

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

January 27, 2004

MEMBERS

Governor Jeb Bush
Attorney General Charlie Crist
Chief Financial Officer Tom Gallagher
Commissioner Charlie Bronson

Contact: Andrew Price (OFR)
(850) 410-9896

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

<u>ITEM</u>	<u>SUBJECT</u>	<u>RECOMMENDATION</u>
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| 1. | Adoption of amendments to Rule 3E-600.015, F.A.C. The amendments clarify the standards by which the Office will exercise its discretion for granting a 30-day extension to a Dealer or Investment Adviser for filing audited financial statements. | |
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(ATTACHMENT 1)

FOR ACTION

- | | | |
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| 2. | Presentation of the Quarterly Report of the Office of Financial Regulation for the period October 1, 2003 through December 31, 2003. | |
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(ATTACHMENT 2)

FOR INFORMATION

ATTACHMENT

1

Adoption of Amendments to Rule 3E-600.015, F.A.C

BACKGROUND AND EXPLANATION OF THE RULE

Rule 3E-600.015(2), F.A.C. requires Dealers and Investment Advisers to file audited financial statements within 90 days after the conclusion of the registrant's fiscal year. Rule 3E-600.015(2) allows the department to grant a 30-day extension to a Dealer and Investment Adviser for the filing of the statements for good cause shown. The prior rule language stated that the Office "may allow up to a thirty (30) day extension" (emphasis added) for good cause shown.

While in the process of updating another section of the rule (Rule was brought before the Commission at the September 18, 2003 meeting), JAPC informed the department that the use of the term "may" was problematic in that it allowed the Office unbridled discretion to grant or deny an extension. Such discretion is not permitted under current law. The Office agreed to amend the rule to provide a standard by which the Office could exercise its discretion.

The proposed amendments to the rule delete the word "may" and replace it with the word "will". The rule further provides a standard under which the discretion will be exercised by defining "good cause" to include excusable neglect or circumstances beyond the control of the registrant. This standard is analogous to case law construing excusable neglect. These amendments should alleviate JAPC's concerns by providing the Office with a clear standard under which the Office will exercise its discretion.

FAW NOTICE FOR RULE 3E-600.015

NOTICE OF PROPOSED RULE

OFFICE OF FINANCIAL REGULATION

RULE TITLE: RULE NOS.:

Financial Reporting Requirements – Statement
of Financial Condition – Dealers
and Investment Advisors 3E-600.015

PURPOSE AND EFFECT: The purpose and effect of this proposed rule amendment is to implement standards by which the discretion afforded in Rule 3E-600.015(2)(a) will be used.

SUMMARY: The proposed rule amendment clarifies that the agency will grant an extension of time if good cause is shown, and defines “good cause” for purposes of this rule.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: No statement of estimated regulatory cost has been prepared.

Any person who wishes to provide information regarding the statement of estimated regulatory costs, or to provide a proposal for a lower cost regulatory alternative, must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 517.03(1), 517.12(9), 517.121(2), FS.

LAW IMPLEMENTED: 517.12(9), 517.121(2), FS.

IF REQUESTED IN WRITING WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW (IF NOT REQUESTED, THIS HEARING WILL NOT BE HELD):

TIME AND DATE: 3:00 p.m., Tuesday, January 20, 2004

PLACE: Room 547, Fletcher Building, 101 East Gaines Street, Tallahassee, Florida

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this program, please advise the Department at least 5 calendar days before the program by contacting the person listed below.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE

DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT, IF AVAILABLE, IS: Bill Reilly, Bureau Chief, Bureau of Securities Regulation, 200 East Gaines Street, Fletcher # 604, Tallahassee, Florida 32399-0350 (850) 410-9805.

THE FULL TEXT OF THE PROPOSED RULES IS:

3E-600.015 Financial Reporting Requirements - Statement of Financial Condition - Dealers and Investment Advisers.

- (1) Except as otherwise specifically noted in this rule, an applicant filing an application for registration as a dealer or investment adviser shall file a balance sheet in accordance with 3E-300.002.
- (2) Every dealer registered pursuant to Section 517.12, F.S., and Rules thereunder shall file annually with the Department, within ninety (90) days after the conclusion of said registrant's fiscal year, audited financial statements as prepared by an independent outside auditor, unless exempted under Rule 3E-300.002.
 - (a) The Department ~~will~~ ~~may~~ allow up to a thirty (30) day extension of the filing requirement as set forth in this subparagraph provided written request is made prior to the date such audited report is due to be filed, and provided further that good cause for such delay is shown. Good cause shall include excusable neglect or circumstances beyond the control of the registrant.
 - (b) Every dealer defined as a broker/dealer under Rule 3E-300.002 shall be required to include in such audited financial statements filed verification of said broker/dealer's compliance with the provisions of Rules 3E-600.016 and 3E-600.017.

(c) In lieu of the provisions of paragraph (b) above, the Department will accept those statements prepared and filed by a dealer in accordance with the provisions of S.E.C. Rule 17a-5 (17 CFR 240.17a-5) and S.E.C. Rule 17a-10 (17 CFR 240.17a-10), as such rules existed on July 1, 2003 ~~February 28, 1992~~.

(3) Every investment adviser registered pursuant to Section 517.12, F.S., and Rules thereunder shall file annually with the Department, within ninety (90) days after the conclusion of said registrant's fiscal year, financial statements as of fiscal year end, such statements prepared in accordance with the provisions of Rule 3E-300.002.

(4) The provisions of paragraph (2)(a) of this Rule apply to the filing requirements set forth in subsection (3).

Specific Authority 517.03(1), 517.12(9), 517.121(2) FS. Law Implemented 517.12(9), 517.121(2) FS. History - New 12-5-79, Amended 9-20-82, Formerly 3E-600.15, Amended 6-16-92, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Bill Reilly, Bureau Chief, Bureau of Securities Regulation, 200 East Gaines Street, Fletcher # 604, Tallahassee, Florida 32399-0350 (850) 410-9805.

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Don Saxon, Director, Office of Financial Regulation

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: December 16, 2003

DATE NOTICE OR PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: October 24, 2003.

ATTACHMENT

2

Office of Financial Regulation

Quarterly Report to

The Financial Services Commission



Don B. Saxon

Director

December 31, 2003



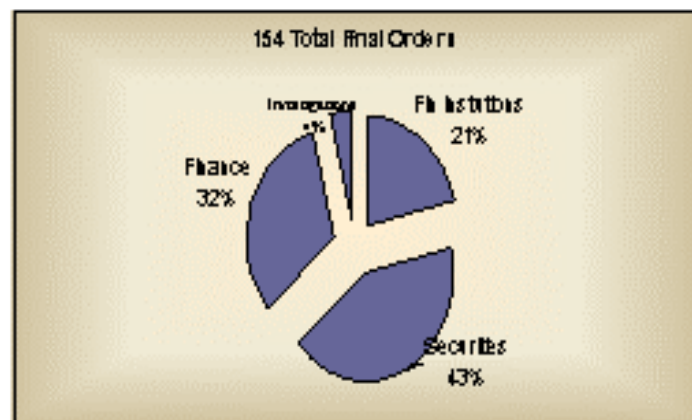
Office Of Financial Regulation

The Office of Financial Regulation (Office) is dedicated to safeguarding the private financial interests of the public by licensing, chartering, examining and regulating depository and non-depository financial institutions. The Office protects the investing public from investment and securities fraud while facilitating capital formation in the State.

Initiatives

- Examination/Investigative sweep of licensed & unlicensed Money Transmitters. Combined effort of Financial Institutions, Finance Regulation & Financial Investigations.
- Preparation for visit by CSBS Reaccreditation Team
- Development & implementation of Continuity of Operations Plan (COOP) & Disaster Response Coordination Plan

Final Orders Issued (July-Dec 2003)



As of 12/31/03

Significant Events

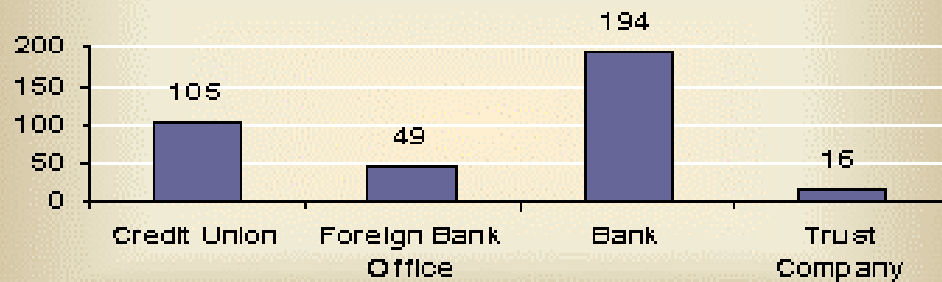
- ❖ **Florida's First District Court of Appeals** affirmed a final order entered by OFR which determined a payphone leaseback scheme was an investment contract, and therefore subject to regulation by OFR under Chapter 517. DCA stated that, although Florida's securities laws are similar to federal laws and the 11th Federal Circuit recently held a similar scheme was not a security under federal law, that construction is not determinative of Florida law and need not be followed by OFR. The court appears to have approved the distinction argued by OFR that the federal act emphasizes 'the protection and stability of the capital markets,' while Florida law is primarily directed at 'the protection of the private individual.'
- ❖ Participated in **North American Securities Administrators Association (NASAA) Organizational Meeting**
- ❖ Participated in **NASAA Securities Industry Regulatory Continuing Education Council Meeting**
- ❖ Spoke at **Securities Industry Association (SIA) Conference**
- ❖ Participated in **National Association of Securities Dealers (NASD) Steering Committee**
- ❖ Testified at **Senate Banking & Insurance Committee** regarding Viaticals
- ❖ Spoke at **Federation of Latin American Banks (FELABAN) Annual Meeting**
- ❖ Participated in **International Dialogue Day**



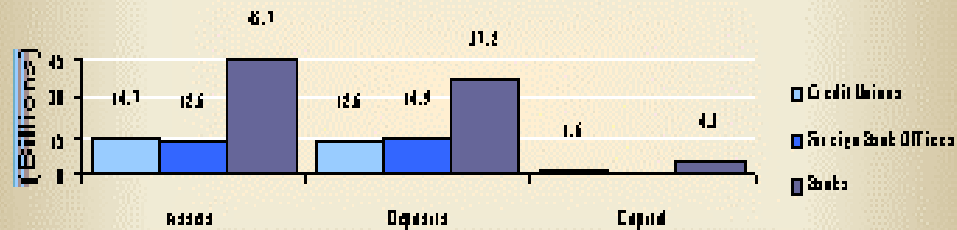
Financial Institutions

Ensure the safety and soundness of the state financial institution system. Support efforts to promote Florida's domestic and international financial services industries.

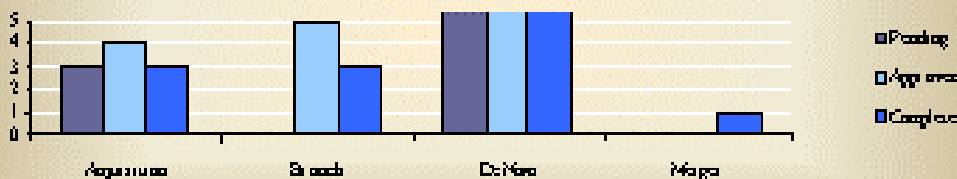
Number of Institutions



Financial Data (as of 9/30/03)

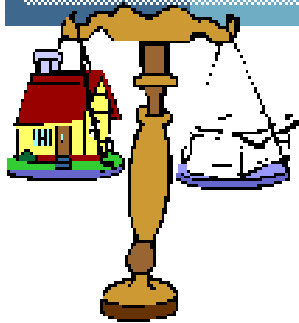


Licensing & Chartering: July 1- December 31



Significant Events

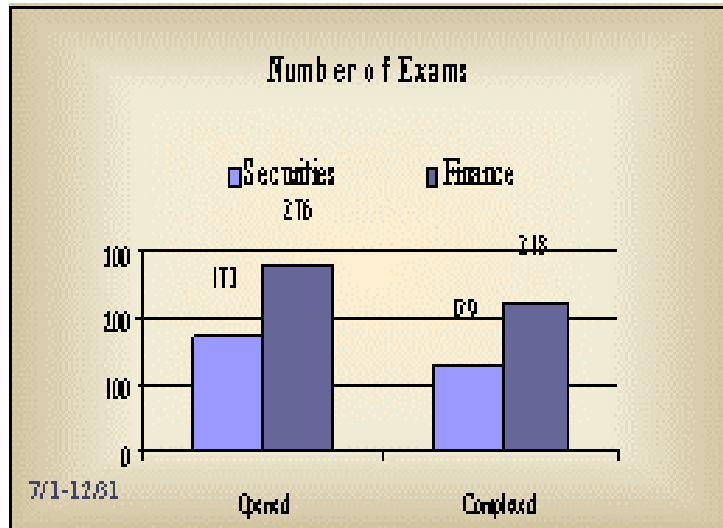
- ◆ Conference of State Bank Supervisors' reaccreditation review team will conduct a review of OFR in April 2004. OFR has been accredited since October 1988
- ◆ National Association of State Credit Union Supervisors will conduct its initial accreditation evaluation of OFR during the 2nd Qtr. of 2004
- ◆ Application to establish Great Florida Bank (Miami) filed October 21st
- ◆ Application to establish First America Bank (Osprey) filed October 22nd
- ◆ Application to establish American First Bank (Clermont) filed October 31st
- ◆ Application to establish Synovus Bank of Jacksonville (Jacksonville) filed November 5th
- ◆ Application to establish Globalbank (Miami) filed November 14th
- ◆ Application to establish Nature Coast Bank (Crystal River) filed December 11th
- ◆ Application to establish an international representative office by Banco Financiera Comercial Hondurena, S.A. (Honduras) filed December 24th
- ◆ Mainstreet Community Bank (DeLand) opened October 24th
- ◆ First Bradenton Bank, FSB converted to a state bank December 1st
- ◆ First Priority Bank (Bradenton) opened December 8th
- ◆ 86% of new banks in Florida during FY02-03 were state chartered
- ◆ 76% of "customer satisfaction" surveys returned rate OFR 2 or better on a scale of 1-5 (1 being highest, 5 being lowest)
- ◆ Institutions Under Formal Administrative Action: 5



Bureaus of Finance and Securities Regulation

Regulate non-depository financial service companies & related industries; protect consumers from illegal financial activities; protect the investing public from investment & securities fraud while facilitating capital formation in the State.

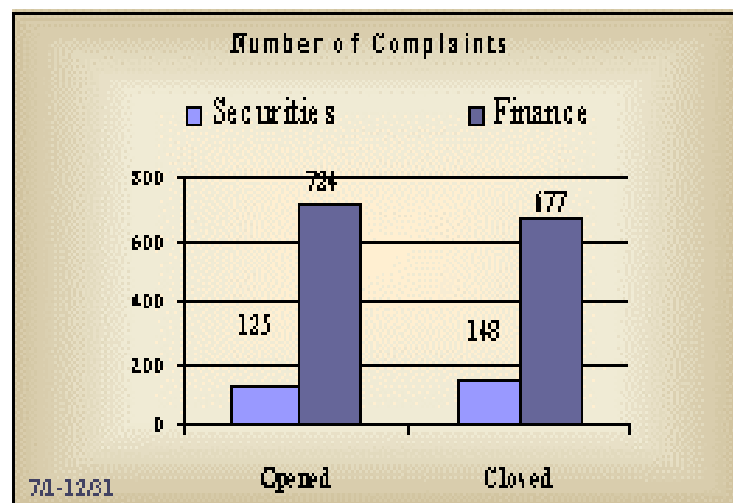
Significant Events



◆ OFR received the final payments from the 10 Wall Street firms settlements related to research analyst conflicts of interest. Florida received a total of \$19,087,642 from nine firms in reference to the settlement (in addition to \$2 million previously received from Merrill Lynch). Funds have been deposited to the State Working Capital Trust Fund.

◆ Securities staff participated in a panel discussion of the new Securities & Exchange Commission (SEC) Books and Records Rule at the National Association of Securities Dealers (NASD) fall conference. The session was attended by securities professionals from various states.

◆ On 12/19/03, the Office issued an Administrative Complaint against Edgar McLean. The Complaint alleged McLean sold approximately \$7 million in ETS Payphones, which was not a registered security in the State of Florida. Also included in the complaint was notice of intent to deny McLean's application for registration as an associated person of Sicor Securities Inc.



◆ Finance staff provided a seminar for the Miami chapter of The Florida Association of Mortgage Brokers on how to prepare for an examination. The class was attended by 150 mortgage brokers. Several other local chapters asked for the presentation at their upcoming meetings.

◆ The Bureau of Finance Regulation held its Annual Training Program in Ft. Lauderdale in October. The program was comprised of two separate training curriculums, with one structured specifically for new examiners.

◆ The Bureau of Finance Regulation is in the process of re-writing all examination modules for review of Mortgage Brokering and Lending entities, Retail Installment Sales entities, and Consumer Finance Companies.



Bureau of Regulatory Review

Review all applications to conduct business as a financial service company or securities firm; review license applications for individuals; and impose licensing restrictions or deny licensure based on findings.

July 1 – December 31

Licenses Approved	36,797	Renewals, Filings & Public Record	
Denied/Withdrawn	1,070	Requests Received:	63,729
Licensed w/Restrictions	42		

Significant Events

◆ The Bureau took action against five Chapter 520, Retail Installment Act, applicants for operating without a license. These were previous licensees who failed to renew and continued to operate without a current license.

◆ As of December 31, 2003, 84% of collection agencies had renewed on-line. Last year, 79-88% of firms (based on the type of company) chose to renew electronically via the web.

◆ The number of mortgage broker test candidates continued to increase as of the last quarter of 2003. The monthly average has increased from 1,039 candidates in 2001 to 2,235 candidates in 2003 - a 115% increase during this time period.

◆ Securities firms and individual registrants were required to renew their licenses for the 2004 calendar year by a statutory deadline of December 31, 2003. As of the deadline over 222,000 firms and individuals had renewed.

◆ The Bureau also invoiced 3,700 broker dealers, investment advisers, issuer dealers, and agents not on Central Registration Depository (CRD) or Investment Advisor Registration Depository (IARD) for renewal of their licenses by the December 31, 2003 statutory deadline. As of December 31, the Bureau had received renewal payments for 83% of those eligible.

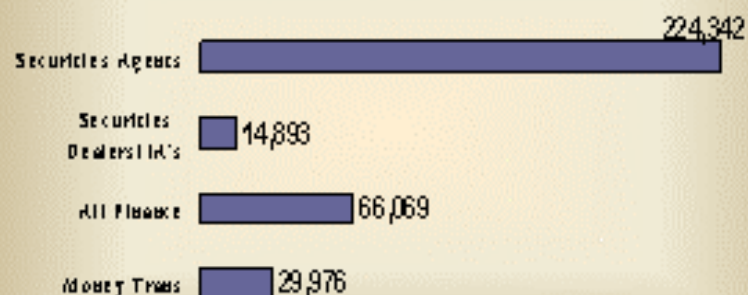
◆ Florida Statutes allow securities firms and agents to renew late between January 1st and January 31st of each calendar year by payment of a late penalty. Final renewal numbers will not be available until February 2004.

Applications Processed



7/1 - 12/31

Active Licensees



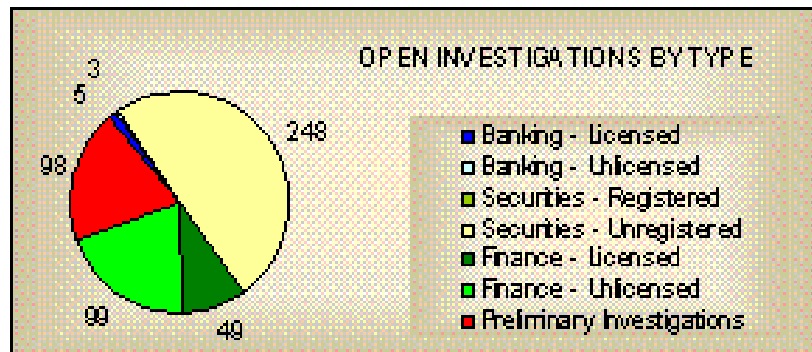
As of December 31, 2003



Bureau of Financial Investigations

Conduct financial investigations into allegations of fraudulent and unlicensed activity.

Investigations Opened *	223
Investigations Closed *	211
Enforcement Actions: *	40 cases closed with 65 actions
On-going Investigations	502



Quarterly Initiative:

- Identify and investigate unregistered check cashing, deferred presentment and funds transmission businesses. Over 300 business locations visited, most were in compliance or have since applied for registration. 76 new investigations were opened into suspected unregistered activity or other violations. Several investigations were referred for appropriate legal action.

* Fiscal Year As of 01/06/2004

Significant Events

◆**Orlando:** commercialloan.com – Investigation of Internet based advance fee scam led to owner, Kevin Jeffrey, pleading guilty to organized fraud and grand theft. He was sentenced in state court to two years imprisonment followed by five years probation. He was also ordered to pay over \$132,000 in restitution to victims.

◆**Miami:** [A E Financing & Investments, Inc.](http://A_E_Financing_&_Investments_Inc) - Anthony Blissett was sentenced to 60 months in federal prison followed by three years probation and ordered to pay \$27 million in restitution. Blissett pled guilty to conspiracy to commit securities fraud for defrauding some 3,000 Florida investors of \$36 million. Blissett promised investors 30% return and falsely represented to investors their funds were guaranteed and insured.

◆**Pensacola:** Investigation into bank fraud and "land flips" led to the indictment of four persons by a federal grand jury and seizure of three residences, commercial real estate and over \$300,000 in cash and other assets.

◆**Ft. Lauderdale:** [Link Delivery Solutions](http://Link_Delivery_Solutions) - Paul Johnson, President of this package delivery company, was convicted in federal court on 29 counts of conspiracy to commit securities fraud, money laundering, wire fraud and perjury. Johnson defrauded more than 450 investors nationwide of \$18.9 million.

◆**Tampa:** [Mortgage Income Trust](http://Mortgage_Income_Trust) - Investigation into \$7.5 million securities fraud involving the sale of promissory notes led to arrest of four individuals who have been charged with a total of 101 counts of securities fraud and sale of unregistered securities. Investigators believe as many as 175 Florida investors may have been defrauded.