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The Supreme Court of Florida
500 South Duval Street
Tallahassee, FL 32399- 1927
Attention: Thomas D. Hall, Clerk

Re: Proposed Amendment to Rules on Interest On Trust Accounts Florida Supreme Court Case No. SCO-85 1

Dear Mr. Chief Justice and Justices:

On behalf of the Florida Bankers Association ("FBA"), we tender the following comments to the Petition of the Florida Bar Foundation for Modification of the Interest on Trust Accounts Program.

The purpose of these comments is to insure the proposed modifications result in rules that are understandable, workable and provide adequate assurances of safety for clients whose funds are in the IOTA accounts.

We understand the object of these modifications is to provide the Florida Bar Foundation with additional revenue, In order to achieve this goal, the proposed modifications do two things. First they expand the types of eligible accounts into which funds may be placed. Second they articulate a requirement that there be parity of interest rates between IOTA and non-IOTA accounts.

Eligible Accounts: We are concerned that the IOTA programs would allow client trust funds to be deposited in uninsured accounts which have no institutional capital to back them up, Permitting client funds to be in money market mutual funds which are not insured by the FDIC or any other agency and which have no

capital of their own introduces an element of risk that is not present under the current rule. We think the owners of the funds, the lawyer's clients, are served by requiring the funds to be in FDIC insured accounts or accounts that have overnight sweep features into repurchase agreements of treasury securities. A money market mutual fund, even if restricted to short term government securities, is subject to market risk. Such funds can loose principal and unlike an insured institution, they do not have any capital to make up the loss.

Clarification of Interest Rate Parity Requirements: The proposed rule creates a new subsection (e) (5) (A) which states:

> Eligible institutions shall pay on IOTA accounts the highest interest rate or dividend generally available from the institution to its non-IOTA account customers when IOTA accounts meet or exceed the same minimum balance or other requirements.

We understand the purpose of this provision is to make sure that the interest paid on IOTA accounts is treated in parity with similar non-IOTA accounts. We have engaged in constructive dialog with representatives of the Florida Bar Foundation and understand that it is not the intent of the rule modifications to require an institution to pay on IOTA accounts interest rates that may be available at other institutions. We further understand that it is not the purpose of the modifications to make account balances the exclusive criteria for eligibility of a rate offered by an institution. The rate that a financial institution pays a customer is based on a number of commercial factors including compensating balances, loan relationships, trust business and business referred to the institution, These factors may vary from bank to bank and are frequently negotiated.

In order to make clear what we believe is the intent and objective of the rule so

that participants will have clear understanding, we suggest that subsection (e)(5) be revised as follows:

(e)(5)

(A) Interest Rate and Dividends. Eligible institutions shall maintain IOTA accounts which pay the highest interest rate or dividend generally available from the institution to its non-IOTA account customers when IOTA accounts meet or exceed the same minimum balance or other account eligibility qualifications, if any.

(B) In determining the highest interest rate or dividend generally available from the institution to its non-IOTA accounts in compliance with subdivision (5) (A) ,above, eligible institutions may consider factors, in addition to the IOTA account balance, customarily considered by the institution when setting interest rates or dividends for its customers, provided that such factors do not discriminate between IOTA accounts and accounts of non-IOTA customers, and that these factors do not include that the account is an IOTA account.

CONCLUSION

We appreciate your consideration of these comments. First and foremost, the IOTA program must not create risk for the client's funds which the lawyer holds in trust. For that reason, we ask that the Court look carefully at expanding eligible accounts to money market mutual funds which are wholly uninsured products and which do not offer the additional back up of a capitalized structure.

We also ask that the rule creating interest rate parity between IOTA and non-IOTA accounts be clarified so that it reflects the realty of what actually occurs in commercial practice. We believe the language proposed above will create less chance

for misunderstanding between the Florida Bar Foundation and the financial institutions who must cooperate to make the IOTA program work.

Sincerely,

J. Thomas Cardwell
General Counsel
FLORIDA BANKERS ASSOCIATION

JTC/ja
cc: Jane E. Curran
John F. Harkness, Jr.