

OFFICE OF FINANCIAL REGULATION (OFR)

Telephone Polling

Section 658.48(7), Florida Statutes, specifies the format in which a bank's board of directors must approve loans, but permits use of telephone meetings to approve loans, provided a record of the approvals is recorded in the minutes of the next regular board meeting. In granting this authority, Section 658.48(7), Florida Statutes, refers to Section 607.0820(4), Florida Statutes. This section requires that all directors must be able to hear each other simultaneously when board meetings are held by telephone. Thus, a poll of directors by telephone does not constitute valid approval of a loan under Section 658.48(7), Florida Statutes, unless all directors can hear each other at the same time. For telephone approval to be considered sufficient, conference calls that allow all directors an opportunity to discuss the merits or deficiencies of a loan prior to voting must be used.

Significant events

Section 655.948, Florida Statutes. (1) Unless exempted by the office pursuant to subsection (4), every financial institution shall notify the office of the occurrence of any of the events listed in subsection (2) by filing with the office a disclosure in a form to be specified by the commission. The form shall include the number and caption of all applicable events, along with a summary of each. Completed forms shall be certified for authenticity and accuracy by the chief executive officer of the financial institution.

(2) Events for which disclosure forms must be filed and the filing schedule for each are as follows:

(a) To be disclosed within 30 days of the occurrence of the event:

1. The addition, resignation, or termination of a director, executive officer, independent internal auditor, or independent credit review officer;
2. The acquisition or divestiture of an asset or assets the value of which exceeds 20 percent of capital as of the date of the most recent call report. Any assets listed in s. 657.042(1) or s. 658.67(1) are excluded from such disclosure requirements;
3. Any change in general counsel or outside auditors who are used to certify financial statements;
4. Any interruption of fidelity insurance coverage;
5. Any credit extension to an executive officer and his or her related interests that, when aggregated with the amount of all other extensions of credit to that executive officer and his or her related interests, exceeds 15 percent of the capital accounts of the financial institution;
6. The failure to meet the minimum daily liquidity required of s. 658.68
7. Any suspected criminal act perpetrated against a financial institution, subsidiary, or service corporation. However, no liability shall be incurred by any financial institution, subsidiary, service corporation, or financial institution-affiliated party as a result of making a good faith effort to fulfill this disclosure requirement; or
8. The acquisition or divestiture of a wholly owned or majority owned subsidiary or service corporation.

(b) Every financial institution shall notify the office within 30 days of the existence of any asset which is defined as a nonaccrual asset and which is in excess of 15 percent of total assets.

(3) A financial institution which fails to file a disclosure form within 30 days after the occurrence shall be subject to the fines provided in s. 655.041.

(4) (a) The office must exempt a financial institution from any of the provisions of this section if the office determines that such financial institution is operating in a safe and sound manner pursuant to commission rules relating to safe and sound operations. The commission shall adopt rules defining the term "safe and sound" and explicitly stating the criteria which shall constitute operating in a safe and sound manner.

(b) Notwithstanding paragraph (a), all newly chartered financial institutions shall be subject to the requirements of subsections (1) and (2) for 3 years.

Rule 3C-100.948 Reporting of Significant Events or Conditions.

(1) Section 655.948, Florida Statutes, requires state financial institutions, not exempted by the Department, to report the occurrence of certain conditions or events within 30 days of the occurrence of the condition or event. Aggregate monthly reports that are received by the Department by the 10th day of each month, covering all reportable events or occurrences that occurred during the previous month, will satisfy the reporting requirements of this section. All reports required by this rule shall be submitted to: Division of Banking, Suite 636, Fletcher Building, 101 East Gaines Street, Tallahassee, Florida 32399-0350. A report will not be required if a reportable event or condition did not occur during the previous month.

(2)(a) "Operating in a safe and sound manner" shall mean any state financial institution operating with a composite rating of "1", "2" or "3", and with a management rating of "1" or "2" in its most recent safety and soundness report of examination or, in the case of a trust company, its most recent trust report of examination, and which is not subject to a State or Federal regulatory action. For purposes of this section "regulatory action" shall include cease and desist orders, written agreements, memoranda of understanding, letters of understanding and agreement, and any other equivalent action initiated by a financial institution regulator. (Examination ratings are based on the Federal Financial Institutions Examinations Council's Uniform Interagency Trust Rating System and Uniform Financial Institutions Rating System, often called the CAMELS rating system.)

(b) Other financial institutions may request a determination that they are operating in a safe and sound manner by writing to the Director of the Division of Banking detailing why the institution believes it is operating in a safe and sound manner. Any such request must include supporting documentation of improvements in the institution and its operations. The request shall be approved only when the Director of the Division of Banking concludes that, because of the documented improvements, the institution would be rated "1", "2" or "3", with a management rating of "1" or "2" were a safety and soundness examination conducted on the date of the institution's request. For example, the Director of the Division of Banking may approve a request from an institution that was poorly rated in its last safety and soundness examination because of inadequate capital if the institution documents that it increased capital sufficiently to address the inadequacy.

(3) As used in this section, a "non-exempt state financial institution" means:

(a) Any state financial institution that was chartered within three years of the occurrence of an event reportable under paragraph (4) of this rule; or

(b) Any state financial institution that is not operating in a safe and sound manner as determined under paragraph (2) of this rule.

(4) All non-exempt state financial institutions shall disclose to the Department, within the timeframes specified in subsection (1), the following events or conditions:

(a) Any interruption in fidelity insurance coverage;

(b) The failure to meet the minimum daily liquidity requirement specified in Section 658.68,

Florida Statutes, and Rule 3C-120.680, F.A.C. on any business day;

(c) Any suspected criminal act perpetrated against the state financial institution, or any of its subsidiaries or service corporations. For purposes of this section, "suspected criminal act" shall mean that there is a reasonable basis for believing that a crime has occurred, is occurring, or may occur;

(d) The addition, resignation or termination of a director, executive officer, independent internal auditor, or independent credit review officer;

(e) The acquisition or divestiture of an asset or related or similar assets, which in the aggregate on any single business day totals 20 percent or more of the state financial institution's capital reported in the most recent Consolidated Report of Condition, quarterly Thrift Financial Report, or Call Report. Assets listed in Section 657.042(1) or Section 658.67(1), Florida Statutes, are exempted from this requirement;

(f) Any change in the state financial institution's outside general counsel or outside independent auditor;

(g) Any extension of credit to an executive officer or his related interests that, when aggregated with other extensions of credit to that executive officer or his related interests, exceeds 15 percent of the state financial institution's capital accounts as reported in the most recent Consolidated Report of Condition, quarterly Thrift Financial Report, or Call Report;

(h) The acquisition or reclassification of any earning asset to "non-accrual" status which, when combined with other non-accrual assets, in the aggregate totals 15% or more of the state financial institution's assets as reported in the most recent Consolidated Report of Condition, quarterly Thrift Financial Report, or Call Report; or

(i) The acquisition or divestiture of a wholly owned or majority-owned subsidiary or service corporation.

(5) All reportable conditions or events must be disclosed on official letterhead. However, an institution is in compliance with section (4)(c), if it provides the Department with a copy of the federal "Suspicious Activity Report" filed with the appropriate federal regulatory or law enforcement agency. Such report shall constitute proper notice of any suspected criminal act perpetrated against a financial institution.

(6) Pursuant to Section 655.041, Florida Statutes, the Department may impose an administrative fine for late filing or non-filing of reportable events or occurrences. For late filing or non-filing of reportable events, the Department shall impose an administrative fine of \$ 100 per day for each day the disclosure report is past due as a result of the negligence of the reporting financial institution, unless the late payment penalty is excused for incidental and isolated clerical errors or omissions. For intentional late filing or non-filing of any report, the Department shall impose an administrative fine of \$ 1,000 per day for each day the report is past due.