

# **SUPREME COURT OF NEW JERSEY ADMINISTRATIVE DETERMINATION**

## **RE: IOLTA AND THE "BEST CUSTOMER" STANDARD**

In the exercise of its exclusive constitutional authority over the practice of law, the Supreme Court regulates attorney trust accounts. Under that authority, the Supreme Court has, since the inception of IOLTA (Income on Non-Interest Bearing Lawyers Trust Accounts), sought to ensure that IOLTA trust account deposits earn a reasonable return, both as a matter of fairness and to support the important public purpose for which the income on such accounts is used. To that end, the Court authorizes attorneys to establish accounts at financial institutions that choose to meet IOLTA requirements as approved by the Court. Since 1992, IOLTA Guidelines for Financial Institutions (Guidelines) approved by the Supreme Court have required that financial institutions that hold IOLTA funds agree to pay a rate of interest on IOLTA accounts “at least the equal of similar interest bearing transaction accounts within the financial institution.” That comparability requirement did not entail specific comparisons among rates paid by the various financial institutions holding IOLTA funds.

Since May 2002, the Guidelines have required that IOLTA-approved depositories pay interest rates that are both “reasonable” and comparable to the rates paid to other depositors with similar accounts at the particular financial institution. The reasonableness criterion was added, in part, to ensure that IOLTA deposits yielded more than the lowest rate available in the market.

In February 2004 the Supreme Court approved an IOLTA Board determination that a reasonable return on IOLTA accounts should be not less than 75% of the 90-day Constant Maturity Treasury rate (CMT rate). This new benchmark replaced the average of all rates paid by participating financial institutions, which was the previous return standard described in the Court’s February 6, 2003 Administrative Determination. In March 2005, when the process to deauthorize financial institutions not meeting the CMT-rate standard was initiated, some members of the banking community, as well as some Executive and Legislative Branch leaders, expressed concern with the standard .

As a means to address the concerns raised, Chief Justice Deborah T. Poritz created the Joint Working Group on IOLTA and Financial Institutions in July 2005. The Group's charge was to consider the implications for financial institutions of implementing the reasonable return standard through the CMT rate and to make appropriate recommendations to the Court in that regard.

The Working Group, which consisted of members of the Bar, representatives from the Judicial, Executive, and Legislative Branches of government and Legal Services of New Jersey, was assisted by representatives of the banking community. It identified and addressed at length the issues raised by the various constituencies affected by the CMT-rate reasonable return standard. The Working Group’s discussions resulted in the

development of a new method for determining reasonableness: the Best Customer Standard.

The Working Group unanimously recommended that:

1. The Supreme Court authorize IOLTA to adopt the Best Customer Standard as the new measure for ensuring reasonable returns;
2. The IOLTA Trustees invite a representative from the Department of Banking and Insurance and a representative from the banking industry to serve as advisors to the IOLTA Trustees during implementation of the Best Customer Standard;
3. IOLTA report to the Supreme Court in one year on the effect of implementation of the Best Customer Standard; and
4. The Bar and the banking industry be reminded that certain account fees as specified in the IOLTA Guidelines for Financial Institutions can be charged to IOLTA, while others can be charged to the attorney or law firm.

With one substantive modification, the Court has approved the recommendations submitted by the Working Group. The modification is that IOLTA must report to the Court on implementation results of the new Best Customer Standard on or before July 31, 2006, rather than the "one year" that the Working Group recommended.

The Court thus directs the IOLTA Board to adopt and forthwith begin implementation of the Best Customer Standard appended to this document as the approved means to determine what constitutes a reasonable return on IOLTA deposits. As part of that expedited process, the Court directs the IOLTA Trustees to consult with a representative from the Department of Banking and Insurance and from the banking industry.

The Court expects that the Best Customer Standard will be in place at approved financial institutions by no later than January 31, 2006. Until a financial institution is in compliance with the Best Customer Standard, it shall abide by the CMT-rate reasonable return standard. Any financial institutions that have chosen not to meet the current CMT-rate standard and who fail to adopt and implement the Best Customer Standard by January 31, 2006, will be subject to removal from the list of financial institutions with whom attorneys may maintain trust and business accounts. That action will follow the Court's receipt of written notice from the IOLTA Trustees. Financial institutions that fail to adopt the Best Customer Standard by January 31, 2006, will receive written notice from IOLTA initiating the deauthorization process described in the Court's Notice to the Bar dated June 15, 2005. To ensure ready access to the information contained in that Notice, it will be incorporated into the IOLTA Guidelines, as approved by the Supreme Court.

To maintain the positive momentum achieved by the Working Group's discussions and to encourage continued cooperation and improved communication among all concerned, the Court notes that normal service charges as defined in the Guidelines may be charged to IOLTA and that other charges should be charged to the attorney or law firm. Banks may waive the charges to IOLTA in the spirit of the important public purpose of the program, but are not required to do so. Banks and attorneys must agree on the method of payment for any other fees. A Notice to the Bar regarding bank charges and provisions of the new standard that affect attorneys is being published contemporaneously with this Administrative Determination.

The Court greatly appreciates the efforts of the Working Group, which identified the concerns of all parties involved and developed an approach that is expected to accommodate the needs of the banks, the Bar, and the important public purposes of IOLTA. The Court also acknowledges and appreciates the efforts by financial institutions to cooperate with and contribute to the success of the IOLTA program in New Jersey.

For the Court:

/s/ Stephen W. Townsend, Esq.

Clerk of the Supreme Court

Date: November 15, 2005

## **Best Customer Standard**

This standard describes the actions necessary to demonstrate that a financial institution is offering a comparable and reasonable return on IOLTA accounts, as required by the IOLTA Guidelines.

A. A financial institution shall provide to IOLTA the highest yield available among the following types of accounts, as provided to the best customers of the institution with similarly-sized deposits in such accounts in New Jersey:

1. A money market account with or tied to check writing capability;
2. A business interest-paying checking account backed by a sweep capability, with the sweep to a money market fund or daily overnight financial institution repurchase agreement invested in or fully collateralized by U.S. Government securities;
3. A government (such as for municipal deposits) checking account;
4. An open-end money market fund with or tied to check writing capability solely invested in or fully collateralized by U.S. Government securities (and with total assets of at least \$250,000,000); or
5. Any other interest-paying business checking account product.

B. As alternatives to the foregoing, the institution may offer:

1. 60% of the Federal Funds Target Rate paid on an interest-bearing checking account; or
2. A yield specified by IOLTA, if IOLTA so chooses, which is agreed to by the financial institution and would be in effect for and remain unchanged during a period of twelve months from the inception of the agreement between the institution and IOLTA.

C. The following additional provisions are applicable. As indicated by their terms, some apply only to one or some of the options set forth above.

1. If the highest yielding of the first five options is chosen by the institution, it shall pay not less than the best rate paid by the lowest bank in the third quartile of all IOLTA participating financial institutions offering that type of account, as specified in options 1 through 5. Quartiles will be created by ranking all banks according to the rates paid for each of options 1 through 5 above, from highest to lowest, and then dividing them into fourths. Such quartiles and amounts shall be determined by IOLTA on a quarterly basis. Based on the reports submitted by participating financial

institutions concerning the rates paid to all bank customers for each type of account, IOLTA will determine on a quarterly basis the distribution of banks in each quartile and the cut off rate at the bottom of the third quartile for each type of account.

2. The sixth option (Fed Funds) shall be calculated as of the first day of each month.
3. A bank may elect to offer the highest rates that it pays on sweep, government or high-yield money market accounts on another qualifying IOLTA checking account, instead of actually offering such account.
4. All account types will provide immediately available funds as required by Supreme Court rule for attorney trust accounts. Money market accounts shall comply with applicable banking regulations.
5. IOLTA will continue to exempt low balance accounts which average \$5,000 or less, as part of its annual registration process.
6. Participating financial institutions shall certify their compliance with these requirements in the form and manner prescribed by the IOLTA Fund.
7. The requirements set forth in this section shall apply to IOLTA accounts with average balances of \$100,000 or more.
8. All participating financial institutions shall report, in the form and manner prescribed by the IOLTA Fund, on the best rate paid to their best customers for each of the types of accounts they offer within the definitions specified in options 1 through 5 above.
9. Attorneys with accounts in a financial institution which ceases for any reason to be an approved depository for attorney trust accounts shall move those accounts to an institution in the first or second quartiles at the time of the move.
10. Where there is reasonable cause to believe a financial institution is willfully misrepresenting its best yield information, the IOLTA Fund may condition continued trust account depository approved status on a finding by the institutions auditor that its certifications have been accurate.

D. The IOLTA Board shall monitor and report periodically to the Supreme Court on the effectiveness of this standard.