Finally regarding the collateralization requirement stipulated in the Foundation's petition: Value in the market for all such collateral should be determined by an independent source and not by the seller of the REPO instrument.

Respectfully submitted,

A handwritten signature in cursive script that reads "Elsie C. Turner". The signature is written in dark ink and is positioned above the printed name.

Elsie C. Turner

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was furnished by first class U.S. Mail to the Executive Director of the Florida Bar, John F. Harkness, Jr., 650 Apalachee Parkway, Tallahassee, FL 32399-2300 and to Stephen E. Day, Taylor, Day & Rio, 50 North Laura Street, Suite 3500, Jacksonville, FL 32202-3663 and at the Florida Bar Foundation, 109 East Church Street, Suite 405, P.O. Box 1553, Orlando, FL 32802-1553.



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