

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:

FINANCIAL SERVICES COMMISSION
OFFICE OF FINANCIAL REGULATION

BOARD OF TRUSTEES, INTERNAL IMPROVEMENT TRUST FUND

The above agencies came to be heard before
THE FLORIDA CABINET, Honorable Governor Crist
presiding, in the Cabinet Meeting Room, LL-03,
The Capitol, Tallahassee, Florida, on Tuesday,
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P R O C E E D I N G S

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(Agenda Items Commenced at 9:30 a.m.)

GOVERNOR CRIST: Financial Services Commission,
Office of Financial Regulation. Tom Cardwell. Good
morning, Tom.

MR. CARDWELL: Good morning, Governor Crist,
members of the Cabinet. I have been asked to speak
to you here this morning on the issue of debt
collection. Debt collection has been in the news
and on the minds of Florida citizens. The current
recession has certainly put tremendous economic
stress on both consumers and businesses.

With significant debt, high unemployment,
individuals are simply not able to pay their bills
in a timely manner, and also we should note that
businesses are similarly stressed. Their customers
are not paying for services and the goods that they
have provided.

Debt collection is a legitimate business that
is necessary in any economy. Creditors have the
right to collect the money that is owed to them.
But the process of debt collection can be and
unfortunately frequently is the subject of abuse.
And that is why there are both state and federal

1 laws that regulate the debt collection industry.

2 Now, times such as these exacerbate the
3 problems that are inherent in debt collection.
4 There are more debts to be collected. There's
5 greater pressure to collect them, and there are more
6 instances of abuse, and there are more complaints
7 about their abuses.

8 Florida's debt collector regulation is flawed.
9 Both the federal and state law regulate debt
10 collection. The federal Fair Debt Collection
11 Practices Act is administered by the Federal Trade
12 Commission, and in Florida we have parallel consumer
13 regulation. That's the Consumer Collection
14 Practices Act found in Chapter 559.

15 Now, regulating debt collection is not easy.
16 The business is not done in person. It is not done
17 through physical locations. Much of it is oral,
18 leaving no paper or electronic traces. And the debt
19 collection business itself can be located anywhere.
20 Florida. It can be located in any state. It, for
21 that matter, can be located in foreign countries.

22 Florida's debt collection laws need attention,
23 and they're drafted in a fashion that makes them
24 extremely difficult to enforce. First, the
25 responsibility for debt collector regulation is

1 spread among three different agencies. The Office
2 of Financial Regulation has the responsibility of
3 registering debt collection companies and taking
4 action against them for violations of Chapter 559.

5 The Department of Financial Services is charged
6 with receiving and maintaining a record of
7 complaints and of corresponding with both the
8 consumer and the collection agency, and the Attorney
9 General is empowered to bring actions on
10 out-of-state debt collectors under our current
11 system.

12 The second flaw is that the enforcement
13 mechanism is drafted in such a way that it is
14 extremely difficult to enforce. Before we at OFR
15 can take any action against a debt collector, it
16 must have at least five unresolved complaints by
17 five different consumers within a 12-month period.

18 And, of course, the debt collector can resolve
19 any of these complaints by promising not to contact
20 a consumer again. So it's very rare for an agency
21 to even have five unresolved complaints at any given
22 period.

23 Secondly, each of the complaints must be in
24 writing and it must be notarized. Now, imagine,
25 you're a consumer. You want to make a complaint.

1 You've essentially got to draft a complaint, which
2 is almost a legal document, and then you've got to
3 find someone to notarize it and to swear to it under
4 oath, and then you've got to send it in to the DFS
5 before it's even counted as a complaint.

6 Now, where there are fewer than five unresolved
7 complaints, all that we at OFR may do is issue a
8 written warning. If five or more remain unresolved,
9 then we can issue a written reprimand. The Office
10 may only -- and that's us -- may only revoke or
11 suspend a registration if we prove in an
12 administrative hearing that the collection agency
13 engaged in repeated violations which establish a
14 clear pattern of abuse of prohibited collection
15 practices. The licensee cannot be -- the license
16 can't be revoked or suspended if the collection
17 agency shows that the violations were not
18 intentional and resulted from bona fide error, often
19 a difficult standard.

20 The third problem is that debt collectors are
21 registered, they're not licensed. The OFR must
22 register them, under the statute, if the application
23 is complete on its face and the fee is paid. That's
24 the test. It can only be denied if the principal
25 had a professional license suspended or revoked and,

1 and that revocation is not explained satisfactorily.

2 And finally, fourth, the penalties for
3 violation under our current law are minimal. The
4 Office may impose an administrative fine up to
5 \$1,000 if there are repeated violations. So as you
6 can see, the current system makes it very difficult
7 for the consumer to make a complaint and for the
8 regulator and the bodies that some of you all head
9 to take effective action.

10 Now, I recently met with a representative of
11 Attorney General McCollum's office, of CFO Sink's
12 office, the Governor's office and the Commissioner
13 of Agriculture's office together to discuss ways to
14 improve our regulation of debt collectors. And a
15 number of ideas were discussed. It was a full and
16 frank and open discussion. And among other things
17 we looked at the interim project of the Senate
18 Banking and Insurance Committee, which has also had
19 an interim project relating to debt collection.

20 And we agreed as a group that there were three
21 primary issues that need to be addressed. Number
22 one is that enforcement procedures need to be made
23 more workable. Number two, the penalty should be
24 increased to be consistent with other regulation and
25 to make it riskier for people in this business when

1 they've violated it, so that there will be less
2 incentive for them to engage in bad behavior. And
3 finally we should improve the regulation to make
4 sure that the people who do not belong in the
5 business do not get in it in the first place.

6 And to accomplish this, we came up with 15
7 specific suggestions. Now, I'm not going to go over
8 all of them here with you, but let me say that they
9 include, number one, making the OFR the agency to
10 receive all the complaints and to act
11 administratively on them, so to house them all in a
12 single place so that problems of handing off are
13 minimized.

14 Secondly, it would give the Attorney General
15 the authority to bring actions in state courts as
16 well as in federal court so that they can act
17 immediately. And in addition to that, we would
18 provide that any violation of the act is also an
19 unfair and deceptive trade practice, which is
20 enforced by the Attorney General.

21 We would eliminate obstacles to consumers
22 bringing complaints. We would, for example, get rid
23 of the requirement that they must be in writing and
24 notarized. We would eliminate the obstacles to
25 taking actions against debt collectors; for example,

1 that there have to be five complaints by five
2 consumers, all different consumers, all unresolved,
3 all within one year.

4 We would increase the fines significantly, I
5 would say, to be consistent with that that we have
6 in other areas that we regulate, such as securities
7 brokers and mortgage brokers. This is not intended
8 to be punitive to debt collectors but basically to
9 put them on the same plane of other people that we
10 regulate.

11 We would require -- and to address the issue of
12 who is in the business, to stop the problems before
13 they happen, we would require fingerprinting for
14 control persons and impose disqualifying periods for
15 certain criminal backgrounds, as we do today with
16 securities and with mortgage brokers. We would
17 again raise that level of regulation to the same
18 that we have in these other areas that deal with the
19 public.

20 And finally, and I think something that could
21 be very effective, we would propose requiring debt
22 collectors to put up a substantial surety bond to
23 pay for misappropriation of funds that they may
24 collect and also for fines that might be assessed by
25 the State. What this does in practice is make the

1 private industry help regulate the business because
2 in order to get the bond, you've got to satisfy the
3 surety that you are a reliable person and a reliable
4 business person. So I think the bond will help
5 control access and entrance and continued
6 performance in the industry.

7 The sum of these changes would be to make
8 enforcement more workable, to make it more risky to
9 violate the law and would help screen persons out
10 who should not be in the business. Now, I want to
11 personally express my appreciation to each of your
12 offices for their constructive participation and
13 their positive suggestions when we all got together
14 to discuss this.

15 The final product that everyone has reviewed
16 and I believe has agreed on is a product of
17 everybody's input. And I frankly think it is a very
18 good example of what we can do to accomplish with
19 good communication and by people working together.

20 This is a proposal that is unlikely to be
21 popular with the industry, but I think the citizens
22 of Florida can take a great deal of satisfaction
23 that it's an example of its government working well.
24 We intend to advocate for this in the current
25 legislative session. I don't know that there is any

1 need for action by the Cabinet itself on this. But,
2 of course, we would always appreciate in the process
3 any support that your offices can have for this
4 program.

5 So I am personally pleased with the product. I
6 think it is a framework for some significant
7 improvements. I think it's got -- it was arrived at
8 in a process where everybody had very positive
9 things to add to it. And, again, I thank your
10 organizations, your people for their participation,
11 and I thank you, and I stand ready for any
12 questions.

13 GOVERNOR CRIST: Tom, thank you very much for
14 your leadership and your comments, and I
15 particularly enjoyed when you said that it may not
16 be something that the industry embraces, but as we
17 all are aware and cognizant, the industry is not who
18 employ us. It is the people. CFO.

19 CFO SINK: Thank you, Governor. Thank you,
20 Commissioner Cardwell. I brought this up at the
21 last meeting because this is an issue that's been
22 kind of festering for quite some time now, and I
23 believe that we as the Financial Services Commission
24 ought to act very strongly and make clear our intent
25 to protect consumers.

1 As you very well described some of the
2 provisions of the existing law, it clearly was
3 written by the special interests. It was clearly
4 not written to protect consumers, when you say that
5 you have to have five complaints from five different
6 consumers and they can't just call someplace in
7 Tallahassee and register a complaint and, rather,
8 they have to go get a notarized statement. Who in
9 the world has time to do that, when these are people
10 who are under financial stress?

11 As the Orlando Sentinel pointed out, children
12 have been threatened by these callers and evidently
13 been told that their parents might go to jail.
14 There are people who have been impersonating police
15 officers. When you think about the fox guarding the
16 henhouse, this was a legislation that the fox built
17 the henhouse in this situation. And we have a real
18 opportunity, I think, in this session to get this
19 corrected.

20 And, Governor, I agree with you. We're all
21 employed by the people, not the special interests.
22 And so I'm glad that our staffs were able to get
23 together and apparently receive -- or come to a
24 conclusion that these 15 items are items that we
25 would recommend to the Legislature. So I think we

1 ought to make it clear that -- and I'm going to make
2 a motion that we, sitting as the members of the
3 Financial Services Commission, recommend to the
4 Legislature that these 15 items -- I know there are
5 many laws, draft laws that are floating around, but
6 that we as the Financial Services Commission do
7 recommend that these 15 items be incorporated in any
8 legislation so that it is clear that we four are
9 speaking with one voice. I offer that motion.

10 ATTORNEY GENERAL McCOLLUM: I would second the
11 motion. Governor, could I --

12 GOVERNOR CRIST: Please, of course.

13 ATTORNEY GENERAL McCOLLUM: First of all, I
14 want to commend you, Commissioner Cardwell, for
15 this. You've made great leadership in this. This
16 is an excellent work product. And I would thank
17 you, CFO Sink, because your office staff worked
18 really well with mine on this, and I think we have a
19 very good product to recommend to the Legislature,
20 and it needs to be done.

21 I agree with the Chief Financial Officer that
22 it sounds like the debt collectors had written the
23 original law. Probably they didn't, but they
24 certainly had some input into it. And this will
25 give us all the tools that we really want in that

1 area that we're really missing right now.

2 But I would like to point out one thing in
3 context. As important as debt collection reform
4 is -- and it is very important. I don't want to
5 diminish that at all. The work product is fabulous.
6 It is one of the three or four pieces of the problem
7 right now that face our consumers in this arena.
8 Credit is -- credit card debt is an incredible
9 problem for us right now in the state, just like
10 mortgage debt is and mortgage foreclosures. We're
11 seeing that in our office a lot today in various
12 forms.

13 The other three principal areas where you see
14 this are in credit counseling, Governor, in debt
15 management and in so-called debt settlement. And
16 there are a lot debt relief companies that are out
17 there that are taking people to the woodshed, so to
18 speak, taking advantage of people who are in
19 trouble.

20 And the Senate committee that you mentioned,
21 Tom, that's considering this is looking at a piece
22 of legislation that our office testified on last
23 week that is more comprehensive, but it should
24 include -- we hope it will include every single item
25 that we're putting forward on debt collection today.

1 But they're also looking at these other three.

2 And the reason why I see this as so important
3 to be looking at it all comprehensively is that
4 we're seeing companies that charge huge up-front
5 fees without providing services. We see them
6 prohibiting consumers from contacting their
7 creditors. They engage in deceptive advertising.
8 And we're talking now about folks who are trying to
9 do debt settlement. They'll say to you, "Governor,
10 you've got this debt. Don't worry about it anymore.
11 You don't need to pay anybody. Just pay us," that
12 type of thing. And often they don't do the work at
13 all that they're promising.

14 And so three or four things that are in that
15 legislation, I just want to bring it to my fellow
16 Cabinet members' attention, besides the debt
17 collection, would be to require debt relief
18 companies to be prohibited from charging an advance
19 fee, up-front fee, prior to the full and complete
20 performance of their services, that debt relief
21 companies should be prohibited from receiving a
22 portion of the fees from debt reduction until the
23 debt is fully released. The debt relief companies
24 should allow consumers to have a right of
25 cancellation or a cooling-off period, and that debt

1 relief companies should provide detailed disclosures
2 and documentation of any fees and financial
3 suitability of the programs that they are
4 administering.

5 I'm only pointing that out. I'm not proposing
6 to change the resolution we're doing today. But I
7 think all of us need to know, and I wanted you to
8 know because my office sees these up front and we do
9 have direct responsibility there. And we now have,
10 with this passage, hopefully, this law, will have
11 more, along with you, CFO Sink, responsibility that
12 we can act on in the debt collection area. But the
13 debt problem is a big problem. It's not just debt
14 collection.

15 But, anyway, I'm really pleased with the
16 product that you produced, Commissioner, and am
17 happy to support this resolution.

18 COMMISSIONER BRONSON: Governor.

19 GOVERNOR CRIST: Commissioner.

20 COMMISSIONER BRONSON: If I might as well,
21 because even though we're not going to be
22 responsible for handling this situation, we're going
23 to get a lot of calls, whether we handle it or not,
24 through our consumer service division as well. And
25 the one thing that I think ought to be a part of

1 this solution is that these companies do not extend
2 punitive issues with the people they collect from
3 for future credit when they clear their debt, that
4 they don't put some kind of marker on there that
5 puts these people in more of a disadvantage or some
6 type of punitive situation after the debt is
7 cleared.

8 And that's another thing I've heard off and on,
9 is, well, I finally got my debt taken care of, and
10 now I still can't do anything because they've got
11 this marker hanging on me out here. And themselves
12 or their kids can't even get credit because they put
13 a marker on their account.

14 So I think, if we're going to do this, we need
15 to make sure they don't come back and say, well, we
16 have this on your account, but now, if you will pay
17 us up front to do a clearing, we'll clear that. I
18 want to make sure that's added to it, because that's
19 kind of after-the-fact, I think, bad business and
20 faith on their part. So I want to make sure that's
21 added to it.

22 MR. CARDWELL: We'll certainly look at that as
23 a part of the proposal, Commissioner Bronson. Thank
24 you for your point.

25 CFO SINK: Governor, can I just ask one more

1 question, because this is really also important to
2 me, Commissioner Cardwell. Clearly this proposed
3 legislation is going to put the responsibility on
4 your office to take all the complaints in, to
5 evaluate them and also to be the enforcer.

6 And I just want to hear from you that your
7 office is prepared to be very aggressive in the
8 enforcement activities and go after these abusers of
9 the system.

10 MR. CARDWELL: Absolutely. We fully intend to
11 use the resources that we have available to us to
12 enforce the powers that we have. And, frankly, part
13 of the frustration of all of us, and I think all of
14 you all and certainly all of me, has been the
15 problem that the tools that we have had have not
16 been, either been -- we've not been able to
17 efficiently use them nor have they been of
18 sufficient strength to be effective.

19 And so I think, frankly, even by simply having
20 this legislation on the books we will move forward.
21 But we intend to aggressively enforce these laws.

22 CFO SINK: Good. Thank you.

23 GOVERNOR CRIST: We have a motion and a second.
24 All in favor, signify by saying aye. Aye.

25 CFO SINK: Aye.

1 ATTORNEY GENERAL McCOLLUM: Aye.

2 COMMISSIONER BRONSON: Aye.

3 GOVERNOR CRIST: Opposed like sign. Motion
4 carries.

5 ATTORNEY GENERAL McCOLLUM: Governor.

6 GOVERNOR CRIST: General.

7 ATTORNEY GENERAL McCOLLUM: I had asked, in
8 light of all the discussion that's gone on in the
9 last week, in the wake of Attorney General Cuomo's
10 lawsuit against Merrill Lynch, for Commissioner
11 Cardwell to comment this morning on the OFR
12 situation and status with regard to reviewing the
13 Merrill Lynch acquisition by Bank of America.

14 And let me explain that in context. CFO Sink,
15 you sent me a letter this week about that. The
16 issue, to put it in a framework, is that back in
17 2008, Bank of America acquired Merrill Lynch. And
18 there is an ongoing question as to whether or not
19 the Bank of America executives, including Ken Lewis,
20 disclosed the amount of information on the financial
21 status of Merrill Lynch to the shareholders,
22 particularly with regard to this transaction, before
23 it was completed and before it was voted on.

24 And the accusation by the attorney general in
25 New York, under laws of that state, which are of

1 course different from our laws, are that there was
2 fraud that was committed in that case.

3 It's my understanding, in fact, more than my
4 understanding. I know for a fact that our State
5 Board of Administration is a party to -- our pension
6 fund is a party to a class action lawsuit over the
7 same matter, to protect, if you will, the pension
8 funds, because we're shareholders as the State
9 there.

10 In the case of the general public, there's no
11 taxpayer interest directly here, but Florida has,
12 I'm sure, a number of Bank of America shareholders
13 whose interests, I presume, would be directly under
14 your supervision in terms of the Office of Financial
15 Regulation with regard to some aspect of this.

16 And I realize you don't enforce or you don't
17 regulate national banks. We don't regulate national
18 banks in Florida. But I believe there is an
19 enforcement role that the Office of Financial
20 Regulation has or could have. And the reason I
21 asked you to present something to us this morning is
22 just for clarification, so we all can understand the
23 status of this and where the law is relative to what
24 we could or couldn't be doing or should or shouldn't
25 be doing right now in relation to this issue.

1 So, Tom, if you would, I'd appreciate it if
2 you'd give us a briefing on that.

3 MR. CARDWELL: Thank you for the opportunity to
4 explain how this fits in the larger context of what
5 we do in Florida and what our agency does in dealing
6 with this. As you point out, Bank of America is
7 accused in this matter, the Merrill Lynch matter, of
8 doing two things; number one, that it failed to
9 disclose the Merrill Lynch bonuses and, number two,
10 that it failed to disclose losses which occurred
11 prior to Bank of America shareholders voting to buy
12 Merrill Lynch. And it has claimed that that failure
13 to disclose by Bank of America constitutes
14 securities fraud, for which Bank of America should
15 pay damages.

16 There are at least three separate proceedings
17 that are dealing with these issues. First, the
18 Securities Exchange Commission, the SEC has filed an
19 action on each of these allegations. There is a
20 settlement awaiting pending court approval in the
21 Southern District of New York before Judge Rakoff.

22 The settlement would provide both
23 administrative and regulatory remedies. It would
24 require Bank of America, for example, to have
25 independent audit supervision and disclosure

1 controls similar to those under Section 404 of
2 Sarbanes-Oxley. It would require special counsel to
3 the audit committee. It would require
4 super-independence of the compensation committee.
5 It would require the shareholders to vote on
6 executive comp.

7 And I tell you these things because one of our
8 jobs is not only to get restitution but also to
9 regulate to make sure that companies behave
10 according to the law. And it looks like the SEC is
11 addressing those issues.

12 In addition, the SEC settlement requires a
13 \$150 million penalty, all of which would be
14 distributed to harmed Bank of America shareholders
15 wherever they might be. The SEC settlement thus
16 addresses both the regulatory interests of people
17 involved, including the states, and it addresses
18 consumer harm.

19 The second thing that's going on in this front
20 is a class action, of which our SBA is a party to.
21 It is based on the same Merrill Lynch claims,
22 failure to disclose prior to the shareholders
23 buying. And the relief, if it's granted and if it's
24 ultimately proved, would enure to the shareholders,
25 the general public, the citizens in Florida. There

1 are four firms who are involved in that 155-page
2 complaint, and it's signed by 21 separate lawyers.
3 So if it is successful, it will recover the damages
4 for all investors, including Florida investors.

5 The third matter is the Cuomo suit, which has
6 been filed in addition. And it is against just two
7 individuals, who by the way are also named in these
8 other claims. But Cuomo, the attorney general of
9 New York, has filed -- has suits against Ken Lewis,
10 the former CEO and the former CFO.

11 As best I can tell reading it, these cases do
12 not ask for any relief different than that which is
13 asked for in either the SEC cases or in the class
14 actions. And I'll have to say that it has been
15 suggested by some that that is a matter of political
16 theater as much as it is of legal consequence to
17 people who actually own shares.

18 Now, what is the role of the OFR in this
19 situation which you've asked, and I don't purport to
20 speak to anybody else's role, but as to ours, how do
21 we think about this? There are multiple ships in
22 the sea of securities regulation. There are
23 multiple regulators who have concurrent
24 jurisdiction. There's the SEC. In addition, for
25 criminal matters, there's the Justice Department.

1 There's FINRA, relating to broker/dealers. There
2 are state securities regulators and in some states
3 there are states attorneys general.

4 There are the class action vehicle, which has
5 literally hundreds of law firms who vindicate
6 individual interests by class action. And there's
7 the right of private litigants to bring actions as
8 they want under the securities laws for this. So
9 there are a lot of opportunities to deal with
10 problems like we have by different parties.

11 One of the things that has been very important
12 to me in coming to the Office of Financial
13 Regulation, a state agency which like many state
14 agencies has resources that are less than one would
15 like, is prioritization. We need to prioritize what
16 we do and we need to use the assets that we have
17 where they are best and most effectively used.

18 We actually have far fewer securities lawyers
19 than the 24, I believe, who signed the class action
20 complaint. And I think, in fact, the number of
21 lawyers whose names appear on that civil relief is
22 just about the same number as we have total lawyers
23 in our complete organization. So that gives you an
24 idea of the scale, not to mention the SEC lawyers
25 who have weighed in on this, not to mention the

1 attorney general of New York's having weighed in on
2 it. And as you all know, our prospects for getting
3 additional staff to deal with this are probably -- I
4 guess minimal is the most charitable way to put it,
5 as we are right now.

6 So we at OFR have to respond to complaints in
7 Florida by citizens that the SEC, that the U.S.
8 attorney's office, that FINRA and that the attorney
9 general of New York are never going to look at. We
10 are in a real sense at OFR, the role that we serve
11 is the regulator of last resort for the citizens of
12 Florida, where others have not picked up on the
13 matter.

14 So when I look at the Merrill Lynch claims, the
15 first question I ask is, does it appear they are
16 being adequately addressed in other forums. And
17 it's my professional conclusion that at this point,
18 given what I have recited, the claims against Bank
19 of America for the Merrill Lynch activities are
20 being actively and competently, vigorously litigated
21 and defended.

22 My choice would have to be, to get involved in
23 this, to take resources away from claims that nobody
24 else is willing to handle and to throw them or to
25 put them to claims that many others are making in a

1 lot of other forums. And while I say this, it might
2 be good press to do that, in my professional
3 judgment, it is not the right priority. It would
4 not be the right thing for the OFR to do, given its
5 resources and what it has.

6 I will also point out and another factor in my
7 view of this whole situation is it is not clear that
8 OFR or even the Attorney General here at the State
9 of Florida has a claim to assert on behalf of
10 Florida citizens for restitution. And the reason
11 for that is, you will recall that last year the
12 Legislature beefed up our securities laws. And one
13 of the things that they beefed up in that was to
14 make clear that the State, the OFR and the AG, who
15 has authority now to also enforce that, would have
16 the right to get restitution, because it was not
17 clear under prior law that there was such a right.

18 And I can tell you that in my private practice
19 life before in the securities area, I had advised
20 clients that it was doubtful that the State, under
21 existing laws, prior to July 1st, 2009, could
22 actually compel restitution.

23 And so you can -- and let me say that our law
24 became effective July 1st, 2009. The acts that are
25 in question for the Merrill Lynch acquisition here

1 occurred in September, October and November of 2008.
2 And I think almost any lawyer will tell you that our
3 act is not retroactive. So you can imagine that if
4 our agency filed a claim on behalf of the citizens
5 of Florida for restitution, it would be challenged
6 whether we even had the authority to do that. So
7 that is another factor in the way that I think about
8 how to do this.

9 So the conclusion, Attorney General McCollum
10 and members of the Cabinet, that I came to is what
11 is the role of the OFR here. And it is certainly to
12 continue to monitor all of the pending developments.
13 If it appears that there's a constructive role for
14 us to play that is not being addressed by others,
15 then at that point we should consider what we should
16 do that is consistent with the resources that we
17 have available to do it, with the allocations that
18 we have.

19 And I fully intend to work and consult with
20 you, Attorney General McCollum, and your office and
21 the Cabinet with respect to this issue and to follow
22 it going forward to make sure that the interests of
23 the citizens of Florida are being actively
24 vindicated.

25 So, conclusion, my conclusion to all this is

1 that the Bank of America acquisition of Merrill
2 Lynch is frankly a national issue that has attracted
3 a lot of heavy artillery. And from what I can tell,
4 the current battles vindicate the interests of
5 Florida citizens.

6 At OFR we have limited powder, and we need to
7 shoot at our local rattlesnakes which are coming out
8 and striking at our citizens, which none of these
9 other people are going to go after. So that's where
10 we are. And I'm certainly, any questions, happy to
11 answer.

12 ATTORNEY GENERAL McCOLLUM: Thank you very
13 much, Commissioner, for that very good erudition on
14 where we are on in the status of this matter. That
15 Investor Protection Act that you referred to that
16 became law this year was one that we urged out of
17 our office to be passed. And I'm really pleased
18 it's there. But as you point out, it wasn't there
19 before, so it makes it very difficult. You can't go
20 back on those sorts of things, as you pointed out,
21 with retroactivity.

22 But I want you to know that our office stands
23 ready, the Attorney General's Office, to help you.
24 I know your resources are limited in a lot of ways.
25 And now that we have this new power under the

1 Investor Protection Act, any time you see something
2 or we see something dealing with fraud in securities
3 and so on that affects our people in Florida, the
4 investors in Florida, we want to stand ready to help
5 you. So don't hesitate to holler at us.

6 I would point out that with regard to Bank of
7 America, we have one thing we do have jurisdiction
8 over. You may recall that Countrywide was acquired
9 by Merrill Lynch -- or excuse me -- acquired by Bank
10 of America, and that was acquired in a way that also
11 brought with it a lawsuit that we had against
12 Countrywide about subprime lending. Bank of America
13 settled that.

14 And we were appreciative of their settlement.
15 But they did not provide people in the state, human
16 beings to actually be there to help negotiate
17 readjustments of mortgages, Governor. There was
18 nobody you can go to, to my knowledge, still nobody
19 in a normal retail banking outlet to talk to about
20 renegotiating your mortgage, under the terms of our
21 agreement or any other term.

22 They have recently sent folks here at our
23 request. We had a nice meeting with them. And I
24 want to commend them for doing that. They sent a
25 team in to look at this. But that's still under

1 review. I am concerned about it. I think that is
2 an area of concern for Florida. I'm obviously
3 concerned, like you are, with what's going on with
4 this other matter, too. But I think you put it in
5 the proper perspective.

6 It's our State Board of Administration that
7 already is involved with the class action lawsuit,
8 and the federal government, the SEC, that has the
9 primary role and the only legal role in this Merrill
10 Lynch matter. But thank you for coming in and
11 telling us today. Thank you.

12 GOVERNOR CRIST: Thank you. CFO?

13 CFO SINK: Thank you, Governor. Mr. Cardwell,
14 I just -- with all due respect, I'm not really
15 impressed with the comments you made. I think that,
16 as a reminder, you weren't here, but the last
17 commissioner lost his job because he hid behind,
18 well, not having powers or not having resources or
19 not being really able to go after in that case
20 mortgage brokers, when we were just inundated by
21 complaints in this situation.

22 And I really want to encourage you to come --
23 to come before this Commission and plead that you
24 can't do anything or you can't take action because
25 you don't have resources is not a good excuse. The

1 Attorney General just said, he's sitting over here
2 with hundreds and hundreds of lawyers on his staff
3 who would be able to get involved with you and
4 provide legal assistance.

5 And my main frustration, as I've told you
6 privately, with the Office of Financial Regulation
7 for the last three years is just a sense of
8 do-nothingness and inaction in the face of all sorts
9 of scams that have occurred here in our state. I
10 was particularly interested in bringing you aboard
11 because of your background in securities enforcement
12 and legislation. And as for me, I'm just ready to
13 see something more aggressive.

14 And the reason I want to see something more
15 aggressive is because citizens and people are being
16 hurt out there. Lots of citizens, whether it's
17 through their retirement plan or whatever, have been
18 damaged by the actions that were taken in the Bank
19 of America and Merrill Lynch situation, and proven
20 by the fact, as you say, that the SEC has been
21 taking action. But the SEC itself, they tried to
22 enter into a decree or a consent with the Bank of
23 America for \$50 million in one of the actions, and
24 the judge threw it out because he said it wasn't
25 sufficient. It was just a slap on the hand.

1 And the fact that in these -- on behalf of the
2 pension funds, Florida is just riding along. We're
3 not really a participant. The lead plaintiffs were,
4 listen to this, CalPERS, CalSTRS, the retirement
5 system of Ohio, the Ohio Public Employees'
6 Retirement System, the Teacher Retirement System of
7 Texas.

8 These are all really big players, who they took
9 the lead in determining whether or not the investors
10 in this situation have been misled. And I'm hoping
11 that and thinking that when Director Williams comes
12 from the SBA at our next SBA meeting, that he's
13 going to discuss with us whether or not Florida --
14 we're the fourth largest pension firm in this
15 country. And according to the general counsel, the
16 SBA told some of my staff people that we had as much
17 as \$180 million in losses as a result of this
18 fiasco.

19 So my bias is that we've just been entirely too
20 passive. And, General McCollum, I think it's
21 fantastic that we got the new act passed in the
22 Legislature last year to enable you to be more
23 aggressive and more forthright about protecting
24 Florida investors. It just doesn't make any sense
25 to me to shoot at the little rattlesnakes when there

1 are big rattlesnakes out there that need to be cut
2 off at the head sometimes.

3 MR. CARDWELL: Well, with all due respect,
4 Commissioner Sink, when you voted for me for this
5 job, you voted for me to use my best professional
6 judgment with what to do with the resources that we
7 have and within the circumstances in which we find
8 ourselves.

9 We have a case with the Merrill Lynch case,
10 which is under discussion here, and Bank of America,
11 in which the claims and the interests of the
12 citizens of Florida, to the best of my knowledge,
13 are being fully and completely vindicated on at
14 least three fronts. And as I sit there in my office
15 and try to consider, with the resources that I do
16 have -- this is not an excuse. This is not trying
17 to say I don't want to do it. It's saying I
18 legitimately have 28 lawyers, all totaled, who are
19 covering securities, are covering banking, who are
20 covering all of these other areas in there.

21 For me to pull them off of these jobs and to
22 throw them into a fray in which, as best I can tell,
23 the citizens of Florida are being fully vindicated
24 is not in the best interest of the citizens of
25 Florida.

1 The complaints that we hear, that we get and
2 that we're asked to deal with are frequently small
3 people, are frequently individuals, are people that
4 the SEC is never going to look at. They throw
5 beneath their minimums. And somebody needs to pay
6 attention to those people. And, as I say, we're the
7 regulator of last resort. We are asked to do that.

8 And so the views that I've expressed here --
9 and I understand you disagree with me on this. But,
10 respectfully, I think we are being aggressive.
11 We're being aggressive where we need to be
12 aggressive, and I am certainly personally doing my
13 best to get this industry -- to get this agency to
14 effectively represent the interests of the citizens
15 of Florida, who are the people obviously to whom I
16 answer.

17 CFO SINK: Well, Governor, maybe --
18 Commissioner Cardwell continues to say that he
19 doesn't have sufficient resources to get the job
20 done. Perhaps you should come back to our staffs
21 and present to us, to our staffs and also to us,
22 because we're the board -- we're the ultimate
23 authority, your best assessment of what it would
24 take to be an effective protector of consumers in
25 this state.

1 ATTORNEY GENERAL McCOLLUM: If I might.

2 GOVERNOR CRIST: General.

3 ATTORNEY GENERAL McCOLLUM: CFO Sink, with all
4 due respect, I've been listening to this exchange,
5 and I think one thing is being missed here, and that
6 is that, I believe I'm right, Commissioner Cardwell
7 has told us and I would concur in this, and that is
8 that even with more resources, even though that is
9 an issue for him -- and going forward we're going to
10 be there with the new Investor Protection Act to
11 help him, which we weren't before.

12 But even with more resources right now, in the
13 case of Merrill Lynch and Bank of America, there's a
14 problem because the law that was in effect at the
15 time is not one that would have given him the tools
16 to seek any restitution for the people of Florida.

17 So I think the real key to this is that
18 not only -- maybe he does need more people. We need
19 to wait and see for the future. But the case that's
20 in point occurred before the new law went into
21 effect. And I don't think, from what you're telling
22 us, Tom, that you think that there was a good case,
23 even if you had the personnel, for Florida. And you
24 think that, of course, the SEC and others are
25 protecting them already. Am I right about that?

1 MR. CARDWELL: Yes. There's a real problem
2 with that. A court would ultimately have to decide
3 that. But one of the reasons that the law was
4 changed last time, you're absolutely correct,
5 Attorney General McCollum, was that it was unclear
6 that the State had the right to press for relief for
7 individuals for restitution. And it hasn't been
8 decided, but I personally took the position
9 representing clients and thought that the better
10 argument was that the State did not have the
11 authority to do anything.

12 And so if we were to go in and file an action
13 right now, the first thing we'd run into is a
14 defense that, well, you didn't have the authority
15 before you changed the statute. You didn't
16 afterwards, and you can't do anything.

17 ATTORNEY GENERAL MCCOLLUM: But any time you
18 see -- going forward, again, I want to repeat, any
19 time you see an issue in the securities area now,
20 Scott Palmer, who is actually sitting here with us
21 here today, and others in my shop are ready to help
22 you and ready to supplement what I know is a
23 staff -- and hopefully you won't need more people
24 over there to do this sort of thing. We can come in
25 and do the litigation and all with you. But let's

1 wait until we get one that's ripe to do that. Thank
2 you.

3 GOVERNOR CRIST: Thank you, Commissioner.

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1 GOVERNOR CRIST: Board of Trustees, Secretary
2 Sole.

3 MR. SOLE: Governor, Cabinet members. Good
4 morning.

5 GOVERNOR CRIST: How are you?

6 MR. SOLE: I'm well. Thank you, sir.

7 GOVERNOR CRIST: Good, good.

8 MR. SOLE: Item Number 1, submittal of the
9 minutes, November 17th, 2009, Cabinet meeting.

10 GOVERNOR CRIST: Is there a motion on the
11 minutes?

12 CFO SINK: Move it.

13 ATTORNEY GENERAL McCOLLUM: Second.

14 GOVERNOR CRIST: Moved and seconded. Show the
15 minutes approved without objection.

16 MR. SOLE: Thank you. Item Number 2, this is a
17 consideration of an option agreement to acquire an
18 addition to the Florida Fish and Wildlife
19 Conservation Commission's Aucilla Wildlife
20 Management Area. It's a 28 -- little over
21 2,800-acre acquisition. Consideration is for
22 \$5.2 million, which is 94 percent of the appraised
23 value.

24 The property is within the St. Joe Timberland
25 Florida Forever Project. This is one of our top 21

1 high priority project efforts. The good news is
2 this will also connect the existing Aucilla Wildlife
3 Management Area to St. Marks National Wildlife
4 Refuge. The Department recommends approval.

5 ATTORNEY GENERAL McCOLLUM: I move Item 2.

6 CFO SINK: Second.

7 GOVERNOR CRIST: Moved and seconded. Show it
8 approved without objection.

9 MR. SOLE: Item Number 3, this is a request
10 from SeaCoast Gas Transmission and TECO People's Gas
11 for a total of four easements crossing Board of
12 Trustees' owned land. This is for a 51-mile natural
13 gas pipeline project, of which only six miles will
14 access or affect Board of Trustees lands. The two
15 locations are Jennings State Forest, located in Clay
16 County, for roughly a 30-acre impact for 50 years,
17 and Julington-Durbin Preserve, which is located in
18 Duval County.

19 The consideration is a combined easement fee of
20 \$70,000, plus a public interest addition of 1.5
21 times the value, which will be provided in land,
22 expected to be some roughly 40 acres of addition to
23 the boundary of the Jennings State Forest there in
24 Clay County.

25 The good news is TECO and SeaCoast have done a

1 good job in co-locating the natural gas pipeline
2 along many of the existing easements, FPL's electric
3 transmission line easement as well as roadways, and
4 JEA easements. The natural gas pipeline will
5 primarily serve the Greenland Energy Center from JEA
6 and will provide that area with clean natural gas.
7 The Department recommends approval.

8 GOVERNOR CRIST: Is there a motion on 3?

9 CFO SINK: Move it.

10 ATTORNEY GENERAL McCOLLUM: Second.

11 GOVERNOR CRIST: Moved and seconded. Show it
12 approved without objection.

13 CFO SINK: Governor, could I make a comment
14 about this project, please?

15 GOVERNOR CRIST: Of course.

16 CFO SINK: Secretary Sole, as we were reviewing
17 this, this is the second one, because we had a
18 previous one, gas transmission line. And I
19 mentioned in that previous meeting that it would
20 result in many jobs being provided for Floridians.
21 And as my staff and I were reviewing this project, I
22 also asked them to go back, and they had the
23 indication that this project will provide about 150
24 jobs for not -- probably not all Floridians because
25 of some of the specialized nature, but the

1 specialized employees who will be coming in here
2 will be hopefully spending the night in our motels
3 and hotels and eating at our restaurants and helping
4 our economy. And hopefully they will also be buying
5 some of their materials in our stores and improving
6 our sales tax collections, Governor.

7 But I had kind of a big light bulb go on
8 because, subsequently, we're also going to be
9 talking about the expansion of a marina in one the
10 next items.

11 MR. SOLE: Yes, ma'am.

12 CFO SINK: The reason I wanted to bring it up
13 here was, it just occurred to me that in this
14 economy, when we're trying to expedite any kind of
15 job creation and we're so desperate for job
16 creation, there are probably numerous projects that
17 are in the permitting process over at the DEP that I
18 at least would be curious to have you or interested
19 in having you go and outline for us all the projects
20 that are currently in the permitting process and
21 maybe tell us what dates that you started working on
22 them or the application was filed, and look back and
23 determine whether or not any of these projects, just
24 through the simple effort of expediting some of this
25 permitting, we could bring those items up before us

1 as the Board of Internal Improvement, Board of
2 Trustees, and get these jobs out for Floridians in a
3 more expedited process.

4 Is that something that would be a reasonable
5 request?

6 MR. SOLE: Yes, ma'am. I think I understand
7 the question. For example, in this case, they're
8 ready to go. They are ready to bring people to
9 Florida and get them working within, I think, a week
10 or two and have this project underway. And but for
11 getting this easement, that's what's holding them
12 up.

13 So I think we can give kind of a forensic look
14 at, here are the projects that are in the queue,
15 without going through every project, but here are
16 the key projects that are in the queue that have job
17 creation potential, and here's where we're at and
18 here is how we can try to facilitate that. If
19 that's the request, I think we can do that.

20 CFO SINK: Yeah, because if we had been able to
21 get this a month or 60 days ago, you know, 150 more
22 people would be at work today that weren't 60 days
23 ago. So thank you. I look forward to having you do
24 that review.

25 MR. SOLE: Thank you, ma'am.

1 GOVERNOR CRIST: He's already done it, just so
2 you know. It's been a while ago that I directed all
3 of our agency heads that had construction projects
4 as part of their ability to accelerate that process
5 and to move forward faster in order to produce more
6 jobs. And they have done that at the Department of
7 Education, at the Department of Environmental
8 Protection and many others. And so we will continue
9 to do it and ratchet it up more.

10 MR. SOLE: Yes, sir, we will.

11 CFO SINK: Thank you.

12 MR. SOLE: Thank you. Speaking of jobs, Item
13 Number 4, this is consideration of an application
14 from Murrelle Marina. It's an open-to-the-public
15 docking facility. Currently they have 39 slips.
16 They want to expand to some 65 slips. It's located
17 in Palm Beach County. There is some small dredging,
18 roughly a half an acre of dredging to a depth of
19 4.5 feet mean low water.

20 While there's no direct seagrass impacts, there
21 is some potential seagrass habitat. So there is
22 some shoreline mitigation to offset those impacts.
23 The consideration is for \$19,400, and the upland use
24 is a shipyard and boat repair facility, as well as
25 40-slip dry storage.

1 Because the vessels at this facility may be
2 larger, roughly 80 foot, the Department has also
3 asked that they provide pump-out capacity at the
4 facility. It can be portable pump-out, but we felt
5 that it was appropriate, and the applicant has
6 agreed. The Department recommends approval.

7 ATTORNEY GENERAL McCOLLUM: I move Item 4.

8 CFO SINK: Second.

9 GOVERNOR CRIST: Moved and seconded. Show it
10 approved without objection.

11 MR. SOLE: Thank you. Item Number 5, this is a
12 request from Palm Beach International Boat Show for
13 a one-year special event lease renewal and
14 modification, preempting some roughly 27.5 acres for
15 a 621-temporary-slip facility for the Lake Worth
16 Lagoon Palm Beach County Boat Show.

17 The boat show is going to be held March 25th
18 through 28th this year. There is roughly a \$16,900
19 consideration, albeit the expectation is the
20 five percent off the gross rentals will increase
21 that consideration. Yachting Promotions operates
22 some eight additional boat shows throughout the
23 state of Florida. Six of them are on sovereign
24 submerged lands. In fact, right now, if I'm not
25 mistaken, the Miami Boat Show is underway, and

1 they're operating there as we speak.

2 There have been some minor compliance issues in
3 the past. The good news is they are fully in
4 compliance. Again, we inspected the Miami Boat
5 Show. They are in compliance. But the Department
6 is recommending that it be a one-year lease, with
7 delegation of the Department, as long as continued
8 compliance occurs, that we would be able to extend
9 that for an additional four-year period. The
10 Department is recommending approval.

11 CFO SINK: Governor --

12 GOVERNOR CRIST: Is there a motion on Item 5?

13 CFO SINK: Well, I'll move it, but I want to
14 make a comment about this one, please.

15 GOVERNOR CRIST: I'll second it, so we're in a
16 good posture.

17 CFO SINK: Okay. You did mention the fact that
18 this particular lessor really has a long history of
19 noncompliance and pushing the law. And their
20 presence at the boat show is important. I got to go
21 myself to the Palm Beach Boat Show last year. It
22 was very impressive, lots of economic activity going
23 on. So we certainly want to encourage this
24 activity.

25 But it continues to distress me. And I think

1 you've taken good action here by not -- you have not
2 given them a five-year lease but rather put them on
3 a short leash --

4 GOVERNOR CRIST: A short lease.

5 CFO SINK: -- to determine whether or not they
6 can get their act straight. But I clearly hope, and
7 the reason I'm making my comments is that I hope you
8 will pass along to them the extreme dissatisfaction
9 with the continued noncompliance and just kind of
10 rubbing our face in it and acting as if they can
11 take license with their permits, while every other
12 provider and vendor is trying to abide by the laws.

13 So my hope is that they do everything that
14 they're supposed to do and they comply and they
15 follow the rules, or else they understand that you
16 will not be giving them a renewal for next year, and
17 perhaps some other provider would be able to come
18 in.

19 MR. SOLE: Yes, ma'am. I'm sure we'll be able
20 to convey that. We have Mr. Graziano here, Dane
21 Graziano.

22 GOVERNOR CRIST: Good morning, sir. How are
23 you?

24 MR. GRAZIANO: Good morning, Governor. I want
25 to clarify something --

1 GOVERNOR CRIST: Sir, would you state your name
2 for the record?

3 MR. GRAZIANO: I'm Dane Graziano, the senior
4 vice-president and COO of Yachting Promotions.

5 GOVERNOR CRIST: Thank you.

6 MR. GRAZIANO: Mrs. Sink, I want to clarify
7 something with you. I've been doing this here with
8 the Cabinet for 20 years, and I take this really
9 serious. I have a track record of 113 events, 113
10 marinas that we've built in 20 years. I have four
11 noncompliance issues. All four were regulatory
12 issues. This one that was current was a
13 non-notification by the State. They transferred the
14 deed to the City. The City transferred to the State
15 and didn't notify me.

16 So I was late getting a permit, but it was a
17 little bit of an action where the City and the State
18 transferred an existing deed and never notified the
19 occupant. I had a lease there. And we got caught
20 in the middle of it. And those are the three other
21 violations I've had.

22 So I want you to know that I take this very
23 seriously. I've been here for 20 years. Tim Rach,
24 who we've both known each other for 15 years, he did
25 his first submerged land lease with me 15 years ago.

1 So I just want to go on record that I do take this
2 seriously. I honor everything the State does, and
3 we do create a lot of jobs and revenue for our
4 industry.

5 CFO SINK: Well, hopefully everything will be
6 perfect next year when you come back and we'll be
7 able to enter into a five-year lease like you
8 prefer.

9 MR. GRAZIANO: My understanding is this is a
10 one-year based on my performance, and it will be
11 automatically renewed by the Department's
12 recommendation.

13 CFO SINK: That's right.

14 MR. GRAZIANO: Thank you for your time.

15 GOVERNOR CRIST: Thank you for your time.

16 MR. SOLE: That concludes --

17 GOVERNOR CRIST: It's been moved and seconded.
18 She moved it. I seconded.

19 MR. SOLE: You seconded, yes, sir, Governor.

20 GOVERNOR CRIST: And show it approved without
21 objection. Thank you.

22 MR. SOLE: Thank you, Cabinet members.

23 (Whereupon, the meeting was concluded at 10:30
24 a.m.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF LEON)

I, Jo Langston, Registered Professional Reporter,
do hereby certify that the foregoing pages 4 through 49,
both inclusive, comprise a true and correct transcript of
the proceeding; that said proceeding was taken by me
stenographically and transcribed by me as it now appears;
that I am not a relative or employee or attorney or counsel
of the parties, or a relative or employee of such attorney
or counsel, nor am I interested in this proceeding or its
outcome.

IN WITNESS WHEREOF, I have hereunto set my hand
this 1st day of March 2010.

JO LANGSTON
Registered Professional Reporter

