

GOVERNOR RICK SCOTT

MONTHLY AGENCY ACHIEVEMENT REPORT

OFFICE OF FINANCIAL REGULATION

OCTOBER 2013

OCTOBER ACHIEVEMENTS

1. Monthly Statistics

- Division of Securities
 - Examinations Opened: 31
 - Examinations Closed: 15
 - Complaints Received: 18
 - Complaints Closed: 21
 - Applications Received: 3,688
 - Applications Approved: 3,692
 - Applications Denied/Withdrawn: 52

- Division of Consumer Finance
 - Examinations Opened: 40
 - Examinations Closed: 68
 - Complaints Received: 300
 - Complaints Closed: 402
 - Applications Received: 3,611
 - Applications Approved: 3,413
 - Applications Denied/Withdrawn: 58

- Division of Financial Institutions
 - Examinations Opened: 7
 - Examinations Closed: 8
 - Complaints Received: 94
 - Complaints Closed: 94
 - Applications Received: 17
 - Applications Approved: 5
 - Applications Denied/Withdrawn: 0

- Bureau of Financial Investigations
 - Investigations Opened: 23
 - Investigations Closed: 20

2. Substantial Sanctions

Final Order for \$10,000 Fine against an Investment Adviser Associated Person for Unregistered Activity

On September 30, 2013, the Division of Securities entered a Final Order against John J. Beachy for engaging in investment advisory business in Florida without being registered. An administrative fine of \$10,000 was paid.

Permanent Bar and \$249,250 Fine against a Broker Dealer Agent for Fraud

On October 15, 2013, the Division of Securities entered a Final Order against Joseph Brandon Westphal permanently barring him from seeking future registration as a dealer, investment adviser or associated person under the Florida Securities and Investor Protection Act, Chapter 517, F. S., after he failed to request a hearing. The Final Order follows an Administrative Complaint, which alleged Mr. Westphal engaged in fraudulent securities transactions. A \$249,250 administrative fine was assessed.

Administrative Fine of \$20,000 against an Investment Adviser for Unregistered Activity

On October 17, 2013, the Division of Securities entered a Final Order against Gordon Gelley & Co., PLLC for engaging in unregistered investment advisory activities and misrepresenting the qualifications of the investment adviser and an employee of the firm. The final order was entered after the firm failed to request a hearing. An administrative fine of \$20,000 was assessed.

Permanent Bar and \$1,410,000 in Total Fines Against an Unregistered Broker Dealer and Associated Person for Fraud

On October 18, 2013, the Division of Securities entered a Final Order against Michael Charles Heimbach and Bryn Advisory Group, LLC permanently barring him and the firm from seeking future registration as a dealer, investment adviser or associated person under the Florida Securities and Investor Protection Act, Chapter 517, F.S., after they failed to request a hearing. The Final Order follows an Administrative Complaint, which alleged Mr. Heimbach and Bryn Advisory Group, LLC offered and sold unregistered securities, engaged in securities business in Florida without being registered and conducted fraudulent securities transactions. A total of \$1,410,000 in administrative fines was assessed.

Revocation of Investment Adviser Firm

On October 24, 2013, the Division of Securities entered a Final Order against Elliott & Associates Wealth Management, Inc. f/k/a Elliott & Tintle Wealth Management, LLC, revoking the firm's registration as an Investment Adviser in the state of Florida, after the firm failed to request a hearing. The Final Order follows an Administrative Complaint, which alleges Elliott & Associates Wealth Management, Inc. failed to pay a \$12,375 administrative fine imposed by a Final Order issued by the Division of Securities on July 12, 2013.

Denial of Associated Persons Applications

During the month of October 2013, the Division of Securities denied two applications for registration as associated persons. The Notice of Intent to Deny alleged that the associated person made a material misrepresentation or misstatement on their application for registration as an associated person.

3. Enforcement Actions

South Florida Man Sentenced for Role in Elaborate Precious Metals Fraud

On September 30, 2013, Judge Federico Moreno sentenced Robert Roca to 36 months in federal prison to be followed by three years of supervised release. Roca was also ordered to pay \$1.9 million in restitution to victims. Roca had previously pled guilty to one count of conspiracy to commit mail and wire fraud. A joint state/federal investigation determined that multiple subjects allegedly operated an elaborate precious metals investment fraud through Global Bullion Trading Group (GBTG), WJS Funding, Inc. d/b/a Capital Asset Management and Certified, Inc. Robert Roca was a leading sales agent for the companies and earned over \$788,000 in commissions. The subjects ran a boiler room which solicited investors to purchase precious metals using leveraged/margin accounts. Investors were led to believe they were purchasing physical metals and that their metals would be held in personalized accounts. Investors were also told they had the ability to take possession of the precious metals at any time, subject to handling fees, postage and insurance. The telemarketing operation brought in over \$48 million from investors. The investigation alleged the subjects did not purchase physical metals or maintain individual accounts on behalf of investors. It also appears that they diverted \$5.7 million to their benefit or for the benefit of family members. On August 9, 2012, the United States District Court, Southern District of Florida unsealed a federal grand jury indictment charging Arthur John Schlecht, Frederick Gomer, Carlos Rodriguez and Ricardo Padron for their roles in the alleged scheme. On February 19, 2013, a superseding indictment was issued charging Roca for his role in the purported scheme. Gomer, Rodriguez, and Padron have also pled guilty and are awaiting sentencing. Schlecht is scheduled for trial in January 2014.

South Florida Man Arrest for Precious Metals Fraud

On October 22, 2013, Eduardo Cuervo was arrested and charged with grand theft. He is the principal of Crow Commodities, a precious metals investment company. Cuervo allegedly told investors that he was a successful trader in precious metals and gold coins. From October 2008 through May 2009, investors sent Cuervo over \$72,000. Cuervo bragged to the investors that their gold and silver investments were up 30 percent. Despite the investor's requests for account statements, none of the investors received them. When the investors asked Cuervo to send them their gold coins, or return their investment funds, Cuervo allegedly told them that an off-shore firm he was working with had disappeared with their funds. When questioned about this firm, Cuervo could not produce any evidence supporting this. The bank records revealed that Cuervo used \$20,000 of the investors' funds to trade in gold futures contracts and U.S. treasury bonds through an account at R. J. O'Brien Associates, resulting in quick losses. In addition, Cuervo used \$17,000 of the investor's funds to purchase gold coins through an account at American Precious Metals Exchange and eBay. Cuervo ultimately resold the gold coins through a bidding auction on eBay. In October 2009, eBay and PayPal suspended his account due to "suspicious activity". It is alleged that none of the investors received any of the profits from the sale of the gold coins and that Cuervo used the investors' funds to pay for his mother's attorney fees, for salaries and for his own personal expenses.

4. Outreach Activities

On October 18, 2013, a member of the Division of Securities spoke at the Annual Strategic Planning Meeting of the Financial Planning Association of Florida held in Orlando. Topics included legislative rule changes, common registration issues and exam violations as well as numerous questions from the audience. Members of the Division's enforcement staff also attended the meeting. Approximately 43 securities industry members were in attendance.

On October 18, 2013, a member of the Division of Financial Institutions represented the OFR as part of the Bank Secrecy Act (BSA) / Anti-Money Laundering (AML) Regulatory Panel (other regulators included the Federal Deposit Insurance Corporation, Federal Reserve Bank, and Office of the Comptroller of the Currency) at the Florida Bankers Association 9th Annual BSA/AML School. The event was held in Orlando, Florida, with approximately 125 attendees, consisting of BSA staff and officers representing banks throughout Florida. Topics of discussion included BSA/AML compliance risk, advancements in BSA/AML compliance technology, emerging trends and best practices for future compliance.

On October 21, 2013, Commissioner Drew J. Breakspear and members of the Division of Financial Institutions and represented the OFR at the Conference of State Bank Supervisors (CSBS) Interagency Meeting. The meeting was held over a two day period in Atlanta, Georgia, with approximately 70 attendees. Attendees at the meeting included financial regulatory representatives from other States (Alabama, Georgia, Arkansas, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Virginia, and West Virginia), the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the Federal Reserve Bank and the CSBS. Topics of discussion included banking and micro and macro-economic emerging trends, regulatory best practices, capital market trends and implementation of regulatory and accounting policies of the Dodd Frank Act.

On October 25, 2013, Division of Securities staff participated in the Securities and White Collar Crime Roundtable meeting held by the U.S. Securities and Exchange Commission in Miami. Other participants included the Financial Industry Regulatory Authority, the Federal Bureau of Investigation, the United States Attorney's Office, and other State and Federal regulatory and law enforcement agencies. The meeting was held to discuss updates, from participating agencies, on new and/or significant trends or concerns in Securities and/or Investment Fraud matters. Other issues discussed included suggestions for better collaborative investigations and parallel criminal prosecutions.

5. Operating Efficiencies

The OFR will begin participating in the weekly meetings at the Florida Fusion Center. The Florida Fusion Center is hosted by FDLE and brings together various state and federal agencies to share information with the goal of

maximizing the ability to detect, prevent, apprehend and respond to criminal and terrorist activity utilizing an all crimes/all hazards approach.