

AMENDED AGENDA
FINANCIAL SERVICES COMMISSION
OFFICE OF FINANCIAL REGULATION

<http://www.flofr.com/Cabinet/PublicNotices.htm>

May 25, 2010

MEMBERS

Governor Charlie Crist
Attorney General Bill McCollum
Chief Financial Officer Alex Sink
Commissioner Charlie Bronson

Contact: Andrea Moreland (OFR)
(850) 410-9601

9:00 A.M.
LL-03, The Capitol
Tallahassee, Florida

ITEM	SUBJECT	RECOMMENDATION
-------------	----------------	-----------------------

1. The Office requests approval of the minutes of the January 26, 2010, and February 9, 2010, meetings.

(ATTACHMENT 1)

FOR APPROVAL

2. The Office requests approval to file Notices of Proposed Rules for Rule Chapters 69W-100, 69W-200, 69W-300, 69W-301, 69W-500, and 69W-600, relating to securities regulation. The proposed rules impose disqualifying periods for persons with criminal events in their background, update references to federal statutes and regulations, repeal unnecessary rules, and make other changes to clarify and simplify the regulations.

Advertising and Sales Literature

Rule 69W-100.007 is amended to clarify the standards for determining when advertisements and sales literature materials will need to be approved by the Office.

Definitions

Rule 69W-200.001 is amended to reflect the most current version of federal regulations and federal statutes referenced in the rule.

Financial Statements and Reports

Rule 69W-300.002 is amended to reflect the most current version of federal regulations and federal statutes referenced in the rule.

Refund of Fees, Files Denied or Withdrawn

Rule 69W-300.003 is repealed because it duplicates statutory provisions.

Right to Hearing

Rule 69W-301.003 is clarified to reflect the specific rules that govern the process of requesting a hearing.

Exempt Transactions

Rules 69W-500.008, .013, .015, .016, and .017 are amended to reflect the most current versions of federal regulations and federal statutes referenced in the rules.

Law Enforcement Records/Registration Applications

Proposed Rule 69W-600.0011, relating to the effect of law enforcement records on applications for registration as dealers, issuer/dealers, or investment advisers, will apply to registration requirements for securities dealers, issuer/dealers, and investments advisers. The proposed rule imposes disqualifying periods pursuant to which a relevant person of an applicant will be disqualified from being an officer, director, owner, etc., of the business, if the person has been convicted of, or pled guilty or nolo contendere to, crimes involving fraud, dishonesty or any other act of moral turpitude.

(ATTACHMENT 2)

APPROVAL FOR PUBLICATION

3. The Office requests approval to file a Notice of Proposed Rule for Rule 69U-100.045, relating to examination manuals and referenced standards.

The rule is amended to reflect the current versions of manuals and guides that the Office uses to examine state-chartered financial institutions.

(ATTACHMENT 3)

APPROVAL FOR PUBLICATION

ATTACHMENT 1

Financial Services Commission
Office of Financial Regulation
Meeting Minutes
January 26, 2010

FINANCIAL SERVICES COMMISSION
OFFICE OF FINANCIAL REGULATION

January 26, 2010

Members

Governor Charlie Crist
Chief Financial Officer Alex Sink
Attorney General Bill McCollum
Agriculture Commissioner Charles Bronson

MINUTES

All four members of the Financial Services Commission were present at the meeting, which was held in the Cabinet Meeting Room, Lower Level, The Capitol, Tallahassee, Florida, 32399. The following items were considered by the Commission, which were presented by Andrea Moreland, Legislative and Cabinet Affairs Director, Office of Financial Regulation.

ITEM

1. The Office requested approval of the minutes of the November 17, 2009, meeting.

Item was moved and seconded. Item was approved without objection.

2. The Office requested approval to file for final adoption Rule 69W-600.0021, relating to the effect of law enforcement records on applications for registration as associated persons.

Item was moved and seconded. Item was approved without objection.

After the above items were considered, Chief Financial Officer Sink indicated that she would be requesting that the issue of debt collectors be placed on the next agenda of the Financial Services Commission.

Minutes Prepared by:

Andrea J. Moreland
Director of Legislative and Cabinet Affairs
Office of Financial Regulation

Financial Services Commission
Office of Financial Regulation
Meeting Minutes
February 9, 2009

T H E C A B I N E T
S T A T E O F F L O R I D A

Representing:

FINANCIAL SERVICES COMMISSION
OFFICE OF FINANCIAL REGULATION

BOARD OF TRUSTEES, INTERNAL IMPROVEMENT TRUST FUND

The above agencies came to be heard before
THE FLORIDA CABINET, Honorable Governor Crist
presiding, in the Cabinet Meeting Room, LL-03,
The Capitol, Tallahassee, Florida, on Tuesday,
February 9, 2010, commencing at 9:10 a.m.

Reported by:
JO LANGSTON
Registered Professional Reporter

ACCURATE STENOGRAPHY REPORTERS, INC.
2894 REMINGTON GREEN LANE
TALLAHASSEE, FLORIDA 32308
(850) 878-2221

APPEARANCES:

Representing the Florida Cabinet:

CHARLIE CRIST
Governor

CHARLES H. BRONSON
Commissioner of Agriculture

BILL McCOLLUM
Attorney General

ALEX SINK
Chief Financial Officer

* * *

1	INDEX		
2	FINANCIAL SERVICES COMMISSION		
	OFFICE OF FINANCIAL REGULATION		
3	(Presented by THOMAS CARDWELL)		
4	ITEM	ACTION	PAGE
5	1	Approved	20
6			
7	BOARD OF TRUSTEES, INTERNAL IMPROVEMENT		
8	TRUST FUND		
	(Presented by MICHAEL SOLE)		
9	ITEM	ACTION	PAGE
10	1	Approved	39
11	2	Approved	40
	3	Approved	41
12	4	Approved	45
	5	Approved	49
13			
14			
15			
16			
17			
18			
19			
20	CERTIFICATE OF REPORTER		50
21			
22			
23			
24			
25			

1 P R O C E E D I N G S

2 * * *

3 (Agenda Items Commenced at 9:30 a.m.)

4 GOVERNOR CRIST: Financial Services Commission,
5 Office of Financial Regulation. Tom Cardwell. Good
6 morning, Tom.

7 MR. CARDWELL: Good morning, Governor Crist,
8 members of the Cabinet. I have been asked to speak
9 to you here this morning on the issue of debt
10 collection. Debt collection has been in the news
11 and on the minds of Florida citizens. The current
12 recession has certainly put tremendous economic
13 stress on both consumers and businesses.

14 With significant debt, high unemployment,
15 individuals are simply not able to pay their bills
16 in a timely manner, and also we should note that
17 businesses are similarly stressed. Their customers
18 are not paying for services and the goods that they
19 have provided.

20 Debt collection is a legitimate business that
21 is necessary in any economy. Creditors have the
22 right to collect the money that is owed to them.
23 But the process of debt collection can be and
24 unfortunately frequently is the subject of abuse.
25 And that is why there are both state and federal

1 laws that regulate the debt collection industry.

2 Now, times such as these exacerbate the
3 problems that are inherent in debt collection.
4 There are more debts to be collected. There's
5 greater pressure to collect them, and there are more
6 instances of abuse, and there are more complaints
7 about their abuses.

8 Florida's debt collector regulation is flawed.
9 Both the federal and state law regulate debt
10 collection. The federal Fair Debt Collection
11 Practices Act is administered by the Federal Trade
12 Commission, and in Florida we have parallel consumer
13 regulation. That's the Consumer Collection
14 Practices Act found in Chapter 559.

15 Now, regulating debt collection is not easy.
16 The business is not done in person. It is not done
17 through physical locations. Much of it is oral,
18 leaving no paper or electronic traces. And the debt
19 collection business itself can be located anywhere.
20 Florida. It can be located in any state. It, for
21 that matter, can be located in foreign countries.

22 Florida's debt collection laws need attention,
23 and they're drafted in a fashion that makes them
24 extremely difficult to enforce. First, the
25 responsibility for debt collector regulation is

1 spread among three different agencies. The Office
2 of Financial Regulation has the responsibility of
3 registering debt collection companies and taking
4 action against them for violations of Chapter 559.

5 The Department of Financial Services is charged
6 with receiving and maintaining a record of
7 complaints and of corresponding with both the
8 consumer and the collection agency, and the Attorney
9 General is empowered to bring actions on
10 out-of-state debt collectors under our current
11 system.

12 The second flaw is that the enforcement
13 mechanism is drafted in such a way that it is
14 extremely difficult to enforce. Before we at OFR
15 can take any action against a debt collector, it
16 must have at least five unresolved complaints by
17 five different consumers within a 12-month period.

18 And, of course, the debt collector can resolve
19 any of these complaints by promising not to contact
20 a consumer again. So it's very rare for an agency
21 to even have five unresolved complaints at any given
22 period.

23 Secondly, each of the complaints must be in
24 writing and it must be notarized. Now, imagine,
25 you're a consumer. You want to make a complaint.

1 You've essentially got to draft a complaint, which
2 is almost a legal document, and then you've got to
3 find someone to notarize it and to swear to it under
4 oath, and then you've got to send it in to the DFS
5 before it's even counted as a complaint.

6 Now, where there are fewer than five unresolved
7 complaints, all that we at OFR may do is issue a
8 written warning. If five or more remain unresolved,
9 then we can issue a written reprimand. The Office
10 may only -- and that's us -- may only revoke or
11 suspend a registration if we prove in an
12 administrative hearing that the collection agency
13 engaged in repeated violations which establish a
14 clear pattern of abuse of prohibited collection
15 practices. The licensee cannot be -- the license
16 can't be revoked or suspended if the collection
17 agency shows that the violations were not
18 intentional and resulted from bona fide error, often
19 a difficult standard.

20 The third problem is that debt collectors are
21 registered, they're not licensed. The OFR must
22 register them, under the statute, if the application
23 is complete on its face and the fee is paid. That's
24 the test. It can only be denied if the principal
25 had a professional license suspended or revoked and,

1 and that revocation is not explained satisfactorily.

2 And finally, fourth, the penalties for
3 violation under our current law are minimal. The
4 Office may impose an administrative fine up to
5 \$1,000 if there are repeated violations. So as you
6 can see, the current system makes it very difficult
7 for the consumer to make a complaint and for the
8 regulator and the bodies that some of you all head
9 to take effective action.

10 Now, I recently met with a representative of
11 Attorney General McCollum's office, of CFO Sink's
12 office, the Governor's office and the Commissioner
13 of Agriculture's office together to discuss ways to
14 improve our regulation of debt collectors. And a
15 number of ideas were discussed. It was a full and
16 frank and open discussion. And among other things
17 we looked at the interim project of the Senate
18 Banking and Insurance Committee, which has also had
19 an interim project relating to debt collection.

20 And we agreed as a group that there were three
21 primary issues that need to be addressed. Number
22 one is that enforcement procedures need to be made
23 more workable. Number two, the penalty should be
24 increased to be consistent with other regulation and
25 to make it riskier for people in this business when

1 they've violated it, so that there will be less
2 incentive for them to engage in bad behavior. And
3 finally we should improve the regulation to make
4 sure that the people who do not belong in the
5 business do not get in it in the first place.

6 And to accomplish this, we came up with 15
7 specific suggestions. Now, I'm not going to go over
8 all of them here with you, but let me say that they
9 include, number one, making the OFR the agency to
10 receive all the complaints and to act
11 administratively on them, so to house them all in a
12 single place so that problems of handing off are
13 minimized.

14 Secondly, it would give the Attorney General
15 the authority to bring actions in state courts as
16 well as in federal court so that they can act
17 immediately. And in addition to that, we would
18 provide that any violation of the act is also an
19 unfair and deceptive trade practice, which is
20 enforced by the Attorney General.

21 We would eliminate obstacles to consumers
22 bringing complaints. We would, for example, get rid
23 of the requirement that they must be in writing and
24 notarized. We would eliminate the obstacles to
25 taking actions against debt collectors; for example,

1 that there have to be five complaints by five
2 consumers, all different consumers, all unresolved,
3 all within one year.

4 We would increase the fines significantly, I
5 would say, to be consistent with that that we have
6 in other areas that we regulate, such as securities
7 brokers and mortgage brokers. This is not intended
8 to be punitive to debt collectors but basically to
9 put them on the same plane of other people that we
10 regulate.

11 We would require -- and to address the issue of
12 who is in the business, to stop the problems before
13 they happen, we would require fingerprinting for
14 control persons and impose disqualifying periods for
15 certain criminal backgrounds, as we do today with
16 securities and with mortgage brokers. We would
17 again raise that level of regulation to the same
18 that we have in these other areas that deal with the
19 public.

20 And finally, and I think something that could
21 be very effective, we would propose requiring debt
22 collectors to put up a substantial surety bond to
23 pay for misappropriation of funds that they may
24 collect and also for fines that might be assessed by
25 the State. What this does in practice is make the

1 private industry help regulate the business because
2 in order to get the bond, you've got to satisfy the
3 surety that you are a reliable person and a reliable
4 business person. So I think the bond will help
5 control access and entrance and continued
6 performance in the industry.

7 The sum of these changes would be to make
8 enforcement more workable, to make it more risky to
9 violate the law and would help screen persons out
10 who should not be in the business. Now, I want to
11 personally express my appreciation to each of your
12 offices for their constructive participation and
13 their positive suggestions when we all got together
14 to discuss this.

15 The final product that everyone has reviewed
16 and I believe has agreed on is a product of
17 everybody's input. And I frankly think it is a very
18 good example of what we can do to accomplish with
19 good communication and by people working together.

20 This is a proposal that is unlikely to be
21 popular with the industry, but I think the citizens
22 of Florida can take a great deal of satisfaction
23 that it's an example of its government working well.
24 We intend to advocate for this in the current
25 legislative session. I don't know that there is any

1 need for action by the Cabinet itself on this. But,
2 of course, we would always appreciate in the process
3 any support that your offices can have for this
4 program.

5 So I am personally pleased with the product. I
6 think it is a framework for some significant
7 improvements. I think it's got -- it was arrived at
8 in a process where everybody had very positive
9 things to add to it. And, again, I thank your
10 organizations, your people for their participation,
11 and I thank you, and I stand ready for any
12 questions.

13 GOVERNOR CRIST: Tom, thank you very much for
14 your leadership and your comments, and I
15 particularly enjoyed when you said that it may not
16 be something that the industry embraces, but as we
17 all are aware and cognizant, the industry is not who
18 employ us. It is the people. CFO.

19 CFO SINK: Thank you, Governor. Thank you,
20 Commissioner Cardwell. I brought this up at the
21 last meeting because this is an issue that's been
22 kind of festering for quite some time now, and I
23 believe that we as the Financial Services Commission
24 ought to act very strongly and make clear our intent
25 to protect consumers.

1 As you very well described some of the
2 provisions of the existing law, it clearly was
3 written by the special interests. It was clearly
4 not written to protect consumers, when you say that
5 you have to have five complaints from five different
6 consumers and they can't just call someplace in
7 Tallahassee and register a complaint and, rather,
8 they have to go get a notarized statement. Who in
9 the world has time to do that, when these are people
10 who are under financial stress?

11 As the Orlando Sentinel pointed out, children
12 have been threatened by these callers and evidently
13 been told that their parents might go to jail.
14 There are people who have been impersonating police
15 officers. When you think about the fox guarding the
16 henhouse, this was a legislation that the fox built
17 the henhouse in this situation. And we have a real
18 opportunity, I think, in this session to get this
19 corrected.

20 And, Governor, I agree with you. We're all
21 employed by the people, not the special interests.
22 And so I'm glad that our staffs were able to get
23 together and apparently receive -- or come to a
24 conclusion that these 15 items are items that we
25 would recommend to the Legislature. So I think we

1 ought to make it clear that -- and I'm going to make
2 a motion that we, sitting as the members of the
3 Financial Services Commission, recommend to the
4 Legislature that these 15 items -- I know there are
5 many laws, draft laws that are floating around, but
6 that we as the Financial Services Commission do
7 recommend that these 15 items be incorporated in any
8 legislation so that it is clear that we four are
9 speaking with one voice. I offer that motion.

10 ATTORNEY GENERAL McCOLLUM: I would second the
11 motion. Governor, could I --

12 GOVERNOR CRIST: Please, of course.

13 ATTORNEY GENERAL McCOLLUM: First of all, I
14 want to commend you, Commissioner Cardwell, for
15 this. You've made great leadership in this. This
16 is an excellent work product. And I would thank
17 you, CFO Sink, because your office staff worked
18 really well with mine on this, and I think we have a
19 very good product to recommend to the Legislature,
20 and it needs to be done.

21 I agree with the Chief Financial Officer that
22 it sounds like the debt collectors had written the
23 original law. Probably they didn't, but they
24 certainly had some input into it. And this will
25 give us all the tools that we really want in that

1 area that we're really missing right now.

2 But I would like to point out one thing in
3 context. As important as debt collection reform
4 is -- and it is very important. I don't want to
5 diminish that at all. The work product is fabulous.
6 It is one of the three or four pieces of the problem
7 right now that face our consumers in this arena.
8 Credit is -- credit card debt is an incredible
9 problem for us right now in the state, just like
10 mortgage debt is and mortgage foreclosures. We're
11 seeing that in our office a lot today in various
12 forms.

13 The other three principal areas where you see
14 this are in credit counseling, Governor, in debt
15 management and in so-called debt settlement. And
16 there are a lot debt relief companies that are out
17 there that are taking people to the woodshed, so to
18 speak, taking advantage of people who are in
19 trouble.

20 And the Senate committee that you mentioned,
21 Tom, that's considering this is looking at a piece
22 of legislation that our office testified on last
23 week that is more comprehensive, but it should
24 include -- we hope it will include every single item
25 that we're putting forward on debt collection today.

1 But they're also looking at these other three.

2 And the reason why I see this as so important
3 to be looking at it all comprehensively is that
4 we're seeing companies that charge huge up-front
5 fees without providing services. We see them
6 prohibiting consumers from contacting their
7 creditors. They engage in deceptive advertising.
8 And we're talking now about folks who are trying to
9 do debt settlement. They'll say to you, "Governor,
10 you've got this debt. Don't worry about it anymore.
11 You don't need to pay anybody. Just pay us," that
12 type of thing. And often they don't do the work at
13 all that they're promising.

14 And so three or four things that are in that
15 legislation, I just want to bring it to my fellow
16 Cabinet members' attention, besides the debt
17 collection, would be to require debt relief
18 companies to be prohibited from charging an advance
19 fee, up-front fee, prior to the full and complete
20 performance of their services, that debt relief
21 companies should be prohibited from receiving a
22 portion of the fees from debt reduction until the
23 debt is fully released. The debt relief companies
24 should allow consumers to have a right of
25 cancellation or a cooling-off period, and that debt

1 relief companies should provide detailed disclosures
2 and documentation of any fees and financial
3 suitability of the programs that they are
4 administering.

5 I'm only pointing that out. I'm not proposing
6 to change the resolution we're doing today. But I
7 think all of us need to know, and I wanted you to
8 know because my office sees these up front and we do
9 have direct responsibility there. And we now have,
10 with this passage, hopefully, this law, will have
11 more, along with you, CFO Sink, responsibility that
12 we can act on in the debt collection area. But the
13 debt problem is a big problem. It's not just debt
14 collection.

15 But, anyway, I'm really pleased with the
16 product that you produced, Commissioner, and am
17 happy to support this resolution.

18 COMMISSIONER BRONSON: Governor.

19 GOVERNOR CRIST: Commissioner.

20 COMMISSIONER BRONSON: If I might as well,
21 because even though we're not going to be
22 responsible for handling this situation, we're going
23 to get a lot of calls, whether we handle it or not,
24 through our consumer service division as well. And
25 the one thing that I think ought to be a part of

1 this solution is that these companies do not extend
2 punitive issues with the people they collect from
3 for future credit when they clear their debt, that
4 they don't put some kind of marker on there that
5 puts these people in more of a disadvantage or some
6 type of punitive situation after the debt is
7 cleared.

8 And that's another thing I've heard off and on,
9 is, well, I finally got my debt taken care of, and
10 now I still can't do anything because they've got
11 this marker hanging on me out here. And themselves
12 or their kids can't even get credit because they put
13 a marker on their account.

14 So I think, if we're going to do this, we need
15 to make sure they don't come back and say, well, we
16 have this on your account, but now, if you will pay
17 us up front to do a clearing, we'll clear that. I
18 want to make sure that's added to it, because that's
19 kind of after-the-fact, I think, bad business and
20 faith on their part. So I want to make sure that's
21 added to it.

22 MR. CARDWELL: We'll certainly look at that as
23 a part of the proposal, Commissioner Bronson. Thank
24 you for your point.

25 CFO SINK: Governor, can I just ask one more

1 question, because this is really also important to
2 me, Commissioner Cardwell. Clearly this proposed
3 legislation is going to put the responsibility on
4 your office to take all the complaints in, to
5 evaluate them and also to be the enforcer.

6 And I just want to hear from you that your
7 office is prepared to be very aggressive in the
8 enforcement activities and go after these abusers of
9 the system.

10 MR. CARDWELL: Absolutely. We fully intend to
11 use the resources that we have available to us to
12 enforce the powers that we have. And, frankly, part
13 of the frustration of all of us, and I think all of
14 you all and certainly all of me, has been the
15 problem that the tools that we have had have not
16 been, either been -- we've not been able to
17 efficiently use them nor have they been of
18 sufficient strength to be effective.

19 And so I think, frankly, even by simply having
20 this legislation on the books we will move forward.
21 But we intend to aggressively enforce these laws.

22 CFO SINK: Good. Thank you.

23 GOVERNOR CRIST: We have a motion and a second.
24 All in favor, signify by saying aye. Aye.

25 CFO SINK: Aye.

1 ATTORNEY GENERAL McCOLLUM: Aye.

2 COMMISSIONER BRONSON: Aye.

3 GOVERNOR CRIST: Opposed like sign. Motion
4 carries.

5 ATTORNEY GENERAL McCOLLUM: Governor.

6 GOVERNOR CRIST: General.

7 ATTORNEY GENERAL McCOLLUM: I had asked, in
8 light of all the discussion that's gone on in the
9 last week, in the wake of Attorney General Cuomo's
10 lawsuit against Merrill Lynch, for Commissioner
11 Cardwell to comment this morning on the OFR
12 situation and status with regard to reviewing the
13 Merrill Lynch acquisition by Bank of America.

14 And let me explain that in context. CFO Sink,
15 you sent me a letter this week about that. The
16 issue, to put it in a framework, is that back in
17 2008, Bank of America acquired Merrill Lynch. And
18 there is an ongoing question as to whether or not
19 the Bank of America executives, including Ken Lewis,
20 disclosed the amount of information on the financial
21 status of Merrill Lynch to the shareholders,
22 particularly with regard to this transaction, before
23 it was completed and before it was voted on.

24 And the accusation by the attorney general in
25 New York, under laws of that state, which are of

1 course different from our laws, are that there was
2 fraud that was committed in that case.

3 It's my understanding, in fact, more than my
4 understanding. I know for a fact that our State
5 Board of Administration is a party to -- our pension
6 fund is a party to a class action lawsuit over the
7 same matter, to protect, if you will, the pension
8 funds, because we're shareholders as the State
9 there.

10 In the case of the general public, there's no
11 taxpayer interest directly here, but Florida has,
12 I'm sure, a number of Bank of America shareholders
13 whose interests, I presume, would be directly under
14 your supervision in terms of the Office of Financial
15 Regulation with regard to some aspect of this.

16 And I realize you don't enforce or you don't
17 regulate national banks. We don't regulate national
18 banks in Florida. But I believe there is an
19 enforcement role that the Office of Financial
20 Regulation has or could have. And the reason I
21 asked you to present something to us this morning is
22 just for clarification, so we all can understand the
23 status of this and where the law is relative to what
24 we could or couldn't be doing or should or shouldn't
25 be doing right now in relation to this issue.

1 So, Tom, if you would, I'd appreciate it if
2 you'd give us a briefing on that.

3 MR. CARDWELL: Thank you for the opportunity to
4 explain how this fits in the larger context of what
5 we do in Florida and what our agency does in dealing
6 with this. As you point out, Bank of America is
7 accused in this matter, the Merrill Lynch matter, of
8 doing two things; number one, that it failed to
9 disclose the Merrill Lynch bonuses and, number two,
10 that it failed to disclose losses which occurred
11 prior to Bank of America shareholders voting to buy
12 Merrill Lynch. And it has claimed that that failure
13 to disclose by Bank of America constitutes
14 securities fraud, for which Bank of America should
15 pay damages.

16 There are at least three separate proceedings
17 that are dealing with these issues. First, the
18 Securities Exchange Commission, the SEC has filed an
19 action on each of these allegations. There is a
20 settlement awaiting pending court approval in the
21 Southern District of New York before Judge Rakoff.

22 The settlement would provide both
23 administrative and regulatory remedies. It would
24 require Bank of America, for example, to have
25 independent audit supervision and disclosure

1 controls similar to those under Section 404 of
2 Sarbanes-Oxley. It would require special counsel to
3 the audit committee. It would require
4 super-independence of the compensation committee.
5 It would require the shareholders to vote on
6 executive comp.

7 And I tell you these things because one of our
8 jobs is not only to get restitution but also to
9 regulate to make sure that companies behave
10 according to the law. And it looks like the SEC is
11 addressing those issues.

12 In addition, the SEC settlement requires a
13 \$150 million penalty, all of which would be
14 distributed to harmed Bank of America shareholders
15 wherever they might be. The SEC settlement thus
16 addresses both the regulatory interests of people
17 involved, including the states, and it addresses
18 consumer harm.

19 The second thing that's going on in this front
20 is a class action, of which our SBA is a party to.
21 It is based on the same Merrill Lynch claims,
22 failure to disclose prior to the shareholders
23 buying. And the relief, if it's granted and if it's
24 ultimately proved, would enure to the shareholders,
25 the general public, the citizens in Florida. There

1 are four firms who are involved in that 155-page
2 complaint, and it's signed by 21 separate lawyers.
3 So if it is successful, it will recover the damages
4 for all investors, including Florida investors.

5 The third matter is the Cuomo suit, which has
6 been filed in addition. And it is against just two
7 individuals, who by the way are also named in these
8 other claims. But Cuomo, the attorney general of
9 New York, has filed -- has suits against Ken Lewis,
10 the former CEO and the former CFO.

11 As best I can tell reading it, these cases do
12 not ask for any relief different than that which is
13 asked for in either the SEC cases or in the class
14 actions. And I'll have to say that it has been
15 suggested by some that that is a matter of political
16 theater as much as it is of legal consequence to
17 people who actually own shares.

18 Now, what is the role of the OFR in this
19 situation which you've asked, and I don't purport to
20 speak to anybody else's role, but as to ours, how do
21 we think about this? There are multiple ships in
22 the sea of securities regulation. There are
23 multiple regulators who have concurrent
24 jurisdiction. There's the SEC. In addition, for
25 criminal matters, there's the Justice Department.

1 There's FINRA, relating to broker/dealers. There
2 are state securities regulators and in some states
3 there are states attorneys general.

4 There are the class action vehicle, which has
5 literally hundreds of law firms who vindicate
6 individual interests by class action. And there's
7 the right of private litigants to bring actions as
8 they want under the securities laws for this. So
9 there are a lot of opportunities to deal with
10 problems like we have by different parties.

11 One of the things that has been very important
12 to me in coming to the Office of Financial
13 Regulation, a state agency which like many state
14 agencies has resources that are less than one would
15 like, is prioritization. We need to prioritize what
16 we do and we need to use the assets that we have
17 where they are best and most effectively used.

18 We actually have far fewer securities lawyers
19 than the 24, I believe, who signed the class action
20 complaint. And I think, in fact, the number of
21 lawyers whose names appear on that civil relief is
22 just about the same number as we have total lawyers
23 in our complete organization. So that gives you an
24 idea of the scale, not to mention the SEC lawyers
25 who have weighed in on this, not to mention the

1 attorney general of New York's having weighed in on
2 it. And as you all know, our prospects for getting
3 additional staff to deal with this are probably -- I
4 guess minimal is the most charitable way to put it,
5 as we are right now.

6 So we at OFR have to respond to complaints in
7 Florida by citizens that the SEC, that the U.S.
8 attorney's office, that FINRA and that the attorney
9 general of New York are never going to look at. We
10 are in a real sense at OFR, the role that we serve
11 is the regulator of last resort for the citizens of
12 Florida, where others have not picked up on the
13 matter.

14 So when I look at the Merrill Lynch claims, the
15 first question I ask is, does it appear they are
16 being adequately addressed in other forums. And
17 it's my professional conclusion that at this point,
18 given what I have recited, the claims against Bank
19 of America for the Merrill Lynch activities are
20 being actively and competently, vigorously litigated
21 and defended.

22 My choice would have to be, to get involved in
23 this, to take resources away from claims that nobody
24 else is willing to handle and to throw them or to
25 put them to claims that many others are making in a

1 lot of other forums. And while I say this, it might
2 be good press to do that, in my professional
3 judgment, it is not the right priority. It would
4 not be the right thing for the OFR to do, given its
5 resources and what it has.

6 I will also point out and another factor in my
7 view of this whole situation is it is not clear that
8 OFR or even the Attorney General here at the State
9 of Florida has a claim to assert on behalf of
10 Florida citizens for restitution. And the reason
11 for that is, you will recall that last year the
12 Legislature beefed up our securities laws. And one
13 of the things that they beefed up in that was to
14 make clear that the State, the OFR and the AG, who
15 has authority now to also enforce that, would have
16 the right to get restitution, because it was not
17 clear under prior law that there was such a right.

18 And I can tell you that in my private practice
19 life before in the securities area, I had advised
20 clients that it was doubtful that the State, under
21 existing laws, prior to July 1st, 2009, could
22 actually compel restitution.

23 And so you can -- and let me say that our law
24 became effective July 1st, 2009. The acts that are
25 in question for the Merrill Lynch acquisition here

1 occurred in September, October and November of 2008.
2 And I think almost any lawyer will tell you that our
3 act is not retroactive. So you can imagine that if
4 our agency filed a claim on behalf of the citizens
5 of Florida for restitution, it would be challenged
6 whether we even had the authority to do that. So
7 that is another factor in the way that I think about
8 how to do this.

9 So the conclusion, Attorney General McCollum
10 and members of the Cabinet, that I came to is what
11 is the role of the OFR here. And it is certainly to
12 continue to monitor all of the pending developments.
13 If it appears that there's a constructive role for
14 us to play that is not being addressed by others,
15 then at that point we should consider what we should
16 do that is consistent with the resources that we
17 have available to do it, with the allocations that
18 we have.

19 And I fully intend to work and consult with
20 you, Attorney General McCollum, and your office and
21 the Cabinet with respect to this issue and to follow
22 it going forward to make sure that the interests of
23 the citizens of Florida are being actively
24 vindicated.

25 So, conclusion, my conclusion to all this is

1 that the Bank of America acquisition of Merrill
2 Lynch is frankly a national issue that has attracted
3 a lot of heavy artillery. And from what I can tell,
4 the current battles vindicate the interests of
5 Florida citizens.

6 At OFR we have limited powder, and we need to
7 shoot at our local rattlesnakes which are coming out
8 and striking at our citizens, which none of these
9 other people are going to go after. So that's where
10 we are. And I'm certainly, any questions, happy to
11 answer.

12 ATTORNEY GENERAL McCOLLUM: Thank you very
13 much, Commissioner, for that very good erudition on
14 where we are on in the status of this matter. That
15 Investor Protection Act that you referred to that
16 became law this year was one that we urged out of
17 our office to be passed. And I'm really pleased
18 it's there. But as you point out, it wasn't there
19 before, so it makes it very difficult. You can't go
20 back on those sorts of things, as you pointed out,
21 with retroactivity.

22 But I want you to know that our office stands
23 ready, the Attorney General's Office, to help you.
24 I know your resources are limited in a lot of ways.
25 And now that we have this new power under the

1 Investor Protection Act, any time you see something
2 or we see something dealing with fraud in securities
3 and so on that affects our people in Florida, the
4 investors in Florida, we want to stand ready to help
5 you. So don't hesitate to holler at us.

6 I would point out that with regard to Bank of
7 America, we have one thing we do have jurisdiction
8 over. You may recall that Countrywide was acquired
9 by Merrill Lynch -- or excuse me -- acquired by Bank
10 of America, and that was acquired in a way that also
11 brought with it a lawsuit that we had against
12 Countrywide about subprime lending. Bank of America
13 settled that.

14 And we were appreciative of their settlement.
15 But they did not provide people in the state, human
16 beings to actually be there to help negotiate
17 readjustments of mortgages, Governor. There was
18 nobody you can go to, to my knowledge, still nobody
19 in a normal retail banking outlet to talk to about
20 renegotiating your mortgage, under the terms of our
21 agreement or any other term.

22 They have recently sent folks here at our
23 request. We had a nice meeting with them. And I
24 want to commend them for doing that. They sent a
25 team in to look at this. But that's still under

1 review. I am concerned about it. I think that is
2 an area of concern for Florida. I'm obviously
3 concerned, like you are, with what's going on with
4 this other matter, too. But I think you put it in
5 the proper perspective.

6 It's our State Board of Administration that
7 already is involved with the class action lawsuit,
8 and the federal government, the SEC, that has the
9 primary role and the only legal role in this Merrill
10 Lynch matter. But thank you for coming in and
11 telling us today. Thank you.

12 GOVERNOR CRIST: Thank you. CFO?

13 CFO SINK: Thank you, Governor. Mr. Cardwell,
14 I just -- with all due respect, I'm not really
15 impressed with the comments you made. I think that,
16 as a reminder, you weren't here, but the last
17 commissioner lost his job because he hid behind,
18 well, not having powers or not having resources or
19 not being really able to go after in that case
20 mortgage brokers, when we were just inundated by
21 complaints in this situation.

22 And I really want to encourage you to come --
23 to come before this Commission and plead that you
24 can't do anything or you can't take action because
25 you don't have resources is not a good excuse. The

1 Attorney General just said, he's sitting over here
2 with hundreds and hundreds of lawyers on his staff
3 who would be able to get involved with you and
4 provide legal assistance.

5 And my main frustration, as I've told you
6 privately, with the Office of Financial Regulation
7 for the last three years is just a sense of
8 do-nothingness and inaction in the face of all sorts
9 of scams that have occurred here in our state. I
10 was particularly interested in bringing you aboard
11 because of your background in securities enforcement
12 and legislation. And as for me, I'm just ready to
13 see something more aggressive.

14 And the reason I want to see something more
15 aggressive is because citizens and people are being
16 hurt out there. Lots of citizens, whether it's
17 through their retirement plan or whatever, have been
18 damaged by the actions that were taken in the Bank
19 of America and Merrill Lynch situation, and proven
20 by the fact, as you say, that the SEC has been
21 taking action. But the SEC itself, they tried to
22 enter into a decree or a consent with the Bank of
23 America for \$50 million in one of the actions, and
24 the judge threw it out because he said it wasn't
25 sufficient. It was just a slap on the hand.

1 And the fact that in these -- on behalf of the
2 pension funds, Florida is just riding along. We're
3 not really a participant. The lead plaintiffs were,
4 listen to this, CalPERS, CalSTRS, the retirement
5 system of Ohio, the Ohio Public Employees'
6 Retirement System, the Teacher Retirement System of
7 Texas.

8 These are all really big players, who they took
9 the lead in determining whether or not the investors
10 in this situation have been misled. And I'm hoping
11 that and thinking that when Director Williams comes
12 from the SBA at our next SBA meeting, that he's
13 going to discuss with us whether or not Florida --
14 we're the fourth largest pension firm in this
15 country. And according to the general counsel, the
16 SBA told some of my staff people that we had as much
17 as \$180 million in losses as a result of this
18 fiasco.

19 So my bias is that we've just been entirely too
20 passive. And, General McCollum, I think it's
21 fantastic that we got the new act passed in the
22 Legislature last year to enable you to be more
23 aggressive and more forthright about protecting
24 Florida investors. It just doesn't make any sense
25 to me to shoot at the little rattlesnakes when there

1 are big rattlesnakes out there that need to be cut
2 off at the head sometimes.

3 MR. CARDWELL: Well, with all due respect,
4 Commissioner Sink, when you voted for me for this
5 job, you voted for me to use my best professional
6 judgment with what to do with the resources that we
7 have and within the circumstances in which we find
8 ourselves.

9 We have a case with the Merrill Lynch case,
10 which is under discussion here, and Bank of America,
11 in which the claims and the interests of the
12 citizens of Florida, to the best of my knowledge,
13 are being fully and completely vindicated on at
14 least three fronts. And as I sit there in my office
15 and try to consider, with the resources that I do
16 have -- this is not an excuse. This is not trying
17 to say I don't want to do it. It's saying I
18 legitimately have 28 lawyers, all totaled, who are
19 covering securities, are covering banking, who are
20 covering all of these other areas in there.

21 For me to pull them off of these jobs and to
22 throw them into a fray in which, as best I can tell,
23 the citizens of Florida are being fully vindicated
24 is not in the best interest of the citizens of
25 Florida.

1 The complaints that we hear, that we get and
2 that we're asked to deal with are frequently small
3 people, are frequently individuals, are people that
4 the SEC is never going to look at. They throw
5 beneath their minimums. And somebody needs to pay
6 attention to those people. And, as I say, we're the
7 regulator of last resort. We are asked to do that.

8 And so the views that I've expressed here --
9 and I understand you disagree with me on this. But,
10 respectfully, I think we are being aggressive.
11 We're being aggressive where we need to be
12 aggressive, and I am certainly personally doing my
13 best to get this industry -- to get this agency to
14 effectively represent the interests of the citizens
15 of Florida, who are the people obviously to whom I
16 answer.

17 CFO SINK: Well, Governor, maybe --
18 Commissioner Cardwell continues to say that he
19 doesn't have sufficient resources to get the job
20 done. Perhaps you should come back to our staffs
21 and present to us, to our staffs and also to us,
22 because we're the board -- we're the ultimate
23 authority, your best assessment of what it would
24 take to be an effective protector of consumers in
25 this state.

1 ATTORNEY GENERAL McCOLLUM: If I might.

2 GOVERNOR CRIST: General.

3 ATTORNEY GENERAL McCOLLUM: CFO Sink, with all
4 due respect, I've been listening to this exchange,
5 and I think one thing is being missed here, and that
6 is that, I believe I'm right, Commissioner Cardwell
7 has told us and I would concur in this, and that is
8 that even with more resources, even though that is
9 an issue for him -- and going forward we're going to
10 be there with the new Investor Protection Act to
11 help him, which we weren't before.

12 But even with more resources right now, in the
13 case of Merrill Lynch and Bank of America, there's a
14 problem because the law that was in effect at the
15 time is not one that would have given him the tools
16 to seek any restitution for the people of Florida.

17 So I think the real key to this is that
18 not only -- maybe he does need more people. We need
19 to wait and see for the future. But the case that's
20 in point occurred before the new law went into
21 effect. And I don't think, from what you're telling
22 us, Tom, that you think that there was a good case,
23 even if you had the personnel, for Florida. And you
24 think that, of course, the SEC and others are
25 protecting them already. Am I right about that?

1 MR. CARDWELL: Yes. There's a real problem
2 with that. A court would ultimately have to decide
3 that. But one of the reasons that the law was
4 changed last time, you're absolutely correct,
5 Attorney General McCollum, was that it was unclear
6 that the State had the right to press for relief for
7 individuals for restitution. And it hasn't been
8 decided, but I personally took the position
9 representing clients and thought that the better
10 argument was that the State did not have the
11 authority to do anything.

12 And so if we were to go in and file an action
13 right now, the first thing we'd run into is a
14 defense that, well, you didn't have the authority
15 before you changed the statute. You didn't
16 afterwards, and you can't do anything.

17 ATTORNEY GENERAL MCCOLLUM: But any time you
18 see -- going forward, again, I want to repeat, any
19 time you see an issue in the securities area now,
20 Scott Palmer, who is actually sitting here with us
21 here today, and others in my shop are ready to help
22 you and ready to supplement what I know is a
23 staff -- and hopefully you won't need more people
24 over there to do this sort of thing. We can come in
25 and do the litigation and all with you. But let's

1 wait until we get one that's ripe to do that. Thank
2 you.

3 GOVERNOR CRIST: Thank you, Commissioner.

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

ATTACHMENT 2

**Financial Services Commission
Office of Financial Regulation**

Agenda Item #2

Briefing Sheet

Rule Chapter 69W-100

Rule 69W-100.007, relating to advertising and sales literature, is clarified to provide that if an advertisement or sales literature is in compliance with the requirements NASD Rule 2210, relating to communications with the public, the material does not need to be approved by or filed with the Office of Financial Regulation. This rule relates to communications concerning securities registered under s. 517.081, F.S. Currently, the rule contains general references to rules promulgated by the National Association of Securities Dealers and general reference to federal law (i.e. the Securities Act of 1933 and any statement of policy by the Securities and Exchange Commission concerning advertisements and sales literature.) The rule is amended to provide specific guidance to the industry.

Rule Chapter 69W-200

Rule 69W-200.001, relating to definitions, is amended to reflect the most current version of federal regulations and federal statutes referenced in the rule. The rule also replaces references to the National Association of Securities Dealers with the Financial Industry Regulatory Authority (FINRA). FINRA was created in July 2007 through the consolidation of National Association of Securities Dealers, and the member regulation, enforcement and arbitration functions of the New York Stock Exchange. The rule also corrects cross-references.

Rule Chapter 69W-300

Rule 69W-300.002, relating to financial statements and reports, is amended to reflect the most current version of federal regulations and federal statutes referenced in the rule. The rule is also amended to replace references to the National Association of Securities Dealers with the Financial Industry Regulatory Authority (FINRA). Rule 69W-300.003, relating to refund of fees, and files denied or withdrawn, is repealed. This rule is not needed because the statutes under Chapter 517, F.S., specify the accounts where fees are to be deposited and

that fees are non-refundable.

Rule Chapter 69W-301

Rule 69W-301.003, relating to right to hearing, is amended to clarify the references to the uniform administrative rules that govern the process of requesting a hearing. The general references to Rule Chapter 28-106 and 28-107, which has been repealed, are replaced with the specific references to Rule 28-106.201 and Rule 28-106.301.

Rule Chapter 69W-500

Rules 69W-500.008, .015, .016, and .017, F.A.C., relating to exempt transactions, are amended to reflect the most current versions of federal regulations and federal statutes referenced in the rules. Rule 69W-500.013, F.A.C., is amended to correct a cross reference.

Rule Chapter 69W-600

Proposed Rule 69W-600.0011, relating to the effect of law enforcement records on applications for registration as a dealer, issuer/dealer, or investment adviser, sets forth registration disqualifying periods for applicants and their relevant persons who have been found guilty of, or who have pled guilty or nolo contendere to, certain crimes, regardless of whether adjudication was withheld. Relevant persons include: any member, principal, partner, officer or director of the applicant or any person having similar status or performing similar functions; any person directly or indirectly controlling the applicant; direct owners, principals, or indirect owners that are required to be reported on behalf of the applicant on Form BD (Uniform Application for Broker-Dealer Registration) or Form ADV (Uniform Application for Investment Registration) pursuant to s. 517.12(15), F.S.

Class A Crimes

Class A crimes address felonies involving fraud, dishonesty or any other act of moral turpitude. Under the proposed rule, the disqualification period for a Class A crime is 15 years. Examples of Class A crimes include: fraud, perjury, robbery, extortion, bribery, embezzlement, grand theft, larceny, burglary, breaking and entering, identity theft, forgery, misuse of public office, racketeering, dealing in stolen property, treason, altering public

documents, witness tampering, tax evasion, impersonating a law enforcement officer, money laundering, murder, arson, drug trafficking, aggravated assault, aggravated battery, rape, sexually molesting any minor, sexual battery, battery of or threatening a law enforcement officer or public official, and kidnapping.

Class B Crimes

The rule imposes a 5 year disqualification period for Class B crimes, which are defined as misdemeanors involving fraud, dishonest dealing or any other act of moral turpitude.

Effect of Disqualifying Periods

The disqualification periods run from the date that the applicant or relevant person was found guilty of or pled guilty or nolo contendere to the crime. The Office may not register an applicant that has a relevant person with a disqualifying offense until the later of the disqualification period set forth in the rule or five years after the date of imprisonment. The disqualifying periods established in the rule do not give an applicant a right to registration after any set period of time. Regardless of the expiration of any disqualifying period imposed by the rule, the burden to prove entitlement to registration remains on the applicant.

Other Factors

The rule provides that the disqualification periods for a Class A or Class B crime will be extended if the applicant or relevant person has multiple Class A or B crimes. The rule also provides that mitigating factors may be considered to reduce disqualifying periods. Other factors related to the consideration of the applicant's or relevant person's criminal history are also addressed.

Notice of Proposed Rule

DEPARTMENT OF FINANCIAL SERVICES

Securities

RULE NO: RULE TITLE

69W-100.007: Advertising and Sales Literature

PURPOSE AND EFFECT: The rule is clarified to provide that if an advertisement or sales literature is in compliance with the requirements NASD Rule 2210, relating to communications with the public, the material does not need to be approved by or filed with the Office of Financial Regulation.

SUMMARY: The rule is clarified to provide that if an advertisement or sales literature is in compliance with the requirements NASD Rule 2210, relating to communications with the public, the material does not need to be approved by or filed with the Office of Financial Regulation.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared. The Office determined the proposed rule will not have an adverse impact on small business.

Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 517.03 FS

LAW IMPLEMENTED: 517.081 FS

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN FAW.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Pam Epting, Chief, Bureau of Regulatory Review, Division of Securities, Office of Financial Regulation, The Fletcher Building, 200 East Gaines Street, Tallahassee, Florida 32399-0375, (850)410-9500, pam.epting@flofr.com

THE FULL TEXT OF THE PROPOSED RULE IS:

69W-100.007 Advertising and Sales Literature.

(1) No change.

(2) Every advertisement used in connection with an offering of securities registered pursuant to Section 517.081, F.S., must be authorized in writing by the Office of Financial Regulation before being published or circulated unless it is within the requirements of NASD Rule 2210 and ~~rules promulgated by the National Association of Securities Dealers~~ concerning advertisements for use in newspapers or any other means of public communication ~~or satisfies the requirements of the Securities Act of 1933 and any statement of policy by the Securities and Exchange Commission concerning advertisements and sales literature~~, or contains no more than the following:

- (a) Date of issuance or release;
- (b) Name and address of issuer;
- (c) Identity or title of securities;
- (d) Per unit offering price;
- (e) Amount of offering;
- (f) Brief statement of general character of the business;
- (g) Address where prospectus or offering circular may be obtained.

(3) Any advertisement, except an offering circular or prospectus, intended to be used by a registered Florida dealer in connection with the public sale or offer for sale of any securities within the State of Florida shall be filed with the Office of Financial Regulation at least ten (10) days prior to publication or circulation if such advertisement contains more than the disclosure items listed in subsection (2), or does not meet the requirements of NASD Rule 2210 and ~~rules promulgated by the National Association of Securities Dealers~~ concerning advertisements for use in newspapers or any other means of public communication ~~or does not satisfy the requirements of the Securities Act of 1933 and statement of policy by the Securities and Exchange Commission concerning advertisements and sales literature~~.

(3) NASD Rule 2210 (Feb. 5, 2009) is hereby incorporated by reference. Copies of the rule may be obtained through the Financial Industry Regulatory Authority's website (http://finra.complinet.com/en/display/display_viewall.html?rbid=2403&element_id=3617&record_id=10467) or by contacting the Florida Office of Financial Regulation, Division of Securities, 200 E. Gaines Street, Tallahassee, Florida 32399, (850) 410-9500.

Rulemaking Specific Authority 517.03 FS. Law Implemented 517.081 FS. History—New 12-5-79, Amended 9-20-82, Formerly 3E-100.07, 3E-100.007, Amended _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Pam Epting, Chief, Bureau of Regulatory Review, Division of Securities, Office of Financial Regulation, The Fletcher Building, 200 East Gaines Street, Tallahassee, Florida 32399-0375, (850)410-9500, pam.epting@flofr.com

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Financial Services Commission

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: May 25, 2010

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: December 24, 2009

Notice of Proposed Rule

DEPARTMENT OF FINANCIAL SERVICES

Securities

RULE NO: RULE TITLE

69W-200.001: Definitions

PURPOSE AND EFFECT: The rule is amended to reflect the most current version of federal regulations and federal statutes referenced in the rule. The rule is also amended to replace references to the National Association of Securities Dealers with the Financial Industry Regulatory Authority (FINRA). FINRA was created in July 2007 through the consolidation of National Association of Securities Dealers and the member regulation, enforcement and arbitration functions of the New York Stock Exchange. The rule corrects cross-references.

SUMMARY: The rule is amended to reflect the most current version of federal regulations and federal statutes referenced in the rule. The rule is also amended to replace references to the National Association of Securities Dealers with the Financial Industry Regulatory Authority (FINRA). FINRA was created in July 2007 through the consolidation of National Association of Securities Dealers and the member regulation, enforcement and arbitration functions of the New York Stock Exchange. The rule corrects cross-references.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared. The Office determined the proposed rule will not have an adverse impact on small business.

Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 517.03(1) FS

LAW IMPLEMENTED: 517.07, 517.12, 517.021, 517.061, 517.051, 517.081, 517.161 FS

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN FAW.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS:

THE FULL TEXT OF THE PROPOSED RULE IS:

69W-200.001 Definitions.

As used in the Rules and Regulations of the Financial Services Commission and Office of Financial Regulation, pursuant to Chapter 517, F.S., unless the context otherwise specifically requires:

(1) “Accredited Investor” shall mean any person who comes within any of the following categories, or who the issuer reasonably believes comes within any of the following categories, at the time of the sale of the securities to that person:

(a) Any bank as defined in section 3(a)(2) of the Securities Act of 1933 (15 U.S.C. § 77c-(a)(2) (2006 & Supp. II)), or any savings and loan association or other institution as defined in section 3(a)(5)(A) of that Act (15 U.S.C. § 77c-(a)(5)(A) (2006 & Supp. II)) whether acting in its individual or fiduciary capacity; any broker or dealer registered pursuant to section 15 of the Securities Exchange Act of 1934 (15 U.S.C. § 78o (2006 & Supp. II)); any insurance company as defined in section 2(13) of the Securities Act of 1933 (15 U.S.C. § 77b (2006 & Supp. II)); any investment company registered under the Investment Company Act of 1940 (15 U.S.C. §§ 80a-1 through 80a-64 (2006 & Supp. II)) or a business development company as defined in section 2(a)(48) of that Act (15 U.S.C. § 80a-2(a)(48) (2006 & Supp. II)); Small Business Investment Company licensed by the U.S. Small Business Administration under section 301(c) ~~or (d)~~ of the Small Business Investment Act of 1958 (15 U.S.C. § 681(c) (2006 & Supp. II)); any plan established and maintained by a state, its political subdivisions, or any agency or instrumentality of a state or its political subdivisions for the benefit of its employees, if such plan has total assets in excess of \$5,000,000; employee benefit plan within the meaning of the Employee Retirement Income Security Act of 1974 (29 U.S.C. § 1002(3) (2006 & Supp. II)) if the investment decision is made by a plan fiduciary, as defined in section 3(21) of such Act (29 U.S.C. § 1002(21) (2006 & Supp. II)), which is either a bank, savings and loan association, insurance company, or registered investment adviser, or if a self-directed plan, with investment decisions made solely by persons that are accredited investors;

(b) Any private business development company as defined in section 202(a)(22) of the Investment Advisers Act of 1940 (15 U.S.C. § 80b-2(a)(22) (2006 & Supp. II));

(c) Any organization described in section 501(c)(3) of the Internal Revenue Code (26 I.R.C. § 501(c)(3) (2006 & Supp. III)), corporation, Massachusetts or similar business trust or partnership, not formed for the specific purpose of acquiring the securities offered, with total assets in excess of \$5,000,000;

(d) through (f) No change.

(g) Any trust, with total assets in excess of \$5,000,000, not formed for the purpose of acquiring the securities offered, whose purchase is directed by a sophisticated person as described in Securities and Exchange Commission Regulation 230.506(b)(2) (ii) (17 C.F.R. § 230.506(b)(2)(ii) (2009)); and

(h) No change.

(2) No change.

(3) “Aggregate Indebtedness” is defined pursuant to S.E.C. Rule 15c3-1 (17 C.F.R. ~~CFR~~ § 240.15c3-1 (2009)).

(4) “Allowable Assets” is defined pursuant to S.E.C. Rule 15c3-1 (17 C.F.R. ~~CFR~~ § 240.15c3-1 (2009)).

(5) through (6) No change.

(7)(a) “Associated person” as defined in Section 517.021(2), F.S., shall include any person who for compensation refers, solicits, offers, or negotiates for the purchase or sale of securities and/or of investment advisory services. A person whose activities fall within this definition is required to register with the Office of Financial Regulation as an associated person pursuant to Sections 517.12(1) or (4), F.S.

(b) Notwithstanding the provisions of paragraph (a), an associated person registered with the Office of Financial Regulation and operating in compliance with ~~subsection Rule 69W-600.003(3)~~ 69W-600.003(2), F.A.C., shall not be deemed an associated person of any investment adviser other than the investment adviser or dually registered dealer/investment adviser with which such associated person is registered.

(c) Any person acting in compliance with S.E.C. Rule 206(4)-3 (17 C.F.R. ~~CFR~~ § 275.206(4)-3 (2009)), ~~as it existed on July 1, 2003~~, shall not be deemed an associated person of an investment adviser.

(8) through (16) No change.

(17) “Independent Director” shall be defined as a member of the Issuer’s Board of Directors who:

(a) Is not an officer or employee of the Issuer, its subsidiaries, or their affiliates or associates and has not been an officer or employee of the Issuer, its subsidiaries or their affiliates or associates within the last two years; and

(b) Is not a promoter as defined in Section ~~517.021(18)(b)~~ 517.021(15)(b), F.S.; and

(c) Does not have a material business or professional relationship with the issuer or any of its affiliates or associates. For purposes of determining whether or not a business or professional relationship is material, the gross revenue derived by the Independent Director from the Issuer, its affiliates and associates shall be deemed material if it exceeds 5% of the Independent Director’s;

1. Annual gross revenue, derived from all sources, during either of the last two years; or

2. Net worth, on a fair market value basis.

(18) and (19) No change.

(20) “Issuers” Within the Meaning of Section ~~517.021(14)~~ 517.021(11), F.S.

(a) For the purposes of determining whether a person is an issuer within the meaning of Section ~~517.021(14)~~ ~~517.021(11)~~, F.S., the term “promoter” shall be deemed to include:

1. Any person who, acting alone or in conjunction with one or more other persons, directly or indirectly initiates the founding or organizing of the business or enterprise of an issuer; or

2. Any person who, in connection with the founding and organizing of the business or enterprise of an issuer, directly or indirectly receives in consideration of services, or a combination of services and property, 10% or more of any class of securities of the issuer or 10% or more of the proceeds from the sale of any class of securities of the issuer; provided that any person who receives securities or proceeds from the sale of securities either solely as underwriting commissions or solely in consideration of property shall not be deemed a promoter if such person does not otherwise take part in founding and organizing the enterprise of the issuer.

(b) Notwithstanding the provisions of subsection (1) of this rule, no person shall be deemed to be a promoter with respect to any issuer which is duly qualified to transact business under the laws of the jurisdiction in which it is organized and which has actively been engaged in business for a continuous period of one year.

(21) through (24) No change.

(25) “Qualified Institutional Buyer” for purposes of Section 517.061(7), F.S., shall be defined as provided in Securities and Exchange Commission rule 144A(a) (~~i.e.~~, 17 C.F.R. § s. 230.144A(a) (2009)), ~~as such rule existed on November 1, 1992.~~

(26) and (27) No change.

(28) “Reportable Act” shall mean:

(a) Having exercised management or policy control over or owned 10 percent or more of the securities of any dealer or investment adviser for which a Securities Investor Protection Corporation (“SIPC”) trustee was appointed pursuant to the Securities Investor Protection Act or which is insolvent;

(b) Conviction of or entry of a plea of guilty or no contest to any criminal act, excluding traffic violations or other minor offenses;

(c) Having been the subject of any decision, finding, injunction, suspension, prohibition, revocation, denial, judgment, or order by any court of competent jurisdiction, administrative law judge, or by any state or federal agency, national securities, commodities, or option exchange, or national securities, commodities, or option association, involving a violation of any federal or state securities or commodities law or any rule or regulation promulgated thereunder, or any rule or regulation of any national securities, commodities or options exchange or national securities, commodities, or options association, or having been the subject of any injunction or adverse

order by a state or federal agency or court of competent jurisdiction regulating banking, insurance, finance or small loan companies, real estate, mortgage brokers, or other related or similar industries;

(d) Being charged, in a pending enforcement action or pending criminal prosecution, with any conduct that if proven and not subsequently reversed, suspended, or vacated, would be deemed a reportable act under paragraphs (a) through (c) of this rule.

1. For purposes of this rule, “enforcement action” means any judicial proceeding or any administrative proceeding where such judicial or administrative proceeding is brought by an agency of the United States or of any state to enforce or restrain violation of any state or federal law, or any disciplinary proceeding maintained by the Financial Industry Regulatory Authority (formerly known as the National Association of Securities Dealers), the National Futures Association, the New York Stock Exchange, or any other similar self-regulatory organization.

2. An enforcement action is pending at any time after notice to the respondent of such action and is terminated at any time after entry of final judgment or decree in the case of judicial proceedings, final agency action in the case of administrative proceedings, and final disposition by a self-regulatory organization in the case of disciplinary proceedings.

3. A criminal prosecution is pending at any time after criminal charges are filed and is terminated at any time after conviction, acquittal, or dismissal.

(29) “Renewal Applicant” shall mean an applicant who is a registrant who seeks a timely renewal of the license.

(30) “Securities Act of 1933”, 15 U.S.C. §§ 77a through 77mm (2006 & Supp. II), “Securities Exchange Act of 1934”, 15 U.S.C. §§ 78a through 78oo (2006 & Supp. II), “Investment Company Act of 1940”, 15 U.S.C. §§ 80a-1 through 80a-64 (2006 & Supp. II), “Investment Advisers Act of 1940”, 15 U.S.C. §§ 80b-1 through 80b-21 (2006 & Supp. II), and “Internal Revenue Code”, 26 U.S.C. Subtitles A through K (2006 & Supp. III), mean the federal statutes of those names ~~as amended~~.

(31) “State” means any state, territory or possession of the United States, the District of Columbia and Puerto Rico.

(32) “Total Equity Investment” for purposes of subsection 69W-700.005(1), F.A.C., shall mean the total of (1) par or stated values of all equity securities offered or proposed to be offered; and (2) the amount of surplus of any kind, regardless of description and whether or not restricted.

(33) “Wholesaler” is defined as any dealer conducting business exclusively with other dealers in this State, and such dealer need not be registered as a dealer under Section 517.12, F.S.

(34) The federal statutes and regulations referenced in this rule are hereby incorporated by reference. Copies of the United States Code are available online through the U.S. House of Representatives, Office of the Law Revision Counsel: <http://uscode.house.gov/download/downloadPDF.shtml>. Copies of the Code of Federal Regulation are available online through the U.S. Government Printing Office via GPO Access: <http://www.gpoaccess.gov/cfr/retrieve.html>.

Rulemaking Specific Authority 517.03(1) FS. Law Implemented 517.07, 517.12, 517.021, 517.061, 517.051, 517.081, 517.161 FS. History—New 12-5-79, Amended 9-20-82, Formerly 3E-200.01, Amended 12-8-87, 10-14-90, 7-31-91, 6-16-92, 1-10-93, 5-5-94, 10-20-97, 8-9-98, 8-19-99, 10-30-03, Formerly 3E-200.001, Amended 5-15-07,_____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Pam Epting, Chief, Bureau of Regulatory Review, Division of Securities, Office of Financial Regulation, The Fletcher Building, 200 East Gaines Street, Tallahassee, Florida 32399-0375, (850)410-9500, pam.epting@flofr.com

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Financial Services Commission

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: May 25, 2010

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: December 24, 2009

Notice of Proposed Rule

DEPARTMENT OF FINANCIAL SERVICES

Securities

RULE NO: RULE TITLE

69W-300.002: Financial Statements and Reports

69W-300.003: Refunds of Fees, Files Denied or Withdrawn

PURPOSE AND EFFECT: Rule 69W-300.002, F.A.C., is amended to reflect the most current version of federal regulations and federal statutes referenced in the rule. The rule is also amended to replace references to the National Association of Securities Dealers with the Financial Industry Regulatory Authority (FINRA). FINRA was created in July 2007 through the consolidation of National Association of Securities Dealers and the member regulation, enforcement and arbitration functions of the New York Stock Exchange. Rule 69W-300.003 is repealed. This rule is not needed because the statutes under Chapter 517, F.S., specify the accounts where fees are to be deposited and also specify that fees are non-refundable.

SUMMARY: Rule 69W-300.002, F.A.C., is amended to reflect the most current version of federal regulations and federal statutes referenced in the rule. The rule is also amended to replace references to the National Association of Securities Dealers with the Financial Industry Regulatory Authority (FINRA). FINRA was created in July 2007 through the consolidation of National Association of Securities Dealers and the member regulation, enforcement and arbitration functions of the New York Stock Exchange. Rule 69W-300.003 is repealed. This rule is not needed because the statutes under Chapter 517, F.S., specify the accounts where fees are to be deposited and also specify that fees are non-refundable.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared. The Office determined the proposed rule will not have an adverse impact on small business.

Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 517.03 FS

LAW IMPLEMENTED: 517.081, 517.082, 517.12, 517.131, 517.315 FS

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN FAW.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Pam Epting, Chief, Bureau of Regulatory Review, Division of Securities, Office of Financial Regulation, The Fletcher Building, 200 East Gaines Street, Tallahassee, Florida 32399-0375, (850)410-9500,

pam.epting@flofr.com

THE FULL TEXT OF THE PROPOSED RULE IS:

69W-300.002 Financial Statements and Reports.

(1) All financial statements required for registration of securities, or registration of dealers and investment advisers, shall be prepared in accordance with United States generally accepted accounting principles. Financial statements required to be prepared in accordance with Regulation S-X (17 C.F.R. Part 210 (2009)) ~~together with the Accounting Series Releases, pursuant to the Securities Act of 1933 and the Securities Exchange Act of 1934,~~ will be acceptable to the Office of Financial Regulation unless otherwise required by these rules.

(2) No change.

(3) Requirements for Dealers.

(a) Every dealer applicant, unless exempted under paragraph (3)(b) or (3)(e) of this rule, shall file financial statements as of a date within ninety (90) days prior to the date of filing for registration. These financial statements need not be audited provided that there shall also be filed audited financial statements as of said applicant's most recent fiscal year end.

(b) Those dealer applicants which have been in operation for a period of time less than twelve (12) months, and for whom an audited financial statement has not been prepared or is not available, shall be permitted to file unaudited financial statements provided the following conditions are met:

1. Such financial statements are as of a date within thirty (30) days prior to the date of filing for registration, and are prepared in accordance with the provisions of paragraphs (2)(b), (2)(d) and (3)(c) of this rule; and

2. Such applicant is effectively registered with the Securities Exchange Commission or Financial Industry Regulatory Authority (formerly known as the National Association of Securities Dealers, Inc.)

(c) Every dealer applicant and registrant shall file, in addition to the information specified in paragraph (2)(b) of this rule, the following:

1. Computations of net capital and customer reserve requirements prepared in accordance with the provisions of Rules 69W-600.016 and 69W-600.017, F.A.C.;

2. Written notice of designation of an independent certified public accountant, which notice shall include name, address, and telephone number of the accountant so designated;

3. Written notice of fiscal year end or audit date of such dealer;

4. Disclosure of any contingent, civil or criminal liabilities of such dealer.

(d) The Office of Financial Regulation shall deem those financial statements and reports, prepared and filed in accordance with the provisions of SEC Rule 17a-5 (17 C.F.R. CFR § 240.17a-5 (2009)) and SEC Rule 17a-10 (17 C.F.R. CFR § 240.17a-10 (2009)) (~~as such provisions existed on July 1, 2003~~), to be in compliance with, and fulfill the requirements of, this rule as applicable to a dealer.

(e) The financial statements and reports required by paragraphs (a) through (d) are not required to be filed with the Office of Financial Regulation, unless specifically requested by the Office of Financial Regulation, by a dealer applicant or registrant if the dealer registrant is a current member of a securities association registered pursuant to section 15A of the Securities Exchange Act of 1934 (15 U.S.C. §78o-3 (2006 & Supp. II)) and such association requires financial reports to be filed with it.

(4) Requirements for Investment Advisers.

(a) Investment adviser applicants shall file financial statements as of a date within ninety (90) days prior to the date of filing for registration, which statements may be unaudited financial statements defined in paragraph (2)(d) of this rule. However, each investment adviser who has custody or possession of client's funds or securities; requires prepayment of advisory fees six months or more in advance and in excess of \$500 per client; or computes net capital pursuant to SEC Rule 15c3-1 (17 C.F.R. § 240.15c3-1 (2009)) for purposes of compliance with subsection 69W-600.016(3), F.A.C., shall file financial statements as required by paragraphs (3)(a) and (3)(b) of this rule.

(b) Investment adviser registrants shall provide the Office of Financial Regulation with written notification of such investment adviser's fiscal year end or annual audit date, and thereafter file annually financial statements as of said date in accordance with the provisions of subsection 69W-600.015(3), F.A.C. Such financial statements may be unaudited as defined in paragraph (2)(d) of this rule. However, each investment adviser who has custody or possession of client's funds or securities; requires prepayment of advisory fees six months or more in advance and in excess of \$500 per client; or computes net capital pursuant to SEC Rule 15c3-1 (17 C.F.R. § 240.15c3-1 (2009)) for purposes of compliance with subsection 69W-600.016(3), F.A.C., shall file audited financial statements as defined by paragraph (2)(a) of this rule. Accompanying all audited financial statements shall be a written statement from the independent certified public accountant verifying compliance with subsection 69W-600.016(3), F.A.C.

(c) Every investment adviser applicant and registrant, in addition to the information specified in paragraphs (2)(b) and (2)(d) of this rule, shall provide to the Office of Financial Regulation:

1. Computations of net capital requirements prepared in accordance with the provision of Rule 69W-600.016, F.A.C.;

2. Written disclosure of any contingent, civil or criminal liabilities of such investment adviser.

(5) through (7) No change.

(8) The federal statutes and regulations referenced in this rule are hereby incorporated by reference. Copies of the United States Code are available online through the U.S. House of Representatives, Office of the Law Revision Counsel:

<http://uscode.house.gov/download/downloadPDF.shtml>. Copies of the Code of Federal

Regulation are available online through the U.S. Government Printing Office via GPO Access:

<http://www.gpoaccess.gov/cfr/retrieve.html>

Rulemaking Specific Authority 517.03 FS. Law Implemented 517.081, 517.12 FS. History—New 12-5-79, Amended 9-20-82, Formerly 3E-300.02, Amended 6-28-93, 11-22-93, 12-24-95, 9-19-00, 10-30-03, Formerly 3E-300.002, Amended 5-15-07,_____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Pam Epting, Chief, Bureau of Regulatory Review, Division of Securities, Office of Financial Regulation, The Fletcher Building, 200 East Gaines Street, Tallahassee, Florida 32399-0375, (850)410-9500, pam.epting@flofr.com

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Financial Services Commission

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: May 25, 2010

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: December 24, 2009

Notice of Proposed Rule

DEPARTMENT OF FINANCIAL SERVICES

Securities

RULE NO: RULE TITLE

69W-301.003: Right to Hearing

PURPOSE AND EFFECT: Rule 69W-301.003, F.A.C., is amended to clarify the references to the administrative rules that govern the process of requesting a hearing.

SUMMARY: Rule 69W-301.003, F.A.C., is amended to clarify the references to the administrative rules that govern the process of requesting a hearing.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared. The Office determined the proposed rule will not have an adverse impact on small business.

Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 517.03(1), 517.12, 517.1201 FS

LAW IMPLEMENTED: 120.60(1), 120.57, 517.051, 517.081, 517.082, 517.12, 517.161(5), 517.241(1) FS

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN FAW.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Pam Epting, Chief, Bureau of Regulatory Review, Division of Securities, Office of Financial Regulation, The Fletcher Building, 200 East Gaines Street, Tallahassee, Florida 32399-0375, (850)410-9500, pam.epting@flofr.com

THE FULL TEXT OF THE PROPOSED RULE IS:

69W-301.003 Right to Hearing.

Should the Office of Financial Regulation refuse to grant the license, the Office of Financial Regulation shall notify the applicant of this decision stating the grounds for denial. The applicant aggrieved by such a refusal shall be entitled to an administrative hearing upon filing a written request for such a hearing. Procedures for requesting such hearing appear in Rules 28-106.201 and 28-106.301, F.A.C. Chapters 28-106 and 28-107, F.A.C.

Rulemaking Specific Authority 517.03(1) FS. Law Implemented 120.60, 120.57, 517.081, 517.082, 517.12, 517.241(1) FS. History– New 9-20-82, Formerly 3E-301.03, Amended 7-31-91, 6-22-98, Formerly 3E-301.003, Amended _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Pam Epting, Chief, Bureau of Regulatory Review, Division of Securities, Office of Financial Regulation, The Fletcher Building, 200 East Gaines Street, Tallahassee, Florida 32399-0375, (850)410-9500, pam.epting@flofr.com

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Financial Services Commission

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: May 25, 2010

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: December 24, 2009

Notice of Proposed Rule

DEPARTMENT OF FINANCIAL SERVICES

Securities

RULE NO: RULE TITLE

69W-500.008: Unsolicited Purchase or Sale of Securities Pursuant to Section 517.061(13), F.S

69W-500.013: Exemption/Mobile Home Parks/Limited Purpose Stock Offering

69W-500.015: Exemption for Offers and Sales of Securities of Foreign Issuers to Non-U.S. Persons in Offshore Transactions

69W-500.016: Exemption for Issuers of Section 4(2) Offerings

69W-500.017: Compensatory Benefit Plan Exemption

PURPOSE AND EFFECT: Rules 69W-500.008, .015, .016, and .017, F.A.C., are amended to reflect the most current versions of federal regulations and federal statutes referenced in the rules. Rule 69W-500.013, F.A.C., is amended to correct a cross reference.

SUMMARY: Rules 69W-500.008, .015, .016, and .017, F.A.C., are amended to reflect the most current versions of federal regulations and federal statutes referenced in the rules. Rule 69W-500.013, F.A.C., is amended to correct a cross reference.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared. The Office determined that the proposed amendments will not have an adverse impact on small business.

Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 517.03, 517.061(19) FS.

LAW IMPLEMENTED: 517.061(13), 517.061(18), 517.061(19) FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN FAW.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: : Pam Epting, Chief, Bureau of Regulatory Review, Division of Securities, Office of Financial Regulation, The Fletcher Building, 200 East Gaines Street, Tallahassee, Florida 32399-0375, (850)410-9500, pam.epting@flofr.com

THE FULL TEXT OF THE PROPOSED RULE IS:

69W-500.008 Unsolicited Purchase or Sale of Securities Pursuant to Section 517.061(13), F.S.

(1) For purposes of Section 517.061(13), F.S., the offer or sale of securities in a transaction meeting the requirements of SEC Rule 144 (17 C.F.R. § 230.144 (2009)), which is hereby incorporated by reference, ~~promulgated pursuant to section 4(1) of the Securities Act of 1933, as in effect on November 1, 1978,~~ shall be deemed an unsolicited purchase or sale of securities on order of and as agent for another. Copies of the Code of Federal Regulation are available online through the U.S. Government Printing Office via GPO Access:
<http://www.gpoaccess.gov/cfr/retrieve.html>.

(2) and (3) No change.

Rulemaking Specific Authority 517.03(1) FS. Law Implemented 517.061(13) FS. History–New 12-5-79, Amended 9-20-82, Formerly 3E-500.08, Amended 10-14-90, Formerly 3E-500.008, Amended _____.

69W-500.013 Exemption/Mobile Home Parks/Limited Purpose Stock Offering.

Transactions which involve the offer or sale of stock, bonds, or other instruments deemed to be securities as defined in Section 517.021(21) ~~517.021(17)~~, F.S., offered or sold by or on behalf of a non-profit corporation consisting solely of property owners of a singular mobile home park, where the securities evidence shares of the corporation, are hereby exempted from the registration requirements of Section 517.07, F.S., provided that such securities meet and comply with all of the following criteria:

(1) That proceeds from the sale of securities are used exclusively for the maintenance, improvement or acquisition of common areas within the mobile home park.

(2) That the solicitation and subsequent sale of securities is made exclusively by the non-profit corporation to persons retaining a property interest in the mobile home park and no form of general solicitation or general advertisement is instituted.

(3) That no individual, either directly or indirectly, receives any compensation or commission for or as a result of the sale of such securities.

(4) That prior to the sale of said securities, each property owner within the mobile home park is provided with or given reasonable access to full and fair disclosure concerning all relevant information relating to the securities themselves.

(5) That the Office of Financial Regulation is provided with reasonable notice of the issuance of said securities prior to or contemporaneous with their offer and sale.

Rulemaking Specific Authority 517.03 FS. Law Implemented 517.061(18) FS. History–New 1-8-86, Amended 7-31-91, Formerly 3E-500.013, Amended _____.

69W-500.015 Exemption for Offers and Sales of Securities of Foreign Issuers to Non-U.S. Persons in Offshore Transactions.

(1) Any offer or sale of securities of a foreign issuer made to a person, other than a U.S. person, in an offshore transaction that is exempt from registration under section 5 of the ~~Securities Act of 1933~~ pursuant to Regulation S (17 C.F.R. §§ 230.901 through 230.905 (2009)) promulgated by the ~~Securities and Exchange Commission~~, is hereby exempted from the registration requirements of Section 517.07, F.S.

(2) For purposes of this rule, the terms “foreign issuer,” “offshore transaction,” and “U.S. person” shall have the meanings prescribed in rule 902 of Regulation S (17 C.F.R. § 230.902 (2009)) ~~as it existed on April 29, 1998.~~

(3) The federal regulations referenced in this rule are hereby incorporated by reference. Copies of the Code of Federal Regulation are available online through the U.S. Government Printing Office via GPO Access: <http://www.gpoaccess.gov/cfr/retrieve.html>.

Rulemaking Specific Authority 517.03(1), 517.061(19) FS. Law Implemented 517.061(19) FS. History–New 7-30-98, Formerly 3E-500.015, Amended _____.

69W-500.016 Exemption for Issuers of Section 4(2) Offerings.

Securities offered or sold in a transaction exempt under a rule or regulation issued by the Securities and Exchange Commission under Section 4(2) of the Securities Act of 1933 (15 U.S.C. § 77d(2) (2006 & Supp. II)), ~~as it existed on January 1, 2001~~, are hereby exempted from the filing requirements of Section 517.07, F.S. An issuer of such securities and each of its bona fide employees who satisfy the criteria set forth in Section 517.021(6)(b)6., F.S., and through whom the issuer elects to sell such securities, shall be exempted from the registration requirements of Section 517.12(1), F.S. The federal statute cited in this rule is hereby incorporated by reference. Copies of the United States Code are available online through the U.S. House of Representatives, Office of the Law Revision Counsel: <http://uscode.house.gov/download/downloadPDF.shtml>.

Rulemaking Specific Authority 517.03(1), 517.061(19) FS. Law Implemented 517.061(19) FS. History–New 1-1-02, Formerly 3E-500.016, Amended _____.

69W-500.017 Compensatory Benefit Plan Exemption.

(1) Transactions involving the offer or sale of a security pursuant to a written compensatory benefit plan (or a written compensation contract) or similar plan established by the issuer, its

parent, its majority-owned subsidiaries or majority-owned subsidiaries of the issuer's parent, for the participation of their employees, directors, general partners, trustees, officers, or consultants and advisors, and their family members who acquire such securities from such persons through gifts or domestic relations orders, are exempt from the registration provisions of Section 517.07, F.S., if:

(a) The sale of the security meets all of the requirements of SEC Rule 701 (17 C.F.R. § 230.701 (2009)) ~~as it existed on November 1, 2000~~;

(b) The security is sold pursuant to a plan of a type exempt under section 3(a) of the Securities Act of 1933; or

(c) The security is effectively registered under sections 6 to 8 of the Securities Act of 1933, 15 U.S.C. §§ 77f through h (2006 & Supp. II), and is offered and sold in compliance with the provisions of section 5 of the Securities Act of 1933, 15 U.S.C. § 77e (2006 & Supp. II).

(2) For the purposes of this rule, the terms "compensatory benefit plan" and "family member," shall have the same meanings as defined in SEC Rule 701 (17 C.F.R. § 230.701 (2009)) ~~as it existed on November 1, 2000~~.

(3) through (4) No change.

(5) The federal statutes and regulations referenced in this rule are hereby incorporated by reference. Copies of the United States Code are available online through the U.S. House of Representatives, Office of the Law Revision Counsel:

<http://uscode.house.gov/download/downloadPDF.shtml>. Copies of the Code of Federal Regulation are available online through the U.S. Government Printing Office via GPO Access: <http://www.gpoaccess.gov/cfr/retrieve.html>.

Rulemaking Specific Authority 517.03(1), 517.061(19) FS. Law Implemented 517.061(19) FS. History—New 11-25-01, Formerly 3E-500.017, Amended _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: : Pam Epting, Chief, Bureau of Regulatory Review, Division of Securities, Office of Financial Regulation, The Fletcher Building, 200 East Gaines Street, Tallahassee, Florida 32399-0375, (850)410-9500, pam.epting@flofr.com

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Financial Services Commission

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: May 25, 2010

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: December
24, 2009

Notice of Proposed Rule

DEPARTMENT OF FINANCIAL SERVICES

Securities

RULE NO: RULE TITLE

69W-600.0011: Effect of Law Enforcement Records on Applications for Registration as Dealer, Issuer/Dealer, or Investment Adviser

PURPOSE AND EFFECT: Section 517.1611(2), F.S., requires the Financial Services Commission to adopt registration disqualifying periods for applicants and their relevant persons based upon criminal convictions, pleas of nolo contendere, or pleas of guilt, regardless of whether adjudication was withheld. The statute imposes a disqualifying period of 15 years for certain felonies and 5 years for certain misdemeanors. The statute provides that the rule may also address mitigating factors, an additional waiting period based upon dates of imprisonment or community supervision, an additional waiting period based upon commitment of multiples crimes, and other factors reasonably related to the consideration of an applicant's criminal history. The proposed rule implements these requirements for dealers, issuer/dealers, and investment advisers, including their relevant persons. Relevant persons include: any member, principal, or director of the applicant or any person having similar status or performing similar functions; any person directly or indirectly controlling the applicant; direct owners, principals, or indirect owners that are required to be reported on behalf of the applicant on Form BD (Uniform Application for Broker-Dealer Registration) or Form ADV (Uniform Application for Investment Registration) pursuant to s. 517.12(15), F.S.

SUMMARY: The rule makes a general classification of crimes into two classes: Class A and Class B. Class A crimes address felonies involving fraud, dishonesty or any other act of moral turpitude; and Class B crimes address misdemeanors involving those same issues. Under the proposed rule, the disqualification period for a Class A crime is 15 years. For Class B crimes, the disqualification period is 5 years. The rule provides that the disqualification period will be extended if the applicant or relevant person has multiple Class A or B crimes, and it provides that mitigating factors may be considered to reduce disqualifying periods. The disqualifying periods established in the rule do not give an applicant a right to registration after any set period of time. Regardless of the expiration of any disqualifying period imposed by the rule, the burden to prove entitlement to registration remains on the applicant. Other factors related to the consideration of the applicant's or relevant person's criminal history are also addressed.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: A Statement of Estimated Regulatory Cost was prepared. The possible impact associated with the implementation of this rule is that

certain relevant persons associated with an applicant firm may cause the applicant firm to be disqualified from approval for registration due to the existence of a criminal history. There are no transactional costs associated with the implementation of this rule. The rule does not impose any additional costs on the Office. No other state or local agencies will be impacted by the proposed rule. There are no anticipated effects on state or local revenues.

Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 517.1611(2) FS

LAW IMPLEMENTED: 517.12, 517.161 FS

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN FAW.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Pam Epting, Chief, Bureau of Regulatory Review, Division of Securities, Office of Financial Regulation, The Fletcher Building, 200 East Gaines Street, Tallahassee, Florida 32399-0375, (850)410-9500, pam.epting@flofr.com

THE FULL TEXT OF THE PROPOSED RULE IS:

69W-600.0011 Effect of Law Enforcement Records on Applications for Registration as Dealer, Issuer/Dealer, or Investment Adviser.

(1) General Procedure Regarding Law Enforcement Records. For purposes of this rule, an “applicant” is any Dealer, Issuer/Dealer or Investment Adviser seeking registration in Florida. Any member, principal, or director of the applicant or any person having similar status or performing similar functions; any person directly or indirectly controlling the applicant; direct owners, principals, or indirect owners that are required to be reported on behalf of the applicant on Form BD or Form ADV pursuant to subsection 517.12(15), F.S. shall be referred to collectively as “relevant persons”. As part of the application review process for each Dealer, Issuer/Dealer, or Investment Adviser, submitted on Form BD or Form ADV, the Office is required to consider all relevant persons law enforcement records when deciding whether to approve an application for registration. When conducting this review, the Office reviews the criminal history information derived from the fingerprint check, any responses made by the applicant or relevant person, and information from other resources such as the Financial Industry Regulatory Authority. In the event of a question regarding the relevant person’s criminal history, the Office may request additional information from the applicant to determine the status of a criminal event.

the specific facts and circumstances surrounding a criminal event, or to address other issues determined relevant to the review of the law enforcement record. The Office will notify the applicant of any specific documents that it requires in order to complete its review of the relevant person's law enforcement record. Documentation that is typically requested includes:

(a) A copy of the police arrest affidavit, arrest report or similar document.

(b) A certified copy of the charges.

(c) A certified copy of the plea, judgment, and sentence where applicable.

(d) A certified copy of an order of entry into pre-trial intervention, and the order of termination of pre-trial intervention showing dismissal of charges where applicable.

(e) A certified copy of an order of termination of probation or supervised release, if applicable.

If the requested documentation cannot be obtained, the applicant shall submit evidence of that fact in order for the application to be deemed complete. Evidence that documentation cannot be obtained shall consist of a written statement on the letterhead of the agency that would be the custodian of the documents, signed by a representative of that agency, stating that they have no record of such matter, or that the record is lost or was damaged or destroyed, or otherwise stating why the document cannot be produced.

(2) Effect of Failure to Fully Disclose Law Enforcement Record on Application.

(a) The omission of any part of a law enforcement record required to be disclosed is a material misrepresentation or material misstatement on the application and the application shall be denied pursuant to section 517.161(1)(b), Florida Statutes.

(b) If the Office discovers the applicant's failure to disclose any part of a law enforcement record required to be disclosed regarding a relevant person on the application after a registration has been granted, the Office will suspend or revoke each registration currently held by the applicant as follows:

1. Suspension for 12 months if, had the application been accurate, the application would have been granted, based upon the statutes and rules applicable to the application at the time the Office granted registration.

2. Revocation if, had had the application been accurate, the application would have been denied, based upon the statutes and rules applicable to the application at the time the Office granted registration.

(3) Classification of Crimes.

(a) The Office makes a general classification of crimes into two classes: A and B, as listed in subsections (14) and (15), of this rule.

(b) These classifications reflect the Office's evaluation of various crimes in terms of moral turpitude and the seriousness of the crime as such factors relate to the prospective threat to public welfare typically posed by a person who would commit such a crime.

(c) The names or descriptions of crimes, as set out in the classification of crimes, are intended to serve only as generic names or descriptions of crimes and shall not be read as legal titles of crimes, or as limiting the included crimes to crimes bearing the exact name or description stated.

(d) For purposes of this rule, “trigger date” means the date on which an applicant was found guilty, or pled guilty, or pled nolo contendere to a crime.

(e) A charge in the nature of attempt or intent to commit a crime, or conspiracy to commit a crime, is classified the same as the crime itself.

(4) Relevant Person(s) With a Single Crime. The Office finds it necessary to implement the following standards for an applicant with relevant person(s) whose law enforcement record includes a single crime, subject to the mitigating factors set forth elsewhere in this rule before registration. All disqualifying periods referenced in this rule run from the trigger date.

(a) Class A Crime. The applicant will not be granted a registration until 15 years have passed since the trigger date.

(b) Class B Crime. The applicant will not be granted a registration until 5 years have passed since the trigger date.

(5) Relevant Person(s) With Multiple Crimes.

(a) The Office construes section 517.161, Florida Statutes, to require that an applicant with relevant person(s) whose law enforcement record includes multiple Class A or Class B crimes, or any combination thereof, wait longer than those whose law enforcement record includes only a single crime before becoming eligible for registration in order to assure that such relevant person’s greater inability or unwillingness to abide by the law has been overcome. Therefore, the Office finds it necessary that a longer disqualifying period be utilized in such instances before registration can safely be granted. Accordingly, where the relevant person has been found guilty or pled guilty or pled nolo contendere to more than one crime, the Office shall add 5 years to the disqualifying period for each additional crime.

(b) The additional periods are added to the basic disqualifying period for the one most serious crime, and the combined total disqualifying period then runs from the trigger date of the most recent crime.

(c) Classification as “Single Crime” versus “Multiple Crimes.” For purposes of this rule, two (2) or more offenses are considered a single crime if they are based on the same act or transaction or on two (2) or more connected acts or transactions.

(6) Mitigating Factors.

(a) The disqualifying period for a Class “A” or “B” crime or crimes shall be shortened upon proof of one or more of the following factors. Where more than one factor is present the applicant is entitled to add together all the applicable mitigation amounts and deduct that total from the usual disqualifying period.

provided that an applicant shall not be permitted an aggregate mitigation of more than three (3) years for the following factors:

1. One year is deducted if the relevant person's probation officer or prosecuting attorney in the most recent crime states in a signed writing that the probation officer or prosecuting attorney believes the relevant person would pose no significant threat to public welfare if registered.

2. One year is deducted if restitution or settlement has been made for all crimes in which restitution or settlement was ordered by the court, and proof of such restitution or settlement is shown in official court documents or as verified in a signed writing by the relevant person's prosecuting attorney or probation officer.

3. One year will be deducted if the relevant person was under age 21 when the crime was committed and there is only one crime in the relevant person's law enforcement record.

4. One year is deducted if the applicant furnishes proof that the relevant person was at the time of the crime addicted to drugs or suffering active alcoholism. The proof must be accompanied by a written letter from a properly licensed doctor, psychologist, or therapist licensed by a duly constituted state licensing body stating that the licensed person has examined or treated the relevant person and that in his or her professional opinion the addiction or alcoholism is currently in remission and has been in remission for the previous 12 months. The professional opinion shall be dated within 45 days of the time of application.

5. Other Mitigating Factors. An applicant is permitted to submit any other evidence of facts that the applicant believes should decrease the disqualifying period before registration is allowed and one additional year shall be deducted if the Office agrees the facts have a mitigating effect on the registration decision.

(b) The burden is upon the applicant to establish these mitigating factors. Where the mitigating factor relates to or requires evidence of government agency or court action, it must be proved by a certified true copy of the agency or court document.

(7) Circumstances Not Constituting Mitigation. The Office finds that no mitigating weight exists, and none will be given, for the following factors:

(a) Type of Plea. The Office draws no distinction among types of pleas, e.g., found guilty; pled guilty; pled nolo contendere.

(b) Collateral Attack on Criminal Proceedings. The Office will not allow or give any weight to an attempt to re-litigate, impeach, or collaterally attack judicial criminal proceedings or their results wherein the relevant person was found guilty or pled guilty or nolo contendere. Thus the Office will not hear or consider arguments such as: the criminal proceedings were unfair; the judge was biased; the witnesses or prosecutor lied or acted improperly; the defendant only pled guilty due to financial or mental stress; the defendant was temporarily insane at the time of the crime; or the defendant had ineffective counsel.

(c) The Office finds that subjective factors involving state of mind have no mitigating weight.

(8) Effect of Pending Appeal in Criminal Proceedings; Reversal on Appeal.

(a) The Office interprets the statutory grounds for denial of registration as arising immediately upon a finding of guilt, or a plea of guilty or nolo contendere, regardless of whether an appeal is or is not allowed to be taken. The Office will not wait for the outcome of an appeal to deny registration, unless a Florida court specifically stays the Office's adverse action.

(b) If on appeal the conviction is reversed, the Office shall immediately drop the said crime as grounds for denial of registration.

(9) Pre-Trial Intervention. If at the time of application a relevant person is participating in a pre-trial intervention program based upon a charge of criminal conduct that would authorize denial of a registration under s. 517.161(1), F.S., the Office will deny the application for registration. The Office considers participation in a pre-trial intervention program to be a pending criminal prosecution under s. 517.161(6), F.S., and finds it necessary to the public welfare to wait until final disposition of all charges of criminal conduct that would authorize denial of a registration under s. 517.161(1), F.S., before an application for registration may be considered.

(10) Effect of Sealing or Expunging of Criminal Record.

(a) An applicant is not required to disclose or acknowledge, and is permitted in fact to affirmatively deny, any arrest or criminal proceeding for a relevant person, the record of which has been legally and properly expunged or sealed by order of a court of competent jurisdiction prior to the time of application, and such denial or failure to disclose is not grounds for adverse action by the Office.

(b) Matters Sealed or Expunged Subsequent to Application. Occasionally a relevant person will have a matter sealed or expunged after the applicant submits an application, but before an application decision is made by the Office. In such situations the Office policy is as follows:

1. If the applicant properly revealed the law enforcement record relating to the relevant person on the application, and thereafter the record is sealed or expunged, the Office will not consider the matter in the application decision.

2. However, if the applicant did not reveal the law enforcement record relating to the relevant person on the application and the matter had not been sealed or expunged at the time of making the application, the Office will construe the failure to disclose the matter on the application as a material misrepresentation or material misstatement, and the application shall be denied pursuant to section 517.161(1)(b), Florida Statutes.

(11) Effect of Varying Terminology.

(a) With regard to the following six subparagraphs, the Office treats each phrase in a particular subparagraph as having the same effect as the other phrases in that same subparagraph:

1. Adjudicated guilty; convicted.

2. Found guilty; entered a finding of guilt.

3. Pled guilty; entered a plea of guilty; admitted guilt; admitted the charges.

4. Nolo contendere; no contest; did not contest; did not deny; no denial.

5. Adjudication of guilt withheld; adjudication withheld; no adjudication entered; entry of findings withheld; no official record to be entered; judgment withheld; judgment not entered.

6. Nolle prosequere; nolle prosequi; charges withdrawn; charges dismissed; charges dropped.

(b) In all other instances the Office will look to the substantive meaning of the terminology used in the context in which it was used under the law of the jurisdiction where it was used.

(12) Imprisoned Persons and Community Supervision.

(a) Imprisonment. Notwithstanding any provision to the contrary in this rule, the Office shall not register any applicant under Chapter 517, Florida Statutes, while any relevant person of the applicant is imprisoned, under arrest, or serving a sentence for any crime. Further, the Office shall not register any applicant with a relevant person who has been released from imprisonment until the later of the period otherwise set out in these rules or five (5) years after the date of release. The Office finds it necessary that the person be released from imprisonment and thereafter demonstrate an ability to abide by the law by passage of at least five (5) years on good behavior, before registration can be granted without undue risk to the public welfare.

(b) Community Supervision. The Office shall not grant registration to an applicant who at the time of application or at any time during the pendency of the application has a relevant person who is under supervision as the result of the commission of a criminal offense and released to the community under the jurisdiction of the courts, paroling authorities, correctional agencies, or other criminal justice agencies for any felony crime or any misdemeanor crime involving fraud, dishonest dealing, or moral turpitude.

(13) Effect of Disqualifying Periods. The disqualifying periods established in this rule do not give an applicant a right to registration after any set period of time. Regardless of the expiration of any disqualifying period imposed by these rules, the burden to prove entitlement to registration remains on the applicant.

(14) Class "A" Crimes include felonies involving an act of fraud, dishonesty, or a breach of trust, or money laundering, and the Office finds that such crimes constitute crimes of moral turpitude. The Office finds the following list of crimes are Class "A" crimes. Crimes similar to the crimes on this list may also be considered Class "A" crimes, and no inference should be drawn from the absence of any crime from this list.

(a) Any type of fraud, including but not limited to Fraud, Postal Fraud, Wire Fraud, Securities Fraud, Welfare Fraud, Defrauding the Government, Credit Card Fraud, Defrauding an Innkeeper, Passing worthless check(s) with intent to defraud.

(b) Perjury.

(c) Armed robbery.

(d) Robbery.

(e) Extortion.

(f) Bribery.

(g) Embezzlement.

(h) Grand theft.

(i) Larceny.

(j) Burglary.

(k) Breaking and entering.

(l) Identity Theft.

(m) Any type of forgery or uttering a forged instrument.

(n) Misuse of public office.

(o) Racketeering.

(p) Buying, receiving, concealing, possessing or otherwise dealing in stolen property.

(q) Treason against the United States, or a state, district, or territory thereof.

(r) Altering public documents.

(s) Witness tampering.

(t) Tax evasion.

(u) Impersonating or attempting to impersonate a law enforcement officer.

(v) Money laundering.

(w) Murder in all degrees.

(x) Arson.

(y) Sale, importation, or distribution of controlled substances (drugs); or possession for sale, importation or distribution.

(z) Aggravated Assault (e.g., as with a deadly weapon).

(aa) Aggravated Battery (e.g., as with a deadly weapon).

(bb) Rape.

(cc) Sexually molesting any minor.

(dd) Sexual battery.

(ee) Battery of or threatening a law enforcement officer or public official in the performance of his/her duties.

(ff) Kidnapping.

(15) Class "B" Crimes any misdemeanor that involves fraud, dishonest dealing or any other act of moral turpitude.

(16) Foreign Law Enforcement Records. If a law enforcement record includes convictions, charges, or arrests outside the United States, the Office shall consider the following factors to reduce, eliminate, or apply a disqualifying period:

(a) Whether the crime in the criminal record would be a crime under the laws of the United States or any state within the United States;

(b) The degree of penalty associated with the same or similar crimes in the United States; and

(c) The extent to which the foreign justice system provided safeguards similar to those provided criminal defendants under the Constitution of the United States; for example, the right of a defendant to a public trial, the right against self-incrimination, the right of notice of the charges; the right to confront witnesses, the right to call witnesses, and the right to counsel.

(17) Form BD and Form ADV are incorporated by reference in subsection 69W-301.002(7), F.A.C.

(18) For purposes of this rule, "certified" means that there must be a certification or attestation by the issuer of the record that the document is a true copy of a record contained in the issuer's office and the issuer's seal, if any.

Rulemaking Authority 517.1611(2), FS. Law Implemented 517.12, 517.161, FS. History—New

NAME OF PERSON ORIGINATING PROPOSED RULE: Pam Epting, Chief, Bureau of Regulatory Review, Division of Securities, Office of Financial Regulation, The Fletcher Building, 200 East Gaines Street, Tallahassee, Florida 32399-0375, (850)410-9500, pam.epting@flofr.com

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Financial Services Commission

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: May 25, 2010

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: December 24, 2009

Office of Financial Regulation

Statement of Estimated Regulatory Costs

Proposed Rule 69W-600.0011, Effect of Law Enforcement Records on Applications for Registration as Dealer, Issuer/Dealer, or Investment Adviser.

Required Elements

Section 120.541, F.S., sets forth the requirements that agencies must follow in preparing Statements of Estimated Regulatory Costs (SERC). Specifically, paragraphs 120.541(2)(a) through (f), F.S., provide that certain information must be addressed in any SERC. The information requirements as they appear in the statute are cited below, with the Office's response to each as related to proposed Rule 69W-600.0011.

(a) A good faith estimate of the number of individuals and entities likely to be required to comply with the rule, together with a general description of the types of individuals likely to be affected by the rule.

In fiscal year 2008-09, the Office of Financial Regulation received 406 applications for registration as Dealer, Issuer/Dealer, or Investment Adviser. Registration of a Dealer or Issuer/Dealer is required for those entities who sell or offer for sale any securities in or from offices in the state of Florida or sell securities to persons in Florida from offices outside this state pursuant to Section 517.12, F.S. Registration of an Investment Adviser is required for those entities who engage in business from offices in this state, or render investment advice to persons of this state, by mail or otherwise. Such entities are required to submit an application for registration and require that their relevant persons, i.e. members, principals, owners, directors, be subject to a criminal background check.

Section 517.12(7), F.S., mandates that relevant persons must submit a fingerprint card and be subject to a criminal background check. This requirement, along with the disqualifying periods set forth in Section 517.1611(2), F.S., became effective July 1, 2009. The proposed rule implements these statutory requirements. Historically, a relevant person associated with one of the above described entities has been subject to additional scrutiny by the Office through a review of the relevant person's disciplinary background, either self-reported or reported by other regulators. The standards being adopted have been generally applied.

(b) A good faith estimate of the cost to the agency, and to any other state and local government entities, of implementing and enforcing the proposed rule, and any anticipated effect on state or local revenues.

The rule does not impose any additional costs on the agency. Further, the implementation and enforcement of the rule is solely the responsibility of the Office of Financial Regulation. Accordingly, no other state or local agencies will be impacted by the proposed rule. There are no anticipated effects on state or local revenues.

(c) A good faith estimate of the transactional costs likely to be incurred by individuals and entities, including local government entities, required to comply with the requirements of the rule. As used in this paragraph, "transactional costs" are direct costs that are readily ascertainable based upon standard business practices, and include filing fees, the cost of obtaining a license, the cost of equipment required to be installed or used or procedures required to be employed in complying with the rule, additional operating costs incurred, and the cost of monitoring and reporting.

There are no transactional costs associated with the implementation of this rule. Currently, a relevant person is subject to a criminal background check as part of the application submission process. This requirement is established by s. 517.12(7), F.S. As the result of this statutory requirement, relevant persons are subject to a fingerprinting processing fee of \$43.25.

(d) An analysis of the impact on small businesses as defined by s. 288.703, and an analysis of the impact on small counties and small cities as defined by s. 120.52.

The possible impact associated with the implementation of this rule is that certain relevant persons associated with an applicant firm may cause the applicant firm to be disqualified from approval for registration due to the existence of a criminal history.

There will be no impact on small counties or small cities because this is a state regulatory program.

[A small business is defined in section 288.703, F.S., as “an independently owned and operated business concern that employs 200 or fewer permanent full-time employees and that, together with its affiliates, has a net worth of not more than \$5 million or any firm based in this state which has a Small Business Administration 8(a) certification. As applicable to sole proprietorships, the \$5 million net worth requirement shall include both personal and business investments.”]

(e) Any additional information that the agency determines may be useful.

The Office has adopted similar rules for stock brokers, mortgage brokers, mortgage lenders, mortgage brokerage businesses, and money services businesses. See Rules 69W-600.0021, 69V-40.0311, 69V-40.0511, 69V-40.201, and 69V-560.1021.

(f) In the statement or revised statement, whichever applies, a description of any good faith written proposal submitted under paragraph (1)(a) and either a statement adopting the alternative or a statement of the reasons for rejecting the alternative in favor of the proposed rule.

No lower cost regulatory alternative to the proposed rule has been submitted to the office.

ATTACHMENT 3

**Financial Services Commission
Office of Financial Regulation
Agenda Item #3**

Briefing Sheet

I. Action Requested

The Office requests approval to publish a Notice of Proposed Rule for Rule 69U-100.045, Examination Manuals and Referenced Standards.

II. Summary

The rule is being amended to reflect the manuals that the Division of Banking uses to examine state-chartered financial institutions. The manuals include:

- a) *Bank Secrecy Act/Anti-Money Laundering Examination Manual* (2010) produced by the Federal Financial Institutions Examination Council.
- b) *DSC Risk Management Manual of Examination Policies* (12/2004) produced by Federal Deposit Insurance Corporation.
- c) *Trust Examination Manual* (05/12/2005) produced by Federal Deposit Insurance Corporation.
- d) *Examiner's Guide* (06/2002) produced by the National Credit Union Administration.
- e) *State Credit Union Examination Manual* (03/25/09) produced by the Office of Financial Regulation.
- f) *Examination Manual for U.S. Branches and Agencies of Foreign Banking Organizations* (07/1997) produced by The Federal Reserve Board.

Notice of Proposed Rule

DEPARTMENT OF FINANCIAL SERVICES

FSC - Financial Institution Regulation

RULE NO: RULE TITLE

69U-100.045: Examination Manuals and Referenced Standards

PURPOSE AND EFFECT: The rule is being amended to reflect the manuals that the Division of Banking uses to examine state-chartered financial institutions.

SUMMARY: The rule is being amended to reflect the manuals that the Division of Banking uses to examine state-chartered financial institutions. The manuals include: a) Federal Financial Institutions Examination Council, Bank Secrecy Act/Anti-Money Laundering Examination Manual (2010); b) Federal Deposit Insurance Corporation, DSC Risk Management Manual of Examination Policies (12/2004); c) Federal Deposit Insurance Corporation, Trust Examination Manual (05/12/2005); d) National Credit Union Administration Examiner's Guide (06/2002); e) State Credit Union Examination Manual (03/25/09); and f) The Federal Reserve Board's Examination Manual for U.S. Branches and Agencies of Foreign Banking organizations (07/1997).

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared. The Office determined the proposed rule will not have an adverse impact on small business.

Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 655.012(2) FS

LAW IMPLEMENTED: 655.045 FS

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN FAW.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Linda Charity, Director, Division of Financial Institutions, Office of Financial Regulation, 200 E. Gaines Street, Tallahassee, Florida 32399, linda.charity@flofr.com, (850)410-9800

THE FULL TEXT OF THE PROPOSED RULE IS:

69U-100.045 Examination Manuals and Referenced Standards.

~~(1) Examination manuals used by OFR which contain referenced standards are available for inspection at OFR's Office in Tallahassee and at the following location:~~

Federal Deposit Insurance Corporation

10 Tenth Street N. E.

Suite 800

Atlanta, Georgia 30309-3906.

(2) The OFR uses the following examination manuals ~~are used by OFR in the~~ implementation of its examination responsibilities; which ~~and~~ are hereby adopted and incorporated by reference into the body of printed materials that the ~~which~~ OFR uses for the purposes of conducting examinations of financial institutions to assess the performance and condition of such institutions. The OFR examiners use the manuals ~~are used by the examiners~~ as reference guidelines when conducting safety and soundness examinations of such financial institutions:

(a) Federal Financial Institutions Examination Council, *Bank Secrecy Act/Anti-Money Laundering Examination Manual* (2010), which may be obtained electronically through the following website:

http://www.ffiec.gov/bsa_aml_infobase/documents/BSA_AML_Man_2010.pdf ~~OFR Examination Procedures Manual (7/89).~~

(b) Federal Deposit Insurance Corporation, *DSC Risk Management Revised DOS Manual of Examination Policies* (12/2004 Revised 6/95), which may be obtained electronically through the following website:

http://www.fdic.gov/regulations/safety/manual/manual_examinations_full.pdf.

(c) Federal Deposit Insurance Corporation, *Trust Examination Manual* (05/12/2005), which may be obtained electronically through the following website:

<http://www.fdic.gov/regulations/examinations/trustmanual/>-Management Evaluation Guidelines (5/93).

(d) National Credit Union Administration, *Examiner's Guide* (06/2002), which may be obtained electronically through the following website:

http://www.ncua.gov/GenInfo/GuidesManuals/examiners_guide/examguide.aspx. Examiner's Guide for the Core Examination Program (2/87).

(e) Office of Financial Regulation, *State Credit Union Examination Manual* Section Examiner's Guide (03/25/09 Revised 7/90), which may be obtained from the Florida Office of Financial Regulation, Division of Banking, 200 E. Gaines Street, Tallahassee, FL 32399.

(f) The Federal Reserve Board's Examination Manual for U.S. Branches and Agencies of Foreign Banking organizations (07/1997), which may be obtained electronically through the following website:

http://www.federalreserve.gov/boarddocs/supmanual/us_branches/usbranch.pdf. Bureau of International Banking Examination Procedures Manual (3/90).

Rulemaking Specific Authority 120.53(1), 655.012(2)(3) FS. Law Implemented 655.045 FS. History—New 10-24-93, Formerly 3C-1.015, Amended 1-2-95, 6-4-95, 5-22-96, Formerly 3C-100.045, Amended _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Linda Charity, Director, Division of Financial Institutions, Office of Financial Regulation, 200 E. Gaines Street, Tallahassee, Florida 32399, linda.charity@flofr.com, (850)410-9800

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Financial Services Commission

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: May 25, 2010

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: December 31, 2009