

**AGENDA  
FINANCIAL SERVICES COMMISSION  
OFFICE OF FINANCIAL REGULATION**

[http://www.flofr.com/Cabinet/Public\\_Notices.aspx](http://www.flofr.com/Cabinet/Public_Notices.aspx)

**June 26, 2012**

**MEMBERS**

Governor Rick Scott  
Attorney General Pam Bondi  
Chief Financial Officer Jeff Atwater  
Commissioner Adam Putnam

Contact: **John Kim (OFR)**  
**(850) 410-9781**

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

<b>ITEM</b>	<b>SUBJECT</b>	<b>RECOMMENDATION</b>
1.	The Office requests approval of the minutes of the April 24, 2012, meeting.  <b>(ATTACHMENT 1)</b>	<b>FOR APPROVAL</b>
2.	<b>Rule amendments – Financial Institutions:</b> The Office requests approval to publish Notices of Proposed Rules in the FAW to amend 7 rules regulating Financial Institutions as a result of the 2011 Enhanced Rule Review: <ul style="list-style-type: none"><li>• <u>Licensing and Chartering of Financial Institutions</u>: 69U-105.206, F.A.C.</li><li>• <u>State Credit Unions</u>: 69U-110.005 and .031, F.A.C.</li><li>• <u>Banks, Trust Companies, Savings Banks and Associations</u>: 69U-120.004 and .009, F.A.C.</li><li>• <u>International Banks</u>: 69U-140.008 and .015, F.A.C.</li></ul> <b>(ATTACHMENT 2)</b>	<b>APPROVAL FOR PUBLICATION</b>
3.	<b>Rule amendments – Securities:</b> The Office requests approval to publish Notices of Proposed Rules in the FAW to amend 8 rules regulating Securities as a result of the 2011 Enhanced Rule Review: <ul style="list-style-type: none"><li>• <u>Exempt Transactions</u>: 69W-500.004, .007, and .013, F.A.C.</li><li>• <u>Registration of Dealers, Investment Advisers, Associated Persons</u>: 69W-600.001, .004, and .008, F.A.C.</li><li>• <u>Registration of Securities</u>: 69W-700.019, F.A.C.</li><li>• <u>Notification Registration of Securities</u>: 69W-800.001, F.A.C.</li></ul> <b>(ATTACHMENT 3)</b>	<b>APPROVAL FOR PUBLICATION</b>

4. **Rule amendments – Consumer Finance:** The Office requests approval to publish Notices of Proposed Rules in the FAW to amend 2 rules regulating Consumer Finance as a result of the 2011 Enhanced Rule Review:

- Florida Consumer Finance Act: 69V-160.025, F.A.C.
- Money Transmitters: 69V-560.802, F.A.C.

**(ATTACHMENT 4)**

**APPROVAL FOR PUBLICATION**

5. The Office requests approval to publish a Notice of Intent to adopt federal standards for the following proposed rule under Chapter 69U-100, relating to financial institutions generally:

**69U-100.1000: Transactions Relating to Iran or Terrorism**, is proposed for adoption to comply with Ch. 2012-201, Laws of Fla. (2012). The law requires the Commission to adopt rules by July 1, 2012 establishing minimum standards for due diligence policies, procedures, and controls for financial institutions chartered in Florida that maintain certain accounts with foreign financial institutions, to reasonably detect whether the foreign financial institution engages in certain activities facilitating the development of weapons of mass destruction by the Government of Iran, provides support for certain foreign terrorist organizations, or participates in other related activities.

The proposed rule adopts as federal standards those set out by the U.S. Treasury Department, Office of Foreign Assets Control, in 31 C.F.R. Part 561, Subparts B, C, and D, which are adopted and incorporated by reference, as the minimum standards for due diligence policies, procedures, and controls as required by Chapter 2012-201, Laws of Florida.

**(ATTACHMENT 5)**

**APPROVAL TO ADOPT FEDERAL STANDARDS**

# ATTACHMENT 1

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:

DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES  
STATE BOARD OF ADMINISTRATION  
FINANCIAL SERVICES COMMISSION, FINANCIAL REGULATION  
FLORIDA DEPARTMENT OF LAW ENFORCEMENT  
DEPARTMENT OF VETERANS' AFFAIRS  
ADMINISTRATION COMMISSION  
FLORIDA LAND AND WATER ADJUDICATORY COMMISSION  
BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND

The above agencies came to be heard before  
THE FLORIDA CABINET, the Honorable Governor Scott  
presiding, in the Cabinet Meeting Room, LL-03, The  
Capitol, Tallahassee, Florida, on Tuesday, April 24,  
2012, commencing at approximately 9:06 a.m.

Reported by:

MARY ALLEN NEEL  
Registered Professional Reporter  
Florida Professional Reporter  
Notary Public

ACCURATE STENOGRAPHY REPORTERS, INC.  
2894 REMINGTON GREEN LANE  
TALLAHASSEE, FLORIDA 32308  
850.878.2221

## APPEARANCES:

Representing the Florida Cabinet:

RICK SCOTT  
Governor

PAM BONDI  
Attorney General

JEFF ATWATER  
Chief Financial Officer

ADAM PUTNAM  
Commissioner of Agriculture

\* \* \*

I N D E X

## PAROLE QUALIFICATIONS COMMITTEE APPOINTMENTS

ITEM	ACTION	PAGE
--	Approved	5

DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES  
(Presented by JULIE JONES)

ITEM	ACTION	PAGE
1	Approved	6
2	Discussed	6
3	Approved	10
4	Approved	11
5	Discussed	11

STATE BOARD OF ADMINISTRATION  
(Presented by ASH WILLIAMS)

ITEM	ACTION	PAGE
1	Approved	21
2	Approved	21
3	Approved	23
4	Approved	24
5	Approved	25

FINANCIAL SERVICES COMMISSION, FINANCIAL REGULATION  
(Presented by BRUCE KUHSE)

ITEM	ACTION	PAGE
1	Approved	28
2	Approved	29
3	Approved	30

FLORIDA DEPARTMENT OF LAW ENFORCEMENT  
(Presented by MARK ZADRA)

ITEM	ACTION	PAGE
1	Approved	31
2	Discussed	31
3	Approved	38
4	Approved	39

1           GOVERNOR SCOTT: All right. Now I would like  
2           to recognize Bruce Kuhse with the Office of  
3           Financial Regulation. Good morning.

4           MR. KUHSE: Good morning. I'm Bruce Kuhse.  
5           I'm the general counsel of the Office. Linda  
6           Charity is up in Atlanta meeting with our federal  
7           banking regulators today.

8           The Office brings three items to your agenda  
9           today for your approval. First of all, we request  
10          approval of the minutes for the March 20, 2012  
11          meeting.

12          GOVERNOR SCOTT: Is there a --

13          CFO ATWATER: So moved.

14          GOVERNOR SCOTT: Is there a second?

15          COMMISSIONER PUTNAM: Second.

16          GOVERNOR SCOTT: Okay. Moved and seconded.  
17          Show it approved without objection.

18          MR. KUHSE: The second item we have for you  
19          today is, we request the approval to file for  
20          adoption amendments to the rules in Chapter 69T-1  
21          relating to the Office's organizational structure  
22          that basically reflects a streamlined organization  
23          and more accurately reflects the roles and  
24          responsibilities of the divisions and bureaus  
25          within the agency. Rule 69V -- or 69W-600 has a

1 series of rules that are going to reflect a  
2 reduction in fingerprinting fees as a reduction of  
3 federal charges there. And then the final one is  
4 adoption of the latest SEC forms that we use,  
5 again, just to update our forms and process there.

6 GOVERNOR SCOTT: Is there a motion to approve?

7 ATTORNEY GENERAL BONDI: So moved.

8 GOVERNOR SCOTT: Is there a second?

9 COMMISSIONER PUTNAM: Second.

10 GOVERNOR SCOTT: Moved and seconded. Show it  
11 approved without objection.

12 MR. KUHSE: Our final item here today is, we  
13 request approval to publish notices proposed rules  
14 for repeal as part of the agency's process for  
15 reviewing rules for repeal. There's 19 rules here  
16 that we would move or are recommending for repeal  
17 that have no impact on consumer safety or any  
18 fiscal impact upon the agency or the state. We  
19 also have one that will be amended just as a  
20 conforming change to these rules.

21 GOVERNOR SCOTT: Okay. Any questions?

22 ATTORNEY GENERAL BONDI: And thank you for  
23 working with us on that, because protecting  
24 consumers, of course, is very important to us, and  
25 thank you for working with us on that.

1           The collection agency rule, that will have no  
2           impact on the bad debt collectors, will it?

3           MR. KUHSE: No, it will not. The rules that  
4           we've brought up today have no impact at all on  
5           that. We have another nine rules that we have  
6           pulled from the agenda we were recommending for  
7           repeal where, based upon comments received from the  
8           various staffs, we're looking at those again, and  
9           we will review those and bring them up at a later  
10          Cabinet meeting.

11          ATTORNEY GENERAL BONDI: And thank you for all  
12          your hard work on this.

13          GOVERNOR SCOTT: All right. Any other  
14          questions? Is there a motion to approve?

15          ATTORNEY GENERAL BONDI: So moved.

16          GOVERNOR SCOTT: Is there a second?

17          CFO ATWATER: Second.

18          GOVERNOR SCOTT: Moved and seconded. Show it  
19          approved without objection. Thank you very much.  
20          Have a great day.

21          MR. KUHSE: Thank you.

22

23

24

25

# ATTACHMENT 2

**FINANCIAL SERVICES COMMISSION  
OFFICE OF FINANCIAL REGULATION**

**AGENDA ITEM #2**

---

**Action Requested**

The Office is requesting approval to file Notices of Proposed Rules to amend 7 rules regulating Financial Institutions in Chapter 69U, F.A.C., as a result of the 2011 Enhanced Rule Review under Sections 120.74 and 120.745, Florida Statutes. The amendments strike certain unnecessary provisions and clarify and conform other provisions to statutes in Chapter 658, F.S. Two rule amendments proposed in the review, 69U-110.021 and 69U-120.045, are under development and will be introduced at a future Cabinet meeting. Listed below are the rules identified for amendment and their corresponding page number on this agenda. All statutes cited are to the 2011 edition of Florida Statutes.

<u>Rule</u>	<u>Page</u>
<u>Licensing and Chartering of Financial Institutions: 69U-105.206</u> .....	10
<u>State Credit Unions: 69U-110.005 and .0301</u> .....	13
<u>Banks, Trust Companies, Savings Banks and Associations: 69U-120.004 and .009</u> .....	19
<u>International Banks: 69U-140.008 and .015</u> .....	28

## Proposed Rule Amendment

### Rule 69U-105.206

#### Chapter Name: Licensing and Chartering of Financial Institutions

#### Title: Regulatory Standards for Evaluating Applications

##### **A. Summary and Justification**

The proposed rule amendment updates the rule to reflect changes in initial capital amounts in Section 658.21, Florida Statutes. Chapter 2008-75, Laws of Florida, increased minimum initial capital amounts to \$8 million for banks and \$3 million for trust companies.

##### **B. Proposed Text of Rule**

###### **69U-105.206 Regulatory Standards for Evaluating Applications.**

(1) No change.

(2) Standards. In making its determination OFR shall consider the following statutory criteria:

(a) No change.

(b) Capital structure.

1. Capital should be adequate to enable the new state financial institution to provide necessary services for state financial institutions, including loans of sufficient size, to meet the needs of prospective customers.

2. Capital should be sufficient to purchase, build, or lease a suitable permanent facility complete with equipment.

3. The initial capital accounts, at opening, for a new bank or association shall not be less than ~~\$8.0 million. \$2.0 million in non-metropolitan areas and \$4.0 million in metropolitan areas.~~ OFR may determine that higher amounts are necessary based on local market conditions or the operating plans of the organizing group. A higher amount may not be required where the applicant is proposed as a subsidiary of a registered financial institution holding company upon a finding by OFR that the financial institution holding company and its affiliated financial institutions have demonstrated satisfactory performance records of meeting OFR requirements.

4. The initial capital accounts, at opening, for a new trust company shall not be less than \$3.0 ~~\$2.0~~ million.

5. The capital referred to above shall be allocated among capital stock, paid-in surplus, and undivided profits in the ratios set forth in subsection (3) of Section 658.21, F.S.

6. With respect to all classes and series of voting stock, the voting rights, right to receive payment of dividends, right to receive payment in the event of liquidation, and any other rights or benefits of ownership shall be proportional to the amount of capital contributed in exchange for such shares.

(c) through (d) No change.

(3) through (5) No change.

*Specific Authority* ~~655.012(2)~~ ~~655.012(3)~~, 658.26(2)(a) FS. *Law Implemented* 517.051(5), 517.301, 517.311, 655.001(2)(c), (d), 655.0322, 655.037, 655.0385, 655.0386, 655.057(6), 658.19, 658.20, 658.21, 658.25, 658.26, 658.33, 665.013, 667.003 FS. *History—New* 5-24-78, *Amended* 6-9-81, *Formerly* 3C-10.051, *Amended* 6-20-90, *Formerly* 3C-10.0051, *Amended* 8-14-94, 4-15-98, *Formerly* 3C-105.206, \_\_\_\_.

### **C. Relevant Statutes Cited in Rule**

#### **655.012 General supervisory powers; rulemaking; seal.—**

[ . . . ]

(2) In addition to other powers conferred by the financial institutions codes, the commission shall have the power to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of such codes.

#### **658.26 Places of transacting business; branches; facilities.—**

(1) Any bank or trust company heretofore or hereafter incorporated pursuant to this chapter shall have one main office, which shall be located within the state.

(2)(a) In addition, with the approval of the office and upon such conditions as the commission or office prescribes, any state bank or trust company may establish branches or relocate offices within or outside the state. With the approval of the office upon a determination that the resulting bank or trust company will be of sound financial condition, any bank or trust company incorporated pursuant to this chapter may establish branches by merger with any other bank or trust company.

#### **658.21 Approval of application; findings required.—**The office shall approve the application if it finds that:

[ . . . ]

(2) The proposed capitalization is in such amount as the office deems adequate, but in no case may the total capital accounts at opening for a bank be less than \$8 million. The total capital accounts at opening for a trust company may

not be less than \$3 million. The organizing directors of the proposed bank shall directly own or control at least the lesser of \$3 million or 25 percent of the bank's total capital accounts proposed at opening as approved by the office. When the proposed bank will be owned by a single-bank holding company, the organizing directors of the proposed bank collectively shall directly own or control at least an amount of the single-bank holding company's capital accounts equal to the lesser of \$3 million or 25 percent of the proposed bank's total capital accounts proposed at opening as approved by the office. When the proposed bank will be owned by an existing multibank holding company, the proposed directors shall have a substantial capital investment in the holding company, as determined by the office; however, such investment shall not be required to exceed the amount otherwise required for a single-bank holding company application. The office may disallow illegally obtained currency, monetary instruments, funds, or other financial resources from the capitalization requirements of this section. The proposed stock offering must comply with the requirements of ss. 658.23-658.25 and 658.34-658.37.

**Proposed Rule Amendments**  
**Chapter Name: State Credit Unions**

**Rules:**

**69U-110.005: Application and Filing Fee**

**69U-110.031: Powers**

**A. Summary and Justification**

69U-110.005 is proposed for amendment to strike the requirement that application forms be filed in triplicate to reduce regulatory burdens. 69U-110.031 is proposed for amendment to delete subparagraph (2)(a)2., which was made obsolete by statutory changes.

**B. Proposed Text of Rule**

**69U-110.005 Application and Filing Fee.**

Application for authority to organize and operate a credit union shall be made to OFR per Rule 69U-105.001 and Chapter 69U-105, Part I, F.A.C., and as follows:

(1) The organizers of the proposed credit union shall complete and file Form OFR-U-60, Application for Authority to Organize and Operate a Credit Union (revised 10/2006), which is hereby incorporated by reference, ~~in triplicate~~ and proposed bylaws on Form OFR-U-61, Model Credit Union Bylaws (revised 10/2006), which is hereby incorporated by reference, ~~in triplicate~~. The original shall be submitted to OFR with a nonrefundable filing fee of \$250. A copy of such documents shall be submitted to the National Credit Union Administration and a copy shall be retained by the organizers.

(2) Each proposed director, member of the supervisory committee, member of the credit committee, and executive officer shall complete the biographical report section only of Form OFR-U-10, Interagency Biographical and Financial Report (revised 6/2006) and Form OFR-U-10-A, Addendum to Form OFR-U-10 (revised 6/2006), which are hereby incorporated by reference, ~~in triplicate~~. The original shall be submitted to OFR, a copy of such documents shall be submitted to the National Credit Union Administration, and a copy shall be retained by the organizers.

(3) through (4) No change.

*Specific Authority 655.012(2) FS. Law Implemented 657.005 FS. History–New 10-21-75,*

*Amended 3-21-77, 10-13-81, Formerly 3C-30.02, 3C-30.002, Amended 10-8-95, Formerly 3C-110.005, Amended 3-6-07,\_\_\_\_\_.*

**69U-110.031 Powers.**

(1) No change.

(2) General Powers Activities. Credit unions are authorized to engage in those general powers activities to provide financial services and benefits to their members without prior approval of the OFR, unless such approval is otherwise specifically required by law or is necessary to achieve competitive equality per Section 655.061, F.S. The following general powers activities are so authorized for competitive equality:

(a) Credit unions exempted from significant events reporting per Section 655.948(4)(a), F.S., and meeting the net worth and Capital, Asset, Management, Earnings and Liquidity (CAMEL) rating eligibility criteria for the National Credit Union Administration's Regulatory Flexibility Program, as specified in 12 C.F.R Part 742 (2006), which is hereby incorporated by reference, may:

1. Establish and maintain Federal public unit and nonmember accounts in accordance with National Credit Union Administration (NCUA) Rule 701.32 (codified at 12 C.F.R. § 701.32 (2006)), which is hereby incorporated by reference, and the exemption of NCUA Rule 742.4(a) (codified at 12 C.F.R. § 742.4(a)(2006)), which is incorporated by reference in paragraph (a), consistent with the limitations of Chapter 280, F.S.;

~~2. Invest in real estate and equipment for the credit union as provided in Section 657.042(5), F.S., that may exceed five percent of the capital of the credit union, without prior notice or approval of the OFR; and~~

~~2. 3.~~ Invest in commercial mortgage related securities as may be permitted by NCUA Rule 703.16 (codified at 12 C.F.R. § 703.16 (2006)), which is hereby incorporated by reference, and the exemption, limitations and restrictions of NCUA Rule 742.4(b) (codified at 12 C.F.R. § 742.4(b) (2006)), which is incorporated by reference in paragraph (a).

(b) Credit unions may serve as a United States Treasury Department tax and loan depository, a depository of Federal taxes, and a financial agent of the United States Government, in accordance with NCUA Rule 701.37 (codified at 12 C.F.R. § 701.37 (2006)), which is hereby incorporated by reference.

(3) No change.

*Specific Authority 655.012(2) FS. Law Implemented 655.061, 657.031, 657.042 FS. History—New 3-6-07.*

### **C. Relevant Statutes Cited in Rule**

#### **655.012 General supervisory powers; rulemaking; seal.—**

[ . . . ]

(2) In addition to other powers conferred by the financial institutions codes, the commission shall have the power to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of such codes.

#### **657.005 Application for authority to organize a credit union; investigation.—**

(1) The proposed organizers of the proposed credit union shall file with the office an application, upon such form as the commission may, by rule, prescribe.

[ . . . ]

(3) The application shall be submitted to the office on forms and in the manner prescribed by rules adopted by the commission and shall be accompanied by a nonrefundable filing fee of \$250. Such application shall include:

(a) The proposed name and the proposed location where the proposed credit union is to have its principal place of business and where legal service must be served.

(b) Designation of the par value of each share of the credit union.

(c) Designation of at least five persons who agree to serve on the board of directors, and at least three other persons who agree to serve on the supervisory committee or audit committee, with a signed agreement to serve in these capacities until the first annual meeting or until the election of their successors, whichever is later, executed by those who so agree.

(d) Any information required by the commission or office to be submitted to the National Credit Union Administration.

(e) Bylaws of the credit union, which bylaws shall be in the form and substance as required by the commission.

[ . . . ]

**657.042 Investment powers and limitations.—**A credit union may invest its funds subject to the following definitions, restrictions, and limitations:

(1) INVESTMENTS NOT SUBJECT TO LIMITATIONS.—There is no limitation with respect to the capital of the investing credit union on the following investments:

(a) Direct obligations of the United States Government.

(b) Obligations of agencies created by the United States Congress and authorized thereby to issue securities or evidences of indebtedness, regardless of guarantee of repayment by the United States Government.

- (c) Public housing authority obligations.
- (d) General obligations of the states of the United States and of the political subdivisions and municipalities thereof.
- (e) Obligations issued by the State Board of Education under authority of the Constitution or applicable statutes.
- (f) Tax anticipation certificates or warrants of counties or municipalities having maturities not exceeding 1 year.
- (g) The assets of liquidating credit unions in this state, provided such assets are otherwise eligible for investment by the acquiring credit union.
- (h) The shares and deposit accounts of corporate credit unions and any other fund established by this state or by the Federal Government for the purpose of maintaining liquidity in credit unions; however, such investments shall not exceed the amount required for the purpose of meeting the daily needs of the investing credit union for operating liquidity.
- (i) Stock of the Federal National Mortgage Association, Federal Home Loan Bank, or any other similar entity designated by the office, designed to promote investment in residential mortgages, which may be purchased and retained as required in connection with mortgage transactions with the association or entity.

(2) INVESTMENTS SUBJECT TO LIMITATION OF 25 PERCENT OF CAPITAL OF THE CREDIT UNION.—Up to 25 percent of the capital of the credit union may be invested in:

- (a) The shares or deposit accounts in any one corporate credit union or other insured financial depository institution. The credit union may exceed the 25-percent investment limitation in the corporate credit union, subject to the prior written approval of the office.
- (b) Federal funds, daily; however, a credit union may not sell at any one time federal funds to any individual institution in an amount exceeding 100 percent of the equity of the selling credit union.
- (c) Bankers' acceptances that are eligible for purchase by Federal Reserve Banks.

(3) INVESTMENT SUBJECT TO LIMITATION OF TWO PERCENT OF CAPITAL OF THE CREDIT UNION.—

- (a) Up to 2 percent of the capital of the credit union may be invested in the capital shares, obligations, or preferred stock issues of any agency or association, or membership association, provided the membership or stockholdings, as the case may be, of such agency or association are primarily confined or restricted to credit unions or organizations of credit unions and provided the purposes for which such agency or association is organized are designed primarily to service or otherwise assist credit union operations.
- (b) Commercial paper and bonds of any corporation within the United States which have a fixed maturity, as provided in subsection (7), except that the total investment in all such paper and bonds may not exceed 10 percent of the capital of the credit union.

(4) INVESTMENT SUBJECT TO LIMITATION OF ONE PERCENT OF CAPITAL OF THE CREDIT UNION.—Up to 1 percent of the capital of the credit union may be invested in any of the following:

(a) Corporate obligations of any one corporation which is an affiliate or subsidiary of the credit union or a service corporation, except that the total investment in all such corporate obligations shall not exceed 10 percent of the capital of the credit union.

(b) Any capital participation instrument or evidence of indebtedness issued by Enterprise Florida, Inc., pursuant to the Florida Small and Minority Business Assistance Act.

(5) INVESTMENTS IN REAL ESTATE AND EQUIPMENT FOR THE CREDIT UNION.—

(a) Up to 5 percent of the capital of the credit union may be invested in real estate and improvements thereon, furniture, fixtures, and equipment utilized or to be utilized by the credit union for the transaction of business.

(b) The limitations provided by this subsection may be exceeded with the prior written approval of the office. The office shall grant such approval if it is satisfied that:

1. The proposed investment is necessary.
2. The amount thereof is commensurate with the size and needs of the credit union.
3. The investment will be beneficial to the members.
4. A reasonable plan is developed to reduce the investment to statutory limits.

(6) INVESTMENTS SUBJECT TO APPROVAL.—A credit union may invest its funds in such other investments, including the capital stock of other financial institutions, as the commission or office approves by rule or order.

(7) SPECIAL PROVISIONS.—

(a) A credit union may not invest its funds in bonds or other obligations described in this section unless the bonds or other obligations are current as to all payments of principal and interest.

(b) A credit union shall establish written policies and procedures for evaluating the systemic and specific risks and benefits associated with investments authorized under this section before making such investments and must conduct appropriate risk management and monitoring for the duration of the investment. An investment decision may not be based solely on the rating of the bond or other obligation by an investment rating service. The office may require a credit union to divest itself of an investment that the office determines creates excessive risk or the associated risk exceeds the ability of the credit union to properly evaluate and manage.

(c) With prior office approval, any investment permitted in this section may also be made indirectly by investment in a trust or mutual fund, the investments of which are limited as set forth in this section. The credit union must maintain a current file on each investment which contains sufficient information to determine whether the investment complies with the requirements of this section. If the investment fails to comply, the credit union must divest itself of its investment, unless otherwise approved by the office.

**655.061 Competitive equality with federally organized or chartered financial institutions.**—Subject to the prior approval of the office pursuant to commission rule or office order of general application, state financial institutions subject to the financial institutions codes may make any loan or investment or exercise any power which

they could make or exercise if incorporated or operating in this state as a federally chartered or regulated financial institution of the same type and are entitled to all privileges and protections granted federally chartered or regulated financial institutions of the same type under federal statutes and regulations. The provisions of this section take precedence over, and must be given effect over, any other general or specific provisions of the financial institutions codes to the contrary. In issuing an order or rule under this section, the office or commission shall consider the importance of maintaining a competitive dual system of financial institutions and whether such an order or rule is in the public interest.

**655.031 Administrative enforcement guidelines.—**

(1) In imposing any administrative remedy or penalty provided for in the financial institutions codes, the office shall take into account the appropriateness of the penalty with respect to the size of the financial resources and good faith of the person charged, the gravity of the violation, the history of previous violations, and such other matters as justice may require.

(2) All administrative proceedings under ss. 655.033 and 655.037 shall be conducted in accordance with chapter 120. Any service required or authorized to be made by the office under the financial institutions codes may be made by certified mail, return receipt requested, delivered to addressee only; by personal delivery; or in accordance with chapter 48. The service provided for hereunder is effective from the date of delivery.

## Proposed Rule Amendments

**Chapter Name: Banks, Trust Companies, Savings Banks and Associations**

### **Rules:**

**69U-120.004: Loans Secured by Secondary Liens on Real Estate**

**69U-120.009: Securities Purchasable by Banks; Investment Characteristics**

#### **A. Summary and Justification**

69U-120.004 is proposed for amendment to remove language nullified by the repeal of certain statutory language in Section 658.48, Florida Statutes, as a result of Chapter 2011-194, Laws of Fla. (2011). 69U-120.009 is proposed for amendment to conform the rule to statutory revisions to Section 658.67, F.S., as a result of Chapter 2011-194, Laws of Fla. (2011).

#### **B. Proposed Text of Amendments**

##### **69U-120.004 Loans Secured by Secondary Liens on Real Estate.**

~~(1) As provided by subparagraph 658.48(5)(e)5., F.S., state banks may make loans based on the security of secondary real estate mortgages in an amount not to exceed 10 percent of capital accounts to any one borrower.~~

(1) ~~(2)~~ For computation of total loans to any one borrower, loans secured by secondary liens will be considered unsecured unless the following criteria are met:

(a) The position of the state bank's mortgage shall be documented. Acceptable forms of documentation shall include an attorney's title opinion, or title insurance, or a written memorandum of title search prepared by the bank's own employee or agent. A written notation made by the person preparing the documentation that prior mortgages contain no future advance provisions is required. If prior liens do contain future advance provisions, an estoppel letter from prior mortgagees must be obtained.

(b) Appropriate records shall be maintained to fully establish the bank's equity in their mortgage at the time the loan is made.

(c) Any loan with a maturity in excess of 5 years from origination will be subject to principal reduction through a regular schedule of payments. At least one such payment is required annually.

(d) Any loan due on demand shall not be carried on the books of a state bank in excess of 5

years, however, it may be converted to an amortized loan with a stated maturity and thereby permissibly extended beyond 5 years.

*Specific Authority ~~655.012(2)~~ 655.012(3), 655.06 FS. Law Implemented 658.48 FS. (See also 12 U. S. C. 371) History—New 6-13-77, Amended 4-23-78, 6-30-81, Formerly 3C-11.17, 3C-11.017, 3C-120.004, \_\_\_\_.*

### **69U-120.009 Securities Purchasable by Banks; Investment Characteristics.**

(1) Securities of political subdivisions of the states are not eligible for investment unless current as to all payments of principal and interest and otherwise supported as to investment quality and marketability by a credit rating file compiled and maintained in current status by the purchasing bank or trust company. rated at least Baa or BAA by established investment services (such as Standard and Poor's Corporation, Moody's Investors Service, and The Fitch Publishing Company, Inc.) are eligible bank investments. It is understood that the compiled and current credit rating file will indicate such ratings indicate the presence of protection for both principal and interest through satisfactory basic credit factors as follows:

(a) For general obligations – assessed valuations; tax rates; tax collections; receipts and disbursements; long-term debt record; direct debt-overlapping debt; budget controls; operating results; economic status of political subdivision including population trend; and, political subdivision management record.

(b) For revenue obligations – assessed valuations; tax rates; tax collections; specific pledged revenues, with projections if available; operating expenses chargeable to revenues; net revenues available for debt service; nature of revenue lien; restrictions against excessive additional revenue bonds; necessity of project; competitive facilities; legal authority for the revenue issue; economic status of political subdivision; and population, including growth trend.

~~(2) Absence of a rating shall not of itself render a security ineligible. Non-rated general obligations and revenue issues of quality but limited in size which possess the factors present in rated issues to a satisfactory and equivalent degree shall be regarded as eligible.~~

~~(2)~~ (3) Corporate obligations listed upon a recognized exchange, and new corporate issues for which listing applications are pending, which are current as to all payments of principal and interest and otherwise supported as to investment quality and marketability by a credit file

compiled and maintained in current status by the purchasing bank or trust company rated at least Baa or BAA by established statistical services shall be considered eligible bank investments, except as follows:

(a) Equipment trust issues shall not be subject to the listing requirement.

(b) Securities convertible into stock at the option of the holder or with stock purchase warrants attached shall be prohibited if the price paid is in excess of the comparative investment value considered independently of the conversion or purchase warrant features.

(c) Securities convertible into stock at the option of the issuer are predominantly speculative and shall be ineligible.

(3) ~~(4)~~ Marketability, which is considered as present in listed corporate issues and in new corporate issues for which listing applications are pending, shall be accepted as present in securities of political subdivisions if they shall be salable under ordinary circumstances with reasonable promptness at a fair value.

*Specific Authority 655.012(2) ~~655.012(3)~~ FS. Law Implemented 658.67 FS. History—New 7-18-74, Amended 6-30-81, Formerly 3-1.04, 3C-11.04, 3C-11.004, 3C-120.009, \_\_\_\_\_.*

### **C. Statutes Cited in Rules**

#### **655.012 General supervisory powers; rulemaking; seal.—**

[ . . . ]

(2) In addition to other powers conferred by the financial institutions codes, the commission shall have the power to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of such codes.

**658.48 Loans.**—A state bank may make loans and extensions of credit, with or without security, subject to the following limitations and provisions:

#### (1) LOANS; GENERAL LIMITATIONS.—

(a) A bank may extend credit to any person, including any related interest of that person, up to an amount of 15 percent of its capital accounts for loans and lines of credit which are unsecured. A bank may extend credit to any person, including any related interest of that person, in any amount up to 25 percent of its capital accounts for loans and lines of credit, all components of which are amply and entirely secured. However, when outstanding loans consist of both secured and unsecured portions, the secured and unsecured portions together may not exceed 25 percent of the capital accounts of the lending bank, and the unsecured portion may not exceed 15 percent of the capital accounts of the lending bank.

(b) The commission may provide by rule for securities margin requirements.

(c) The loan limitations stated in this section shall not be enlarged by the provisions of any other section of this chapter, except as provided in <sup>1</sup>subsection (6).

(2) LOANS TO EXECUTIVE OFFICERS, DIRECTORS, AND THEIR RELATED INTERESTS.—No bank shall extend credit, including the granting of a line of credit, to any of its executive officers or directors, or any related interest of that person, that, when aggregated with the amount of all other extensions of credit to that person and any related interest of that person, exceeds \$25,000, unless the extension of credit has been approved in advance by a majority of the entire board of directors, with the interested party abstaining from participating, directly or indirectly, in the deliberations or voting. Such approval must be granted not more than 1 year prior to the time when such credit is extended.

(3) LOANS TO OTHER PERSONS.—A bank may not extend credit, including the granting of a line of credit, to any person, including a related interest of that person, which, if aggregated with the amount of all other extensions of credit to that person and any related interest of that person, exceeds 15 percent of the capital accounts of the lending bank, unless the extension of credit has been approved in advance by a majority of the entire board of directors or by all members of an authorized committee thereof within 1 year before the time such credit is extended.

(4) SPECIAL PROVISIONS.—

(a) A limitation of 25 percent of the capital accounts of the lending bank applies to the aggregate of all loans made to a corporation, together with all loans secured by shares of stock, bonds, or other obligations of the same corporation, unless the stocks or bonds are listed and traded on a recognized stock exchange, registered under the Securities Exchange Act of 1934, or registered with the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, or the Comptroller of the Currency, in which case no aggregate loan limit applies.

(b) A limitation of 15 percent of the capital accounts of the lending bank applies to loans made to any one borrower on the security of shares of capital stock listed and traded on a recognized exchange. A limitation of 10 percent of the capital accounts of the lending bank applies to loans made to any one borrower on the security of shares of capital stock not listed on a recognized exchange or the obligations subordinate to deposits of another bank. A limitation of 25 percent of the capital accounts of the lending state bank applies to the aggregate of all loans secured by the shares of capital stock or the obligations subordinate to deposits of any one bank.

(c) A loan may not be made by a bank:

1. On the security of the shares of its own capital stock or of its obligations subordinate to deposits.
2. On an unsecured basis for the purpose of purchasing shares of its own capital stock or its obligations subordinate to deposits.
3. On a secured or unsecured basis for the purpose of purchasing shares of the stock of its one-bank holding company.

(d) A one-bank holding company bank may make loans on its own one-bank holding company stock. For capital stock that is listed and traded on a recognized exchange, the stock may not be valued at more than 70 percent

of its current market value, and for capital stock that is not listed and traded on a recognized exchange, the stock may not be valued at more than 70 percent of its current book value.

(e) In computing the total liabilities of any person, all loans or lines of credit endorsed or guaranteed as to repayment by such person and any related interest of such person must be included. Purchased participations in pools of loans which are carried as loans subject to the limits of this section must be aggregated when computing the total liabilities of a person who is a borrower, originator, seller, broker, or guarantor, or has a repurchase agreement obligation for the individual and pooled loans. The computation of total liabilities must also include all potential liabilities and obligations of the person, and any related interest, resulting from the person's derivatives transactions, repurchase agreements, securities lending and borrowing transactions, credit default swaps, and similar contracts.

(f) All loan documentation must be written in English or contain an English translation of foreign language provisions.

(5) **APPLICABILITY OF LOAN LIMITATIONS.**—The loan limitations provided in this section do not apply to:

(a) Loans that are fully secured by assignment of a savings account or certificate of deposit of the lending bank;

(b) Loans that are fully secured by notes, bonds, or other evidences of indebtedness issued by the United States Government or fully guaranteed as to repayment by the United States Government or its agencies, bureaus, boards, or commissions;

(c) Loans made to district school boards if such loans are secured by the assignment of revenues reasonably expected to be received from the state and are otherwise made in compliance with statutes governing borrowings by such boards; or

(d) Purchased participations in pools of loans which are carried as investments subject to the limitations of s. 658.67.

(6) **APPROVAL BY BOARD.**—The requirements of this section concerning approval of lending activities by the board of directors or an authorized committee therefrom are met only if such approvals are recorded in the formal minutes of the actions of the board and its committees by name of borrower, amount of loan, maturity of loan, and general type of collateral. If, at the time of approval of a line of credit, such information is not available, the name of the borrower and the amount of the approved line of credit must be recorded in the minutes. Any action required by this section may be taken pursuant to s. 607.0820(4) if the minutes of the proceedings of the board or of the committee reflect such action and each director taking such action signs the minutes reflecting such action at the next regular meeting of the board or committee attended by such director.

(7) **LIABILITY OF OFFICERS AND DIRECTORS.**—Officers and directors are personally liable, jointly and severally, for any loss that may be occasioned by a willful violation of this section.

(8) If a bank's capital has been diminished by losses so that its ability to honor legally binding written loan commitments is impaired, the office may approve limited expansion of the lending limitations set forth in this section.

(9) FEDERAL RESTRICTIONS AND LIMITATIONS.—This section does not expand, enlarge or otherwise affect lending limits, restrictions, or procedures now provided by federal law applicable to state banks in conjunction with any loan or loans to any borrower or class of borrowers.

**658.67 Investment powers and limitations.**—A bank may invest its funds, and a trust company may invest its corporate funds, subject to the following definitions, restrictions, and limitations:

(1) INVESTMENTS NOT SUBJECT TO LIMITATION.—A bank or trust company may invest without limitation in the following:

- (a) Direct obligations of the United States Government.
- (b) Obligations of agencies created by act of the United States Congress and authorized thereby to issue securities or evidences of indebtedness, regardless of guarantee of repayment by the United States Government.
- (c) Collateralized obligations guaranteed by agencies created by an act of the United States Congress.
- (d) Public housing authority obligations.
- (e) General obligations of the states of the United States and of the political subdivisions and municipalities thereof.
- (f) Obligations issued by the State Board of Education under authority of the State Constitution or applicable statutes.
- (g) Tax anticipation certificates or warrants of counties or municipalities having maturities not exceeding 1 year.
- (h) Prerefunded municipal bonds, the principal and interest of which are secured by the principal and interest of a direct obligation of the United States Government.
- (i) The sale of federal funds on a daily or term basis to a Federal Reserve Bank or Federal Home Loan Bank. However, a bank may not sell at any one time federal funds to any individual bank in an amount exceeding 100 percent of the capital accounts of the selling bank.
- (j) Demand, savings, or time deposits or accounts of any insured state or federal financial institution.
- (k) Bankers' acceptances which are eligible for purchase by federal reserve banks.
- (l) Securities of, or other interests in, any open-end or closed-end management type investment company or investment trust registered under the Investment Company Act of 1940, 15 U.S.C. ss. 80a-1 et seq., as amended from time to time, provided that the portfolio of such investment company or investment trust is limited to United States Government obligations and to repurchase agreements fully collateralized by such United States Government obligations, and provided further that any such investment company or investment trust shall take delivery of such collateral either directly or through an authorized custodian.

(2) INVESTMENTS SUBJECT TO LIMITATION OF TWENTY-FIVE PERCENT OF TOTAL ASSETS.—Up to 25 percent of the total assets of the purchasing bank or trust company may be invested in the following:

- (a) Any single issue of revenue bonds or certificates of the states of the United States or of the political subdivisions and municipalities thereof.

(b) Bonds or other obligations of the Inter-American Development Bank.

(c) Bonds or other obligations of the International Bank for Reconstruction and Development or the International Finance Corporation.

(3) INVESTMENTS SUBJECT TO LIMITATION OF TWENTY-FIVE PERCENT OF CAPITAL ACCOUNTS.—Up to 25 percent of the capital accounts of the purchasing bank or trust company may be invested in:

(a) Bonds or other obligations of the African Development Bank.

(b) Corporate obligations of any one corporation that is not an affiliate or subsidiary of the bank or trust company.

(4) INVESTMENTS SUBJECT TO LIMITATION OF TEN PERCENT OR LESS OF CAPITAL ACCOUNTS.—

(a) Up to 10 percent of the capital accounts of the purchasing bank or trust company may be used to invest in any single issue of industrial development bonds issued for the benefit of a specified corporation.

(b) Up to an aggregate of 10 percent of the capital accounts of the purchasing bank or trust company may be used to invest in tax lien certificates.

(c) Up to 5 percent of the capital accounts of the purchasing bank or trust company may be used to invest in or purchase bonds or other evidences of indebtedness of the State of Israel.

(d) Up to 2 percent of the capital accounts of the purchasing bank or trust company may be used to invest in the stock of a community corporation organized to promote the physical, social, or moral well-being of the members of the community where the bank or trust company is located.

(e) Up to 1 percent of the capital accounts of the purchasing bank or trust company may be used to invest in the stock of the Housing Development Corporation of Florida. The purchasing bank or trust company may thereafter deal in the securities or other evidences of debt of such corporation as provided for in chapter 420.

(f) Up to 10 percent of the capital accounts of a bank or trust company may be invested in any capital participation instrument or evidence of indebtedness issued by Enterprise Florida, Inc., pursuant to the Florida Small and Minority Business Assistance Act.

(5) INVESTMENTS IN RELATED COMPANIES.—A bank or trust company may invest in the stock of incorporated companies to the extent hereinafter defined:

(a) Stock of the Federal Reserve bank or the Federal Home Loan bank of this district may be purchased and retained as required to maintain membership in the system.

(b) Stock of the Federal National Mortgage Association may be purchased and retained as required in connection with mortgage transactions with that association.

(c) Up to 10 percent of the capital accounts of a bank may be invested in a clearing corporation as defined in s. 678.1021.

(d) Up to 10 percent of the capital accounts of a bank may be invested in the capital stock of a banker's bank, except that in no event shall the purchase of such stock result in the acquisition of more than 5 percent of any class of voting securities of such banker's bank.

(6) INVESTMENTS IN CORPORATIONS.—Up to an aggregate of 10 percent of the total assets of a bank may be invested in the stock, obligations, or other securities of subsidiary corporations or other corporations or entities, except as limited or prohibited by federal law, and except that during the first 3 years of existence of a bank, such investments are limited to 5 percent of the total assets. The commission by rule, or the office by order, may further limit any type of investment made pursuant to this subsection if it finds that such investment would constitute an unsafe or unsound practice.

(7) INVESTMENTS IN REAL ESTATE AND EQUIPMENT.—A bank or trust company may invest in real estate and equipment to the extent hereinafter defined:

(a)1. Up to 60 percent of the capital accounts of the bank or trust company may be invested in the direct ownership of, or in leasehold interests in, land and buildings utilized or to be utilized by the bank or trust company in the transaction of its business. This limitation applies to assets subject to a lease agreement which is required to be capitalized under criteria issued by the Financial Accounting Standards Board. In lieu of such investment in real estate, with the prior written approval of the office, up to 60 percent of the capital accounts of the bank or trust company may be invested in the stock of a corporation which owns the land and buildings within which the business of the bank or trust company is or will be transacted.

2. The real estate investment limitations provided by this subsection may not be exceeded except with the prior written approval of the office.

(b) A bank or trust company may own or lease furniture, fixtures, machinery, and equipment such as may be necessary to the transaction of its business.

(8) INVESTMENTS IN PERSONAL PROPERTY.—A bank or trust company may own or lease personal property acquired upon the specific request and for the use of a customer and may incur such additional obligations as may be incident to becoming an owner and lessor of such property. In addition, a bank or trust company may purchase leases as provided by rules of the commission.

(9) ACQUISITIONS OF PROPERTY AS SECURITY.—A bank or trust company may acquire property of any kind to secure, protect, or satisfy a loan or investment previously made in good faith, and such property shall be entered on the books of the bank or trust company and held and disposed of subject to the following conditions and limitations:

(a) The book entry shall be the lesser of the balance of the loan or investment plus acquisition costs and accrued interest or the appraisal value or market value of the property acquired which shall be determined and dated within 1 year prior to or 90 days after the date of acquisition and in compliance with s. 655.60.

(b) The bank or trust company shall have evidence of ownership of all property acquired and shall maintain subsidiary ledgers adequate to the separate recording of all income and expense attributable to its ownership of such property.

(c) Unless an extension of time is approved in writing by the office, real estate shall be sold or charged off within 5 years of the date of acquisition, and personal property shall be sold or charged off within 6 months of the date of acquisition.

(d) The bank will maintain appraisal reports required by s. 655.60.

(10) SPECIAL PROVISIONS.—

(a) The bonds or other obligations described in this section are not eligible for investment unless current as to all payments of principal and interest and otherwise supported as to investment quality and marketability by a credit rating file compiled and maintained in current status by the purchasing bank or trust company. Banks and trust companies shall establish written policies and procedures to evaluate the systemic and specific risks and benefits associated with all investments authorized in this section before making such investments and must provide for appropriate risk management and monitoring for the duration of the investment. An investment decision may not be based solely on the rating of the bond or other obligation by an investment rating service. The office may require a bank or trust company to divest itself of any investment that the office determines creates excessive risk or that has an associated risk that exceeds the ability of the bank or trust company to properly evaluate and manage.

(b) Investment securities shall be entered on the books of the bank or trust company at the fair market value on the date of acquisition. Premiums paid in excess of par value shall be amortized over the life of the security or to the first call date at its call price and thereafter to subsequent call dates at their respective call prices until maturity. Discount may be accreted over the life of the security.

(11) OTHER INVESTMENTS; SUBJECT TO APPROVAL.—A bank or trust company may make such other investments as the commission approves by rule.

## Proposed Rule Amendments

### Chapter Name: Banks, Trust Companies, Savings Banks and Associations

#### Rules:

#### 69U-140.008: Permissible Activities for an Agency

#### 69U-140.015: Capital Equivalency or Asset Maintenance

#### A. Summary and Justification

69U-140.008 is proposed for amendment to clarify and make the rule consistent with the actual activities that an international agency may engage in. 69U-140.015 is proposed for amendment to conform the rule to statutory revisions in Section 658.67, F.S. enacted by Chapter 2011-194, Laws of Fla. (2011).

#### B. Proposed Text of Amendments

##### **69U-140.008 Permissible Activities for an Agency.**

(1) ~~An international banking corporation is authorized to transact only such limited business in Florida as is clearly related to and usual in international or foreign business and financing international commerce.~~ Generally, permissible activities shall include those activities permissible for corporations engaged in international banking or financial operations under the Edge Act, 12 U.S.C. sections 611-631, except such of those activities that are contrary to or inconsistent with any of the provisions of Chapter 663, F.S., or these rules.

(2) through (4) No change.

(5) Lending. ~~An No international banking corporation shall make loans from its agency office in Florida unless such loans are clearly related to and usual in international or foreign business and financing international commerce. Thus,~~ an agency may provide financing and banking services to foreign businesses and foreign individuals in their foreign operations, and also in their operations in the United States or elsewhere, where such operations are in the stream of international business and commerce. An agency may also provide financing and banking services to United States businesses and customers in their foreign operations and in their operations in Florida and elsewhere that are clearly related to international commerce, such as operations directly connected with the production, storage, transportation and sale of goods for export or import if the importation or exportation of the goods is financed by the banking

agency. ~~Real estate loans, automobile loans, retail installment contract financing, loans for the purchase of securities and other essentially domestic loans will not fall within the category of permissible activities.~~

(6) Deposits.

(a) An international bank agency licensed by this state may accept, pursuant to Section ~~663.061~~ 663.06, F.S., only the following deposits:

1. through 4. No change.

(b) No change.

(7) No change.

*Specific Authority* ~~655.012(2)~~ 655.012(3), ~~663.061(3)~~, *663.13 FS. Law Implemented* ~~663.061 FS. History—New~~ *5-4-78, Amended 2-24-80, 7-21-81, 12-2-85, Formerly 3C-15.03, Amended 5-27-87, 5-18-88, Formerly 3C-15.003, Amended 11-5-97, Formerly 3C-140.008, \_\_\_\_\_.*

#### **69U-140.015 Capital Equivalency or Asset Maintenance.**

(1) through (5) No change.

(6) Notwithstanding the limitations of Section 658.67, F.S., an international bank agency or international branch is authorized to use securities issued by foreign governments, or foreign government sponsored entities, for the purpose of satisfying the capital equivalency or asset maintenance requirements of Section 663.07, F.S., provided that:

(a) The bonds or other obligations used for this purpose are current as to all payments of principal and interest and otherwise supported as to investment quality and marketability by a credit rating file compiled and maintained in current status ~~are rated in one of the four highest classifications;~~

(b) through (c) No change.

(7) through (11) No change.

*Specific Authority* ~~655.012(2)~~ 655.012(3), ~~663.13 FS. Law Implemented~~ ~~663.07(1), (3), (5), (7), (9), 663.12(4) FS. History—New~~ *3-10-82, Amended 11-21-85, Formerly 3C-15.10, Amended 10-5-89, Formerly 3C-15.010, Amended 8-24-93, Formerly 3C-140.007, 3C-140.015, \_\_\_\_\_.*

### **C. Relevant statutes cited in rules**

**655.012 General supervisory powers; rulemaking; seal.—**

[ . . . ]

(2) In addition to other powers conferred by the financial institutions codes, the commission shall have the power to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of such codes.

**663.061 International bank agencies; permissible activities.—**

(1) An international bank agency licensed under this part may make any loan, extension of credit, or investment which it could make if incorporated and operating as a bank organized under the laws of this state. An international bank agency may act as custodian and may furnish investment management, and investment advisory services authorized under rules adopted by the commission, to nonresident entities or persons whose principal places of business or domicile are outside the United States and to resident entities or persons with respect to international or foreign investments. An international banking corporation which has an international bank agency licensed under the terms of this part shall be exempt from the registration requirements of s. 517.12.

(2) An international bank agency may not receive deposits in this state except:

(a) Deposits from nonresident entities or persons whose principal places of business or domicile are outside the United States.

(b) Interbank deposits; interbank borrowing, or similar interbank obligations.

(c) International banking facility deposits as defined pursuant to s. 655.071. An international bank agency may maintain in this state, for the account of others, credit balances necessarily incidental to, or arising out of, the exercise of its lawful powers. Such credit balances may be disbursed by check or other draft; however, the commission shall, by rule, provide appropriate limitations upon third-party disbursements to ensure that credit balances are not functionally equivalent to demand deposits. In establishing the limitations, the commission may provide that such disbursement may not exceed an average of 20 checks or drafts per day.

(3) Notwithstanding any provision of this chapter or chapter 658 to the contrary, an international banking corporation licensed under this part to operate an international bank agency may, if authorized by rule of the commission or office order, make any loan or investment or exercise any power which it could make or exercise if it were operating in this state as a federal agency under federal law. The commission and office shall, when adopting such rules or issuing such orders, consider the public interest and convenience and the need to maintain a safe, sound, and competitive state banking system. Unless otherwise provided by statute, an international bank agency may not exercise any powers that a federal agency is not authorized to exercise.

(4) Notwithstanding the provisions of subsection (1), any international banking corporation organized and existing under the laws of any other state and licensed to operate an international bank agency may engage only in those activities permissible for an Edge Act corporation organized under s. 25(a) of the Federal Reserve Act, as amended, 12 U.S.C. ss. 611-632.

(5) With the prior authorization of the office pursuant to s. 660.26, an international bank agency may accept appointments as trustee by nonresident persons or entities and may exercise trust powers with respect to such fiduciary accounts. Except for the foregoing limitation, the trust activities of an international bank agency shall be

subject to the same requirements and may be conducted in the same manner as the trust business of a state trust company or state bank with trust powers.

**663.13 Rules; exemption from statement of estimated regulatory costs requirements.**—In addition to any other rulemaking authority it has under the financial institutions codes, the commission may adopt reasonable rules that it deems advisable for the administration of international banking corporations under this part, in the interest of protecting depositors, creditors, borrowers, or the public interest and in the interest of maintaining a sound banking system in this state. Because of the difficulty in obtaining economic data with regard to such banks, no statement of estimated regulatory costs shall be required in connection with these rules.

**663.07 Asset maintenance or capital equivalency.**—

(1) Each international bank agency and international branch shall:

(a) Maintain with one or more banks in this state, in such amounts as the office specifies, evidence of dollar deposits or investment securities of the type that may be held by a state bank for its own account pursuant to s. 658.67. The aggregate amount of dollar deposits and investment securities for an international bank agency or international branch shall, at a minimum, equal the greater of:

1. Four million dollars; or
2. Seven percent of the total liabilities of the international bank agency or international branch excluding accrued expenses and amounts due and other liabilities to affiliated branches, offices, agencies, or entities; or

(b) Maintain other appropriate reserves, taking into consideration the nature of the business being conducted by the international bank agency or international branch.

The commission shall prescribe, by rule, the deposit, safekeeping, pledge, withdrawal, recordkeeping, and other arrangements for funds and securities maintained under this subsection. The deposits and securities used to satisfy the capital equivalency requirements of this subsection shall be held, to the extent feasible, in one or more state or national banks located in this state or in a federal reserve bank.

[ . . . ]

(3) In lieu of the requirements of subsection (1), the commission may, by rule, permit an international bank agency or international branch to hold, in this state, assets which bear such relationships as the commission by rule prescribes to the aggregate liabilities of the international bank agency or international branch payable in this state or resulting from its operations. The amount of such assets shall be equal to at least \$4 million or 107 percent of the amount of such liabilities, whichever is greater; however, the office by order may reduce the required amount of assets to not less than 100 percent of the amount of such liabilities. When issuing any such order, the office shall take into account the objective of maintaining a sound banking system in this state. The assets shall be maintained as cash on hand; as deposits or placements with other banks, including the total amount of any reserves deposited at a federal reserve bank; as cash items in process of collection; as earning assets such as federal funds sold, bonds,

notes, debentures, drafts, bills of exchange, acceptances, loan participation certificates, or other evidences of indebtedness payable in the United States or in United States funds or in funds freely convertible into United States funds; in such other form as the commission specifies by rule; or in any combination of the foregoing.

[. . .]

(5) The term “assets” as used in this section excludes accrued income and amounts due from other offices or branches of, and wholly owned, except for a nominal number of directors’ shares, subsidiaries of the international banking corporation in question. The term “liabilities” as used in this section excludes accrued expenses and amounts due and other liabilities to branches, offices, agencies, and wholly owned, except for a nominal number of directors’ shares, subsidiaries of the international banking corporation in question, and such other liabilities as the commission specifies by rule. International banking facility deposits, borrowings, and extensions of credit are excluded from the total liabilities and total assets of an international bank agency or international branch unless the office determines that inclusion of international banking facility deposits, borrowings, and extensions of credit is necessary to ensure the maintenance of a sound financial condition, protect depositors, creditors, and the public interest, and maintain public confidence in the business of the international bank agency or international branch.

[. . .]

(7) Notwithstanding the limitations of s. 658.67, the commission may by rule authorize, and may specify conditions and limits on, the use of securities issued by foreign governments or government-sponsored entities, or by an international banking corporation for the purpose of satisfying the capital equivalency or asset maintenance requirements of this section. However, any such securities shall be payable in funds freely convertible into United States funds, and the amount of such securities deposited or held for the purposes of this section shall not exceed 25 percent of the required amount.

[. . .]

(9) Each international bank agency shall file such reports with the office as the commission, by rule, requires to determine compliance with the provisions of this section.

# ATTACHMENT 3

**FINANCIAL SERVICES COMMISSION  
OFFICE OF FINANCIAL REGULATION**

**AGENDA ITEM #3**

---

**Action Requested**

The Office is requesting approval to file Notices of Proposed Rules to amend 8 rules regulating Securities in Chapter 69W, F.A.C., as a result of the 2011 Enhanced Rule Review under Sections 120.74 and 120.745, Florida Statutes. The amendments strike certain unnecessary provisions and clarify and conform other provisions to statutes in Chapter 517, F.S. Two rule amendments that were proposed in the review, 69W-600.0011 and 69W-600.0021, are under development and a workshop will be held. Another proposed amendment, 69W-400.002, will be amended via a technical change letter to the Florida Administrative Weekly. Listed below are the rules proposed for amendment at the Cabinet meeting and their corresponding page number on this agenda. All statutes cited are to the 2011 edition of Florida Statutes.

<u>Rule</u>	<u>Page</u>
<u>Exempt Transactions: 69W-500.004, .007, and .013.....</u>	35
<u>Registration of Dealers, Investment Advisers, Associated Persons:</u>	
69W-600.001, .004, and .008.....	39
<u>Registration of Securities: 69W-700.019.....</u>	43
<u>Notification Registration of Securities: 69W-800.001 .....</u>	45

## **Proposed Rule Amendments**

### **Chapter Name: Exempt Transactions**

#### **Rules:**

#### **69W-500.004: Computation of Number of Purchasers for Purposes of Section 517.061(11), F.S**

#### **69W-500.007: General Solicitation or General Advertising in Connection with an Offering Exempted Under Section 517.061(11), F.S**

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

### **A. Summary and Justification**

69W-500.004 is proposed for amendment to strike subparagraphs (1)(a), (b) and (c), which are redundant of Section 517.061(11), F.S. 69W-500.007 is recommended for amendment to update definitions for general solicitation or general advertising to include electronic media other than television or radio. 69W-500.013 is recommended for amendment to strike subparagraph (5) as this provision has never been invoked by the Office and is unnecessary. This provision requires notice to the Office prior to or contemporaneous with issuance and sale of such securities.

### **B. Text of Proposed Amendments**

#### **69W-500.004 Computation of Number of Purchasers for Purposes of Section 517.061(11), F.S.**

(1) The following purchasers shall be excluded in computing the number of purchasers for purposes of Section 517.061(11), F.S.:

~~(a) Any relative or spouse of a purchaser and any relative of such spouse, who shares the same principal residence as such purchaser;~~

~~(b) Any trust or estate in which a purchaser or any of the persons related to him as specified in paragraph (1)(a) or (c) of this rule collectively owns more than 50% of the beneficial interest in such trust or estate (excluding contingent interests); and~~

~~(c) Any corporation or other organization of which a purchaser or any of the persons related to him as specified in paragraphs (1)(a) and (b) of this rule, collectively, are the beneficial owners of more than 50% of the equity securities (excluding directors' qualifying shares) or equity interest;~~

(a) ~~(d)~~ The issuer, including any promoter of that issuer;

(b) ~~(e)~~ Any General Partner of a Limited Partnership, regardless of the types of interest in the Limited Partnership purchased or held by the General Partner;

(c) ~~(f)~~ Any purchaser with whom the transaction was consummated outside the State of Florida.

(2) No change.

*Specific Authority 517.03 FS. Law Implemented 517.061(11) FS. History—New 12-5-79, Amended 9-20-82, Formerly 3E-500.04, Amended 7-31-91, Formerly 3E-500.004, Amended 5-15-07,\_\_\_\_\_.*

**69W-500.007 General Solicitation or General Advertising in Connection with an Offering Exempted Under Section 517.061(11), F.S.**

(1) No change.

(2) For purposes of Section 517.061(11)(a)2., F.S., general solicitation or general advertising, shall be deemed to include, but not be limited to, the following:

(a) Any advertisement, article, notice or other communication published in any newspaper, magazine or similar medium, or broadcast over the television or radio, or transmitted through electronic media; or

(b) Any seminar, meeting, letter, circular, notice or other written communication.

(3) No change.

*Specific Authority 517.03 FS. Law Implemented 517.061(11) FS. History—New 12-5-79, Amended 9-20-82, Formerly 3E-500.07, Amended 7-31-91, Formerly 3E-500.007,\_\_\_\_\_.*

**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), 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) through (4) No change.

~~(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 Authority 517.03 FS. Law Implemented 517.061(18) FS. History—New 1-8-86, Amended 7-31-91, Formerly 3E-500.013, Amended 9-30-10,\_\_\_\_\_.*

### **C. Relevant statutes cited in rules**

#### **517.03 Rulemaking; immunity for acts in conformity with rules.—**

(1) The office shall administer and provide for the enforcement of all the provisions of this chapter. The commission may adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this chapter conferring powers or duties upon the office, including, without limitation, adopting rules and forms governing reports. The commission shall also have the nonexclusive power to define by rule any term, whether or not used in this chapter, insofar as the definition is not inconsistent with the provisions of this chapter.

(2) No provision of this chapter imposing liability shall apply to an act done, or omitted to be done, in conformity with a rule of the commission in existence at the time of the act or omission, even though such rule may thereafter be amended or repealed or determined by judicial or other authority to be invalid for any reason.

**517.061 Exempt transactions.—**The exemption for each transaction listed below is self-executing and does not require any filing with the office prior to claiming such exemption. Any person who claims entitlement to any of the exemptions bears the burden of proving such entitlement in any proceeding brought under this chapter. The registration provisions of s. 517.07 do not apply to any of the following transactions; however, such transactions are subject to the provisions of ss. 517.301, 517.311, and 517.312:

[ . . ]

(11)(a) The offer or sale, by or on behalf of an issuer, of its own securities, which offer or sale is part of an offering made in accordance with all of the following conditions:

1. There are no more than 35 purchasers, or the issuer reasonably believes that there are no more than 35 purchasers, of the securities of the issuer in this state during an offering made in reliance upon this subsection or, if such offering continues for a period in excess of 12 months, in any consecutive 12-month period.

2. Neither the issuer nor any person acting on behalf of the issuer offers or sells securities pursuant to this subsection by means of any form of general solicitation or general advertising in this state.

3. Prior to the sale, each purchaser or the purchaser's representative, if any, is provided with, or given reasonable access to, full and fair disclosure of all material information.

4. No person defined as a "dealer" in this chapter is paid a commission or compensation for the sale of the issuer's securities unless such person is registered as a dealer under this chapter.

5. When sales are made to five or more persons in this state, any sale in this state made pursuant to this subsection is voidable by the purchaser in such sale either within 3 days after the first tender of consideration is made by such purchaser to the issuer, an agent of the issuer, or an escrow agent or within 3 days after the availability of that privilege is communicated to such purchaser, whichever occurs later.

(b) The following purchasers are excluded from the calculation of the number of purchasers under subparagraph (a)1.:

1. Any relative or spouse, or relative of such spouse, of a purchaser who has the same principal residence as such purchaser.

2. Any trust or estate in which a purchaser, any of the persons related to such purchaser specified in subparagraph 1., and any corporation specified in subparagraph 3. collectively have more than 50 percent of the beneficial interest (excluding contingent interest).

3. Any corporation or other organization of which a purchaser, any of the persons related to such purchaser specified in subparagraph 1., and any trust or estate specified in subparagraph 2. collectively are beneficial owners of more than 50 percent of the equity securities or equity interest.

4. Any purchaser who makes a bona fide investment of \$100,000 or more, provided such purchaser or the purchaser's representative receives, or has access to, the information required to be disclosed by subparagraph (a)3.

5. Any accredited investor, as defined by rule of the commission in accordance with Securities and Exchange Commission Regulation 230.501 (17 C.F.R. 230.501).

(c)1. For purposes of determining which offers and sales of securities constitute part of the same offering under this subsection and are therefore deemed to be integrated with one another:

a. Offers or sales of securities occurring more than 6 months prior to an offer or sale of securities made pursuant to this subsection shall not be considered part of the same offering, provided there are no offers or sales by or for the issuer of the same or a similar class of securities during such 6-month period.

b. Offers or sales of securities occurring at any time after 6 months from an offer or sale made pursuant to this subsection shall not be considered part of the same offering, provided there are no offers or sales by or for the issuer of the same or a similar class of securities during such 6-month period.

2. Offers or sales which do not satisfy the conditions of any of the provisions of subparagraph 1. may or may not be part of the same offering, depending on the particular facts and circumstances in each case. The commission may adopt a rule or rules indicating what factors should be considered in determining whether offers and sales not qualifying for the provisions of subparagraph 1. are part of the same offering for purposes of this subsection.

(d) Offers or sales of securities made pursuant to, and in compliance with, any other subsection of this section or any subsection of s. 517.051 shall not be considered part of an offering pursuant to this subsection, regardless of when such offers and sales are made.

[. . .]

(18) The offer or sale of any security effected by or through a person in compliance with s.517.12(17). [relating to Canadian dealers]

## Proposed Rule Amendments

### Chapter Name: Registration of Dealers, Investment Advisers, Associated Persons

#### Rules:

**69W-600.001: Application for Registration as a Dealer, Issuer/Dealer,  
or Investment Adviser**

**69W-600.004: Registration of Issuer/Dealers, Principals and Branch Offices**

**69W-600.008: Termination of Registration as Dealer, Investment Adviser, Branch Office,  
Principal or Agent**

#### **A. Summary and Justification**

69W-600.001 is recommended for amendment to strike subparagraph (1)(b)6., which requires proof of clearing agreements when requested by the Office, and to add a requirement for control persons and/or owners to provide fingerprint cards in support of the application, pursuant to Section 517.12(7), F.S. 69W-600.004 is recommended for amendment to strike subparagraph (3)(b)4., relating to evidence of current registration with the Secretary of State, as there is no specific statutory authority for this requirement. 69W-600.008 is recommended to be amended to change the number of days for notice in subparagraph (1) from 20 to 30 for consistency with other amendment provisions, and to correct a cross-reference typographical error in subparagraph (1) from 59W to 69W.

#### **B. Proposed Text of Rules**

**69W-600.001 Application for Registration as a Dealer, Issuer/Dealer, or Investment Adviser.**

(1)(a) No change.

(b) A complete application must include the following exhibits or forms that are appropriate for the type of registration requested:

1. through 5.

6. Any direct or indirect owner or control person required to be reported on Form BD, Uniform Application for Broker-Dealer Registration, or Form ADV, Uniform Application for Investment Adviser Registration, pursuant to Section 517.12(7), F.S., who is not currently registered in Florida with the firm they are seeking to join or act as a direct or indirect owner or

control person shall submit to the Office fingerprint cards in accordance with Rule 69W-600.006(3), F.A.C. 6. A fully disclosed dealer shall furnish proof of clearing agreements when requested by the Office of Financial Regulation;

7. through 9. No change.

(2) through (3) No change.

*Rulemaking Authority 517.03(1), 517.12(6) FS. Law Implemented 517.12(6), (7), 517.1205 FS. History—New 12-5-79, Amended 9-20-82, Formerly 3E-600.01, Amended 7-29-90, 8-1-91, 6-16-92, 1-11-93, 11-14-93, 4-30-96, 6-22-98, 5-10-00, 9-19-00, 7-31-02, Formerly 3E-600.001, Amended 3-16-06, 5-15-07, 11-22-10,\_\_\_\_\_.*

#### **69W-600.004 Registration of Issuer/Dealers, Principals and Branch Offices.**

(1) through (2) No change.

(3)(a) No change.

(b) A complete application must include the following exhibits or forms that are appropriate for the type of registration requested:

1. Form BR, which is incorporated by reference under subsection 69W-301.002(7), F.A.C.

2. Statutory fee in the amount required by Section 517.12(10), F.S.

3. Manager and resident agent as appropriate in this rule must be registered as set forth in Rule 69W-600.002, F.A.C.

~~4. Evidence of current registration or exemption from the registration requirements of the Florida Secretary of State.~~

(c) through (d) No change.

*Rulemaking Authority 517.03(1), 517.12(6) FS. Law Implemented 517.12(5), (6), (10) FS. History—New 12-5-79, Amended 9-20-82, Formerly 3E-600.04, Amended 10-14-90, 6-16-92, 1-11-93, 11-7-93, 11-14-93, 12-29-96, 10-20-97, 6-10-99, 8-19-99, 5-27-01, 7-31-02, Formerly 3E-600.004, Amended 3-16-06, 5-15-07, 11-22-10,\_\_\_\_\_.*

#### **69W-600.008 Termination of Registration as Dealer, Investment Adviser, Branch**

### **Office, Principal or Agent.**

(1) Where a registrant withdraws, cancels, or otherwise terminates registration, or is terminated for any reason, notice of such fact shall be filed with the Office of Financial Regulation on the forms prescribed by the Financial Services Commission, in accordance with subsection 69W-301.002(7) ~~59W-301.002(7)~~, F.A.C., within thirty (30) ~~twenty (20)~~ calendar days of the date of termination. Such forms shall be filed electronically in accordance with Rules 69W-301.002, 69W-600.0091, 69W-600.0092 and 69W-600.0093, F.A.C.

(2) through (6) No change.

*Rulemaking Authority 517.03(1) FS. Law Implemented 517.12(12)(b), 517.161(5) FS. History—New 12-5-79, Amended 9-20-82, Formerly 3E-600.08, Amended 7-29-90, 8-1-91, 6-16-92, 1-11-93, 6-22-98, 6-10-99, 5-10-00, 5-27-01, Formerly 3E-600.008, Amended 3-16-06, 11-22-10,*

.

### **C. Relevant statutes cited in rule**

#### **517.03 Rulemaking; immunity for acts in conformity with rules.—**

(1) The office shall administer and provide for the enforcement of all the provisions of this chapter. The commission may adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this chapter conferring powers or duties upon the office, including, without limitation, adopting rules and forms governing reports. The commission shall also have the nonexclusive power to define by rule any term, whether or not used in this chapter, insofar as the definition is not inconsistent with the provisions of this chapter.

#### **517.12 Registration of dealers, associated persons, investment advisers, and branch offices.—**

[ . . . ]

(5) No dealer or investment adviser shall conduct business from a branch office within this state unless the branch office is registered with the office pursuant to the provisions of this section.

(6) A dealer, associated person, investment adviser, or branch office, in order to obtain registration, must file with the office a written application, on a form which the commission may by rule prescribe. The commission may establish, by rule, procedures for depositing fees and filing documents by electronic means provided such procedures provide the office with the information and data required by this section. Each dealer or investment adviser must also file an irrevocable written consent to service of civil process similar to that provided for in s. 517.101. The application shall contain such information as the commission or office may require concerning such matters as:

(a) The name of the applicant and the address of its principal office and each office in this state.

(b) The applicant's form and place of organization; and, if the applicant is a corporation, a copy of its articles of incorporation and amendments to the articles of incorporation or, if a partnership, a copy of the partnership agreement.

(c) The applicant's proposed method of doing business and financial condition and history, including a certified financial statement showing all assets and all liabilities, including contingent liabilities of the applicant as of a date not more than 90 days prior to the filing of the application.

(d) The names and addresses of all associated persons of the applicant to be employed in this state and the offices to which they will be assigned.

[. . .]

(10) An applicant for registration shall pay an assessment fee of \$200, in the case of a dealer or investment adviser, or \$50, in the case of an associated person. An associated person may be assessed an additional fee to cover the cost for the fingerprint cards to be processed by the office. Such fee shall be determined by rule of the commission. Each dealer and each investment adviser shall pay an assessment fee of \$100 for each office in this state. Such fees become the revenue of the state, except for those assessments provided for under s. 517.131(1) until such time as the Securities Guaranty Fund satisfies the statutory limits, and are not returnable in the event that registration is withdrawn or not granted.

[. . .]

(12)(b) Every dealer, investment adviser, or federal covered adviser shall promptly file with the office, as prescribed by rules adopted by the commission, notice as to the termination of employment of any associated person registered for such dealer or investment adviser in this state and shall also furnish the reason or reasons for such termination.

[. . .]

**517.161 Revocation, denial, or suspension of registration of dealer, investment adviser, associated person, or branch office.—**

(5) The office may deny any request to terminate or withdraw any application or registration if the office believes that an act which would be a ground for denial, suspension, restriction, or revocation under this chapter has been committed.

## Proposed Rule Amendment

### Chapter Name: Registration of Securities

### Rule: 69W-700.019: Submission of Sales Reports

#### A. Summary and Justification

69W-700.019 is recommended for amendment to change the requirement of mandatory submission of sales reports to only require submission of sales reports upon request by the Office, to reduce regulatory burdens. Also, an amendment is proposed to clarify the requirement of notice of consummated sales/discontinued offerings in subparagraph (3) by replacing language containing "should" to "shall."

#### B. Proposed Text of Rule

##### **69W-700.019 Submission of Sales Reports.**

(1) Sales reports shall be submitted upon request to the Office of Financial Regulation for securities registered pursuant to Section 517.081, F.S. ~~The Office of Financial Regulation will require sales reports to be submitted for securities registered pursuant to Section 517.081, F.S., as follows:~~

~~(1) In the case of a firm commitment by an underwriter, within one hundred and twenty (120) days after distribution of securities.~~

~~(2) In a "best efforts" underwriting, every thirty (30) days until the offering is completed.~~

(2) (3) When all sales have been consummated or it is the desire to discontinue an offering, notice shall be given to the Office of Financial Regulation ~~should be notified~~ so that it may close its files on this registration.

*Specific Authority 517.03(1) FS. Law Implemented 517.081(3) FS. History—(Formerly 3E-20.18) New 9-20-82, Formerly 3E-700.19, Amended 12-8-87, 7-31-91, Formerly 3E-700.019,\_\_\_\_\_.*

#### C. Statutes Cited in Rule

##### **517.03 Rulemaking; immunity for acts in conformity with rules.—**

(1) The office shall administer and provide for the enforcement of all the provisions of this chapter. The commission may adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this chapter conferring powers or duties upon the office, including, without limitation, adopting rules and forms governing

reports. The commission shall also have the nonexclusive power to define by rule any term, whether or not used in this chapter, insofar as the definition is not inconsistent with the provisions of this chapter.

**517.081 Registration procedure.—**

[ . . . ]

(3) The office may require the applicant to submit to the office the following information concerning the issuer and such other relevant information as the office may in its judgment deem necessary to enable it to ascertain whether such securities shall be registered pursuant to the provisions of this section:

(a) The names and addresses of the directors, trustees, and officers, if the issuer be a corporation, association, or trust; of all the partners, if the issuer be a partnership; or of the issuer, if the issuer be an individual.

(b) The location of the issuer's principal business office and of its principal office in this state, if any.

(c) The general character of the business actually to be transacted by the issuer and the purposes of the proposed issue.

(d) A statement of the capitalization of the issuer.

(e) A balance sheet showing the amount and general character of its assets and liabilities on a day not more than 90 days prior to the date of filing such balance sheet or such longer period of time, not exceeding 6 months, as the office may permit at the written request of the issuer on a showing of good cause therefor.

(f) A detailed statement of the plan upon which the issuer proposes to transact business.

(g)1. A specimen copy of the security and a copy of any circular, prospectus, advertisement, or other description of such securities.

## Proposed Rule Amendment

### Chapter Name: Notification Registration of Securities

#### Rule: 69W-800.001: Filing – Notification Registration Including Shelf Filings.

##### A. Summary and Justification

69W-800.001 is recommended for amendment to change the word “telegraphic” in subparagraph (4) to “electronic” to reflect other forms of electronic delivery.

##### B. Proposed Text of Rule

###### **69W-800.001 Filing – Notification Registration Including Shelf Filings.**

(1) through (3) No change.

(4) Electronic ~~Telegraphic~~ notification of effective registration with the SEC shall be filed within ten (10) business days from the date federal registration is granted if such registration was pending with the SEC at the time the notification application was filed.

(5) through (6) No change.

*Rulemaking Authority 517.03(1) FS. Law Implemented 517.082 FS. History—New 10-15-86, Amended 12-8-87, 7-31-91, 10-1-96, 10-20-97, Formerly 3E-800.001, Amended 11-22-10, \_\_\_\_\_.*

##### C. Statutes Cited in Rule

###### **517.03 Rulemaking; immunity for acts in conformity with rules.—**

(1) The office shall administer and provide for the enforcement of all the provisions of this chapter. The commission may adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this chapter conferring powers or duties upon the office, including, without limitation, adopting rules and forms governing reports. The commission shall also have the nonexclusive power to define by rule any term, whether or not used in this chapter, insofar as the definition is not inconsistent with the provisions of this chapter.

###### **517.082 Notification registration.—**

(1) Except as provided in subsection (3), securities offered or sold pursuant to a registration statement filed under the Securities Act of 1933 shall be entitled to registration by notification in the manner provided in subsection (2), provided that prior to the offer or sale the registration statement has become effective.

(2) An application for registration by notification shall be filed with the office, shall contain the following information, and shall be accompanied by the following:

- (a) An application to sell executed by the issuer, any person on whose behalf the offering is made, a dealer registered under this chapter, or any duly authorized agent of any such person, setting forth the name and address of the applicant, the name and address of the issuer, and the title of the securities to be offered and sold;
- (b) Copies of such documents filed with the Securities and Exchange Commission as the Financial Services Commission may by rule require;
- (c) An irrevocable written consent to service as required by s. 517.101; and
- (d) A nonreturnable fee of \$1,000 per application.

A registration under this section becomes effective when the federal registration statement becomes effective or as of the date the application is filed with the office, whichever is later, provided that, in addition to the items listed in paragraphs (a)-(d), the office has received written notification of effective registration under the Securities Act of 1933 or the Investment Company Act of 1940 within 10 business days from the date federal registration is granted. Failure to provide all the information required by this subsection to the office within 60 days of the date the registration statement becomes effective with the Securities and Exchange Commission shall be a violation of this chapter.

(3) Except for units of limited partnership interests or such other securities as the commission describes by rule as exempt from this subsection due to high investment quality, the provisions of this section may not be used to register securities if the offering price at the time of effectiveness with the Securities and Exchange Commission is \$5 or less per share, unless such securities are listed or designated, or approved for listing or designation upon notice of issuance, on a stock exchange registered pursuant to the Securities Exchange Act of 1934 or on the National Association of Securities Dealers Automated Quotation (NASDAQ) System, or unless such securities are of the same issuer and of senior or substantially equal rank to securities so listed or designated.

(4) In lieu of filing with the office the application, fees, and documents for registration required by subsection (2), the commission may establish, by rule, procedures for depositing fees and filing documents by electronic means, provided such procedures provide the office with the information and data required by this section.

# ATTACHMENT 4

**FINANCIAL SERVICES COMMISSION  
OFFICE OF FINANCIAL REGULATION**

**AGENDA ITEM #4**

---

**Action Requested**

The Office is requesting approval to file Notices of Proposed Rules to amend 2 rules regulating Consumer Finance in Chapter 69V, F.A.C., as a result of the 2011 Enhanced Rule Review under Sections 120.74 and 120.745, Florida Statutes. The amendments strike certain unnecessary provisions and clarify and conform other provisions to statutes in Chapters 494, 520 and 560, F.S. Two rule amendments proposed in the review, 69V-40.175 and 69V-40.260, which would raise maximum administrative penalties, have been omitted as unnecessary. Proposed 69V-560.802, originally proposed for repeal, is proposed for amendment as statutory authority exists for the rule as applied to check cashers, but not to deferred presentment providers. Listed below are the rules identified for amendment and their corresponding page number on this agenda. All statutes cited are to the 2011 edition of Florida Statutes.

<u>Rule</u>	<u>Page</u>
<u>Florida Consumer Finance Act: 69V-160.025</u> .....	49
<u>Money Transmitters: 69V-560.802</u> .....	51

**Proposed Rule Amendment**  
**Chapter Name: Florida Consumer Finance Act**  
**Rule: 69V-160.025: Property Insurance on Loans**

**A. Summary and Justification**

69V-160.025 is recommended for amendment to strike subparagraph (11). The Office lacks statutory authority to require licensees under the act to display the rules governing insurance on household goods and appliances.

**B. Text of Proposed Rule**

**69V-160.025 Property Insurance on Loans.**

(1) through (10) No change.

~~(11) Rules to be displayed. The licensee shall display in a conspicuous place in the office of the lending institution the rules contained herein governing insurance on household goods and appliances. Upon request of the borrower, the licensee shall explain clearly to the borrower his rights and limitations as set forth in said rules.~~

(12) No change.

*Rulemaking Authority 20.05(5), 516.22(1) FS. Law Implemented ~~516.20(1)~~, 516.031(3) FS. History—New 9-1-75, Amended 8-16-83, Formerly 3D-160.25, 3D-160.025, \_\_\_\_\_.*

**C. Relevant Statutes Cited in Rule**

**516.22 Rules; certified copies.—**

(1) RULES.—The commission may adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of law conferring duties upon it.

**516.031 Finance charge; maximum rates.—**

[ . . . ]

(3) OTHER CHARGES.—

(a) In addition to the interest, delinquency, and insurance charges herein provided for, no further or other charges or amount whatsoever for any examination, service, commission, or other thing or otherwise shall be directly or indirectly charged, contracted for, or received as a condition to the grant of a loan, except:

1. An amount not to exceed \$25 to reimburse a portion of the costs for investigating the character and credit of the person applying for the loan;
2. An annual fee of \$25 on the anniversary date of each line-of-credit account;
3. Charges paid for brokerage fee on a loan or line of credit of more than \$10,000, title insurance, and the appraisal of real property offered as security when paid to a third party and supported by an actual expenditure;
4. Intangible personal property tax on the loan note or obligation when secured by a lien on real property;
5. The documentary excise tax and lawful fees, if any, actually and necessarily paid out by the licensee to any public officer for filing, recording, or releasing in any public office any instrument securing the loan, which fees may be collected when the loan is made or at any time thereafter;
6. The premium payable for any insurance in lieu of perfecting any security interest otherwise required by the licensee in connection with the loan, if the premium does not exceed the fees which would otherwise be payable, which premium may be collected when the loan is made or at any time thereafter;
7. Actual and reasonable attorney's fees and court costs as determined by the court in which suit is filed;
8. Actual and commercially reasonable expenses of repossession, storing, repairing and placing in condition for sale, and selling of any property pledged as security; or
9. A delinquency charge not to exceed \$10 for each payment in default for a period of not less than 10 days, if the charge is agreed upon, in writing, between the parties before imposing the charge.

Any charges, including interest, in excess of the combined total of all charges authorized and permitted by this chapter constitute a violation of chapter 687 governing interest and usury, and the penalties of that chapter apply. In the event of a bona fide error, the licensee shall refund or credit the borrower with the amount of the overcharge immediately but within 20 days from the discovery of such error.

(b) Notwithstanding the provisions of paragraph (a), any lender of money who receives a check, draft, negotiable order of withdrawal, or like instrument drawn on a bank or other depository institution, which instrument is given by a borrower as full or partial repayment of a loan, may, if such instrument is not paid or is dishonored by such institution, make and collect from the borrower a bad check charge of not more than the greater of \$20 or an amount equal to the actual charge made to the lender by the depository institution for the return of the unpaid or dishonored instrument.

**Proposed Rule Amendment**  
**Chapter Name: Money Transmitters**  
**Rule: 69V-560.802: Minimum Disclosure**

**A. Summary and Justification**

69V-560.802 is recommended to be amended to remove deferred presentment providers from the requirement to post a schedule of fees, as there is no specific statutory authority as applied to deferred presentment providers. The Office has statutory authority to require check cashers to post a schedule of fees pursuant to Section 560.309(7), F.S.

**B. Proposed Text of Rule**

**69V-560.802 Minimum Disclosure.**

(1) Every check casher ~~and deferred presentment provider~~ must continuously post in a conspicuous place a clearly legible schedule of fees charged in every location and mobile unit.

(2) The term “conspicuous place” is defined herein as a place which is reasonably calculated to impart the information to the public.

*Specific Authority 560.105, 560.404(23) FS. Law Implemented 560.309 FS. History—New 9-24-97, Amended 12-30-98, 12-17-01, Formerly 3C-560.802.*

**C. Relevant Statutes Cited in Rule**

**560.105 Supervisory powers; rulemaking.—**

- (1) The office shall:
  - (a) Supervise all money services businesses and their authorized vendors.
  - (b) Have access to the books and records of persons the office supervises as necessary to carry out the duties and functions of the office under this chapter.
  - (c) Issue orders and declaratory statements, disseminate information, and otherwise administer and enforce this chapter and all related rules in order to effectuate the purposes, policies, and provisions of this chapter.
- (2) The commission may adopt rules pursuant to ss. 120.536(1) and 120.54 to administer this chapter.
  - (a) The commission may adopt rules requiring electronic submission of any forms, documents, or fees required by this chapter, which must reasonably accommodate technological or financial hardship and provide procedures for obtaining an exemption due to a technological or financial hardship.
  - (b) Rules adopted to regulate money services businesses, including deferred presentment providers, must be responsive to changes in economic conditions, technology, and industry practices.

**560.404 Requirements for deferred presentment transactions.—**

[ . . . ]

(23) The office shall implement a common database with real-time access through an Internet connection for deferred presentment providers, as provided in this subsection. The database must be accessible to the office and the deferred presentment providers in order to verify whether any deferred presentment transactions are outstanding for a particular person. Deferred presentment providers shall submit such data before entering into each deferred presentment transaction in such format as required by rule, including the drawer's name, social security number or employment authorization alien number, address, driver's license number, amount of the transaction, date of transaction, the date that the transaction is closed, and such additional information as is required by rule. The commission may by rule impose a fee of up to \$1 per transaction for data that must be submitted by a deferred presentment provider. A deferred presentment provider may rely on the information contained in the database as accurate and is not subject to any administrative penalty or civil liability due to relying on inaccurate information contained in the database. A deferred presentment provider must notify the office, in a manner as prescribed by rule, within 15 business days after ceasing operations or no longer holding a license under part II or part III of this chapter. Such notification must include a reconciliation of all open transactions. If the provider fails to provide notice, the office shall take action to administratively release all open and pending transactions in the database after the office becomes aware of the closure. This section does not affect the rights of the provider to enforce the contractual provisions of the deferred presentment agreements through any civil action allowed by law. The commission may adopt rules to administer this subsection and to ensure that the database is used by deferred presentment providers in accordance with this section.

**560.309 Conduct of business.—**

[ . . . ]

(7) The commission may by rule require a check casher to display its license and post a notice listing its charges for cashing payment instruments.

# ATTACHMENT 5

**FINANCIAL SERVICES COMMISSION  
OFFICE OF FINANCIAL REGULATION**

**AGENDA ITEM #5**

---

**Action Requested**

The Office requests approval to publish a notice of intent to adopt federal standards pursuant to Section 120.54(6), Florida Statutes to comply with Ch. 2012-201, Laws of Fla. (2012). The law requires the Commission to adopt rules by July 1, 2012, establishing minimum standards for due diligence policies, procedures, and controls for financial institutions chartered in Florida that maintain certain accounts with foreign financial institutions, to reasonably detect whether the foreign financial institution engages in certain activities facilitating the development of mass destruction by the Government of Iran, provides support for certain foreign terrorist organizations, or participates in other related activities.

The proposed rule adopts as federal standards those set out by the U.S. Treasury Department, Office of Foreign Assets Control, in 31 C.F.R. Part 561, Subparts B, C, and D, which are adopted and incorporated by reference, as the minimum standards for due diligence policies, procedures, and controls as required by Chapter 2012-201, Laws of Florida.

	<u>Page</u>
<u>Proposed Rule</u> .....	55
<u>Text of Ch. 2012-201, Laws of Fla. (2012)</u> .....	57
<u>Text of 31 C.F.R. 561, Subparts B, C, D</u> .....	60

Notice of Proposed Rule

**DEPARTMENT OF FINANCIAL SERVICES**

**FSC - Financial Institution Regulation**

RULE NO.: RULE TITLE:

[69U-100.1000](#): Transactions Relating to Iran or Terrorism

PURPOSE, EFFECT AND SUMMARY: The rule adopts the federal standards set out by the U.S. Treasury Department, Office of Foreign Assets Control, in 31 C.F.R. Part 561 to establish the minimum standards for due diligence policies, procedures, and controls for Florida state-chartered financial institutions that maintain certain accounts with foreign financial institutions, to reasonably detect whether the foreign financial institution engages in certain activities facilitating the development of weapons of mass destruction by the Government of Iran, provides support for certain foreign terrorist organizations, or participates in other related activities.

RULEMAKING AUTHORITY: [655.012, 120.54\(1\)\(f\) FS; Ch. 2012-201, Laws of Fla.](#)

LAW IMPLEMENTED: [Ch. 2012-201, Laws of Fla.](#)

THIS RULEMAKING IS UNDERTAKEN PURSUANT TO SECTION

120.54(6), F.S. WRITTEN COMMENTS MAY BE SUBMITTED WITHIN 14 DAYS OF THE DATE OF THIS NOTICE TO: Jeffrey Jones, Office of Financial Regulation, [jeffrey.jones@flofr.com](mailto:jeffrey.jones@flofr.com).

SUBSTANTIALLY AFFECTED PERSONS MAY WITHIN 14 DAYS OF THE DATE OF THIS NOTICE, FILE AN OBJECTION TO THIS RULEMAKING WITH THE AGENCY. THE OBJECTION SHALL SPECIFY THE PORTIONS OF THE PROPOSED RULE TO WHICH THE PERSON OBJECTS AND THE SPECIFIC REASONS FOR THE OBJECTION.

THE FULL TEXT OF THE PROPOSED RULE IS:

Florida state-chartered financial institutions shall comply with the federal standards set out by the U.S. Treasury Department, Office of Foreign Assets Control, in 31 C.F.R. Part 561, Subparts B, C, and D, which are adopted and incorporated by reference, as the minimum standards for due diligence policies, procedures, and controls as required by Chapter 2012-201, Laws of Florida.

*Specific Authority 655.012, 120.54(1)(f) FS; Ch. 2012-201, Laws of Fla. Law Implemented Ch. 2012-201, Laws of Fla. History–New \_\_\_\_\_.*

## CHAPTER 2012-201

### Senate Bill No. 792

An act relating to financial institutions; providing definitions; requiring a financial institution that is chartered in this state and that maintains certain accounts with a foreign financial institution to establish due diligence policies, procedures, and controls reasonably designed to detect whether the foreign financial institution engages in certain activities facilitating the development of weapons of mass destruction by the Government of Iran, provides support for certain foreign terrorist organizations, or participates in other related activities; requiring the Financial Services Commission to adopt rules establishing minimum standards for the due diligence policies, procedures, and controls; requiring a financial institution chartered in this state to annually file a compliance certificate with the Office of Financial Regulation; requiring that the Office of Financial Regulation submit an annual report relating to the Financial Services Commission rules and certifications from financial institutions to the Governor, the President of the Senate, and the Speaker of the House of Representatives; requiring that the Office of Financial Regulation make the annual report available to the public on its website; authorizing the Office of Financial Regulation to impose an administrative fine against a financial institution that fails to make the annual certification required by the act; providing an effective date.

WHEREAS, the United States Congress passed, and President Obama signed into law, the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010, and

WHEREAS, the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 prohibits or strictly limits any foreign financial institution's ability to open or maintain a correspondent account or a payable-through account with American financial institutions if the United States Secretary of the Treasury determines that the foreign financial institution knowingly engages in certain activities facilitating the development of weapons of mass destruction by the Government of Iran, provides support for certain foreign terrorist organizations, or participates in other related activities, and

WHEREAS, the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 imposes civil and criminal penalties against financial institutions based in the United States which know or should know that they are maintaining a correspondent account or a payable-through account with a foreign financial institution that engages in prohibited activities, and

WHEREAS, it is a sensible fiduciary responsibility of financial institutions chartered in the State of Florida to know the activities of foreign financial institutions with which they maintain correspondent or payable-through accounts, NOW, THEREFORE,

Be It Enacted by the Legislature of the State of Florida:

Section 1. Financial institutions; transactions relating to Iran or terrorism.—

(1) As used in this section, the term:

(a) “Correspondent account” has the same meaning as defined in 31 U.S.C. s. 5318A.

(b) “Financial institution” has the same meaning as defined in s. 655.005(1)(i), Florida Statutes.

(c) “Payable-through account” has the same meaning as defined in 31 U.S.C. s. 5318A.

(2) A financial institution chartered in this state which maintains a correspondent account or a payable-through account with a foreign financial institution must establish due diligence policies, procedures, and controls reasonably designed to detect whether the United States Secretary of the Treasury has found that the foreign financial institution knowingly:

(a) Facilitates the efforts of the Government of Iran, including efforts of Iran’s Revolutionary Guard Corps, to acquire or develop weapons of mass destruction or their delivery systems;

(b) Provides support for an organization designated by the United States as a foreign terrorist organization;

(c) Facilitates the activities of a person who is subject to financial sanctions pursuant to a resolution of the United Nations Security Council imposing sanctions on Iran;

(d) Engages in money laundering to carry out any activity listed in this subsection;

(e) Facilitates efforts by the Central Bank of Iran or any other Iranian financial institution to carry out an activity listed in this subsection; or

(f) Facilitates a significant transaction or provides significant financial services for Iran’s Revolutionary Guard Corps or its agents or affiliates, or any financial institution, whose property or interests in property are blocked pursuant to federal law in connection with Iran’s proliferation of weapons of mass destruction, or delivery systems for those weapons, or Iran’s support for international terrorism.

(3) By July 1, 2012, the Financial Services Commission shall adopt rules establishing minimum standards for due diligence policies, procedures, and controls required by this section.

(4) By January 1, 2013, and each January 1 thereafter, each financial institution chartered in this state must certify to the Office of Financial

Regulation that the financial institution has adopted and substantially complies with the due diligence policies, procedures, and controls required by this section and the rules adopted under this section, and that to the best knowledge of the financial institution, the financial institution does not maintain a correspondent account or a payable-through account with a foreign financial institution that knowingly engages in any act described in subsection (2).

(5) By January 31, 2013, and each January 31 thereafter, the Office of Financial Regulation must submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives which contains a copy of the rules required under subsection (3) and the status of the certifications of compliance received from the financial institutions chartered in this state.

(6) The Office of Financial Regulation shall make its annual compliance report under this section available on its website.

(7) The Office of Financial Regulation may impose an administrative fine, not to exceed \$100,000 per occurrence, against a financial institution that fails to make the annual certification required under subsection (4).

Section 2. This act shall take effect upon becoming a law.

Approved by the Governor May 4, 2012.

Filed in Office Secretary of State May 4, 2012.

Electronic Code of Federal Regulations  
*e-CFR*  
TM

**e-CFR Data is current as of May 30, 2012**

**Title 31: Money and Finance: Treasury**

[PART 561—IRANIAN FINANCIAL SANCTIONS REGULATIONS](#)

[Browse Previous](#) | [Browse Next](#)

**Subpart B—Prohibitions**

**§ 561.201 CISADA-based sanctions on certain foreign financial institutions.**

Upon a finding by the Secretary of the Treasury that a foreign financial institution knowingly engages in one or more of the activities described in paragraphs (a)(1) through (5) of this section, consistent with the Secretary of the Treasury's authorities under the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (Pub. L. 111–195) (22 U.S.C. 8501–8551) (“CISADA”), either the Secretary of the Treasury will impose one or more strict conditions, as set forth in paragraph (b) of this section, on the opening or maintaining of a correspondent account or a payable-through account in the United States for that foreign financial institution, or, as set forth in paragraph (c) of this section, the Secretary of the Treasury will prohibit a U.S. financial institution from opening or maintaining a correspondent account or a payable-through account in the United States for that foreign financial institution. The name of the foreign financial institution and the relevant prohibition or strict condition(s) will be added to the List of Foreign Financial Institutions Subject to Part 561 (the “Part 561 List”) on the Office of Foreign Assets Control's Web site ( [www.treasury.gov/ofac](http://www.treasury.gov/ofac) ) on the Iran Sanctions page and published in the Federal Register .

(a) A foreign financial institution engages in an activity described in this paragraph if, in any location or currency, the foreign financial institution knowingly:

(1) Facilitates the efforts of the Government of Iran (including efforts of Iran's Islamic Revolutionary Guard Corps or any of its agents or affiliates)—

(i) To acquire or develop weapons of mass destruction or delivery systems for weapons of mass destruction; or

(ii) To provide support for organizations designated as foreign terrorist organizations under section 219(a) of the Immigration and Nationality Act (8 U.S.C. 1189(a)) or support for acts of international terrorism, as defined in §561.312 of this part;

(2) Facilitates the activities of a person subject to financial sanctions pursuant to United Nations Security Council Resolutions 1737, 1747, 1803, or 1929, or any other resolution adopted by the Security Council that imposes sanctions with respect to Iran;

Note to paragraph (a)(2) of §561.201: Persons subject to financial sanctions pursuant to the United Nations Security Council resolutions listed in §561.201(a)(2) include individuals and entities listed in the Annex to UNSC Resolution 1737, Annex I of UNSC Resolution 1747, Annexes I and III of UNSC Resolution 1803, and Annexes I, II, and III of UNSC Resolution 1929; and 060

individuals and entities designated by the Security Council or by the Committee established pursuant to UNSC Resolution 1737 (the “Committee”) as being engaged in, directly associated with or providing support for Iran's proliferation sensitive nuclear activities, or the development of nuclear weapon delivery systems; and individuals and entities acting on behalf of or at the direction of those so listed or designated; and entities owned or controlled by those so listed or designated; and individuals and entities determined by the Security Council or the Committee to have assisted listed or designated individuals or entities in evading sanctions of, or in violating the provisions of, UNSC Resolutions 1737, 1747, 1803, or 1929.

- (3) Engages in money laundering to carry out an activity described in paragraphs (a)(1) or (2) of this section;
- (4) Facilitates efforts by the Central Bank of Iran or any other Iranian financial institution to carry out an activity described in paragraphs (a)(1) or (2) of this section; or
- (5) Facilitates a significant transaction or transactions or provides significant financial services for—
  - (i) Iran's Islamic Revolutionary Guard Corps or any of its agents or affiliates whose property and interests in property are blocked pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (“IEEPA”); or
  - (ii) A financial institution whose property and interests in property are blocked pursuant to parts 544 or 594 of this chapter in connection with Iran's proliferation of weapons of mass destruction or delivery systems for weapons of mass destruction or Iran's support for international terrorism.

Note to paragraph (a)(5) of §561.201: The names of persons whose property and interests in property are blocked pursuant to IEEPA are published in the Federal Register and incorporated into the Office of Foreign Assets Control's Specially Designated Nationals and Blocked Persons List (the “SDN List”). The SDN List is accessible through the following page on the Office of Foreign Assets Control's Web site: [www.treasury.gov/sdn](http://www.treasury.gov/sdn). Additional information pertaining to the SDN List can be found in appendix A to this chapter. Agents or affiliates of Iran's Islamic Revolutionary Guard Corps (“IRGC”) whose property and interests in property are blocked pursuant to IEEPA are identified by a special reference to the “IRGC” at the end of their entries on the SDN List, in addition to the reference to the regulatory part of this chapter pursuant to which their property and interests in property are blocked. For example, an affiliate of the IRGC whose property and interests in property are blocked pursuant to the Weapons of Mass Destruction Proliferators Sanctions Regulations, 31 CFR part 544, will have the tag “[NPWMD] [IRGC]” at the end of its entry on the SDN List. Financial institutions whose property and interests in property are blocked pursuant to parts 544 or 594 of this chapter in connection with Iran's proliferation of weapons of mass destruction or delivery systems for weapons of mass destruction or Iran's support for international terrorism also are identified by the tag “[IFSR]” in addition to the tag referencing part 544 or part 594, as the case may be, located at the end of their entries on the SDN List (e.g., [NPWMD] [IFSR] or [SDGT] [IFSR]). In addition, see §561.405 concerning entities that may not be listed on the SDN List but whose property and interests in property are nevertheless blocked.

(b) The Secretary of the Treasury may impose one or more strict conditions on the opening or maintaining by a U.S. financial institution of a correspondent account or a payable-through account in the United States for a foreign financial institution that the Secretary finds engages in one or more of the activities described in paragraph (a) of this section. Except as otherwise authorized pursuant to this part, a U.S. financial institution shall not open or maintain a correspondent account or payable-through account in the United States in a manner that is inconsistent with any strict condition imposed and in effect pursuant to this paragraph. Such conditions may include, but are not limited to, the following:

- (1) Prohibiting or restricting any provision of trade finance through the correspondent account or payable-through account of the foreign financial institution;
- (2) Restricting the transactions that may be processed through the correspondent account or payable-through account of the foreign financial institution to certain types of transactions, such as personal remittances;
- (3) Placing monetary limits on, or limiting the volume of, the transactions that may be processed through the correspondent account or payable-through account of the foreign financial institution;

(4) Requiring pre-approval from the U.S. financial institution for all transactions processed through the correspondent account or payable-through account of the foreign financial institution; or

(5) Prohibiting or restricting the processing of foreign exchange transactions through the correspondent account or payable-through account of the foreign financial institution.

Note to paragraph (b) of §561.201: The name of the foreign financial institution, together with the actual strict condition or conditions to be imposed, will be added to the Part 561 List on the Office of Foreign Assets Control's Web site ( [www.treasury.gov/ofac](http://www.treasury.gov/ofac) ) on the Iran Sanctions page, and published in the Federal Register .

(c) If the Secretary of the Treasury does not impose one or more strict conditions, pursuant to paragraph (b) of this section, on the opening or maintaining of a correspondent account or a payable-through account in the United States for a foreign financial institution that the Secretary finds engages in one or more of the activities described in paragraph (a) of this section, the Secretary, consistent with CISADA, will prohibit the opening or maintaining by a U.S. financial institution of a correspondent account or a payable-through account in the United States for that foreign financial institution. Except as otherwise authorized pursuant to this part, a U.S. financial institution shall not open or maintain a correspondent account or a payable-through account in the United States for a foreign financial institution for which the opening or maintaining of such an account is prohibited pursuant to this paragraph.

Note to paragraph (c) of §561.201: The names of foreign financial institutions for which the opening or maintaining of a correspondent account or a payable-through account in the United States is prohibited will be listed on the Part 561 List on the Office of Foreign Assets Control's Web site ( [www.treasury.gov/ofac](http://www.treasury.gov/ofac) ) on the Iran Sanctions page, and published in the Federal Register .

Note to §561.201: The Part 561 List will specify whether U.S. financial institutions are required to:

(1) Impose strict conditions on the opening or maintaining of a correspondent account or a payable-through account for a particular foreign financial institution pursuant to paragraph (b) of this section;

(2) Prohibit the opening or maintaining of a correspondent account or a payable-through account for a particular foreign financial institution pursuant to paragraph (c) of this section;

(3) Prohibit the opening or maintaining of a correspondent account or a payable-through account for a particular foreign financial institution pursuant to §561.203(a)(1) and (a)(2)(i); or

(4) Prohibit the opening of a correspondent account or a payable-through account and impose strict conditions on maintaining a preexisting correspondent account or a payable-through account for a particular foreign financial institution pursuant to §561.203(a)(1) and (a)(2)(ii). Where applicable, the Part 561 List also will specify the strict condition or conditions to be imposed on the correspondent account or the payable-through account.

#### **§ 561.202 Prohibitions on persons owned or controlled by U.S. financial institutions.**

Except as otherwise authorized pursuant to this part, any person that is owned or controlled by a U.S. financial institution is prohibited from knowingly engaging in any transaction with or benefitting Iran's Islamic Revolutionary Guard Corps or any of its agents or affiliates whose property and interests in property are blocked pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.* ) (“IEEPA”).

Note 1 to §561.202: The names of persons whose property and interests in property are blocked pursuant to IEEPA are published in the Federal Register and incorporated into the Office of Foreign Assets Control's Specially Designated Nationals and Blocked Persons List (the “SDN List”). The SDN List is accessible through the following page on the Office of Foreign Assets Control's Web site: [www.treasury.gov/sdn](http://www.treasury.gov/sdn). Additional information pertaining to the SDN List can be found in appendix A to this chapter. Agents or affiliates of Iran's Islamic Revolutionary Guard Corps (“IRGC”) whose property and interests in property are blocked pursuant to IEEPA are identified by a special reference to the “IRGC” at the end of their entries on the SDN List, in addition to the reference to the regulatory part of this chapter pursuant to which their property and interests in property are blocked. For example, an affiliate of the IRGC whose property and interests in property are blocked pursuant to the Weapons of Mass Destruction Proliferators Sanctions Regulations, 31 CFR part 544, will have the tag “[NPWMD] [IRGC]” at the end of its entry on the SDN 062

List. In addition, see §561.405 concerning entities that may not be listed on the SDN List but whose property and interests in property are nevertheless blocked.

Note 2 to §561.202: A U.S. financial institution is subject to the civil penalties provided for in section 206(b) of IEEPA if any person that it owns or controls violates the prohibition set forth in this section and the U.S. financial institution knew or should have known of such violation. See §561.701(a)(2).

### § 561.203 NDAA-based sanctions on certain foreign financial institutions.

(a) *Imposition of sanctions.* Subject to the limitations, exceptions, and conditions set forth in paragraphs (d) through (h) of this section, upon a determination by the Secretary of the Treasury that a foreign financial institution has knowingly conducted or facilitated any significant financial transaction with the Central Bank of Iran or a designated Iranian financial institution, consistent with section 1245 of the National Defense Authorization Act for Fiscal Year 2012 (Pub. L. 112–81), the Secretary of the Treasury:

(1) Will prohibit U.S. financial institutions from opening a correspondent account or a payable-through account in the United States for the foreign financial institution with respect to which the determination has been made; and either

(2)(i) Will prohibit U.S. financial institutions from maintaining a correspondent account or a payable-through account in the United States for the foreign financial institution with respect to which the determination has been made; or

(ii) Will impose one or more strict conditions on the maintaining of any correspondent account or payable-through account that had been opened in the United States for the foreign financial institution prior to the Secretary of the Treasury's determination with respect to the foreign financial institution.

Note 1 to paragraph (a) of §561.203: The names of *designated Iranian financial institutions* are identified on the Specially Designated Nationals and Blocked Persons List (the “SDN List”) on the Office of Foreign Assets Control's Web site with the tag “[NDAA]” at the end of their entries, in addition to the reference to the regulatory part of this chapter pursuant to which their property and interests in property are blocked. The SDN List is accessible through the following page on the Office of Foreign Assets Control's Web site: [www.treasury.gov/sdn](http://www.treasury.gov/sdn).

Note 2 to paragraph (a) of §561.203: The name of any foreign financial institution with respect to which a determination has been made pursuant to this paragraph (a), along with the relevant sanctions to be imposed (prohibition(s) and/or strict condition(s)), will be added to the List of Foreign Financial Institutions Subject to Part 561 (the “Part 561 List”), which is maintained on the Office of Foreign Assets Control's Web site ( [www.treasury.gov/ofac](http://www.treasury.gov/ofac) ) on the Iran Sanctions page, and published in the Federal Register .

(b) *Strict conditions.* The strict conditions that might be imposed on the maintaining of a pre-existing correspondent account or payable-through account for a foreign financial institution pursuant to paragraph (a)(2)(ii) of this section include, but are not limited to, the following:

(1) Prohibiting or restricting any provision of trade finance through the correspondent account or payable-through account of the foreign financial institution;

(2) Restricting the transactions that may be processed through the correspondent account or payable-through account of the foreign financial institution to certain types of transactions, such as personal remittances;

(3) Placing monetary limits on, or limiting the volume of, the transactions that may be processed through the correspondent account or payable-through account of the foreign financial institution;

(4) Requiring pre-approval from the U.S. financial institution for all transactions processed through the correspondent account or payable-through account of the foreign financial institution; or

(5) Prohibiting or restricting the processing of foreign exchange transactions through the correspondent

account or payable-through account of the foreign financial institution.

(c) *Prohibitions.* (1) Except as otherwise authorized pursuant to this part, a U.S. financial institution shall not open a correspondent account or payable-through account in the United States for a foreign financial institution for which the opening of such an account is prohibited pursuant to paragraph (a)(1) of this section.

(2) Except as otherwise authorized pursuant to this part, a U.S. financial institution shall not maintain a correspondent account or payable-through account in the United States for a foreign financial institution for which the maintaining of such an account is prohibited pursuant to paragraph (a)(2)(i) of this section.

(3) Except as otherwise authorized pursuant to this part, a U.S. financial institution shall not maintain a correspondent account or payable-through account in the United States for a foreign financial institution in a manner that is inconsistent with any strict condition imposed and in effect pursuant to paragraph (a)(2)(ii) of this section.

(d) *Privately owned foreign financial institutions.* (1) Subject to the exceptions set forth in paragraphs (f) and (h) of this section, sanctions may be imposed pursuant to paragraph (a) of this section beginning on February 29, 2012, with respect to any significant financial transaction conducted or facilitated by a privately owned foreign financial institution that is not for the purchase of petroleum or petroleum products from Iran.

(2) Subject to the exceptions and conditions set forth in paragraphs (g) and (h) of this section, sanctions may be imposed pursuant to paragraph (a) of this section with respect to any significant financial transaction conducted or facilitated by a privately owned foreign financial institution on or after June 28, 2012, for the purchase of petroleum or petroleum products from Iran.

(e) *Government-owned or -controlled foreign financial institutions, including foreign central banks.* Subject to the exceptions and conditions set forth in paragraphs (g) and (h) of this section, sanctions may be imposed pursuant to paragraph (a) of this section on a foreign financial institution owned or controlled by the government of a foreign country, including a central bank of a foreign country, only insofar as it engages in a significant financial transaction on or after June 28, 2012, for the sale or purchase of petroleum or petroleum products to or from Iran.

(f) Sanctions will not be imposed under paragraph (a) of this section with respect to any foreign financial institution for conducting or facilitating a transaction for the sale of food, medicine, or medical devices to Iran.

(g) The Secretary of the Treasury may impose sanctions pursuant to paragraph (a) of this section with respect to any significant financial transaction conducted or facilitated by a foreign financial institution on or after June 28, 2012, for the purchase of petroleum or petroleum products from Iran only if the President determines, not later than March 30, 2012, and every 180 days thereafter, that there is a sufficient supply of petroleum and petroleum products from countries other than Iran to permit a significant reduction in the volume of petroleum and petroleum products purchased from Iran by or through foreign financial institutions. Such successive sufficiency determinations by the President shall render subject to sanctions under paragraph (a) of this section those financial transactions conducted or facilitated by a foreign financial institution for the purchase of petroleum or petroleum products from Iran during each successive 180-day period beginning 90 days after the President's determination.

Note to paragraph (g) of §561.203: Under Section 1245(d)(4)(B) of the NDAA, the President is to make a determination, not later than March 30, 2012, and every 180 days thereafter, of whether the price and supply of petroleum and petroleum products produced in countries other than Iran is sufficient to permit purchasers of petroleum and petroleum products from Iran to reduce significantly in volume their purchases from Iran. This determination is to be based on reports on the availability and price of petroleum and petroleum products produced in countries other than Iran that, pursuant to section 1245(d)(4)(A) of the NDAA, the Administrator of the Energy Information Administration, in consultation with the Secretary of the Treasury, the Secretary of State, and the Director

of National Intelligence, is to submit to Congress beginning not later than February 29, 2012, and every 60 days thereafter.

(h) Sanctions will not be imposed under paragraph (a) of this section on a foreign financial institution if the Secretary of State determines and reports to Congress not later than 90 days after the date on which the President makes the initial determination referenced in paragraph (g) of this section, and every 180 days thereafter, that the country with primary jurisdiction over the foreign financial institution has significantly reduced its volume of crude oil purchases from Iran during the period prior to the initial determination, and during successive 180-day periods.

Note to §561.203: The sanctions regime described in §561.203 is separate from the sanctions regime described in §561.201 and applies in addition to, and independently of, the sanctions regime imposed under §561.201.

[Browse Previous](#) | [Browse Next](#)

---

For questions or comments regarding e-CFR editorial content, features, or design, email [ecfr@nara.gov](mailto:ecfr@nara.gov).

For questions concerning e-CFR programming and delivery issues, email [webteam@gpo.gov](mailto:webteam@gpo.gov).

[Section 508 / Accessibility](#)



**e-CFR Data is current as of May 30, 2012**

## **Title 31: Money and Finance: Treasury**

### **[PART 561—IRANIAN FINANCIAL SANCTIONS REGULATIONS](#)**

[Browse Previous](#) | [Browse Next](#)

#### **Subpart C—General Definitions**

##### **§ 561.301 Effective date.**

(a) The effective date of a prohibition or condition imposed pursuant to §561.201 or §561.203 on the opening or maintaining of a correspondent account or a payable-through account in the United States by a U.S. financial institution for a particular foreign financial institution is the earlier of the date the U.S. financial institution receives actual or constructive notice of such prohibition or condition.

(b) The effective date of the prohibition contained in §561.202 with respect to Iran's Islamic Revolutionary Guard Corps and any of its agents or affiliates whose property and interests in property are blocked as of August 16, 2010, is August 16, 2010.

(c) The effective date of the prohibition contained in §561.202 with respect to an agent or affiliate of Iran's Islamic Revolutionary Guard Corps whose property and interests in property become blocked after August 16, 2010, is the earlier of the date of actual or constructive notice that such person's property and interests in property are blocked.

##### **§ 561.302 UNSC Resolution 1737.**

The term *UNSC Resolution 1737* means United Nations Security Council Resolution 1737, adopted December 23, 2006.

##### **§ 561.303 UNSC Resolution 1747.**

The term *UNSC Resolution 1747* means United Nations Security Council Resolution 1747, adopted March 24, 2007.

##### **§ 561.304 UNSC Resolution 1803.**

The term *UNSC Resolution 1803* means United Nations Security Council Resolution 1803, adopted March 3, 2008.

##### **§ 561.305 UNSC Resolution 1929.**

The term *UNSC Resolution 1929* means United Nations Security Council Resolution 1929, adopted June 9, 2010.

**§ 561.306 Correspondent account.**

The term *correspondent account* means an account established by a U.S. financial institution for a foreign financial institution to receive deposits from, or to make payments on behalf of, the foreign financial institution, or to handle other financial transactions related to such foreign financial institution.

**§ 561.307 Payable-through account.**

The term *payable-through account* means a correspondent account maintained by a U.S. financial institution for a foreign financial institution by means of which the foreign financial institution permits its customers to engage, either directly or through a subaccount, in banking activities usual in connection with the business of banking in the United States.

**§ 561.308 Foreign financial institution.**

The term *foreign financial institution* means any foreign entity that is engaged in the business of accepting deposits, making, granting, transferring, holding, or brokering loans or credits, or purchasing or selling foreign exchange, securities, commodity futures or options, or procuring purchasers and sellers thereof, as principal or agent. It includes but is not limited to depository institutions, banks, savings banks, money service businesses, trust companies, securities brokers and dealers, commodity futures and options brokers and dealers, forward contract and foreign exchange merchants, securities and commodities exchanges, clearing corporations, investment companies, employee benefit plans, and holding companies, affiliates, or subsidiaries of any of the foregoing. The term does not include the international financial institutions identified in 22 U.S.C. 262r(c)(2), the International Fund for Agricultural Development, the North American Development Bank, or any other international financial institution so notified by the Office of Foreign Assets Control.

**§ 561.309 U.S. financial institution.**

The term *U.S. financial institution* means any U.S. entity that is engaged in the business of accepting deposits, making, granting, transferring, holding, or brokering loans or credits, or purchasing or selling foreign exchange, securities, commodity futures or options, or procuring purchasers and sellers thereof, as principal or agent. It includes but is not limited to depository institutions, banks, savings banks, money service businesses, trust companies, insurance companies, securities brokers and dealers, commodity futures and options brokers and dealers, forward contract and foreign exchange merchants, securities and commodities exchanges, clearing corporations, investment companies, employee benefit plans, and U.S. holding companies, U.S. affiliates, or U.S. subsidiaries of any of the foregoing. This term includes those branches, offices, and agencies of foreign financial institutions that are located in the United States, but not such institutions' foreign branches, offices, or agencies.

**§ 561.310 Money laundering.**

The term *money laundering* means engaging in deceptive practices to obscure the nature of transactions involving the movement of illicit cash or illicit cash equivalent proceeds into, out of, or through a country, or into, out of, or through a financial institution, such that the transactions are made to appear legitimate.

**§ 561.311 Agent.**

The term *agent* includes an entity established by a person for purposes of conducting transactions on

behalf of the person in order to conceal the identity of the person.

**§ 561.312 Act of international terrorism.**

The term *act of international terrorism* has the same definition as that provided under section 14 of the Iran Sanctions Act of 1996 (50 U.S.C. 1701 note). As of February 27, 2012, the term *act of international terrorism* means an act which is violent or dangerous to human life and that is a violation of the criminal laws of the United States or of any state or that would be a criminal violation if committed within the jurisdiction of the United States or any state and which appears to be intended to intimidate or coerce a civilian population; to influence the policy of a government by intimidation or coercion; or to affect the conduct of a government by assassination or kidnapping.

**§ 561.313 Financial services.**

The term *financial services* includes loans, transfers, accounts, insurance, investments, securities, guarantees, foreign exchange, letters of credit, and commodity futures or options.

**§ 561.314 Knowingly.**

The term *knowingly*, with respect to conduct, a circumstance, or a result, means that a person has actual knowledge, or should have known, of the conduct, the circumstance, or the result.

**§ 561.315 Person.**

The term *person* means an individual or entity.

**§ 561.316 Entity.**

The term *entity* means a partnership, association, trust, joint venture, corporation, or other organization.

**§ 561.317 Money service businesses.**

The term *money service businesses* means any agent, agency, branch, or office of any person doing business, whether or not on a regular basis or as an organized business concern, in one or more of the capacities listed in 31 CFR 103.11(uu)(1) through (5). The term does not include a bank or a person registered with, and regulated or examined by, the Securities and Exchange Commission or the Commodity Futures Trading Commission.

**§ 561.318 Petroleum.**

A mixture of hydrocarbons that exists in liquid phase in natural underground reservoirs and remains liquid at atmospheric pressure after passing through surface separating facilities. Also known as crude oil.

**§ 561.319 Petroleum products.**

The term *petroleum products* includes unfinished oils, liquefied petroleum gases, pentanes plus, aviation gasoline, motor gasoline, naphtha-type jet fuel, kerosene-type jet fuel, kerosene, distillate fuel oil, residual fuel oil, petrochemical feedstocks, special naphthas, lubricants, waxes, petroleum coke, asphalt, road oil, still gas, and miscellaneous products obtained from the processing of crude oil (including lease condensate), natural gas, and other hydrocarbon compounds. The term does not include natural gas, liquefied natural gas, biofuels, methanol, and other non-petroleum fuels.

**§ 561.320 Iranian financial institution.**

The term *Iranian financial institution* means any entity (including foreign branches), wherever located, organized under the laws of Iran or any jurisdiction within Iran, or owned or controlled by the Government of Iran, or in Iran, or owned or controlled by any of the foregoing, that is engaged in the business of accepting deposits, making, granting, transferring, holding, or brokering loans or credits, or purchasing or selling foreign exchange, securities, commodity futures or options, or procuring purchasers and sellers thereof, as principal or agent. It includes but is not limited to depository institutions, banks, savings banks, money service businesses, trust companies, insurance companies, securities brokers and dealers, commodity futures and options brokers and dealers, forward contract and foreign exchange merchants, securities and commodities exchanges, clearing corporations, investment companies, employee benefit plans, and holding companies, affiliates, or subsidiaries of any of the foregoing.

**§ 561.321 Government of Iran.**

The term *Government of Iran* includes:

- (a) The state and the Government of Iran, as well as any political subdivision, agency, or instrumentality thereof;
- (b) Any entity owned or controlled directly or indirectly by the foregoing;
- (c) Any person to the extent that such person is, or has been, or to the extent that there is reasonable cause to believe that such person is, or has been, acting or purporting to act directly or indirectly on behalf of any of the foregoing; and
- (d) Any person or entity identified by the Secretary of the Treasury to be the Government of Iran under 31 CFR part 560.

**§ 561.322 Entity owned or controlled by the Government of Iran.**

The phrase *entity owned or controlled by the Government of Iran* means any entity, including a financial institution, in which the Government of Iran owns a 50 percent or greater interest or a controlling interest, and any entity, including a financial institution, which is otherwise controlled by that government.

**§ 561.323 Foreign financial institution owned or controlled by the government of a foreign country.**

The phrase *foreign financial institution owned or controlled by the government of a foreign country* means any foreign financial institution, including a central bank of a foreign country, in which a government of a foreign country owns a 50 percent or greater interest and any foreign financial institution which is otherwise controlled by a government of a foreign country.

**§ 561.324 Designated Iranian financial institution.**

The term *designated Iranian financial institution* means any Iranian financial institution whose property and interests in property are blocked by the Department of the Treasury pursuant to any part of this chapter or any Executive order issued pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.* ) and whose name is listed on the Specially Designated Nationals and Blocked Persons List on the Office of Foreign Assets Control's Web site, except for any Iranian financial institution whose property and interests in property are blocked solely pursuant to Executive Order 13599 of February 5, 2012.

Note to §561.324: Facilitating significant transactions or providing significant financial services for a financial institution whose property and interests in property are blocked pursuant to parts 544 or 594 of this chapter in connection with Iran's proliferation of weapons of mass destruction or delivery systems for weapons of mass destruction or Iran's support for international terrorism has, since the enactment of CISADA on July 1, 2010, constituted an activity that could subject a foreign financial institution to prohibitions or strict conditions on correspondent accounts or payable-through accounts in the United States. See §561.201.

**§ 561.325 Financial transaction.**

The term *financial transaction* means any transfer of value involving a financial institution.

**§ 561.326 Privately owned foreign financial institution.**

The phrase *privately owned foreign financial institution* means any foreign financial institution that is not owned or controlled by the government of a foreign country.

**§ 561.327 Food, medicine, and medical devices.**

(a) The term *food* means items that are intended to be consumed by and provide nutrition to humans or animals in Iran, including vitamins and minerals, food additives and supplements, and bottled drinking water, and seeds that germinate into items that are intended to be consumed by and provide nutrition to humans or animals in Iran. For purposes of this definition, the term *food* does not include:

(1) Alcoholic beverages, cigarettes, gum, or fertilizer; and

(2) The following excluded food items: castor beans, castor bean seeds, raw eggs, fertilized eggs (other than fish and shrimp roe), dried egg albumin, live animals, Rosary/Jequirity peas, non-food-grade gelatin powder, and peptones and their derivatives.

(b) The term *medicine* has the same meaning given the term “drug” in section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321) but does not include any item listed on the Commerce Control List in the Export Administration Regulations, 15 CFR part 774, supplement no. 1 (excluding items classified as EAR 99).

(c) The term *medical devices* has the meaning given the term “device” in section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321) but does not include any item listed on the Commerce Control List in the Export Administration Regulations, 15 CFR part 774, supplement no. 1 (excluding items classified as EAR 99).

[Browse Previous](#) | [Browse Next](#)

---

For questions or comments regarding e-CFR editorial content, features, or design, email [ecfr@nara.gov](mailto:ecfr@nara.gov).

For questions concerning e-CFR programming and delivery issues, email [webteam@gpo.gov](mailto:webteam@gpo.gov).

[Section 508 / Accessibility](#)



**e-CFR Data is current as of May 30, 2012**

## **Title 31: Money and Finance: Treasury**

### **[PART 561—IRANIAN FINANCIAL SANCTIONS REGULATIONS](#)**

[Browse Previous](#) | [Browse Next](#)

#### **Subpart D—Interpretations**

##### **§ 561.401 Reference to amended sections.**

Except as otherwise specified, reference to any provision in or appendix to this part or chapter or to any regulation, ruling, order, instruction, directive, or license issued pursuant to this part refers to the same as currently amended.

##### **§ 561.402 Effect of amendment.**

Unless otherwise specifically provided, any amendment, modification, or revocation of any provision in or appendix to this part or chapter or of any order, regulation, ruling, instruction, or license issued by the Office of Foreign Assets Control does not affect any act done or omitted, or any civil or criminal proceeding commenced or pending, prior to such amendment, modification, or revocation. All penalties, forfeitures, and liabilities under any such order, regulation, ruling, instruction, or license continue and may be enforced as if such amendment, modification, or revocation had not been made.

##### **§ 561.403 Facilitation of certain efforts, activities, or transactions by foreign financial institutions.**

For purposes of §§561.201 and 561.203 of this part, the term *facilitate* or *facilitated* used with respect to certain efforts, activities, or transactions refers to the provision of assistance by a foreign financial institution for those efforts, activities, or transactions, including, but not limited to, the provision of currency, financial instruments, securities, or any other transmission of value; purchasing; selling; transporting; swapping; brokering; financing; approving; guaranteeing; or the provision of other services of any kind; or the provision of personnel; or the provision of software, technology, or goods of any kind.

##### **§ 561.404 Significant transaction or transactions; significant financial services; significant financial transaction.**

In determining, for purposes of §561.201(a)(5), whether a transaction is significant, whether transactions are significant, or whether financial services are significant, or, for purposes §561.203(a), whether a financial transaction is significant, the Secretary of the Treasury may consider the totality of the facts and circumstances. As a general matter, the Secretary may consider some or all of the following factors:

(a) *Size, number, and frequency.* The size, number, and frequency of transactions, financial services, or financial transactions performed over a period of time, including whether the transactions, financial services, or financial transactions are increasing or decreasing over time and the rate of increase or

decrease.

(b) *Nature*. The nature of the transaction(s), financial services, or financial transaction, including the type, complexity, and commercial purpose of the transaction(s), financial services, or financial transaction.

(c) *Level of Awareness; Pattern of Conduct*. (1) Whether the transaction(s), financial services, or financial transaction is performed with the involvement or approval of management or only by clerical personnel; and (2) Whether the transaction(s), financial services, or financial transaction is part of a pattern of conduct or the result of a business development strategy.

(d) *Nexus*. The proximity between the foreign financial institution engaging in the transaction(s) or providing the financial services and a blocked person described in §561.201(a)(5), or between the foreign financial institution conducting or facilitating the financial transaction described in §561.203 and the Central Bank of Iran or a designated Iranian financial institution, as defined in §561.324. For example, a transaction or financial service in which a foreign financial institution provides brokerage or clearing services to, or maintains an account or makes payments for a blocked person described in paragraph (a)(5) of §561.201, the Central Bank of Iran, or a designated Iranian financial institution in a direct customer relationship generally would be of greater significance than a transaction or financial service a foreign financial institution conducts for or provides to a blocked person described in §561.201(a)(5), the Central Bank of Iran, or a designated Iranian financial institution indirectly or in a tertiary relationship.

(e) *Impact*. The impact of the transaction(s) or financial services on the objectives of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010, or of the financial transaction on the objectives of the National Defense Authorization Act for Fiscal Year 2012, including:

(1) The economic or other benefit conferred or attempted to be conferred on a blocked person described in §561.201(a)(5), or on the Central Bank of Iran or designated Iranian financial institution, as described or defined in §§561.203 and 561.324;

(2) Whether and how the transaction(s), financial services, or financial transaction contributes to the proliferation of weapons of mass destruction or delivery systems for such weapons, to support for international terrorism, to the suppression of human rights, to an increase in Iran's crude oil revenues, or to connecting the Central Bank of Iran or a designated Iranian financial institution to the international financial system; and

(3) Whether the transaction(s), financial services, or financial transaction supports humanitarian activity or involves the payment of basic expenses as specified in and authorized pursuant to UNSC Resolution 1737 or the payment of extraordinary expenses that have been authorized by the Sanctions Committee established pursuant to UNSC Resolution 1737, or the payment for the sale of food, medicine, or medical devices to Iran.

(f) *Deceptive practices*: Whether the transaction(s), financial services, or financial transaction involves an attempt to obscure or conceal the actual parties or true nature of the transaction(s), financial services, or financial transaction or to evade sanctions; for example, whether the transaction enabled the Central Bank of Iran to facilitate the evasion of sanctions by a blocked person described in §561.201(a)(5) or a designated Iranian financial institution, as defined in §561.324.

(g) *Central Bank of Iran Reserves, Settlement Services, Foreign Currency Exchanges, and Official Development Assistance Repayment*: Other factors involved in making a determination of whether a transaction(s), financial service, or financial transaction is significant are whether the transaction solely involves the passive holding of Central Bank of Iran reserves by a foreign financial institution; whether the Central Bank of Iran's role is limited to providing settlement services or foreign currency exchanges in transactions between a non-designated Iranian financial institution and a foreign financial institution; and whether the transaction involves only the repayment of official development assistance by the Central Bank of Iran or the transfer of funds required as a condition of Iran's membership in an international

financial institution.

(h) *Other relevant factors.* Such other factors that the Secretary deems relevant on a case-by-case basis in determining the significance of a transaction(s), financial services, or financial transaction.

**§ 561.405 Entities owned by a person whose property and interests in property are blocked.**

A person whose property and interests in property are blocked pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.* ) has an interest in all property and interests in property of an entity in which it owns, directly or indirectly, a 50 percent or greater interest. The property and interests in property of such an entity, therefore, are blocked, and such an entity is a person whose property and interests in property are blocked pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.* ), regardless of whether the entity itself is listed on the Office of Foreign Assets Control's Specially Designated Nationals and Blocked Persons List.

**§ 561.406 Country with primary jurisdiction over the foreign financial institution.**

For purposes of §561.203(h), a country includes any jurisdiction that has its own central bank or contains a separate financial sector authority, and a foreign financial institution (including its foreign branches outside of the United States) is under a country's primary jurisdiction if the foreign financial institution is organized under the laws of the country or any jurisdiction within that country.

**§ 561.407 Conducting or facilitating a financial transaction with the Central Bank of Iran or a designated Iranian financial institution.**

A foreign financial institution conducts or facilitates a financial transaction with the Central Bank of Iran or a designated Iranian financial institution if it maintains an account for such entities or engages in a financial transaction directly or indirectly with such entities.

Note to §561.407: See §561.404 for factors that may be considered in determining whether a financial transaction is significant, as required for the imposition of certain sanctions pursuant to this part.

[Browse Previous](#) | [Browse Next](#)

---

For questions or comments regarding e-CFR editorial content, features, or design, email [ecfr@nara.gov](mailto:ecfr@nara.gov).

For questions concerning e-CFR programming and delivery issues, email [webteam@gpo.gov](mailto:webteam@gpo.gov).

[Section 508 / Accessibility](#)