FINANCIAL SERVICES COMMISSION, OFFICE OF FINANCIAL REGULATION

Compliance Economic Review, Group 1 Rules

2011 Enhanced Biennial Review, Section 120.745, Florida Statutes

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RULE

Rule 69W-600.016, F.A.C.
Net Capital Requirements For Dealers and Investment Advisers

TEXT OF RULE

69W-600.016 Net Capital Requirements for Dealers and Investment Advisers.

(1) The net capital of an applicant or registrant under Section 517.12, F.S., shall be maintained at a level required by this rule.

(2) All dealer applicants and registrants shall meet and at all times maintain the net capital and ratio requirements as prescribed by SEC Rule 15c3-1 including any appendices thereto (17 C.F.R. § 240.15c3-1, 240.15c3-1a, 240.15c3-1b, 240.15c3-1c and 240.15c3-1d (2010)), computed in accordance with said rule.

(a) All reporting requirements as specified in (17 C.F.R. § 240.17a-11 (2010)), when such regulation is referred in SEC Rule 15c3-1 shall be applicable with the exception that such reports and notifications required by said rule shall be forwarded to the Office of Financial Regulation as well as the other regulatory agencies specified, if applicable.

(b) All references to (17 C.F.R. § 240.17a-3 (2010)) and (17 C.F.R. § 240.17a-4 (2010)), in the foregoing and subsequent provisions of Office of Financial Regulation or SEC Rules as adopted by the Office of Financial Regulation, shall be read as to mean Office of Financial Regulation, Rule 69W-600.014, F.A.C.

(3) Issuer/dealer or investment adviser applicants or registrants shall meet the net capital requirements of this section:

(a) Investment advisers who have custody of client funds or securities or who receive payment of advisory fees six months or more in advance and in excess of $500 per client shall maintain net capital in the amount of $25,000 calculated as prescribed by SEC Rule 15c3-1 (17 C.F.R. § 240.15c3-1 (2010)), including any ratio requirements and appendices thereto.

(b) Investment advisers who do not have custody of client funds or securities or who do not receive payment for advisory services six months or more in advance and in excess of $500 per client shall maintain net capital: (1) in the amount of $5,000 calculated as prescribed by SEC Rule 15c3-1 (17 C.F.R. § 240.15c3-1 (2010)), including any ratio requirements and appendices thereto; or (2) of at least $2,500. For purposes of option (2) of this subsection, net capital shall be defined as assets minus liabilities in accordance with United States Generally Accepted Accounting Principles.

(c) Investment advisers who compute net capital in accordance with SEC Rule 15c3-1, may exclude liabilities which are subordinated to the claims of creditors pursuant to a subordination agreement, provided such agreement complies with all terms and conditions specified in Appendix D to SEC Rule 15c3-1 (17 C.F.R. § 240.15c3-1 and 240.15c-1d (2010)), except for the requirement that such agreement be filed with and approved by the Securities and Exchange Commission. Those investment advisers who have subordination agreements in effect prior to the effective date of this subsection shall not be required to comply with the conditions specified in Appendix D to SEC Rule 15c3-1. Should the investment adviser renegotiate or enter into a new subordination agreement, the agreement must comply with the provisions of Appendix D of SEC Rule 15c3-1.

(d) An issuer/dealer shall maintain net capital, defined as assets minus liabilities and computed in accordance with United States Generally Accepted Accounting Principles, of at least $5,000, unless required elsewhere by these rules to maintain a greater minimum net capital.

(4) The Office of Financial Regulation may examine the financial statements, general ledgers, journals, source documents, general correspondence, contracts and other pertinent data and receive testimony from employees of entities

associated or affiliated with, or controlling or controlled by, a dealer or investment adviser applicant or registrant.

(5) Any dealer, issuer/dealer or investment adviser who fails to maintain the minimum net capital as required under this rule shall, in addition to the financial reporting requirements set forth in paragraph (2)(a) above, give the Office of Financial Regulation telegraphic or facsimile notice within 24 hours that such entity's net capital is less than required under the rule and immediately suspend business operations. Such entity shall not resume operations unless and until financial statements which verify compliance with this rule have been submitted and approved by the Office of Financial Regulation in writing.

(6) The federal regulations referenced in this rule are hereby incorporated by reference and may be obtained by mail from the Florida Office of Financial Regulation, Division of Securities, 200 E. Gaines Street, Tallahassee, Florida 32399. Copies of the Code of Federal Regulation are also available online through the U.S. Government Printing Office via GPO Access: http://www.gpoaccess.gov/cfr/index.html.

Rulemaking Authority 517.03(1) FS. Law Implemented 517.12(9), (16) FS. History–New 12-5-79, Amended 9-20-82, Formerly 3E-600.16, Amended 10-15-86, 8-1-91, 6-29-93, 11-22-93, Formerly 3E-600.016, Amended 11-22-10.

STATEMENT OF JUSTIFICATION

Rule 69W-600.016, F.A.C. is promulgated pursuant to Section 517.12(9), F.S., which authorizes the commission to: (1) adopt rules requiring regulated securities dealers to file with the Office of Financial Regulation (the "Office") any financial or operational information required to be filed under the SEC Exchange Act or its rules, and (2) adopt rules requiring the maintenance of a minimum net capital (or prescribe a ratio between net capital and aggregate indebtedness) for regulated securities dealers and investment advisers.

The public benefit of the rule is, as stated in the statute, "to assure adequate protection for the investing public," by ensuring that dealers and investments advisers are maintaining sufficient net capital to conduct business in the state of Florida. The minimum net capital requirements set by the rule adopt those set by SEC Rule 15c3-1 (17 C.F.R. § 240.15c3-1)

STATEMENT OF ESTIMATED REGULATORY COSTS

Section 120.541, F.S., sets forth the requirements that agencies must follow in preparing Statements of Estimated Regulatory Costs (SERC). Specifically, paragraphs 120.541(2)(a) through (f), F.S., provide that certain information must be addressed in any SERC. The information requirements as they appear in the statute are cited below, modified for the five-year time period provided by Section 120.745(1)(b)2.a. and (1)(b)2.b., with the Office's response to each as related to Rule 69W-600.016, F.A.C., Net Capital Requirements For Dealers and Investment Advisers.

(a) 1. Is the rule directly or indirectly likely to have an adverse impact on economic growth, private sector job creation or employment, or private sector investment in excess of $1 million in the aggregate in the five-year period beginning on July 1, 2011?

No. The rule requires all dealer applicants and registrants located in and out of the state of Florida and investment adviser applicants and registrants physically domiciled in Florida to maintain minimum net capital amounts as prescribed by Rule 69W-600.016, F.A.C. For dealers, this net capital requirement is also prescribed by SEC Rule 15c3-1. Therefore, dealers registered in Florida already maintain net capital levels prescribed by the federal rule. For state covered investment advisers,

applicants and registrants are required to keep a minimum net capital of either $2,500 or $25,000, which is determined by the adherence to safekeeping requirements detailed in Rule 69W-600.0132, F.A.C. and/or if these investment advisory firms charge fees over $500 more than six months in advance. Issuer /dealer applicants and registrants maintain a net capital of $5,000 or greater. The Office believes the rule has an overall positive impact on economic growth, private sector job creation/employment, and private sector investment by assuring the investing public that dealers and investment advisers it deals with are sufficiently capitalized.

2. Is the rule directly or indirectly likely to have an adverse impact on business competitiveness, including the ability of persons doing business in the state to compete with persons doing business in other states or domestic markets, productivity, or innovation in excess of $1 million in the aggregate in the five-year period beginning on July 1, 2011?

No. The rule requires all dealer applicants and registrants located in and out of the state of Florida and those investment adviser applicants and registrants physically domiciled in Florida to maintain minimum net capital amounts as prescribed by this rule. For dealers, this net capital requirement is also prescribed by SEC Rule 15c3-1. Therefore, dealers registered in Florida already maintain net capital levels prescribed by the federal rule. For state covered investment advisers physically located in Florida, applicants and registrants are required to keep a minimum net capital of either $2,500 or $25,000, which is determined by the adherence to safekeeping requirements detailed in Rule 69W-600.0132, F.A.C. [1] and/or if these investment advisory firms charge fees over $500 more than six months in advance. Issuer /dealer applicants and registrants maintain a net capital of $5,000 or greater. The Office believes the rule does not have an adverse impact on business competitiveness, interstate or otherwise, because the net worth requirements in the rule are equivalent to federal standards enforced nationally.

3. Is the rule directly or indirectly likely to have regulatory costs, including any transactional costs, in excess of $1 million in the aggregate in the five-year period beginning on July 1, 2011?

Yes. The Office has estimated that dealer registrants, state covered investment adviser registrants physically domiciled in Florida and issuer/dealer registrants spend approximately $5.3 million over a 5 year period when maintaining the minimum net capital required by Rule 69W-600.016, F.A.C. Based on this estimate, the Office projects that regulatory costs of the rule will exceed $1 million in the five-year period beginning July 1, 2011.

(See attached Exhibit 1 for data calculations concerning this item.)

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

[1] OFR is also providing an economic impact and cost analysis associated with Rule 69W-600.0132, F.A.C. Custody Requirements for Investment Advisers.

As of October 19, 2011, the Office of Financial Regulation has approximately 543 registered investment advisers and will be receiving approximately an additional 220 physically domiciled investment adviser registrants in January 2012. In addition, there are approximately 2,906 dealers and 83 issuer dealers currently registered. Registration is required of any person, dealer and/or investment adviser, who service financial industry services customers through the opening, servicing and managing of customer accounts whether initiated from within or outside this state.

The term "dealer" includes any person, other than an associated person registered under this chapter, who engages, either for all or part of her or his time, directly or indirectly, as broker or principal in the business of offering, buying, selling, or otherwise dealing or trading in securities issued by another person or any issuer who through persons directly compensated or controlled by the issuer engages, either for all or part of her or his time, directly or indirectly, in the business of offering or selling securities which are issued or are proposed to be issued by the issuer. The term "investment adviser" includes any person who receives compensation, directly or indirectly, and engages for all or part of her or his time, directly or indirectly, or through publications or writings, in the business of advising others as to the value of securities or as to the advisability of investments in, purchasing of, or selling of securities, except a dealer whose performance of these services is solely incidental to the conduct of her or his business as a dealer and who receives no special compensation for such services.

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

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

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

There are no transactional costs associated with the implementation of this rule.

(e) An analysis of the impact on small businesses as defined by s. 288.703, and an analysis of the impact on small counties and small cities as defined in s. 120.52. The impact analysis for small businesses must include the basis for the agency's decision not to implement alternatives that would reduce adverse impacts on small businesses.

The rule requires all dealer applicants and registrants and investment adviser applicants and registrants who are physically domiciled in the state to maintain the same minimum information in their records for the Office to determine compliance with 517.12(9), F.S. and 69W-600.016, F.A.C. This

information is basic data that dealers and investment advisers should be already keeping as part of their regular business practices. Some of these agencies may be small businesses.

There will no impact on small counties or small cities.

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

None.

(g) In the statement or revised statement, whichever applies, a description of any regulatory alternatives submitted under paragraph (1)(a) and a statement adopting the alternative or a statement of the reasons for rejecting the alternative in favor of the proposed rule.

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

EXHIBIT 1

69W-600.016 Net Capital Requirement For Dealers and Investment Advisers

Group 1: Dealers = required to maintain net capital requirements with the state of Florida,

Group 2: Investment Advisers = those physically domiciled in Florida are required to maintain the net capital requirements prescribed by this rule.

(As of October 2011) **528** file unaudited financial statements
23 file audited financial statements

220 (domiciled) from Dodd-Frank legislation expected to file financial statements (assuming 50% will file audited = 110 investment advisers audited)

Group 3: Issuer Dealers = all file annual audited financial statements directly with the state of Florida.

(As of October 2011) **83** file audited financial statements

Economic Impact Calculation:

Group 1: None.

- Already required by SEC Rule 15c3-1 and FINRA rules.

Group 2:
528 IAs x $ 2,500 minimum net capital = $1,320,000
23 IAs x $25,000 minimum net capital = $ 575,000
110 IAs Dodd-Frank x $ 2,500 minimum net capital = $ 275,000
110 IAs Dodd-Frank x $25,000 minimum net capital = $2,750,000

Total IA Impact = **$4,920,000**

Group 3:
83 IDs x $5,000 minimum net capital = **$415,000**

TOTAL ECONOMIC IMPACT = **$5,335,000**