

**OFFICE OF FINANCIAL REGULATION**

**MONEY SERVICE BUSINESS REGULATION,  
SECURITIES REGULATION, AND THE  
REGULATORY ENFORCEMENT AND  
LICENSING SYSTEM**

---

**Operational Audit**



## COMMISSIONER OF THE OFFICE OF FINANCIAL REGULATION

The Office of Financial Regulation is administratively housed within the Department of Financial Services but operates under the direction of the Financial Services Commission which is composed of the Governor, the Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture. The Commission is responsible for appointing the Director of the Office of Financial Regulation, who may also be known as the Commissioner of Financial Regulation. The following Commissioners served during the period of our audit:

J. Thomas Cardwell	From August 24, 2009
Linda Charity	From June 6, 2009, through August 23, 2009
Alex Hager	From October 1, 2008, through June 5, 2009
Don Saxon	Through September 30, 2008

The audit team leader was Matthew Tracy, CPA, and the audit was supervised by Allen Weiner, CPA. Please address inquiries regarding this report to Jane Flowers, CPA, Audit Manager, by e-mail at [janeflowers@aud.state.fl.us](mailto:janeflowers@aud.state.fl.us) or by telephone at (850) 487-9136.

This report and other reports prepared by the Auditor General can be obtained on our Web site at [www.myflorida.com/audgen](http://www.myflorida.com/audgen); by telephone at (850) 487-9175; or by mail at G74 Claude Pepper Building, 111 West Madison Street, Tallahassee, Florida 32399-1450.

---

**OFFICE OF FINANCIAL REGULATION**

Money Service Business Regulation, Securities Regulation, and  
the Regulatory Enforcement and Licensing System

---

**SUMMARY**

---

This operational audit of the Office of Financial Regulation (OFR) focused on OFR's money service business regulation, securities regulation, and the Regulatory Enforcement and Licensing (REAL) System. The audit also included a follow-up on the audit findings included in report No. 2009-110. Our audit disclosed the following matters requiring corrective actions:

**MONEY SERVICE BUSINESS REGULATION**

**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.

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

**SECURITIES REGULATION**

**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.

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

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

**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.

**REGULATORY ENFORCEMENT AND LICENSING (REAL) SYSTEM**

**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.

**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.

**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.

**PRIOR AUDIT FOLLOW-UP**

OFR had taken adequate corrective actions for findings included in report No. 2009-110.

---

**BACKGROUND**

---

The Office of Financial Regulation (OFR) is responsible for safeguarding the private financial interests of the public by licensing, examining, and regulating depository and nondepository financial institutions and financial service

companies in the State. Among its responsibilities, OFR licenses and examines money service businesses, as well as persons and entities conducting securities business in or from Florida.

In the conduct of many of its day-to-day operations, OFR utilizes the Regulatory Enforcement and Licensing (REAL) System. The REAL System is an integrated financial regulatory management system that provides OFR the ability to manage fiscal, licensing, investigation, examination, and legal/complaint functions. For applicants, licensees, and consumers, the REAL System provides, among other functions, the ability to manage accounts, apply for licenses, renew licenses, file required reports, file online complaints, and search for public licensure records.

As described below, our audit found several areas in which OFR could improve the effectiveness with which it carries out its regulatory duties.

## FINDINGS AND RECOMMENDATIONS

### Money Service Business Regulation

The State of Florida regulates money service businesses<sup>1</sup> under Chapter 560, Florida Statutes. Money service businesses are licensed under two license categories. Money transmitters and payment instrument issuers are licensed under Part II of Chapter 560, Florida Statutes, while check cashers and foreign currency exchangers are licensed under Part III. For the 2009-10 fiscal year, OFR reported that there were 151 active Part II licensees and 1,178 active Part III licensees.

Florida law<sup>2</sup> states that OFR may examine each licensee as often as is warranted for the protection of customers and in the public interest, but each licensee must be examined at least once every 5 years effective January 1, 2009. Additionally, all new licensees are to be examined within 6 months after license issuance. Money service businesses represent an area of particular concern to State and Federal regulators due to the potential for fraud, money laundering, and other types of criminal activity. The examination of these entities provides assurance that money service businesses operate in accordance with State and Federal law and to protect consumers from potential financial harm.

#### **Finding No. 1: Money Service Business Examinations**

Effective January 1, 2009, OFR's methodology for selecting money service businesses for examination transitioned from a risk-based selection process to a 5-year schedule based upon changes to Chapter 560, Florida Statutes, requiring each money services business to be examined as often as is warranted for the protection of customers and in the public interest, but at least once every 5 years. The law, as amended, also requires that a new licensee be examined within 6 months after license issuance.

OFR had developed examination manuals for Part II and Part III licensees. Each manual had pre-examination procedures to familiarize the examiner with the licensee and core examination procedures that were designed, in part, to determine compliance with State and Federal regulations. The manuals required that all applicable questions in the examination module be answered and that the examination module serve as the examiner's proof of work. The examination module was also to be used to convey the scope of work performed by the examiner. Pursuant to

<sup>1</sup> Any person located in or doing business in Florida, from Florida, or into Florida from locations outside Florida or the United States who acts as a payment instrument seller, foreign currency exchanger, check casher, or money transmitter.

<sup>2</sup> Section 560.109(1), Florida Statutes.

Florida law,<sup>3</sup> examination records were required to be maintained for at least 5 years after the date of examination ceased to be active.

Other pertinent policies and procedures that should be in place for examinations include, but are not limited to, those requiring the documentation of the rationale leading to decisions to discontinue planned or active examinations or to not pursue potential or actual violations of money service business laws and rules. As indicated in succeeding paragraphs, our audit disclosed that effective policies and procedures were not in place and, as a consequence, OFR's rationale for examination dispositions was not always clear.

As part of our audit of OFR's regulation of money service businesses, we reviewed the files for 20 money service business examinations closed during the period July 2008 through February 2010. During our review, we noted various concerns regarding the absence of documentation, the judgments made, or the clear rationale for discontinuing examinations. For 7 examinations, we found:

- It was not clear from our review of the files for 3 examinations that OFR appropriately determined and documented that the money service businesses had ceased their money service operations and that, notwithstanding licensee status, prior money service business activity did not warrant an examination. Specifically:
  - For one examination, upon notification by OFR of a planned examination during February 2009, the licensee faxed OFR stating, "This letter is to advise you I am no longer cashing checks and at the same time I am no longer interested in keeping my money transmitter/cashier license active."<sup>4</sup> Efforts made by OFR to determine the money service business' status were inconclusive. OFR reviewed the fax, concluded that the licensee was no longer in business, and took pictures at the business address, as recorded in the REAL System, to verify that the licensee's business was no longer in operation. However, the licensee had moved the location of the business and had not provided OFR with the revised business address<sup>5</sup> causing OFR to incorrectly conclude that the licensee was no longer in business and to terminate the examination that would have been performed.
  - An examination for a second licensee was opened in February 2009. However, prior to the conduct of the examination, OFR determined that the entity's license had expired on December 31, 2008. OFR subsequently did not conduct an examination and did not document that it had performed any procedures, including, for example, a review of quarterly reports, to verify that the licensee had ceased its money service business operations.
  - An examination of a third licensee was opened in December 2007 and was not completed, according to OFR, because the licensee did not provide the necessary records. OFR reports and the examination file appeared to support that, during 2008, OFR made attempts to obtain records and complete the examination but was delayed during that period by the licensee. During the initial stages of the examination, the examiner noted initial impressions of several potential violations of Chapter 560, Florida Statutes, but could not substantiate the findings due to the lack of records. On October 1, 2008, the examiner was informed that the licensee was overseas, the licensee had stopped cashing checks in January 2008, and someone had taken the records.<sup>6</sup> Then, during July 2009, OFR was informed by the brother of the licensee that the business had been closed. In response to our audit inquiry, OFR management stated the examiner conducted a drive-by of the business to verify that the store had been closed and took other measures to confirm that the licensee was no longer in business. However, the extent of these other efforts were not documented in the examination file.

---

<sup>3</sup> Section 560.121(3), Florida Statutes. Prior to January 1, 2009, the records retention period was at least 3 years from the date the examination ceased to be active.

<sup>4</sup> The actual license for the licensee had expired on December 31, 2008.

<sup>5</sup> The licensee does not appear to have reported the change in address to OFR per the requirements of Section 560.126(2), Florida Statutes. The change in address was determined through a review of Department of State, Division of Corporations, records.

<sup>6</sup> REAL System records indicate that the money service business had its license renewed on January 1, 2009.

- For one examination, OFR did not complete the examination and issue a report of examination for a licensee that had terminated its license and sold its money transmitter operations to another company. Although the examiner had found multiple potential violations of Chapter 560, Florida Statutes, OFR did not document the reasons for not issuing the report of examination or for not taking action regarding the potential violations, notwithstanding the fact that the money transmitter operations were sold to another company.
- For 2 examinations, the examination was shut down by OFR management because of the reassignment of the examiner-in-charge. Specifically, we found that the examinations were only partially performed, concluding in exit meetings with licensee management, at which five and four potential violations of Chapter 560, Florida Statutes, respectively, were discussed.<sup>7</sup> In both instances, no report of examination was issued.
- One examination file contained only a request to the licensee for information and blank examination modules. The examination was opened in November 2007 and was closed in August 2009 after the lead examiner left OFR on August 29, 2008. A total of 147 hours were charged to the examination, including 93 hours charged by two additional examiners. The reasons for the lack of further examination documentation and the closure of the examination were not clear from the available documentation.

Absent documentation of the rationale for decisions to discontinue examinations and not pursue potential violations of law, OFR lacks the information needed to fully explain the basis for regulatory decisions. Additionally, the risk is increased that fraud, money laundering, other types of criminal activity, and other violations of Florida law will go undetected and unpunished.

---

**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.

---

---

## **Finding No. 2: Money Service Business Complaints**

---

The ability for citizens to initiate complaints with OFR provides an important venue through which potential violations of Florida law encountered by citizens can be addressed and, oftentimes, complaints may also alert OFR to fraud, unfair practices, or other unlawful activity. Complaints may also allow OFR to detect a pattern of wrong-doing which may indicate the need for a formal investigation or action to protect the broad public interest. Complaints received may relate to, for example, problems encountered with companies issuing payday loans or cash advances.

Complaints are submitted to OFR through various means, including the Internet portal, mail, and e-mail. Upon receipt, complaints are to be evaluated as to whether OFR has jurisdiction and are routed to the applicable staff and are either entered in the REAL System or referred to other State agencies or law enforcement. If a complaint is related to a money service business, communication with the complainant is then to be made acknowledging receipt of the complaint and with the licensee requesting, within a specific time period, a response to the allegations described in the complaint. Upon receipt of the licensee's response, OFR is to determine whether the information provided is adequate to process the complaint. Further information may be requested by OFR and investigation, as needed, may be performed.

During the period July 1, 2008, through February 28, 2010, OFR recorded 54 complaints relating to money service businesses. As part of our audit, we reviewed 20 money service business-related complaints to determine, in part, the timeliness of the resolution of the complaint and whether the complainant was contacted by OFR regarding the

---

<sup>7</sup> Examples of the potential violations included the failure to develop and maintain an effective anti-money laundering program, the failure to maintain copies of payment instruments cashed, and the failure to maintain the required data items for payment instruments cashed.

progress or resolution of the complaint. Periodic communication with the complainant as to the progress and resolution of the complaint provides the complainant assurance that OFR is working to resolve the complaint.

For purposes of our review, we considered referrals to be timely if made within 3 days and investigations to be timely if completed within 90 days. Our review disclosed, as shown in Table 1, that OFR in some instances did not timely refer and resolve complaints and that correspondence with complainants was not always documented.

**Table 1**  
**Complaint Handling**

Complaint No.	Date Complaint Received	Date Referred	Days Until Referral	Date Complaint Closed	Days Until Closure	Progress or Final Communication With Complainant
1	01/20/2009	03/26/2009	65	Still Open <sup>a</sup>	Still Open <sup>a</sup>	No
2	01/21/2009	03/25/2009	63	08/14/2009	205	No
3	01/25/2009	03/26/2009	60	06/09/2009	135	No
4	10/23/2009	02/09/2010	109	04/15/2010	174	Yes
5	07/03/2009	07/08/2009	5	09/18/2009	77	No

<sup>a</sup> As of June 29, 2010.

Source: REAL System data.

According to OFR management, delays in the referral of complaints received during January 2009 were attributed to issues relating to the implementation of the REAL System. Additionally, we found that the lack of written policies and procedures describing the type, timing, and documentation of complainant communications that should be made may have contributed to the lack of complainant communication documentation. Effective March 2, 2010, OFR developed the Bureau of Money Transmitter, *Complaint Handling and Processing Manual (Manual)*, that defines time limits for the referral (3 days), licensee response to allegations (15 days), and investigation and reporting (90 days from time of receipt of requested documentation) time frames.

Absent the timely referral and resolution of complaints, there is an increased risk that potential unlawful activities may be allowed to continue, thereby exposing others to such activities. Additionally, absent documentation of periodic communication with the complainant, OFR is unable to demonstrate that complainants were made aware of the status or resolution of the complaints.

---

**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.

---

**Securities Regulation**

The securities markets are national in scope, which compels a complementary partnership between state regulators such as OFR, the Securities and Exchange Commission (SEC), and self-regulatory organizations such as the Financial Industry Regulatory Authority (FINRA).<sup>8</sup> To ensure an effective regulatory structure that provides for fair markets

---

<sup>8</sup> FINRA is an independent, not-for-profit organization that serves, in part, as a self-regulatory organization for securities firms and registered securities representatives doing business in the United States.

for all individuals, it is important that information is shared among all the partners. The North American Securities Administrators Association (NASAA)<sup>9</sup> has noted that this Federal-state-industry relationship “is like a three-legged stool; if one leg is weakened, it can destabilize the entire structure.”

OFR is responsible for ensuring compliance with the Florida Securities and Investor Protection Act (Act).<sup>10</sup> The Act is designed to protect the investing public from illegal securities activity while facilitating the efficient creation of capital. OFR focuses its efforts primarily on protecting investors by registering individuals and firms, conducting examinations, investigating consumer complaints involving alleged abusive sales practices, and raising consumer awareness.

Florida law<sup>11</sup> requires that all dealers, associated persons, or issuers of securities desiring to sell or offer for sale any securities in or from offices in the State of Florida, or to sell securities to persons in the State of Florida from offices outside the State of Florida, by mail or otherwise, register with OFR. Florida law<sup>12</sup> also requires that all investment advisers or associated persons of an investment adviser wishing to engage in business from offices within the State of Florida, or render investment advice to persons of the State of Florida, by mail or otherwise, shall register with OFR. In order to facilitate uniformity and streamline procedures for persons who are subject to registration in multiple jurisdictions, OFR administrative rules<sup>13</sup> provide that persons shall file applications, fingerprint cards, and their respective fees with the Central Registration Depository (CRD) system jointly developed by NASAA and FINRA. A Federally covered investment adviser must only make a notice filing pursuant to Florida law.<sup>14</sup>

OFR receives applications through the CRD system’s automatic queue if there are no disclosures or criminal history information that may preclude an applicant from being registered. These applicants are automatically approved by OFR for registration based upon CRD’s approval. Applications are primarily received by OFR through the CRD system’s manual approval queue if there are any disclosures of prior disciplinary actions that may preclude registration or if criminal background checks identify any criminal history. OFR then performs a review of the application disclosures and the criminal history information to determine if there is any information that may disqualify registration pursuant to Florida Law.<sup>15</sup>

---

---

### **Finding No. 3: Regulatory Filings**

---

As part of its regulatory duties, OFR, like other state securities regulators, has the ability to report disciplinary actions against broker-dealers and associated persons to CRD via a Uniform Disciplinary Action Reporting Form (U6 form). Reporting disciplinary actions, in part, improves the regulation of the securities industry by increasing the information available to other regulators so that those regulators may make sounder registration and other regulatory decisions. Also, individuals are required to report certain disciplinary actions taken against them via a Uniform Application for Securities Industry Registration or Transfer (U4 form). This form is to be used by individuals to report various disciplinary actions, including when:

---

<sup>9</sup> NASAA is a voluntary association devoted to investor protection and with membership consisting of 67 state, provincial, and territorial administrators, including OFR. NASAA members license firms and their agents, investigate violations of state and provincial law, file enforcement actions when appropriate, and educate the public about investment fraud.

<sup>10</sup> Section 517.011, Florida Statutes.

<sup>11</sup> Section 517.12(1), Florida Statutes.

<sup>12</sup> Section 517.12(4), Florida Statutes.

<sup>13</sup> Department of Financial Services Rules, Chapter 69W-600, Florida Administrative Code.

<sup>14</sup> Section 517.1201, Florida Statutes.

<sup>15</sup> Section 517.161, Florida Statutes.

- Any Federal, state, or foreign regulatory agency finds an individual to have been involved in a violation of investment-related regulations or statutes;
- An order is entered in connection with an investment-related activity of the individual; or
- The individual has been notified in writing that he or she is subject to a regulatory complaint or proceeding.

Information concerning current and former member firms, as well as current associated persons and persons who were associated with a firm within the preceding 2 years, is also to be made available to the public by FINRA through BrokerCheck.<sup>16</sup> Effective November 30, 2009, FINRA expanded BrokerCheck to provide public access to certain information about former associated persons, regardless of when they were associated with a firm, if they were the subject of any final regulatory action.

As part of our audit procedures related to registration and enforcement actions, we determined for individuals subject to an OFR disciplinary action, whether OFR and the individuals submitted regulatory filings to CRD. We found that OFR did not always report regulatory actions by filing U6 forms and CRD records did not contain indications that the individuals who were subject to disciplinary actions had filed amended U4 forms. More specifically:

- During the fiscal year ended June 30, 2009, OFR filed nine notices of intent to deny registration to individuals, which constituted a disciplinary action that should be reported via a U6 form. However, as of May 18, 2010, OFR had filed only one U6 form. Additionally, CRD records indicated that only one of these nine individuals had filed the required U4 form amendment, although each individual had been notified in writing that he or she was subject to a regulatory complaint.
- During our testing of 20 enforcement actions that resulted in a disciplinary action against 13 individuals, we found that OFR had filed only one U6 form as of May 27, 2010. As of May 27, 2010, at least 155 days had elapsed from the date the final orders had been issued. Also, CRD records indicated that only 6 of the 13 individuals had filed the required U4 form amendment disclosing that he or she was subject to a disciplinary action.

We inquired of OFR as to whether it was its practice to file U6 forms with CRD when applicable disciplinary actions had been taken against individuals. OFR responded that, although policies and procedures had not been established outlining the criteria by which OFR was to file U6 forms, it was OFR's practice to do so. Absent the filing of U6 forms and the amendment of the U4 forms, the information available in the CRD system to other regulators in making registration and other regulatory decisions is reduced and may adversely impact a regulators' ability to effectively regulate the securities industry. Additionally, the information available through BrokerCheck is potentially limited, impairing the public's ability to investigate the backgrounds of current and former brokers.

---

**Recommendation:** We recommend that OFR file U6 forms with CRD 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 CRD for disciplinary actions taken by OFR.

---

*In response to this finding, OFR management did not concur, in part, with our recommendation and stated that it was not necessary to put in place follow-up procedures to ensure that associated persons file the required Form U4 amendments as consistent filing of Form U6's provides adequate notice to the regulators and the public and expose the lack of Form U4 disclosure by the associated person. We agree that should OFR consistently and timely submit the U6 forms, follow-up procedures to determine whether individuals have filed U4 form amendments will not be needed.*

---

<sup>16</sup> BrokerCheck is a free tool to help investors research the professional backgrounds of current and former FINRA-registered brokerage firms and brokers and is derived from information in CRD.

**Finding No. 4: Section 517.12(10), Florida Statutes, Assessment Fees**

As discussed above, OFR receives associated person applications from the CRD system through the various queues. Upon submission of an application to CRD, an individual must pay all applicable registration fees including a \$50 State of Florida assessment fee required by Florida law.<sup>17</sup> FINRA is to remit application fees to OFR via a daily wire transfer whether or not the individual’s application is being submitted for approval on that day’s approval queues.<sup>18</sup> Due to the large volume of applications and the potential for disparate timing of receipt by OFR, fees received for individuals applying through the CRD system are not individually matched against the corresponding application. OFR indicated that year-end reconciliations are performed and that OFR has always received more in assessment fees than the number of applications would require. However, OFR did not match, on at least a sample basis, applications and fee details to determine that all applications had been accompanied by the applicable fees.

As part of our audit, we performed analytical procedures to evaluate, for an 8-month period, the reasonableness of actual fee collections in relation to estimated fee collections based on applications received. Our analytical procedures disclosed, as shown in Table 2, monthly variances between estimated fees and the actual fees received ranging from approximately -10 percent to 39 percent.

**Table 2**

**Analysis of CRD Applications Received and Assessment Fees Received**

Month and Year	Fees Received	Number of Applications Received	Estimated Fees <sup>a</sup>	Difference	Percent Difference
July 2009	\$236,150	4,309	\$215,450	\$20,700	9.61%
August 2009	220,300	4,128	206,400	13,900	6.73%
September 2009	256,250	4,781	239,050	17,200	7.20%
October 2009	206,050	3,981	199,050	7,000	3.52%
November 2009	180,200	4,007	200,350	(20,150)	-10.06%
December 2009	199,800	2,873	143,650	56,150	39.09%
January 2010	340,450	7,317	365,850	(25,400)	-6.94%
February 2010	191,750	3,834	191,700	50	0.03%

<sup>a</sup> Estimated fees are calculated by multiplying the applications received by the \$50 assessment fee required by Section 517.12(10), Florida Statutes.

Source: OFR records.

Absent the implementation of procedures to assess the reasonableness of fees received from FINRA on more than an annual basis and periodically matching on a sample basis applications and receipt documentation from FINRA, there is a risk that OFR may not receive all the fee amounts due.

**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.

<sup>17</sup> Section 517.12(10), Florida Statutes.

<sup>18</sup> According to OFR management, an individual’s application will not be submitted by FINRA for OFR approval through the approval queues until the required fees have been paid.

*In response to this finding, OFR stated that the risk of OFR not being paid some of the fees due for an associated person application is nonexistent because annually, OFR ensures that the amount of registration fees (fees) received is at least equal to the aggregate amount of fees due for those applications. While the annual verification described by OFR may provide some assurance that it received, in the aggregate, fees that in amount equal or exceed the amount due for the total number of applications processed during a year, the annual verification approach provides much less assurance that errors will be detected timely and that each individual application processed is accompanied by the statutory fee.*

---

**Finding No. 5: Securities Examinations**

---

Florida law<sup>19</sup> provides that OFR may make investigations and examinations within or outside of the State of Florida as it deems necessary to determine whether a person (registrant) has violated or is about to violate any provision of Chapter 517, Florida Statutes, or any rule thereunder, or to aid in the enforcement of Chapter 517, Florida Statutes.

OFR generally performs three different types of examinations. These include special, risk-based, and enforcement examinations, which are typically low, medium, and high in complexity, respectively. Prior to determining whether an examination is warranted, OFR may also perform preliminary inquiries which are informal and designed to search for risks that suggest an increased probability that an event detrimental to investors might occur or has already occurred.

OFR targets registrants for examination based upon the results of preliminary inquiries, due to receiving a complaint alleging fraud or sales practice violations, due to a risk-based selection methodology, or when there appear to be significant violations of Florida laws or rules, or it appears that illegal activity leading to the potential loss of customer funds or other investor harm is occurring or has occurred or there is reasonable basis to believe that customers have been harmed or there is a significant potential that customers will be harmed.

OFR employs various examination modules designed by NASAA. These modules are tools to assist examiners when conducting examinations. Pursuant to OFR procedures, examiners are to confer with their supervisors to determine which component or parts of the modules, if any, they are to complete. Examiners are also instructed to be prepared to deviate or abandon the module(s) if serious conduct so warrants. After review and approval by the appropriate supervisors, the completed portions of the module(s) are to be attached to the REAL System record. Through the REAL System, supervisors have access to aging reports to keep track of the status of open examinations.

The timely completion of examinations is important because significant delays may result in the loss of OFR's ability to contact targets and customers, locate records, and take effective enforcement actions. Although during the period covered by the audit, OFR had no documented performance goals in place relative to the timely completion of examinations, such goals were documented effective March 1, 2010, for special and risk-based examinations.<sup>20</sup> With respect to these type examinations, OFR's goal is to refer for further action or close at least 75 percent of these examinations within 180 days. A performance goal was not established for enforcement examinations due to the complexity of the issues driving these examinations. For purposes of our audit, we employed OFR's 180 day benchmark to measure the timeliness of OFR special and risk-based examinations. To evaluate the timeliness of enforcement examinations, we considered 730 days (2 years) as a reasonable timeframe within which to complete the examinations and used that timeframe for purposes of our analyses.

---

<sup>19</sup> Section 517.201, Florida Statutes.

<sup>20</sup> Although effective March 1, 2010, in response to our audit inquiry, OFR reported that staff have been following these procedures for approximately the past 2 years.

According to OFR records, 386 examinations with hours charged were closed<sup>21</sup> during the period July 2008 through February 2010.<sup>22</sup> As part of our audit, we analyzed OFR examination tracking data to measure the timeliness of examination completion. We also reviewed OFR's examination files for 20 of the 386 closed examinations. Our audit found:

- With respect to the timeliness of examination completion, Table 3 discloses the distribution of the 386 examinations by type and the average number of days required to close examinations. We recognize that the nature and complexity of an examination may sometimes result in the case not being closed within established parameters. However, as shown in Table 3, the days elapsed for a significant number of examinations exceeded OFR timeframes.

**Table 3**  
**Examinations Closed During the Period July 2008 Through February 2010**

Examination Type	Totals by Examination Type	Examinations Not Exceeding Timeframes			Examinations Exceeding Timeframes		
		Number of Examinations	Average Number of Days to Close	Percent of Examinations	Number of Examinations	Average Number of Days to Close	Percent of Examinations
Enforcement	86	59	343	68.60%	27	1,160	31.40%
Risk-Based	155	55	112	35.48%	100	784	64.52%
Special	145	93	107	64.14%	52	296	35.86%
<b>Totals</b>	<b><u>386</u></b>	<b><u>207</u></b>			<b><u>179</u></b>		

Source: Data provided by OFR.

- Three of the 20 examinations reviewed were closed without action due, in part, to the age of the information:
  - One risk-based examination, involving allegations of forgery of a customer signature on account documentation and potential suitability concerns over the annuity products sold, was opened in February 2005, after which work progressed until August 2005. Work notes appeared to indicate that work on the examination ceased until February 2007, a year and a half later. The examination was reassigned and work continued until September 2008, at which time the examination was closed with no action. Three years from the start of the examination, the examination was closed, as the target of the examination was no longer a registrant in the securities industry<sup>23</sup> and OFR was unable to reach or obtain cooperation from all of the customers with potential concerns relating to the suitability of variable annuities purchased by them. In response to our audit inquiry, OFR indicated that the initial examiner had been reassigned and other priorities contributed to the delays in completing the examination.
  - The second examination in question (an enforcement examination) was opened in September 2007 and involved an entity specializing in marketing church bonds. OFR's examination disclosed various concerns as outlined in prior reports issued by the SEC as well as FINRA. The concerns noted by OFR included for example, supervisory procedures were not current, employee files did not contain fingerprints for two representatives, and the integrity of the books and records. In March 2008, 6 months after the commencement of the examination, the target of the examination filed for bankruptcy. In September 2008, one year after the start of the examination, the target withdrew its registration as a

<sup>21</sup> The closed date represents the date that the examination was actually closed or referred for further action.

<sup>22</sup> According to the data provided, there were 84 examinations for which no hours were charged. Had this data been included in Table 3, Special Examinations would have met the goal of 75 percent of the examinations being completed in 180 days or less; however, the data inclusion would not have had any significant effect on the close-out percentages for risk-based or enforcement examinations.

<sup>23</sup> At the time of our audit field work, the target of the examination was still actively licensed as an insurance agent selling variable annuity contracts.

broker-dealer with FINRA. A June 2009 memorandum to the file indicated that the examination was to be closed with no action because the respondent had withdrawn its registration.

- The third examination (an enforcement examination) was started in January 2008 and was not closed until February 2010. A review of the examination file, including the close-out memorandum written in February 2010, indicated that the examination involved a joint review into a company's solvency, as well as, potential securities and finance violations. Field work began in May 2008 and, later that same year, the finance portion of the examination was completed. In March 2009, the examiner-in-charge left the employ of OFR and no additional work was subsequently performed. Although the securities portion of the examination was not completed, the examination was closed in February 2010 with no action taken, according to the close-out memorandum, based on the age of the examination, the fact that the company was no longer registered, the lack of customer complaints, and no indications of fraud being found.
- For one examination of the 20 examinations reviewed, the appropriateness of the closeout action was not demonstrated by the examination file documentation. During the examination, potential violations of Florida law were noted for the firm being examined and five individuals working for the firm, as documented in a report of examination dated October 31, 2006. One individual involved pled guilty to one count of money laundering and was sentenced to 50 months imprisonment. However, the examination was closed with no action by OFR against the other individuals or the firm nearly 27 months later in January 2009. Although the examination clearly noted that the other individuals and the firm were not aware of the fraudulent activities, other potential violations of Florida law were found but resulted in no action by OFR. The potential violations included failing to treat hedge fund activities as private securities transactions and failure to comply with requirements of securities rules.
- For 7 (4 enforcement and 3 risk-based) examinations, the files did not demonstrate whether the examinations had proceeded as planned because documentation indicating what was to be reviewed was not found. Additionally, completed modules for the examinations, or alternatively, documentation demonstrating why only portions of modules or no modules were completed, were not available.

Absent effective securities examination planning procedures and complete examination files, the risk that examinations will not be conducted in accordance with appropriate methodologies is increased. Further, absent the timely conduct and completion of examinations, opportunities to fully pursue investigation of potential violations of securities laws and rules may be lost.

---

**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.

---

---

#### **Finding No. 6: Enforcement Action Follow-up**

---

Examinations that find violations of Florida laws or rules or other illegal activity leading to the potential loss of customer funds or other investment harm are to be referred to OFR's legal department or a prosecutor for formal action. OFR's legal department formalizes enforcement actions through the creation of a final order that may stipulate cease and desist actions, payment of fines, and other actions that are to be taken by the securities dealers, investment advisers, their respective offices, and agents.

Our audit disclosed that OFR had not developed written policies and procedures requiring that OFR identify what subsequent actions, if any, OFR should take to ensure compliance with the provisions of a final order. During our

audit, we reviewed 20 securities-related enforcement actions taken by OFR to determine, in part, whether OFR verified compliance with the terms of the final order. We found that in 5 instances there was no documentation to show that OFR had determined whether subsequent compliance with the provisions of a final order needed to be verified, nor was there any documentation demonstrating that such verification had taken place. In these five instances, the final orders included cease and desist provisions. The violations included such matters as the failure to maintain accurate books and records, failure to timely file financial statements and other required documentation, failure to observe high standards of commercial honor and just and equitable principles of trade, and the failure to independently test an anti-money laundering program.

Absent OFR’s follow-up, a registrant’s failure to comply with the terms of a final order is not subject to timely detection and regulatory action.

---

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

---

<b>Regulatory Enforcement and Licensing System</b>
--

In March 2008, OFR, in conjunction with two consultants, completed implementation of Release 1 of the REAL System that included the integration of online licensing, fiscal, and enforcement activities for all licenses issued under Chapter 494, Florida Statutes (mortgage brokerage and mortgage lending). In January 2009, Release 2 was deployed that included all remaining license types regulated by OFR. The REAL System is to provide OFR with an integrated financial regulatory management system that combines core processes for fiscal, licensing, investigations, examinations, as well as, legal and complaint functions.

To measure the degree of licensee satisfaction with the level of services provided by the REAL System, we mailed surveys to 200 licensees. Survey questions addressed licensee satisfaction with REAL System services related to account management, licensing, report filing, online payments, system availability, and overall satisfaction with use of the REAL System. Although we received a limited number of responses (40), as shown in Table 4, our evaluation of the survey results indicated that the licensees who responded were satisfied to very satisfied with the services provided by the REAL System.

**Table 4**

**REAL System Licensee Satisfaction Survey Responses**

	Somewhat Dissatisfied to Dissatisfied		Satisfied to Very Satisfied		Total Number of Responses <sup>a</sup>
	Number	Percent	Number	Percent	
Account Management	2	6%	31	94%	33
Licensing	1	3%	30	97%	31
Report Filings	-	-	24	100%	24
Online Service Guides	1	4%	27	96%	28
Online Payments	1	4%	24	96%	25
System Availability	1	3%	32	97%	33
<b>Overall Assessment</b>	<b>2</b>	<b>6%</b>	<b>32</b>	<b>94%</b>	<b>34</b>

<sup>a</sup> Not all 40 respondents provided a response to every survey question.

Source: REAL System licensee survey responses.

**Finding No. 7: REAL System User Satisfaction**

To measure the degree of user (OFR personnel and contracted examiners) satisfaction with the REAL System, we e-mailed surveys to 60 of the 335 users. Survey questions addressed user satisfaction with REAL System policies and procedures, report creation and processing, training, system availability, system support, and overall satisfaction with the REAL System. We received 38 responses to our survey. Our evaluation of the results for all surveyed users, as shown by Table 5, indicated that, generally, users were satisfied to very satisfied with the REAL System.<sup>24</sup>

**Table 5**

**REAL System User Satisfaction Survey Responses**

	Somewhat Dissatisfied to Dissatisfied		Satisfied to Very Satisfied		Total Responses <sup>a</sup>
	Number	Percent	Number	Percent	
Policies and Procedures	5	14%	32	86%	37
Report Creation and Processing	3	14%	18	86%	21
Training	5	14%	30	86%	35
System Availability	2	6%	33	94%	35
System Support	1	4%	25	96%	26
<b>Overall Assessment</b>	<b>6</b>	<b>16%</b>	<b>31</b>	<b>84%</b>	<b>37</b>

<sup>a</sup> Not all 38 respondents provided a response to every survey question.

Source: REAL System user survey responses.

While most respondents indicated that they were satisfied to very satisfied with the REAL System, written comments provided by the respondents identified the following areas where potential enhancements could be made:

- REAL System policies and procedures could be improved by providing users the guidance necessary to ensure consistent and proper use of the System. Furthermore, users were interested in policies and procedures that would cover the use of the REAL System from the beginning of a business process through completion. OFR management indicated that they are currently in the process of reengineering procedures as part of a training initiative.
- The standard reports produced from the REAL System were limited in some ways. Several users found some reports to be unreliable. Although ad hoc reporting was available when standard reports did not provide the information needed, users noted that ad hoc reporting was only available to a limited number of users.
- Several users responded that training had not been conducted closely enough to the date of REAL System implementation, thereby reducing some of the benefits of the training. Some users also reported that additional follow-up training was needed. OFR management reported that they are currently in the process of implementing a training program for the REAL System.
- Users noted various functionality concerns regarding the REAL System, centering on duplicative data entry required in some instances that can be labor intensive and contribute to errors. OFR management indicated that, in some cases, this is due to either requests in the design of the REAL System or to the users misunderstanding of REAL System processes and that training is planned to address these issues.

<sup>24</sup> With 95 percent confidence, approximately 68 percent to 94 percent of the population of REAL System users would be satisfied to very satisfied with the REAL System.

---

---

**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.

---

---

---

---

**Finding No. 8: Service Level Agreement**

---

---

Effective information technology (IT) business practices dictate that when one entity depends on another for significant technology resources, a formal service level agreement (agreement) that defines the responsibilities and roles of both parties should be in place. IT service level agreements typically address such matters as the services to be provided, availability, and security, among other things.

Release 1 of the REAL System, including activities for all mortgage brokerage and mortgage lending licenses under Chapter 494, Florida Statutes, was completed in March 2008. After implementation, OFR utilized DFS, Division of Information Systems (DFS-DIS), to provide services including hosting the REAL System hardware on the DFS-DIS data center floor and providing system back-up. Although OFR continued to subsequently use various DFS-DIS services, both parties did not enter into a written agreement outlining the services to be provided, as well as, the responsibilities of both parties.

The absence of a written agreement that defines, among other matters, both OFR's and DFS-DIS's roles and responsibilities, the services to be provided, and the security and availability of the REAL System, increases the risk that IT requirements will not be sufficiently met.

---

---

**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.

---

---

---

---

**Finding No. 9: REAL System Access Controls**

---

---

Access controls are intended to prevent or detect inappropriate access to computer resources and to protect the confidentiality, integrity, and availability of data. Effective access controls include maintaining appropriate documentation of entity actions to authorize, establish, and monitor system access privileges. Examples of appropriate access control documentation include records of authorization of user access privileges requested, approved, and granted by applicable management or system owners; descriptions of user roles and access privileges; and documentation that correlates user roles with job functions.

While OFR had established written policies and procedures related to REAL System access, our audit disclosed that OFR did not always maintain appropriate access control documentation for users of the REAL System and that the access privileges granted to particular modules was not always appropriate.<sup>25</sup> Specifically, our review of eight user's access privileges disclosed:

- One OFR user was improperly granted update access to the REAL System Test module. The user's job responsibilities did not require update access to the Test module.
- One OFR user was improperly granted update access to the REAL System Cash module. Subsequent to our audit inquiry, OFR identified four other users whose access was the same and, thus, also had improper update

---

<sup>25</sup> Examples of modules in the REAL System included the Cash, Enforcement, License, and Transaction modules.

access to the Cash module. While none of these employees had access to cash collections, in all instances the user's job responsibilities did not require update access to the Cash module.

- One consultant who was a programmer and had security administration rights was improperly granted update access to various REAL System modules, including the Complaint and Enforcement modules. Appropriate separation of duties is an important internal control that can assist in the detection of errors and potential fraud. The appropriate separation of duties includes ensuring that programmers do not have access to production data.
- Two users' access to the REAL System did not match the access authorized by the user's REAL System Security Access Request Form Template.

Subsequent to our audit inquiries, OFR management indicated that corrective actions had been taken to remove or alter to view-only the improper access noted and to appropriately update access control documentation.

Absent clear and consistent documentation demonstrating that appropriate REAL System access privileges have been requested, approved, and granted, OFR's ability to control and monitor the appropriateness of access controls in protecting the confidentiality, integrity, and availability of data in the REAL System is limited.

---

---

**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.**

---

---

#### PRIOR AUDIT FOLLOW-UP

As part of our audit, we determined that OFR had taken appropriate actions to correct the findings included in report No. 2009-110.

#### OBJECTIVES, SCOPE, AND METHODOLOGY

The Auditor General conducts operational audits of governmental entities to provide the Legislature, Florida's citizens, public entity management, and other stakeholders unbiased, timely, and relevant information for use in promoting government accountability and stewardship and improving government operations.

We conducted this operational audit from January 2010 to August 2010 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

This operational audit focused on OFR's money service business regulation, securities regulation, and the Regulatory Enforcement and Licensing (REAL) System. The overall objectives of this audit were:

- To evaluate the effectiveness of established internal controls in achieving management's control objectives in the categories of compliance with controlling laws, administrative rules, and other guidelines; the economic and effective operation of State government; the relevance and reliability of records and reports; and the safeguarding of assets.
- To evaluate management's performance in achieving compliance with controlling laws, administrative rules, and other guidelines; the economic and effective operation of State government; the relevance and reliability of records and reports; and the safeguarding of assets.

- To identify statutory and fiscal changes that may be recommended to the Legislature pursuant to Section 11.45(7)(h), Florida Statutes.

Our audit included steps to determine whether management had corrected, or was in the process of correcting, all deficiencies disclosed in report No. 2009-110.

In conducting our audit, we:

- Reviewed 60 money service business applications received by OFR during the period January 2009 through February 2010 to test the effectiveness of selected OFR licensing process controls.
- Reviewed 20 money service business examinations closed by OFR during the period July 2008 through February 2010 to test the effectiveness of OFR's examination processes.
- Reviewed 20 money service business complaints received by OFR during the period July 2008 through February 2010 to test the effectiveness of OFR's controls for complaint handling as well as the timeliness of complaint resolutions.
- Reviewed 20 money service business enforcement actions taken by OFR during the period January 2009 through February 2010 to test the consistency of OFR's enforcement actions.
- Reviewed 51 Central Registration Depository (CRD) system and 9 Florida-only registration applications received by OFR during the period July 2008 through February 2010 to test the effectiveness of OFR's registration process.
- Reviewed 20 securities examinations closed by OFR during the period July 2008 through February 2010 to test the effectiveness of OFR's examination processes.
- Analyzed data to determine the timeliness of closure for all OFR security examinations closed during the period July 2008 through February 2010.
- Reviewed 20 securities-related complaints received by OFR during the period July 2008 through February 2010 to test the effectiveness of OFR's controls for complaint handling, as well as, the timeliness of complaint resolutions.
- Reviewed 20 securities enforcement actions taken by OFR during the period January 2009 through February 2010 to test the consistency of OFR enforcement actions.
- Reviewed documentation of OFR's testing of CRD system functionality and other procedures performed by OFR to obtain assurance over controls in place for the CRD system.
- Obtained an understanding of selected Information Technology (IT) controls pertinent to the REAL System, determined whether selected general and application IT controls were in place, and tested the effectiveness of the controls.
- Surveyed 200 licensees and reviewed the responses received to determine the level of satisfaction with the REAL System.
- Surveyed 60 OFR employees and OFR-contracted examiners and reviewed their responses to determine satisfaction with the REAL System.
- Examined the appropriateness of access to the various modules in the REAL System for eight employees and contractors.
- Interviewed OFR personnel and reviewed OFR policies and procedures.
- Reviewed five credit union examinations to determine whether an examination checklist had been appropriately completed.
- Reviewed eight bank and credit union examinations to determine whether there was evidence of supervisory review.
- Performed other audit procedures as necessary to accomplish the objectives of the audit.

- Prepared and submitted for management response the findings and recommendations that are included in this report and which describe those matters requiring corrective actions.

**AUTHORITY**

Section 11.45, Florida Statutes, requires that the Auditor General conduct an operational audit of each State agency on a biennial basis. Pursuant to the provisions of Section 11.45, Florida Statutes, I have directed that this report be prepared to present the results of our operational audit.



David W. Martin, CPA  
Auditor General

**MANAGEMENT'S RESPONSE**

In a response letter dated January 12, 2011, the Commissioner of the Office of Financial Regulation provided responses to our audit findings and recommendations. The Commissioner's response is included as EXHIBIT A.

EXHIBIT A  
MANAGEMENT'S RESPONSE



**J. THOMAS CARDWELL**  
COMMISSIONER

200 East Gaines Street, Tallahassee, Florida 32399-0370  
Phone (850) 410-9601 • Fax (850) 410-9663  
Visit us on the web: [WWW.FLOFR.COM](http://WWW.FLOFR.COM) • Toll Free: (800) 848-3792

January 12, 2011

Mr. David W. Martin  
Auditor General  
State of Florida  
G74 Claude Pepper Building  
111 West Madison Street  
Tallahassee, Florida 32399-1450

Re: Response to Preliminary and Tentative Audit Findings  
Operational Audit of the Office of Financial Regulation's Money Service Business  
Regulation, Securities Regulation and the Regulatory Enforcement and Licensing  
System.

Dear Mr. Martin:

Enclosed is the Office of Financial Regulation's (Office) response to the Preliminary and  
Tentative Audit Findings for the operational audit of the Money Service Business Regulation,  
Securities Regulation, and the Regulatory Enforcement and Licensing System.

This Office expresses its sincere appreciation to the auditors of the Auditor General's Office for  
their diligence and thoroughness in the conduct of this engagement. Your staff's professionalism  
and tireless efforts have produced an extensive review of select processes within the Office of  
Financial Regulation and we will be better for it.

If you have any questions, please contact Karen Calhoun at 410-9674.

Sincerely,

J. Thomas Cardwell

Enclosure

FINANCIAL SERVICES COMMISSION

RICK SCOTT  
GOVERNOR

PAM BONDI  
ATTORNEY  
GENERAL

JEFF ATWATER  
CHIEF FINANCIAL  
OFFICER

ADAM PUTNAM  
COMMISSIONER OF  
AGRICULTURE

**EXHIBIT A**  
**MANAGEMENT'S RESPONSE (CONTINUED)**

**RESPONSE TO AUDITOR GENERAL FINDINGS**

**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.*

**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.*

**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*

**EXHIBIT A**  
**MANAGEMENT'S RESPONSE (CONTINUED)**

*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 thousands of 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 only 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 provides 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 is required.*

**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: Do 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 never results in a deficiency in application fees paid to OFR.*

**EXHIBIT A**  
**MANAGEMENT'S RESPONSE (CONTINUED)**

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

**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.*

**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.*

**EXHIBIT A**  
**MANAGEMENT'S RESPONSE (CONTINUED)**

**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 two years with DFS-DIS presenting to OFR a proposed Master Services Agreement (MSA) for review. Recent management changes within DFS-DIS have delayed progress as DIS has indicated a need to postpone further discussions regarding the MSA until the new administration is in place.*

**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.*