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FLORIDA
OFFICE OF
FINANCIAL
REGULATION




J. Thomas Cardwell
Commissioner

INTEROFFICE COMMUNICATION

DATE: June 28, 2011

TO: J. Thomas Cardwell, Commissioner

FROM:  Karen Fisher, Inspector General

SUBJECT: Six-month Month Follow-up to Auditor General Report No. 2011-083,
*Money Service Business Regulation, Securities Regulation, and the Regulatory
Enforcement and Licensing System*

Pursuant to Section 20.055(5) (h), Florida Statutes, the Inspector General shall monitor the implementation of the Office of Financial Regulation's (OFR) response to any report on OFR issued by the Auditor General. No later than six-months after the Auditor General publishes an audit report, the Inspector General shall provide a written response to the Commissioner and file a copy with the Legislative Auditing Committee. Attached is the six-month OFR response to the status of each audit finding in Auditor General Report No. 2011-083.

Cc: Legislative Auditing Committee

OFFICE OF FINANCIAL REGULATION
MONEY SERVICE BUSINESS REGULATION, SECURITIES REGULATION, AND THE
REGULATORY ENFORCEMENT AND LICENSING SYSTEM

RESPONSE TO AUDITOR GENERAL FINDINGS REPORT NO. 2011-083
SIX-MONTH FOLLOW-UP STATUS

Finding No. 1: OFR did not always adequately conduct or document examinations of money service businesses. Additionally, OFR did not have written policies and procedures requiring documentation of the rationale for the cancellation of examinations and disposition of potential or actual violation of laws and rules.

Recommendation: We recommend that OFR adequately conduct and document examinations of money services business. Additionally, we recommend that OFR implement written policies and procedures relating to the cancellation of examinations and disposition of potential or actual violation of laws and rules.

OFR Response: Concur. OFR will review and update policies and procedures necessary to adequately document, in the REAL system, the cancellation of examinations and the disposition of examinations with apparent violations.

Six-Month Follow-up: The Office of Financial Regulation (Office) has implemented written procedures relating to the documentation of the cancellation of examinations within the Bureau of Money Transmitter Regulation (Bureau). The Office's policy concerning the disposition of potential or actual violations of laws and rules, for the Bureau, is pending the implementation of agency-wide guidelines designed to refine its enforcement and fines processes. These guidelines are being drafted and the Bureau will move to implement unit specific procedures as soon as these guidelines are finalized and approved for implementation.

Finding No. 2: OFR did not always timely respond to consumer complaints related to money service businesses and document related correspondence with complainants.

Recommendation: We recommend that OFR comply with the time frames set forth in the Manual. Additionally, we recommend that OFR amend the Manual to require both periodic communication with complainants as to the complaint status and communication of the final resolution of the complaint and that such communications be documented.

OFR Response: Concur. OFR has implemented unit-specific complaint handling procedures, effective March 1, 2010, which include maintenance of all correspondence referral guidelines. Phone conversations will be documented in the REAL system, and complainants have 24/7 access, through the REAL system's online portal, to the complaint number, status, disposition, examiner assigned, and regional office assigned.

OFFICE OF FINANCIAL REGULATION
MONEY SERVICE BUSINESS REGULATION, SECURITIES REGULATION, AND THE
REGULATORY ENFORCEMENT AND LICENSING SYSTEM

Six-Month Follow-up: In addition to the implementation of the Complaint Handling and Processing Manual (Manual), the Division of Finance presented training to staff concerning the Manual at the March 2010 statewide conference. Periodic correspondence with complainants was determined by the Office to be cost prohibitive, however, consumers are provided with contact information in order to make inquiries on filed complaints. Complainants may also check on the status of complaints filed online through the Office's online portal.

Finding No. 3: OFR did not always timely submit to the Central Registration Depository (CRD) regulatory filings disclosing disciplinary actions taken (U6 forms), thereby limiting the information available to others as they pursue their duties relative to the regulation of the securities industry.

Recommendation: We recommend that OFR file U6 forms with FINRA to ensure that disciplinary actions against individuals are available to other regulators and, as applicable, to the public through BrokerCheck. Additionally, we recommend that OFR perform follow-up procedures to determine whether individuals have filed U4 form amendments with FINRA for disciplinary actions taken by OFR.

OFR Response: Partially concur. OFR concurs it should input Form U-6s into the CRD. Since the creation of the Form U-6 many years ago, it has been OFR practice and policy to file the Form U-6. OFR had a vacant position during the audit period. Since the vacancy was filled in 2010, OFR has entered Form U-6 filings into CRD.

For many years, OFR has provided, upon request and free of charge, a CRD printout, which contains the firm's or individual's disciplinary disclosure and registration status, and the individual's testing and employment histories. Since July 1, 2009, OFR has provided 4,243 CRD printouts and responded to many telephone inquiries from the public. OFR Final Orders are available to the public via the OFR website. In contrast, FINRA's Broker Check provides less information to the public, and was rolled out recently after years of pressure from OFR and the other state securities regulators through NASAA for FINRA to increase its disclosure with respect to its members.

OFR does not concur it is necessary to put in place follow-up procedures to ensure that associated persons file the required Form U-4 amendments to include notice regarding a regulatory action taken against the associated person. The legal duty to comply with the requirement to amend the Form U-4 rests with the registrant, not the regulator.

Consistent filing of Form U-6's would provide adequate notice to the regulators and the public and expose the lack of Form U-4 disclosure by the associated person. If a Form U-4 amendment was required, action can be taken against the registrant and the requirement would be flagged in the registration process if the individual were to ever be reviewed for registration again (for example, as an applicant with a new firm). No further follow-up would be required.

OFFICE OF FINANCIAL REGULATION
MONEY SERVICE BUSINESS REGULATION, SECURITIES REGULATION, AND THE
REGULATORY ENFORCEMENT AND LICENSING SYSTEM

Six-Month Follow-up Status: The Office has entered all Forms U-6 into the CRD System in a timely and consistent manner since January 1, 2011. The Office, as stated in the original response, does not agree with the finding concerning the Form U-4 amendments. It is the legal duty of the registrant to file the Form U-4 amendments, not the regulator.

Finding No. 4: OFR did not match, on at least a sample basis, associated person applications to the related fees remitted by FINRA.

Recommendation: We recommend that OFR implement procedures to reconcile fees transferred from FINRA to applications received by OFR more frequently than once each year. OFR should also consider implementing procedures to periodically match, on at least a sample basis, applications and receipt documentation.

OFR Response: Does not concur. Daily, OFR reconciles 100% of the application fees received through the CRD system for broker dealers, investment advisers and their branches. During fiscal years 2007-2008, 2008-2009 and 2009-2010, there were no discrepancies when these fees were reconciled one-to-one. Annually, OFR verifies the payment of fees for all new associated person registration applications, by assuring that the amount of fees received at least equaled the aggregate amount due for those applications.

The risk of OFR not being paid some of the fees due for an application is nonexistent. When applying for state registration, including in Florida, the applicant checks a box next to the name of each state where registration is sought and pays fees for all of the states checked. Upon submission of an application into the CRD system, the fee associated with each Florida application is immediately transferred to OFR. This process may result in more fees having been paid to OFR than the aggregate number of registrants would indicate, but it never results in a deficiency in application fees paid to OFR.

Six Month Follow-up Status: As explained and stated in the original response the Office does not concur with this finding. The Office does not foresee the possibility that there would be a deficiency in application fees paid compared to applications filed.

Finding No. 5: OFR did not always adequately document the planning of securities examinations and timely conclude examinations.

Recommendation: We recommend that OFR improve the securities examination process by requiring examiners to document in each examination file the planning procedures to be performed including what modules, if any, are to be utilized. Additionally, OFR should take actions to ensure the timely completion of examinations.

OFR Response: Concur. OFR will better document examination planning and results, including use of the REAL system, when appropriate. OFR will complete more examinations in a timely manner by supervisor monitoring, use of the Case Aging Report and Priority Case Guidelines, and staff training. OFR is reprioritizing examinations and redefining the timelines for

OFFICE OF FINANCIAL REGULATION
MONEY SERVICE BUSINESS REGULATION, SECURITIES REGULATION, AND THE
REGULATORY ENFORCEMENT AND LICENSING SYSTEM

intermediate milestones and completion of examinations. The policies and procedures for closing of examinations and cases will be revised and implemented, as revised.

Six-Month Follow-up Status: Effective July 1, 2010, the performance measure that the Auditor General staff used to measure the timely completion of special and risk-based examinations has been deleted. New measures have been implemented to focus on the complexity and stature of examinations and the resulting sanctions. In addition, the Office has drafted procedures to address the planning of securities examinations. Those procedures will be implemented in FY 2011-2012.

Finding No. 6: OFR did not have policies and procedures requiring the identification of the subsequent actions, if any; OFR would take to ensure compliance with the provisions of final orders and did not always have documentation evidencing follow-up efforts.

Recommendation: We recommend that OFR develop written policies and procedures addressing and assigning the responsibility for enforcement action follow-up.

OFR Response: Concur. OFR agrees with the recommendation that OFR should follow-up to ensure compliance with the provisions of final orders where it is warranted. OFR believes there was adequate follow-up in nearly all securities cases involving final orders. However, OFR will develop and implement a policy identifying the subsequent actions, if any, OFR would take in those circumstances requiring follow-up.

Six-Month Follow-up Status: The Office has developed written policies and procedures addressing and assigning the responsibility for enforcement action follow-up. These policies and procedures will be included in the Bureau of Security Regulation Revised Policy and Procedures to be released in June 2011.

Finding No. 7: Our survey of REAL System OFR users found that they were generally satisfied with the System, although some areas for improvement were suggested.

Recommendation: We recommend that OFR continue its efforts regarding policy and procedure enhancements and training. In addition, we recommend that OFR ensure that all employees have access to the reporting functions needed to properly perform their duties. We also recommend that in the future OFR periodically survey users regarding areas of training need.

OFR Response: Concur. On July 1, 2010, OFR implemented the REAL System Training program focusing on core functionality and specific business use of the system including the proper use of reports. OFR management has mandated training for all employees new to the agency as of July 1, 2010.

OFFICE OF FINANCIAL REGULATION
MONEY SERVICE BUSINESS REGULATION, SECURITIES REGULATION, AND THE
REGULATORY ENFORCEMENT AND LICENSING SYSTEM

Six-Month Follow-up Status: The Office has implemented the REAL System Operations and Maintenance Training Plan (Plan). This document sets forth the structure of the training program and provides specific guidance to management and trainers. The Plan and all associated training materials are housed on the Office intranet and accessible to all Office employees.

Finding No. 8: OFR and the Department of Financial Services (DFS) did not have a signed service level agreement for the REAL System services provided by DFS.

Recommendation: OFR should pursue the finalization of an agreement that includes appropriate and specific provisions defining each party's roles and responsibilities with respect to the REAL System.

OFR Response: Concur. OFR recognizes the importance of a formal service level agreement as evidenced by agreements currently in place with the two external IT providers supporting the REAL system. OFR and DFS-DIS began initial efforts to secure a signed agreement in September, 2008. Efforts continued for the next 2 years with DFS-DIS presenting to OFR a proposed Master Services Agreement (MSA) for review. Recent management changes within DFS-DIS will impact progress as they have indicated a need to postpone further discussions regarding the MSA until the new administration is in place.

Six-Month Follow-up Status: The Office has not entered into an agreement with Department of Financial Services, Division of Information Systems (DFS-DIS). Senate Bill 2098 requires the Department of Financial Services data centers to begin preliminary planning, during 2013-2014 fiscal year, for consolidation into a primary data center. The Office has begun the process of negotiating to move the REAL System to the Southwood Shared Resource Center prior to the 2013-2014 fiscal year.

Finding No. 9: OFR did not always maintain appropriate access control documentation for users of the REAL System and the access granted was not always appropriate.

Recommendation: OFR should ensure that access authorization records are clear and consistently maintained to document all REAL System access privileges requested, approved, and granted, and to ensure that such privileges are appropriate.

OFR Response: Concur. OFR will take appropriate steps to ensure the proper documentation of access privileges.

Six-Month Follow-up Status: The procedure, for the REAL System user access privileges annual review, is in draft form. The Office did conduct an annual review, in March 2011, and requested feedback from staff to incorporate into the draft procedures.