

The following is a real-time transcript taken as closed captioning during the oral argument proceedings, and as such, may contain errors. This service is provided solely for the purpose of assisting those with disabilities and should be used for no other purpose. These are not legal documents, and may not be used as legal authority. This transcript is not an official document of the Florida Supreme Court.

Amendments to Rules Regulating The Florida Bar: Interest on Trust Accounts

THE NEXT CASE ON THE COURT'S DOCKET IS THE AMENDMENT TO THE RULES REGULATING THE FLORIDA BAR HAVING TO DO WITH THE IOTA RULE.

GOOD MORNING. MAY IT PLEASE THE COURT. GOOD MORNING, CHIEF JUSTICE WELLS AND MEMBERS OF THE COURT. I AM HAMILTON COOK. I AM FROM JACKSONVILLE, AND I HAVE THE PRIVILEGE OF CURRENTLY SERVING AS PRESIDENT OF THE FLORIDA BAR FOUNDATION. WITH ME AT COUNSEL TABLE IS CATHY McELROY FROM TAMPA, WHO HAS BEEN CHAIR OF OUR AD HOC COMMITTEE, STUDYING THESE PROPOSED AMENDMENTS TO THE IOTA RULE. I AM VERY PLEASED AND PROUD TO REPRESENT OUR BOARD, TO REPRESENT OUR GRANTEE COMMUNITY, AND MORE THAN 150 LAWYERS WHO SIGNED ON OUR PETITION, REQUESTING THAT THE IOTA RULE BE AMENDED. WE FILED THIS WITH THE UNANIMOUS SUPPORT OF OUR FOUNDATION BOARD, AND AFTER VERY CAREFUL STUDY AND DEBATE, ON WHICH ARE THE BEST WAYS TO TRY TO COMBAT A WHIP SHAW COMBINATION THAT WE WERE EXPERIENCING AND HAVE FOR THE LAST TEN YEARS, IN LOW-INTEREST RATES, AND HIGH SERVICE CHARGES. WHEN THIS COURT ADOPTED MANDATORY IOTA IN 1989, WE SAW THE INCOME FOR THE FOUNDATION GOING FROM AN AVERAGE OF ABOUT \$3 MILLION-A-YEAR TO \$19 MILLION-A-YEAR. IT WAS AN INCREDIBLE RISE. THE LEADERSHIP OF THE FOUNDATION AT THAT TIME, WISELY DECIDED TO PUT ASIDE A RESERVE, REALIZING THAT WE MAY NOT HAVE THAT KIND OF INCOME EVERY YEAR. AND SO WE DID PUT ASIDE A RESERVE, AND WE BEGAN TO SEE THAT INTEREST RATES BEGAN TO GO DOWN AND SERVICE CHARGES BEGAN TO GO UP. AND SO OUR ANNUAL INCOME WAS BEING REDUCED EACH YEAR. WE WERE ABLE TO USE OUR RESERVES AND TO HELP KEEP OUR FUNDING LEVELS AT A RELATIVELY STABLE LEVEL, FOR OUR GRANTEESE. HOWEVER, IN -- FOR OUR GRANTEES. HOWEVER, IN THE LAST YEAR, OUR INCOME HAS NOW GOTTEN DOWN FROM A HIGH OF \$19 MILLION TO A CURRENT LEVEL OF ABOUT \$11 MILLION. WE HAVE NECESSARILY HAD TO SPEND OUR RESERVES, TRYING TO KEEP OUR GRANTS AT A STABLE LEVEL. FOR THE LAST TWO YEARS, WE HAVE HAD TO REDUCE OUR GRANTS TO OUR GRANTEES BY 15 PERCENT.

CAN WE DISCUSS THE SPECIFICS OF THE AMENDMENT? AS I AM UNDERSTANDING IT, THERE ARE TWO ASPECTS. ONE IS YOU WANT TO EXPAND THE POOL OF ELIGIBLE INSTITUTIONS TO INCLUDE SOME OTHER TYPE OF INVESTMENT VEHICLE. IS THAT CORRECT?

YES.

AND THE SECOND IS THAT YOU WANT IOTA ACCOUNTS TO BE TREATED EQUALLY WITH SIMILAR NON-IOTA ACCOUNTS.

EXACTLY.

HAVE YOU RECEIVED A COPY OF, AND I KNOW THEY WERE LATE-FILED BUT WE ALLOWED THEM TO BE FILED, THE FLORIDA'S BANKERS ASSOCIATION COMMENTS?

YES, JUSTICE PARIENTE.

AND ALSO OFFICER ENGLAND'S COMMENTS ABOUT THE EXACT WORDING.

YES, MA'AM.

ARE YOU PREPARED TO ADDRESS THOSE SPECIFICS, AS TO WHETHER THE WORDING OF THE RULE NEEDS TO BE CLARIFIED AT ALL?

MR. CARDWELL IS HERE TO SPEAK TO THE COURT. MR. ENGLAND IS NOT HERE, AS I UNDERSTAND IT. WE HAVE HAD TO WORK VERY CLOSELY WITH BOTH OF THOSE INDIVIDUALS, WITH THE FLORIDA BANKERS ABOUT LANGUAGE. WE HAD FEEL OUR LANGUAGE IS GOOD GOOD. -- WE FEEL OUR LANGUAGE IS GOOD. WE DON'T HAVE OBJECTION TO THE LANGUAGE THAT WE ARE -- THAT THEY ARE SUGGESTING.

SO THEIR LANGUAGE DOES REFLECT YOUR INTENT, WHICH IS NOT EXCLUSIVELY REQUIRE BANKS TO BASE THE INTEREST CHARGES ON THE MINIMUM BALANCE BUT AS TO WHATEVER THE FACTORS THAT THEY WOULD USE, AS LONG AS THEY DON'T DISCRIMINATE AGAINST IOTA ACCOUNTS.

EXACTLY. WE ARE SIMPLY WANTING TO HAVE THE IOTA ACCOUNTS TREATED ON THE SAME PARITY WITH NONIOTA ACCOUNTS.

NOW, WHAT ABOUT THE COMMENTS, CONCERNING THE FACT THAT THE INVESTMENT MONEY MARKET ACCOUNTS THAT YOU HAVE SPECIFIED THAT THEY BE IN MONEY MARKETS THAT HAVE GOVERNMENT FUNDS, BUT WITH A MINIMUM BALANCE OF \$250 MILLION.

YES, MA'AM.

THERE IS NO INSURANCE REQUIREMENT. THE BANK'S COMMENTS INDICATE THAT THEY THINK THAT IS A RISKY --

WE DO NOT BELIEVE THAT IS A RISKY SITUATION, JUSTICE PARIENTE. WE ARE DEALING WITH LARGE MONEY MARKET THAT IS CONSISTENT ONLY OF U.S. GOVERNMENT SECURITIES. A MINIMUM BALANCE OF \$250 MILLION, AND WE BELIEVE THAT THAT IS A SAFE INVESTMENT. IF THIS COURT PERMITS THIS, I AM SURE THE FOUNDATION WILL CONTINUE TO EXPLORE OPTIONS OF TRYING TO ENSURE THAT, IF THERE IS ANY RISK, THAT WE CAN MEET THAT, BUT WE FEEL THIS IS A VERY VERY MINIMAL RISK.

WHAT IS THE MECHANISM? BECAUSE THE -- IT IS THE WAY THAT YOU PROPOSE IT, IT IS THE FOUNDATION THAT WILL DETERMINE IF A BANK QUALIFIES BY OFFERING THE SAME INTEREST RATES AS THEY WOULD TO ANOTHER CUSTOMER. BECAUSE, AGAIN, THE CRITERIA ARE NOT EXACT, AND APPARENTLY BANKS HAVE -- DON'T HAVE A PUBLISHED SET OF OBJECTIVE CRITERIA, WHAT HAPPENS OR WHAT IS THE MECHANISM IF EITHER A LAWYER OR A, THE BANK DISPUTES THE FOUNDATION'S DECISION THAT THIS IS NOT A QUALIFYING INSTITUTION?

OKAY. THE FIRST IS WE WISH THAT YOU WILL CHARGE US IN IMPLEMENTING THIS RULE, NOT THE LAWYERS OR THE LAW FIRMS. EACH BANK IS GOING TO HAVE THEIR OWN, INDIVIDUAL CRITERIA. SOME BANKS OFFER SWEEP ACCOUNTS AS A REGULAR RULE. IF THEY DO, WE SIMPLY WANT TO ENSURE THAT, IF THE IOTA ACCOUNT IS MEETING THE SAME CRITERIA THAT THEY USE FOR ANYWHERE NONIOTA ACCOUNT THAT, WE GET THE SAME RATE.

AND YOU EXPECT THOSE TO BE WRITTEN CRITERIA?

WE WOULD HOPE. THAT WOULD BE NICE. SOME DO, SOME DON'T. I THINK MR. ENGLAND'S COMMENT WAS IT SHOULD BE A PUBLISHED CRITERIA. YES. THERE ARE SOME BANKS THAT ARE NOT GOING TO OFFER THE SWEEP ACCOUNT. OUR RULE DOES NOT REQUIRE THEM TO DO SO. IN OTHER WORDS WE ARE LOOKING AT EACH BANK. WHAT DO YOU OFFER? AND IF YOU OFFER THIS AS A STANDARD VEHICLE FOR NONIOTA, WE ARE ASKING, WE ARE BASICALLY SAYING, IN THE RULE, THAT THAT BANK, TO BE AN ELIGIBLE BANK FOR IOTA ACCOUNTS, MUST OFFER THAT SAME PRODUCT TO THE IOTA ACCOUNT. SO WE, OUR AMENDMENTS DO -- EXCUSE ME.

WHAT I AM TRYING TO UNDERSTAND IS, IF THE BANK, AFTER ALL IS SAID AND DONE, SAYS WE ARE GOING TO GIVE YOU A 1 PERCENT INTEREST RATE OR 2 PERCENT, AND YOU SAID BUT WAIT A SECOND. YOU HAVE GOT THESE CUSTOMERS AND THEY ARE GETTING 1.5 OR 2 PERCENT. THEY GO THAT IS BECAUSE OF THE FACT THAT THEY GET US OTHER BUSINESS, AND YOU SAY WHERE IS, HOW, I AM JUST TRYING TO UNDERSTAND, BECAUSE AT THAT POINT, IF THEY DON'T OFFER IT IN THE SAME PERCENTAGE, UNDER THIS RULE, THEY WOULD NOT BE A QUALIFYING INSTITUTION FOR THE FUNDS TO GO DEPOSITED INTO, THE LAWYER'S FUNDS, CORRECT?

IT WOULD BE AN INEXACT SCIENCE. THE PUBLICATION OF STANDARDS WOULD BE HELPFUL BY THE BANK. WE ARE GOING TO BE MONITORING IT IN EVERY WAY WE CAN. IF WE FEEL LIKE BANKS ARE NOT TREATING THE IOTA ACCOUNTS FAIRLY, THEN WE ARE GOING TO TRY TO BRING THAT TO THEIR ATTENTION ATTENTION. IF --

BUT WHO IS GOING TO BE THE ULTIMATE ARBITER, IF YOU SAY, IF THE FOUNDATION ENDS UP SAYING YOU ARE NOT A BANK THAT QUALIFIES. THEREFORE LAWYERS FUNDS CANNOT GO THERE. WHAT IS --

I THINK THE FOUNDATION WOULD FINALLY, IF THERE WAS NO MOVEMENT, IF THERE WAS NO RELIEF AT ALL, WE WOULD BE GOING TO THE LAW FIRM AND SAYING THAT THAT BANK IS NOT AN ELIGIBLE INSTITUTION FOR IOTA FUNDS. IT DOESN'T MEAN THAT ALL BANK ACCOUNTS HAVE TO BE CHANGED, BUT THE IOTA ACCOUNT WOULD NOT, THEY DID NOT MEET THAT CRITERIA. SO WE ARE DOING THREE THINGS WITH OUR PROPOSED RULE AMENDMENT. FIRST IS WHAT I HAVE CALLED THE FAIRNESS OR PARITY AMENDMENT, SAYING THAT IOTA ACCOUNTS SHOULD BE TREATED THE SAME AS NONIOTA ACCOUNTS, WITH SIMILAR STANDARDS STANDARDS. WE ARE, ALSO, SAYING THAT WE BELIEVE THAT INVESTMENT COMPANIES SHOULD BE PERMITTED DEPOSITORY FOR OUR ACCOUNTS, TO INJECT COMPETITION INTO THE PROCESS. AND AS WE DISCUSSED BEFORE, THAT WE SHOULD BE, THAT PERMITTED U.S. GOVERNMENT SECURITIES, MONEY MARKET FUNDS, SHOULD BE PERMITTED INVESTMENTS, AND SO THOSE ARE THE PRIMARY FOCUS OF OUR PETITION.

WHAT WAS THE REASON FOR THE INITIAL CHANGE? WHEN THIS WAS INITIALLY PUBLISHED, THERE WAS SOME LANGUAGE IN THERE THAT ALLOWED CREDIT UNIONS, ALSO, AND THEN THAT LANGUAGE WAS CHANGED TO REMOVE CREDIT UNIONS. WHAT WAS THE REASON FOR THAT REMOVAL?

PRIMARILY BECAUSE WE FOUND, AS WE INVESTIGATED THAT, THAT THERE IS NOT INSURANCE AVAILABLE ON CREDIT UNION AC OCCUPANTS, EXCEPT WITH RESPECT TO -- UNION ACCOUNTS, EXCEPT WITH RESPECT TO MEMBERS OF THE CREDIT UNION, AND SO WE FELT, WITH THAT NOT BEING THE POSTURE THAT, WE OUGHT TO TAKE CREDIT UNIONS OUT AT THIS POINT.

ANY DEPP POSTORE IN ACCREDIT -- ANY DEPOSIT OR IN A CREDIT UNION IS ONLY APPLIED TO A MEMBER OF THAT CREDIT UNION?

YES. THAT CONSISTS OF MANY ACCOUNTS, MANY OF WHOM ARE NOT MEMBERS OF THAT CREDIT UNION, THEN THE INSURANCE WOULD NOT COVER IT. SO THAT WAS THE REASON. WE HAVE RESERVED SOME TIME FOR SOME OTHER COMMENTS WITH THE COURT'S INDULGENCE. AND I WOULD LIKE TO CALL ON FOR A BRIEF COMMENT. MR. RUSSELL. MR. CHIEF JUSTICE: MR. RUSSELL.

MAY IT PLEASE THE COURT. NEVER BEFORE HAVE I HAD THE PRIVILEGE OF SPEAKING TO THE COURT TWICE IN THE SAME DAY, AND I APPRECIATE IT VERY MUCH. FIRST OF ALL, I HAD THE PRIVILEGE AND THE HONOR OF SERVING, FOR EIGHT YEARS, ON THE BOARD OF DIRECTORS OF THE FOUNDATION, AND ACTUALLY SERVED FOR A WEEK AS PRESIDENT-ELECT DECIDING NATIONAL OF THE FOUNDATION. -- DECIDING NATIONAL OF THE FOUNDATION -- DECEMBER I GO NATIONAL OF THE FOUNDATION -- DESIGNATE OF THE FOUNDATION, AND IT WAS PARTLY WITH

THE NEEDS OF THE FOUNDATION'S PROGRAMS AND PROVIDING CIVIL LEGAL ASSISTANCE TO THE POOR IN THIS STATE, THAT I WAS ABLE TO TAKE A MESSAGE TO THE FLORIDA BAR, AND I AM VERY PLEASED TO REPORT TO THE COURT THAT THE FLORIDA BOARD OF GOVERNORS OF THE FLORIDA BAR HAS ENTHUSIASTICALLY AND UNANIMOUSLY VOTED IN SUPPORT OF THE PROPOSED RULE CHANGE, DEALING WITH ELIGIBLE IOTA ACCOUNTS. WE ARE MINDFUL OF THE NEED, RECOGNIZE THE PROBLEM, AND THINK THAT THIS IS A GOOD SOLUTION FOR IT, SO I AM PLEASED TO REPORT THAT TO THE COURT. I WOULD JUST HAVE A COUPLE OF COMMENTS I WOULD, ALSO, LIKE TO MAKE. WE UNDERSTAND IN THIS STATE THAT LAWYERS WHO VOLUNTEER THEIR TIME DO SO MAGNIFICENTLY. THEY HAVE REPORTED THAT THEY GIVE \$1.3 -- \$EXCUSE ME, 1.3 MILLION HOURS OF THEIR TIME TO PRO BONO LEGAL SERVICES. THEY DONATE \$1.6 MILLION IN CASH. THEY GIVE TIME THEY DON'T REPORT. THE FOUNDATION DOES A MAGNIFICENT JOB IN DOLE -- A MAGNIFICENT JOB IN DOLING OUT ITS GRANTS THAT THEY ARE ALLOWED TO DO, AND SO WE PROVIDE CIVIL LEGAL ASSISTANCE TO THOSE THAT CANNOT AFFORD IT. WE ARE CONCERNED ABOUT IT, PROVIDING ONLY A THIRD IN THIS STATE TO THE NEEDS IN THE STATE, AND WE ARE EXCITED ABOUT PROVIDING MORE WORTHY SUPPORT TO THAT VERY REMARKABLE NEED. MORE REMARKABLY, IN FLORIDA IOTA ACCOUNTS TODAY, WE HAVE \$1.7 BILLION, BILLION, AND OVER THE PAST DECADE OR SO, WHAT IS EQUALLY REMARKABLE IS THAT THOSE ACCOUNTS HAVE ONLY GENERATED \$10 MILLION OR \$11 MILLION-A-YEAR FOR FLORIDA CIVIL LEGAL SERVICES. THERE IS SOMETHING WRONG WITH THAT NUMBER, AND IN MY JUDGMENT, IN MY OBSERVATION OF THIS, WHEN WE ARE LOOKING AT IOTA ACCOUNTS, THE MARKET FORCE ECONOMICS THAT WOULD NORMALLY BE AT PLAY, IN CAUSING THESE ACCOUNTS TO PROVIDE A COMPETITIVE RETURN ARE NOT THERE. NOT INTENTIONALLY. I THINK THE LAW FIRMS THAT CREATE THESE ACCOUNTS SIMPLY HAVE NO MOTIVATION TO SEE TO IT THAT THE RETURNS ON THE ACCOUNTS ARE SIMILAR TO THOSE THAT THAT WOULD BE IN A COMMERCIAL ENVIRONMENT. THEY DON'T LOOK OVER THOSE ACCOUNTS AND SAY, WELL, WHY IS MY COMPETITOR UP THE STREET GETTING 3.35 PERCENT ON A RETURN ON HIS TRUST ACCOUNTS FOR CLIENTS ABOUT MY IOTA ACCOUNT IS ONLY GETTING 1.2, SO THIS HAS SORT OF LEFT FINANCIAL INSTITUTIONS FREE, IN MY OPINION TO DEAL WITH THESE IOTA ACCOUNTS IN SKIMPY WAY, IN A WAY THAT IS NOT THE SAME AS COMPETITIVE ACCOUNTS WITH SIMILAR AMOUNTS OF MONEY, AND THAT THEY ARE MAKING SIMILAR RETURNS ON. SO THIS RULE CHANGE, I THINK, THE BOARD OF GOVERNORS SAW IT THAT WAY AND BELIEVES THAT THIS IS A GOOD, FAIR, EQUITABLE SOLUTION TO PROVIDE THAT MISSING FACTOR, AND THAT FACTOR IS THE MARKETPLACE SIMPLY IS NOT AT PLAY ON IOTA ACCOUNTS, SO WE WOULD URGE THE COURT, AND WE THANK THE COURT, AGAIN, FOR ALLOWING THE BAR TO BE REPRESENTED HERE THIS MORNING, AND WE WOULD URGE THE COURT TO APPROVE THIS RULE, AND WE ARE ENTHUSIASTICALLY IN SUPPORT OF IT. THANK YOU.

THANK YOU, MR. RUSSELL. IS MISS NAB GOING TO?

MAY IT PLEASE THE COURT. MY NAME IS CHRISTINE NAB. I AM THE DIRECTOR OF LEGAL SERVICES OF NORTH FLORIDA. I AM HERE THIS MORNING ON BEHALF OF THE PROJECT DIRECTORS ASSOCIATION, WHICH IS MADE UP OF LEGAL SERVICES AND LEGAL AID DIRECTORS FROM AROUND THE STATE. MORE IMPORTANTLY I AM HERE TO ADD A VOICE TO THE ECONOMICALLY DISADVANTAGED CITIZENS OF OUR STATE, ABUSED AND BATTERED WOMEN AND CHILDREN, ELDERLY WHO FALL PREY TO -- FALL PREY TO CONSUMER FRAUD PRACTICES, WHO WILL BENEFIT FROM THE MODIFICATIONS TO THE RULE THAT IS BEFORE YOU. QUITE STRONGLY WE ENCOURAGE YOUR APPROVAL. THANK YOU.

THANK YOU. MR. CARDWELL.

THANK YOU, MR. CHIEF JUSTICE. JUSTICES. COUNSEL. I AM TOM CARDWELL. I AM COUNSEL FOR THE FLORIDA BANKERS ASSOCIATION. WE HAVE PROVIDED --

MR. CARDWELL, HAS THE -- YOU AND MR. COOKE BEEN ABLE TO WORK OUT THIS LANGUAGE?

I BELIEVE SO. THE LANGUAGE THAT WE HAVE PROPOSED IN OUR COMMENT, AS I UNDERSTAND IT, AND UNDERSTAND FROM MR. COOKE'S COMMENTS, IS ACCEPTABLE TO THEM WE HAVE HAD A VERY CONSTRUCTIVE CONVERSATION WITH THE FLORIDA BAR FOUNDATION, AND ALTHOUGH I AM SITTING ON THE OTHER SIDE OF THE PODIUM HERE, I AM NOT HERE SPEAKING IN OPPOSITION TO THE RULES, THEMSELVES. WHAT I DID WANT TO DO WAS TO SAY THAT THE BANKERS HAD SOME CONCERN ABOUT THE SPECIFICITY OF THE RULE, WITH RESPECT TO DETERMINING WHETHER OR NOT THE HIGHEST INTEREST RATE IS PAID, WORKED WITH THEM ON SOME LANGUAGE, EXCHANGED IT, AND AS I UNDERSTAND IT, THE LANGUAGE THAT IS SHOWN IN OUR COMMENT LETTER IS NOT SOMETHING THAT THE BAR FOUNDATION WOULD OPPOSE.

OKAY.

SO I THINK, TO THAT POINT, WE HAVE WORKED THAT OUT.

WOULD YOU, JUST ON THAT.

YES.

ARTHUR ENGLAND HAD, WITH A MINOR VARIATION, HAD PROPOSED SOMETHING SIMILAR, BUT HIS SAID "PUBLISHED ACCOUNT ELIGIBILITY QUALIFICATIONS." COULD YOU JUST ADDRESS THE QUESTION AS TO WHETHER THESE ACCOUNT ELIGIBILITY QUALIFICATIONS THAT THE BANK HAS IS SOMETHING THAT, FOR EACH BANK, IN WRITING, OR IS IT SOMETHING THAT WHEN THE BAR FOUNDATION GOES AND TRIES TO FIND OUT WHY AIN'T REST RATE IS DIFFERENT, THE BANK OFFICER SAYS THAT IS JUST BECAUSE IN OUR BANK THESE ARE THE OTHER FACTORS THAT WE --

WHAT HAPPENS, JUSTICE PARIENTE, IN SETTING A BANK RATE IS OBVIOUSLY SOME ACCOUNTS, IF THEY ARE RELATIVELY SMALL, ARE JUST STRAIGHT OFF THE CARD. IN LARGER RELATIONSHIPS, WHICH VARIOUS LAW FIRMS AND OTHERS HAVE, THERE ARE A NUMBER OF FACTORS WHICH DETERMINE THE HIGHEST RATE THAT IS PAID, AND THOSE FACTORS INCLUDE THE SIZE OF THE ACCOUNT. OTHER ACCOUNT RELATIONSHIPS THAT THE FINANCIAL INSTITUTION MAY HAVE, BUSINESS REFERRALS, WHETHER, FOR EXAMPLE, THERE ARE LOANS THAT, LOAN RELATIONSHIPS, AND WHAT, FRANKLY, SOME OF THE FINANCIAL INSTITUTIONS WERE CONCERNED ABOUT, IS THAT THEY MAY BE PAYING HIGHER RINT REST OF RATES TO -- HIGHER INTEREST OF RATES TO NONITE HE IOTA AC -- TO NONIOTA ACCOUNTS, WHICH FACT ANALYSIS IS WHAT WE USE, A NONIOTA ANALYSIS OF THE ACCOUNT, SO YOU MAY HAVE A \$150,000 OR \$200,000 ACCOUNT, YOU MAY BE PAYING, AS A FINANCIAL INSTITUTION, A HIGHER RATE OF INTEREST, BECAUSE THIS IS TO A NONIOTA CLIENT WHO COMES IN AND SAYS THAT IS TRUE, BUT I AM BORROWING FROM YOU. I HAVE A LINE OF CREDIT. I HAVE OVER RELATIONSHIPS WITH YOU, SO AS A PART OF THAT AS A BALANCE OF PAY ME MORE ON THIS INTEREST, AND WHAT WE WERE CONCERNED WITH WAS NOT GETTING WHIP-SAWED, BY FINDING OURSELVES PAYING MORE INTEREST TO SOME AND BEING CONFRONTED BY SAYING WE KNOW OF COMPANY "X" AND WE KNOW THAT THEY HAVE THE SAME AMOUNT OF MONEY IN THEIR ACCOUNT, AND YOU ARE NOT, AS THE BANK, PAYING THE SAME RATE.

I GUESS THE QUESTION THAT I WOULD ASK, IS ARE THESE, WITHIN EACH BANK, IT SOMETHING ASCERTAINABLE, YOU KNOW, USUALLY WHEN YOU DETERMINE DISCRIMINATION OR HOW TO DETERMINE PARITY, YOU LOOK AT ARE THERE OBJECT I HAVE CRITERIA THAT THE BAR FOUNDATION WILL LOOK TO TO SAY THAT YOU ARE NOT PAYING THE SAME. THEY HAVE THIS AND THIS AND YOU HAVEN'T GIVEN IT TO THEM. AGAIN, BECAUSE WE ARE PUTTING THIS INTO A RULE, AND WE ARE SAYING ELIGIBILITY QUALIFICATIONS, IF ANY. WHAT ARE, IS THAT A DEFINED TERM THAT WE CAN, THAT IS UNAMBIGUOUS?

VERY LITTLE OF THE WORLD IS UNAMBIGUOUS, BUT THE LANGUAGE THAT WE HAD PROPOSED WAS THAT THE STANDARDS THAT WERE CUSTOMARILY USED. MY CONCERN ABOUT PUBLISHED IS THAT, WHEN YOU DO THE KIND OF ANALYSIS ABOUT WHICH I HAVE JUST SPOKEN, THERE IS NOT

GOING TO BE A CARD SITTING OUT IN FRONT THAT WE HAND OUT TO CUSTOMERS. I BELIEVE, AND I BELIEVE, JUSTICE PARIENTE, THIS TIES IN WITH THE QUESTION YOU ASKED A FEW MINUTES AGO, WHICH WAS HOW ARE YOU GOING TO ENFORCE THIS, AND WHAT HAPPENS IN REAL LIFE IN THESE SITUATIONS, AS I UNDERSTAND IT, IS THAT THE BAR FOUNDATION, AND -- SITS DOWN AND ACTUALLY TALKS TO THE BANK ABOUT THIS, AND I WOULD FEEL THAT THE BANK ABSOLUTELY WOULD HAVE TO JUSTIFY THAT ANY FACTOR THAT IT USED IN HERE WOULD HAVE TO BE ONE THAT IS ONE THAT IT CUSTOMARILY USED IN SETTING THIS RATE, AND IF THE BAR FOUNDATION FELT, IN DISCUSSION WITH THEM, THAT THEY WEREN'T DOING IT, THEN AS MR. COOK SAID, THEY HAVE THE ULTIMATE CALL, AND THIS IS A COLLABORATIVE EFFORT TO MAKE THIS PROGRAM WORK. THE FINANCIAL INSTITUTIONS AND THE BAR NEED TO WORK TOGETHER.

THE BOTTOM LINE, IF I UNDERSTAND IT, IN ANSWER TO THAT QUESTION, IS YOU DON'T BELIEVE THAT IT IS POSSIBLE TO HAVE PUBLISHED STANDARDS BY EACH BANK.

I THINK IT IS UNLIKELY THAT A BANK IS LIKELY TO HAVE A SET SERIES OF PUBLISHED STANDARDS IN THERE. I THINK WE HAVE 364 SEPARATE BANK CHARTERS. A LOT OF THEM ARE SMALL, INDEPENDENT BANKS. A LOT OF THEM ARE IN SMALL COMMUNITIES. I AM SURE THAT SOME WILL HAVE THESE. I AM SURE THAT OUR MORE SOPHISTICATED BANKS WILL. THE GROUP THAT I REPRESENT COVERS A BROAD SPECTRUM, AND IN SPEAKING FOR ALL OF THEM, I PREFER TO USE THE WORD "CUSTOMARILY", LEAVING IT, FRANKLY, TO JUDGMENT IN THAT POINT, AND THE JUDGMENT WOULD BE EXERCISED BY THE FLORIDA BAR FOUNDATION, IN DOING THIS.

I TAKE IT, IF YOU DID HAVE PUBLISHED STANDARDS, YOU WOULD END UP WITH A CATCHALL PHRASE, RELATIVE TO ANY OTHER FACTOR THAT THE BANK DEEMS NECESSARY, OR SOMETHING LIKE THAT?

I WOULD NOT BE SURPRISED TO SEE THAT, YOUR HONOR, NO.

IT WOULD TURN IT BACK TO THIS AMBIGUOUS SITUATION.

RIGHT. WHAT I THINK IS IMPORTANT HERE AND I THINK THE WAY THAT THIS WILL WORK OUT IS THE RULE MAKES IT CLEAR THAT, I CALL IT A MOST FAVORED NATIONS CLAUSE IS REALLY WHAT IT IS, IS YOU REALLY CAN'T DISCRIMINATE AGAINST THESE ACCOUNTS. MR. RUSSELL EXPRESSED CONCERNS THAT SOME FINANCIAL INSTITUTIONS NOT BEING FORCED TO DO SO, WOULD PAY LOWER RATES ON THIS AMOUNT THAN ON SOME AMOUNTS OF MONEY. I CERTAINLY DO NOT KNOW WHETHER THAT WOULD BE DONE OR NOT BUT CERTAINLY DON'T ADVOCATE A PRACTICE AND HAVE NO PROBLEM WITH A RULE THAT SAYS YOU HAVE GOT TO TREAT THESE FAIRLY, SO WE ARE NOT TROUBLED BY THAT RULE AT ALL AND SUPPORT IT, AND I CERTAINLY THINK THAT THIS GIVES THE FLORIDA BAR FOUNDATION THE LEVERAGE THAT IT NEEDS, TO BE ABLE TO ENFORCE THAT THAT IS, IN FACT, THE CASE.

THANK YOU, MR. CARDWELL. YOUR TIME IS UP. MR. COOKE, YOU MAY HAVE ONE MINUTE.

THANK YOU, YOUR HONOR.

IN THE LETTER THAT WAS SUBMITTED BY THE BANKERS ASSOCIATION, THEY PROPOSE AN A AND A B. THE B WOULD BE A NEW ---AN "A" AND A "B". THE "B" WOULD BE A NEW-FOUNDATION.

WE FELT THAT OUR LANGUAGE WAS GOOD. WE DID NOT HAVE OBJECTION TO MR. CARDWELL'S LANGUAGE OR TO MR. ENGLAND'S LANGUAGE. WE APPRECIATE THIS COURT'S ATTENTION TO THIS AND, HOPEFULLY EX-PEDITYITED TREATMENT. -- EXPEDITED TREATMENT. IT MAKES A DIFFERENCE, IF THIS RULE CAN COME INTO PLAY AS SOON AS POSSIBLE FOR OUR GRANTEE COMMUNITY. I THANK THE COURT VERY MUCH.

THANK, MR. COOKE. THANK YOU, COUNSEL, FOR YOUR ASSISTANCE IN THIS MATTER.

