

# GOVERNOR RICK SCOTT

## MONTHLY AGENCY ACHIEVEMENT REPORT

### OFFICE OF FINANCIAL REGULATION

NOVEMBER 2013

#### NOVEMBER ACHIEVEMENTS

##### 1. Monthly Statistics

- Division of Securities
  - Examinations Opened: 23
  - Examinations Closed: 18
  - Complaints Received: 11
  - Complaints Closed: 12
  - Applications Received: 3,985
  - Applications Approved: 3,787
  - Applications Denied/Withdrawn: 35
  
- Division of Consumer Finance
  - Examinations Opened: 51
  - Examinations Closed: 35
  - Complaints Received: 221
  - Complaints Closed: 247
  - Applications Received: 2,255
  - Applications Approved: 2,336
  - Applications Denied/Withdrawn: 45
  
- Division of Financial Institutions
  - Examinations Opened: 8
  - Examinations Closed: 13
  - Complaints Received: 85
  - Complaints Closed: 85
  - Applications Received: 17
  - Applications Approved: 3
  - Applications Denied/Withdrawn: 0
  
- Bureau of Financial Investigations
  - Investigations Opened: 17
  - Investigations Closed: 13

##### 2. Substantial Sanctions

###### Permanent Bar and \$107,500 Fine against an Unregistered Broker Dealer and Associated Person for Fraud

On October 30, 2013, the Division of Securities entered a Final Order against David L. Webb, Results Capital Group Inc., SeaAway Funding Inc. and Organic

Labs Holding, Inc.; permanently barring Mr. Webb and his firms from registration with the Office, after they failed to timely request a hearing. The Final Order follows an Administrative Complaint, which alleged David L. Webb, Results Capital Group Inc., SeaAway Funding Inc. and Organic Labs Holding, Inc.; offered and sold unregistered securities; engaged in securities transactions in Florida without being registered and conducted fraudulent securities transactions. An administrative fine of \$107,500 was assessed.

On October 30, 2013, the Florida Office of Financial Regulation closed Bank of Jackson County, Graceville, Florida, and appointed the Federal Deposit Insurance Corporation (FDIC) as receiver. The FDIC entered into a purchase and assumption agreement with First Federal Bank of Florida, Lake City, Florida, which will assume all of the deposits of Bank of Jackson County, ensuring minimal disruption to depositors and customers. As of June 30, 2013, Bank of Jackson County had approximately \$25.5 million in total assets and \$25.0 million in total deposits.

#### Permanent Bar and Investor Restitution against an Unregistered Broker Dealer Firm and Associated Person for Fraud

On November 6, 2013, the Division of Securities entered a Final Order against CPL Investment and Development, Inc. and Arnel Polo for engaging in securities business in Florida without being registered, offering and selling unregistered securities, and for conducting fraudulent securities transactions. CPL Investment and Development, Inc. and Arnel Polo were permanently barred from engaging in securities related business in Florida and from seeking future registration as a dealer, investment adviser or associated person under the Florida Securities and Investor Protection Act, Chapter 517, F. S. In addition, Mr. Polo shall list for sale the real property he owns in the State of Georgia for the purpose of paying restitution to each investor and shall pay an administrative fine of \$5,000.

#### Denial, Three Year Bar and \$25,000 Fine against a Broker Dealer Associated Person for Fraud

On November 22, 2013, the Division of Securities entered a Final Order against Shawn Paul Sapp for failure to disclose a criminal event and an outside business activity and for using client funds in a manner which operated as a fraud or deceit. Mr. Sapp's application for registration as an associated person was denied and he was barred from seeking future registration as a dealer, investment adviser or associated person under the Florida Securities and Investor Protection Act, Chapter 517, F. S. for three (3) years. An administrative fine of \$25,000 was assessed.

#### Final Order for \$5,000 Fine against an Investment Adviser for Unregistered Activity

On November 22, 2013, the Division of Securities entered a Final Order against D C Voss & Company, LLC and David Charles Voss for engaging in unregistered investment advisory activities. The firm and Mr. Voss paid an administrative fine of \$5,000.

Final Order for \$8,000 Fine against an Investment Adviser for Failure to File Financial Statements and Prohibited Business Practices

On November 22, 2013, the Division of Securities entered a Final Order against UCB Financial Advisers, Inc., for failing to: file audited annual financial statements; maintain an accurate Form ADV; timely file annual financial statements; and for deducting fees directly from its clients' accounts without sending invoices. The firm paid an administrative fine of \$8,000.

Summary Suspension, \$5,000 Fine and Final Order Lifting Summary Suspension against a Broker Dealer for Failure to Comply with the Branch Office Notice Filing Requirements

On November 18, 2013, the Division of Securities issued a Summary Suspension against Tandem Securities for failing to comply with and resolve the notice filing requirements for a Florida branch office. The branch office was prohibited from operating until relevant information was supplied to the Office. The firm provided the information and paid a fine of \$5,000. On November 26, 2013, the Division of Securities entered a Final Order lifting the summary suspension.

Final Order for \$50,000 Fine and Offer of Rescission for an Unregistered Issuer Dealer

On November 26, 2013, the Division of Securities entered a Final Order against Southern Union Revolving Fund, Inc. for acting as an Issuer Dealer by selling demand notes in Florida without being registered. From January 1, 2012 to May 23, 2013, Southern Union Revolving Fund, Inc. offered and sold demand notes in Florida, totaling \$8,866,261, to 227 individuals and affiliated organizations without being registered with the Office. Southern Union Revolving Fund agreed to offer rescission to their Florida customers who purchased the demand notes and paid a \$50,000 administrative fine. Pursuant to the Final Order, Southern Union Revolving Fund, Inc. shall be registered as an Issuer Dealer.

Final Order for \$20,000 Fine against an Associated Person for Unregistered Activity

On November 27, 2013, the Division of Securities entered a Final Order against Carolyn Kohn for engaging in unregistered investment advisory activities. A \$20,000 administrative fine was paid.

Denial of Associated Persons Applications

During the month of November 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**

Three Arrested for Roles in Precious Metals Fraud

On October 24, 2013, Colin A Smith, the last of four defendants in an alleged precious metals investment fraud operating as Mercury Management Service Company, was arrested on charges of grand theft and securities fraud. Another defendant, Sarah King, was arrested on October 17, 2013 and a third defendant

Daniel Kannaly was arrested on October 19, 2013. Each was charged in Broward Circuit Court with one count of grand theft and one count of organized fraud. A fourth defendant and the main principal of Mercury Management Service Company, Daniel Brown, is presumed to be deceased. The OFR investigation revealed that from October 2008 through June 2010, Daniel Brown, Daniel Kannaly, Colin Smith and Sarah King were involved in an alleged precious metals scheme which took in over \$800,000 from 17 Investors around the country. Investors were purportedly told that “they could make a lot of money investing in precious metals with little to no risk” and were promised high returns and quick profits. When investors contacted the company to check on the status of their financed precious metals accounts, they were told that their money was lost due to “a dip in the price of metals.” Some were told that due to a margin call, they needed to send in more money to keep their accounts active. An analysis of all bank accounts in this case revealed that there is no evidence that Brown or Kannaly purchased metals on behalf of the investors, but rather spent the investors’ money for their personal benefit. This case will be prosecuted by Assistant State Attorney T. Don Tenbrook of the Broward county State Attorney’s office.

#### Guilty Plea in Haitian Affinity Investment Fraud Case

On October 28, 2013, George Louis Theodule pled guilty to one count of mail fraud in violation of Title 18, United States Code, Sections 1343 and 2. In exchange for his plea, the United States will dismiss the remaining counts of the indictment. Theodule faces a statutory maximum of 20 years imprisonment, followed five years of supervised release. Theodule was indicted on 36 counts of wire fraud, one count of securities fraud, and three counts of money laundering on July 2, 2013 and was arrested on August 23, 2013. From July 2007 through December 2008, Theodule engaged in a massive Ponzi scheme from which he collected more than \$30 million primarily from Haitian-Americans living in the South Florida region. Theodule falsely represented to investors that he was an investment guru, capable of doubling their investments every 30 to 90 days. Theodule advertised the investment through churches, word of mouth, seminars and individual presentations to groups. He enticed others to form investment clubs from which investors pooled their money and then turned it over to him. Consequently, investors formed more than 100 clubs in more than seven states. Theodule opened a number of trading accounts with online-brokerage firms to trade investors’ money. Theodule lost all the money he invested in the trading accounts, all the while assuring investors that their monies were safe and guaranteed. Furthermore, Theodule was paying older investors with money from newer investors and used a significant amount of investors’ money to fund his extravagant lifestyle, including renting two mansions in Georgia, paying for his wedding, giving large monetary gifts to his girlfriends and relatives, and taking trips abroad. Theodule will be sentenced on February 24, 2014 at the federal courthouse in West Palm Beach, Florida. On December 29, 2008, the Securities and Exchange Commission (SEC) filed a complaint against Theodule and his various companies. In March 2010, the SEC obtained a Judgment of Permanent Injunction and Other Relief against Theodule and the court ordered Theodule to pay \$5,099,512 in disgorgement. In 2008, the court appointed a receiver whom

thus far has collected over \$1,000,000 in assets for the benefit of the Receivership Estate. This case is a joint investigation between the FBI (West Palm Beach Office) and the OFR and is being prosecuted by AUSA Roger Stefin. Investigator Dieujuste was responsible for 50% of the work performed in this case, including but not limited to, interviewing witnesses, serving subpoenas, and reviewing bank records.

#### Orlando Man Pleads Guilty to Investment Fraud

On November 6, 2013, Phillip Leon pled guilty in federal court to one count of conspiracy to commit mail fraud and one count of conspiracy to commit wire fraud. The charges and subsequent conviction stem from Leon's role in an elaborate investment fraud that bilked investors out of more than \$18 million nationwide. A joint OFR/US Secret Service investigation revealed that from 2009 to 2012, Leon and his partner, John Wilkins, raised over \$18 million from more than 200 investors by falsely claiming that the Matterhorn Fund (an unregistered hedge fund managed by Leon and Wilkins) generated annual rates of return ranging from 11% to 91% between the years 1980 and 2009. However, the investigation found that the Matterhorn Fund did not exist until 2009. The investigation also revealed that both men misrepresented their employment histories and educational backgrounds in communications with investors. These misrepresentations and others are believed to have been at the center of the pairs' efforts to exploit unsuspecting investors, ultimately luring many of them to place money in the fund. A review of the fund's bank and trading records revealed that in early 2010, when the Matterhorn Fund began to lose money, Leon and Wilkins falsified the Matterhorn Funds' performance reports to show the fund had generated extraordinary gains. The men then used these false reports to solicit investment funds from additional victims and to create new hedge funds with the promise of similarly outlandish returns. Leon is scheduled to be sentenced in late January 2014. On August 22, 2013, John Wilkins pled guilty in federal court to one count of conspiracy to commit mail fraud and wire fraud. Wilkins is scheduled to be sentenced in late November 2013.

#### Former Miami Securities Professional Pleads Guilty to Securities Fraud in Connection with Multi-State Investment Scheme

On November 26, 2013, Daniel Paez of Miami, Florida, pled guilty to one count of securities fraud before U.S. District Judge William P. Dimitrouleas, in connection with a scheme to defraud investors in Florida and several states. Paez faces a maximum of 20 years in prison and maximum \$250,000 fine. Sentencing has been set for February 4, 2014 before Judge Dimitrouleas in Ft. Lauderdale. According to a joint OFR/FBI investigation, Paez was the president of Fly High Investments, Inc., a Miami-Dade investment fund. From in or around September 2010 through in or around April 2012, Paez obtained more than \$500,000 in funds from investors via telephone solicitations and through the Internet. Paez told investors that Fly High Investments was a hedge fund that managed more than \$50 million, and he promised investors that their money would be invested in safe and secure investments. Paez also promised a fixed rate of return and that investors could withdraw their money whenever they wished. Instead, according to the information, Paez spent the bulk of the money raised from

investors at casinos and also withdrew large amounts of cash for his personal benefit. Paez did invest certain investor monies in stocks and other securities, but often in high-risk investments or penny stocks that were materially different than the specific investments promised to investors during their sales pitch. When investors contacted Fly High Investments and Paez to inquire about the status of their funds, Paez misled investors into believing their money was safe and had been invested profitably. Paez ultimately stopped returning calls and ignored requests for the return of investor funds. According to the charges, there were approximately 17 victim investors who were located in Florida and other states, including California, South Dakota, New Jersey, and Minnesota. None of these investors received any return on their investment and they lost all of the money they invested with Fly High Investments and Paez.

#### Judge Issues Temporary Injunction Against Companies Claiming to Sell CDs

On November 27, 2013, as a result of a petition filed by OFR, a temporary injunction was issued by the Circuit Court in Brevard County against First Merchant Capital, LLC, Capstar Industries, LLC, Southeast Mutual Insurance and Investment, Inc., Donald Ray Babb, Ralph V. Ruth and Catherine Ruth (the defendants). The OFR is currently investigating allegations that the defendants sold certificates of deposit (CDs) to Florida investors by falsely claiming the CDs were insured by the Federal Deposit Insurance Corporation (FDIC). The OFR is also investigating allegations that the investors' proceeds have been misused by the defendants. Through the investigation, the OFR has alleged that the defendants have lured at least 30 customers to invest nearly \$3 million in the CD program since August 2011. Sales were primarily made to elderly customers searching for ultra conservative investments with FDIC insurance backing. Advertisements appearing in the Tampa Bay Times and the Jacksonville Times-Union placed by the defendants indicated that the CDs pay the "highest rates in the nation." The purported rate was better than rates offered by legitimate financial institutions in Florida, typically bettering the rate by .5% to 2%. The defendants advertised the sale of brokered CDs, but the OFR's investigation was unable to confirm that money from investors was going to FDIC insured banks for the purchase of CDs. The judge has appointed Michael Moecker as receiver of the companies while the OFR investigation continues.

#### [Judge Issues Temporary Injunction Against Companies Claiming to Sell CDs](#)

#### **4. Outreach Activities**

On November 13, 2013, a member of the Division of Financial Institutions represented the OFR as part of a Federal Reserve Bank (FRB) of Atlanta panel to discuss Opportunities and Challenges in Low- to Moderate-Income Communities. The event was held in Atlanta, Georgia, with approximately 50 attendees. Topics of discussion focused on Housing Finance, Financial Services and Small Business Lending.

November 12-14, 2013 the Division of Securities held its annual training program in Orlando, FL. All enforcement exam staff and management were in attendance as well as personnel from the Bureau of Financial Investigations, Securities registration bureau, and legal section. Commissioner Drew J. Breakspear and

Deputy Commissioner Gregory J. Hila attended and made presentations to the group. The training focused on enforcement trends, procedures, Chapter 517, Florida Statutes, and Chapter 69W, Florida Administrative Code. The attendees were exposed to the examination, registration, investigative and legal aspects of our enforcement program.

#### **5. Operating Efficiencies**

Several administrative rules were amended to reflect statutory changes that went into effect October 1, 2013. The rule amendments updated procedures in the processing of applications to include the use of electronic live-scan fingerprinting rather than paper-based fingerprint cards. Additionally, the amendments updated procedures for certain branch offices conducting securities transactions to reflect that the branch offices shall notice file rather than register with the Office of Financial Regulation (OFR). The disciplinary guidelines for Chapter 517, Florida Statutes, were updated to specify sanctions for branch offices that fail to notice file with the OFR. The sanctions for a first or subsequent occurrence provide for a fine up to \$10,000, summary suspension of the branch office, and/or revocation.