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May 11, 2001

The Supreme Court of Florida
500 South Duval Street
Tallahassee, Florida 32399- 1927

Attention: Thomas D. Hall, Clerk

Re: Proposed Amendment to Rules on Interest On Trust Accounts
Florida Supreme Court Case No. SC01-85 1

Dear Mr. Chief Justice and Justices:

I am writing pursuant to the invitation for comments on the newly-proposed amendment to the IOTA Rules which appeared in the April 15 edition of the Florida Bar News.

I'm sure that you know that I have had substantial intimacy with and affection for the Florida Bar Foundation's IOTA program. I strongly support the proposed rule change, and the Foundation's endeavor to generate more funds for the activities which IOTA supports. I am writing only to suggest a technical change in the proposed rule, in order to clarify the Rule in a way which will allay concerns that may be harbored by banks and other financial institutions.

The proposed Rule change would create a new subsection (e)(5)(A) to read:

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.

My comment is addressed to the phrase "minimum balance or other requirements" at the end of the sentence. Respectfully, I suggest that the Court delete that phrase, and in its place put the phrase: "minimum balance or other published account eligibility qualifications, if any." This sentence of the Rule would then read:

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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 published account eligibility qualifications, if any . ”

The sentence to which my comment is addressed is the most critical one in the proposed Rule. I'm advised that this sentence was designed to assure a parity of treatment between IOTA and non-IOTA accounts, in order to achieve the objective of generating more funds for the Foundation under the IOTA program. Significantly, this sentence recognizes that the higher returns which can be paid on some non-IOTA accounts are premised on an institution's application of individualized, non-quantifiable factors which reflect the tangible and intangible factors which define the institution's relationship with its clients. Tangible factors might include the amount of the compensating balance that is maintained by the account holder. Intangible factors might include the length, terms and conditions of the relationship between the institution and the account holder.

Financial institutions do not award higher rates of return merely on the basis of certain level of a compensating balance, or any other pre-specified, objective criteria. Each such award is individually determined for an account holder, based on a range of considerations. The process of awarded higher rates of return to some non-IOTA account holders involves weighing numerous factors by an institution.

I believe the sentence in the proposed Rule quoted above was crafted to assure that IOTA account holders would be treated no differently than non-IOTA account holders when it comes to receiving preferred rates, but to signal the Foundation's recognition that specific, objective criteria do not exist for the decision-making which goes into a financial institution's decision to pay higher dividends or interest to account holders.

The word "requirements" in the proposed Rule, however, connotes the existence of standards, or at least some definable or specified set of guidelines by which these preferred rate evaluations are made. The change which I'm suggesting is designed to reflect more precisely what I believe to be the Foundation's intent, and more importantly to allay unnecessary concerns regarding the Foundation's attempt to assure equal treatment between non-IOTA account holders and its lawyer/law firm IOTA account holders. I believe it would be helpful for the Court to adopt text for the Rule which eliminates any implication that there exists, or could be applied, some pre-determined, objective criteria for setting preferred dividend or interest rates for account holders.

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Thank you for your consideration of this comment on the proposed Rule.

Respectfully yours,

A handwritten signature in black ink, reading "Arthur J. England, Jr." in a cursive script.

AJE/ct

cc: John F. Harkness, Jr.
Jane E. Curran

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