

Office of Financial Regulation

Quarterly Report to

The Financial Services Commission



J. Thomas Cardwell

Commissioner

December 31, 2009

Commissioner Cardwell's Comments

Our regulated industries continue to feel the stress of these economic factors. In January, I attended a Southeastern Region Interagency Meeting. This is a meeting of state and federal banking regulators to discuss economic and regulatory trends, macro risk concerns and capital market issues. The consensus expressed by the federal economists at that meeting is that Florida will recover later than most states but will recover in a stronger manner.

In 2009, six state chartered banks were closed and one credit union was placed into conservatorship. A total of 15 banks failed in Florida for the year and we have already lost two institutions since January 1. As of September 30, 2009, more than 75% of Florida's banks were unprofitable and delinquent loans stood at more than 7.5% for banks with Florida headquarters. While we know there will be additional failures in the coming months, failure rates are still well below those of the early 1990s.

The challenge presented by the deterioration in the banking institutions has caused exceptional stress on our resources available to supervise them. This has been exacerbated by the loss of experienced,

professional staff in the Division of Financial Institutions. We have lost 11 employees to federal regulatory agencies, at salary increases between 25 and 100%. We lost an additional seven to resignation or retirement – a total of 18 in 12 months.

Despite this stress, there continue to be bright spots in our regulatory areas. The Office earned reaccreditation by the National Association of State Credit Union Supervisors (NASCUS) in November. NASCUS President and CEO Mary Martha Fortney said, "... reaccreditation is a significant achievement and represents the effectiveness and sound supervision of the state credit union regulatory system." She went on to congratulate the staff "... for their ongoing commitment to supervisory excellence in Florida."

The Bureau of Financial Investigations was commended by the United States Attorney for the Middle District of Florida for their role in the Mortgage Fraud Surge Task Force. To date it has resulted in the indictment of more than 100

Commissioner Cardwell's Comments (Cont.)

individuals. The Florida task force was also highlighted in recent Department of Justice testimony before the U.S. Senate Judiciary Committee.

The Division of Securities participated in a sweep by the North American Securities Administrators Association (NASAA) related to the collapse of the Auction Rate Securities (ARS) market. As a result, the Division settled two cases since July, 2009 imposing fines of \$13.2 million.

As of December 31, 2009, companies and individuals who provide loan modification services are required to be registered with the Office. OFR has been making a concerted effort to review the activities of as many companies offering loan modification services as possible and on February 4, took action against three companies in the Orlando area who have been operating without a license. We will be taking additional actions in the coming weeks to protect consumers who are being defrauded.

Despite the stresses experienced by our industries, I remain optimistic about our progress. We are continuing with efforts to improve our operations, such as proposing rules in the Securities area to implement consumer protection provisions passed during the last legislative session. These include disciplinary guidelines for enforcement actions and disqualification periods for applicants with law enforcement records. We are also working on legislation for the coming session related to regulation of international trust company representative offices, further implementation of the S.A.F.E. Act, stronger regulation of debt collectors, and regulation of internet lenders who attempt to circumvent Florida's lending laws.

I will continue to report on our progress.

A handwritten signature in black ink, appearing to read "G. Thomas Cardwell". The signature is written in a cursive, flowing style.

Office of Financial Regulation



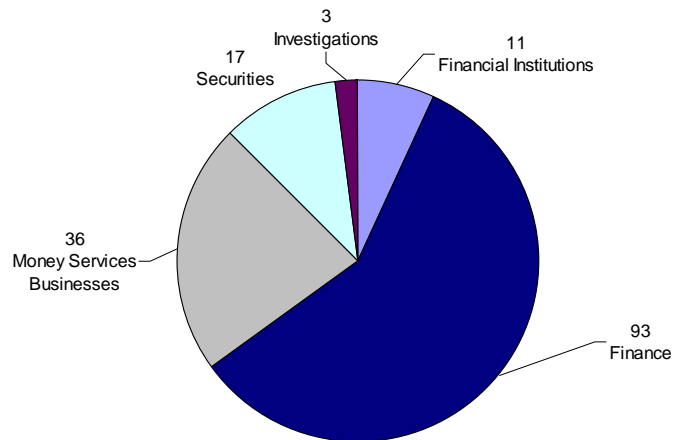
The Office of Financial Regulation (Office or OFR) is dedicated to safeguarding the private financial interests of the public by licensing, chartering, examining and regulating depository and non-depository financial institutions and financial service companies. The Office strives to protect consumers from financial fraud, while preserving the integrity of Florida's markets and financial service industries.

Major Initiatives

- OFR staff presented information to 450 securities industry participants at the **National Association of Compliance Professionals Annual Conference**.
- OFR worked with the **Financial Industry Regulatory Authority (FINRA)** to make several presentations of the "SaveAndInvest.Org" Program.

160 Final Orders Issued

(October 1 – December 31, 2009)



Significant Events

- Commissioner Cardwell appointed **Bill Spann** as OFR Chief of Staff. Mr. Spann served with the Department of Children and Family Services from 2003-2006 in the positions of Director of Communications, Deputy Chief of Staff and Chief of Staff. Prior to his service with the state, he was a career naval officer serving in the public and media relations area. His last posting was as Director of Communications for the United States Naval Academy. Mr. Spann joined the Office in November.
- In November, the **Bureau of Financial Investigations** was commended by the **U.S. Attorney for the Middle District of Florida** for its role in the Mortgage Fraud Surge Task Force. To date, the surge has resulted in the indictment of more than 100 individuals. The surge was highlighted in recent Department of Justice testimony before the U.S. Senate Judiciary Committee.
- On November 17, 2009 Commissioner Cardwell made a presentation on small business lending before the Financial Services Commission.



Division of 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.

Significant Events

- **Hillcrest Bank of Florida**, Naples, failed on October 23rd. The Federal Deposit Insurance Corporation (FDIC) estimated the cost to the Deposit Insurance Fund (DIF) at \$45 million.
- **Orion Bank**, Naples, failed on November 13th. The FDIC estimated the cost to the DIF at \$615 million.
- **Commerce Bank of Southwest Florida**, Fort Myers, failed on November 20th. The FDIC estimated the cost to the DIF at \$23.6 million.
- A pending new bank application for **Florida Shores Bank - Gulf Coast**, Fort Myers, was withdrawn on October 23rd.
- No new bank applications were filed with the Division during the quarter.
- In November, OFR earned reaccreditation by the **National Association of Credit Union Administrators** (NASCUS). The reaccreditation is valid for five years.

Industry Trends

- The number of financial institution failures continues to increase but were well below the number of failures during the early 1990s. Nationwide, 140 banks were closed during 2009 compared with 25 in all of 2008.
- Eight Florida-based financial institutions failed during the 4th quarter of 2009: **Partners Bank**, **Flagship National Bank** and **Hillcrest Bank of Florida** on October 23rd; **Orion Bank** and **Century Bank, FSB** on November 13th; **Commerce Bank of SW Florida** on November 20th; **Republic Federal Bank** on December 11th; and **Peoples First Community Bank** on December 20th, bringing the total number of bank failures in Florida for 2009 to 15. Additional failures are likely.
- The number of state-chartered institutions requiring heightened supervision and monitoring has increased.
- An increased number of institutions are operating under regulatory agreements. As of December 31, 198 administrative actions were in force or pending implementation.



Division of Securities

Licenses and regulates securities firms to protect consumers from illegal securities activities, while facilitating capital formation within the State.

Significant Events

- Securities Regulation staff presented saving and investing information to 290 participants at three consumer outreach programs.
- In October, the Office denied the application for **Michael Brigman** due to his criminal record. Brigman's application disclosed he had pleaded no contest to a charge of aggravated assault, a misdemeanor, in January, 2005.
- In October, **RJJ Pasadena Securities** entered a Stipulation and Consent Agreement for conducting business without proper registration. The firm was fined \$1,500 and withdrew its application.
- In November, **Richard Hill**, who was terminated by his securities dealer, was ordered to cease and desist and ordered not to reapply for registration for a period of ten years. A final order was issued against Hill finding he misappropriated \$109,350 from an investor. Hill's former securities dealer reimbursed the customer for the loss.
- In December, **Thomas M. Aretz** was ordered to cease and desist and pay a fine of \$30,000 for obtaining loans from clients totaling \$166,700. Borrowing money from clients is a prohibited business practice.
- In December, **Alan Schuh & Associates**, a registered investment adviser, was ordered to cease and desist and fined \$10,000 for failure to maintain all books and records, and using false or misleading advertising.
- In December, final orders were entered against **John Croes, Eric Langholtz** and **Michael Jacobson** for violating FINRA rules regarding unapproved outside business activity. While employed at a brokerage firm, they sold multiple equity index annuities without notifying their firm. Croes and Langholtz were fined \$7,000 each and ordered not to apply for a license for 120 days. Jacobson, the largest producer, was fined \$15,000 and barred from reapplying for a license for 165 days.
- In December, a final order was issued against **Olympian Capital Management, LLC**, a registered investment adviser, for filing inaccurate financial statements, failing to maintain books and records, overcharging fees, and failing to follow the safekeeping requirements. The firm was fined \$5,000, ordered to reimburse clients and within six months hire a consultant to review the firm's activities and adopt the recommendations made by the consultant.



Division of Finance

Licenses and regulates business activities of non-depository financial services companies and other related industries.

Significant Events

Bureau of Regulatory Review

- Issued 67 final orders assessing \$58,500 in administrative fines, of that:
 - ✓ Fined 24 licensees for compliance violations for \$15,500
 - ✓ Fined 13 mortgage brokerage businesses \$43,000 for unlicensed activity
- Revoked 16 mortgage lender licenses for failure to maintain a surety bond
- Revoked one mortgage broker license for material misstatement as they failed to disclose criminal background
- Denied licensure to nine mortgage brokers (out of 1,060 applications) and four businesses (out of 1,906 applications)
- Received and processed 442 money services business, 124 commercial collection and 1,015 consumer collections renewals through the REAL System

Bureau of Finance Regulation

- Closed 115 examinations and 889 consumer complaint investigations resulting in 45 final orders assessing \$138,280 in administrative fines
- Revoked 31 mortgage industry licenses based on violations of Chapter 494, Florida Statutes

- Mortgage brokers, **Rony Alberto Aguilar-Hecker** (Miami), **Pablo Atouro Aponte-Torres** (San Juan, Puerto Rico) and **Juan Carlos Lopez** (Miami) were indicted in an \$8.5 million mortgage fraud ring against Washington Mutual Bank.

- A federal grand jury issued indictments against licensed mortgage broker **Brian Ernest Oelbermann** (West Palm Beach) of Warshaw Capital, LLC in a mortgage fraud scheme for fraudulent loans totaling more than \$1.7 million for five real estate transactions.

Bureau of Money Transmitter Regulation

- Twenty-six final orders were issued for administrative fines totaling \$65,500 including four license terminations and revocations.
- A \$5,000 fine was issued against Miami check casher **Hurricane Liquors**, for failure to maintain an effective Bank Secrecy Act/Anti-Money Laundering manual and failure to file Currency Transaction Reports. The principals surrendered their license and agreed not to apply for related licenses for ten years.



Bureau of Financial Investigations

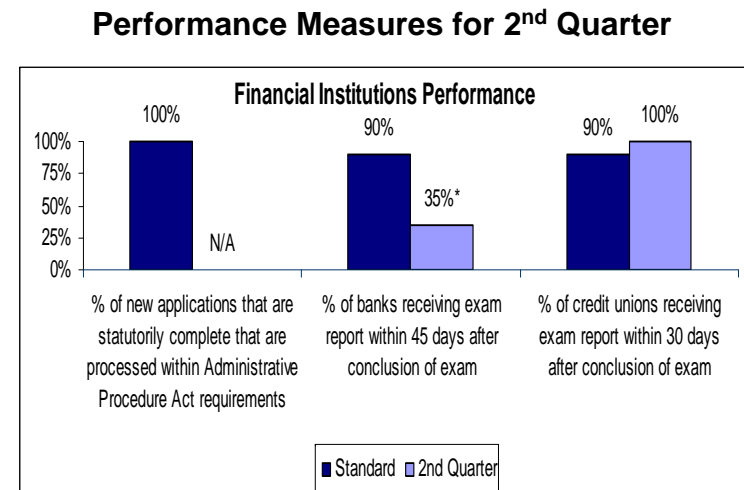
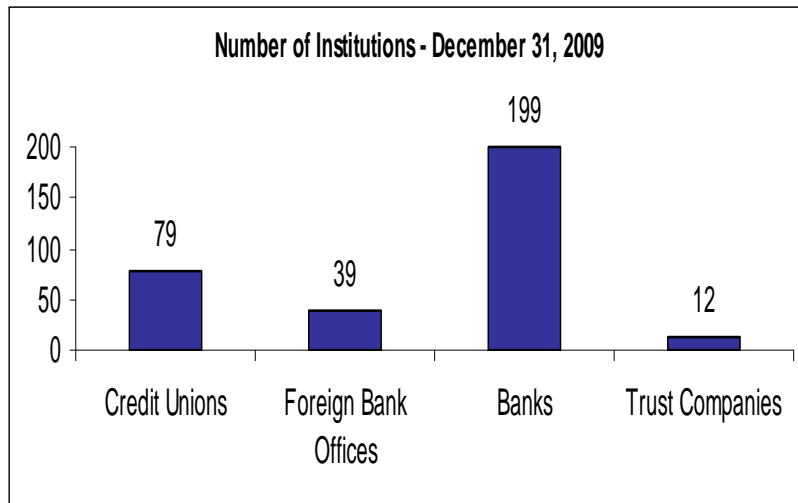
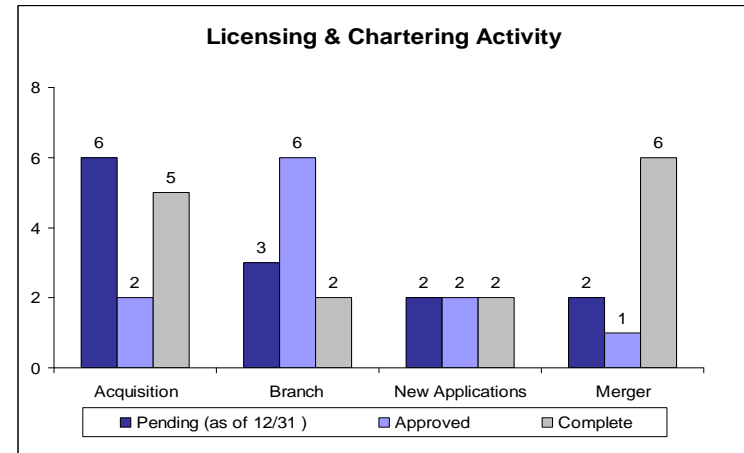
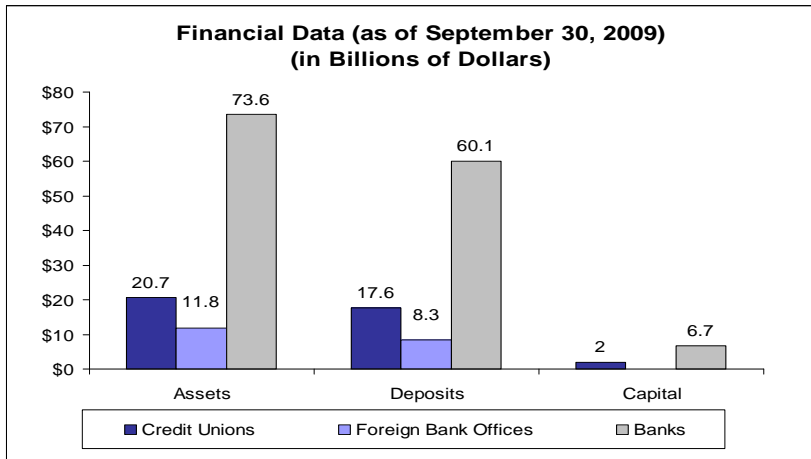
Conducts financial investigations into allegations of fraudulent and unlicensed activity.

Significant Events

- **Rose Mwangi** pleaded guilty to grand theft for allegedly orchestrating a \$2.9 million mortgage fraud involving bogus second mortgages. Her plea agreement with the Office of Statewide Prosecution calls for a prison sentence of between 30 and 120 months depending on her ability to pay restitution to victims. The Bureau of Financial Investigations was assisted in this investigation by the Bureau of Finance Regulation.
- As a result of a joint federal-state investigation, **David A. Owen** was arrested for violations of the U.S. Commodity and Exchange Act. He is charged with defrauding investors of \$2.2 million, wire fraud and tax evasion. Investigators allege Owen provided false information regarding his expertise in trading commodities and futures, provided investors with fictitious trading account statements and failed to disclose his prior criminal convictions.
- **Peter A. Bakowski** pleaded guilty in federal court to making a false statement to a financial institution and is scheduled to be sentenced in January 2010. Investigators alleged that over a seven-year period, Bakowski engaged in a \$20 million Ponzi scheme involving the fraudulent sale of mortgage assignments to investors. Bakowski's scheme allegedly ended when the housing market collapsed and he could no longer attract new investor money.
- **Clayton John** and **Christopher Hernandez** were charged with three counts of loan and credit application fraud for submitting three fraudulent mortgage applications to lenders totaling \$794,000. This investigation was conducted by Bureau investigators and the Federal Bureau of Investigation (FBI) as part of the Mortgage Fraud Surge Task Force.
- **Isaac Niego** was sentenced to 41 months in federal prison and 36 months of supervised release in November, 2009 for his involvement in a \$2.5 million securities fraud involving 34 investors. Niego was also ordered to pay \$1,443,797 in restitution. The investigation was conducted by the Bureau, the FBI, Internal Revenue Service and the Key Biscayne Police Department.
- **Vincent Mitchell** was arrested in December, 2009 and charged with wire fraud and conspiracy for his involvement in a \$10 million mortgage fraud. It is alleged Mitchell knowingly served as a straw buyer for **Jason Vitulano** of **Premium Capital Funding, LLC** d/b/a **TopDot Mortgage Company**, and he submitted fraudulent documents and misrepresented his income. This investigation was conducted by Bureau investigators and prosecuted by the U.S. Attorney's Office.

Financial Institutions

Important Statistics for October 1 – December 31, 2009

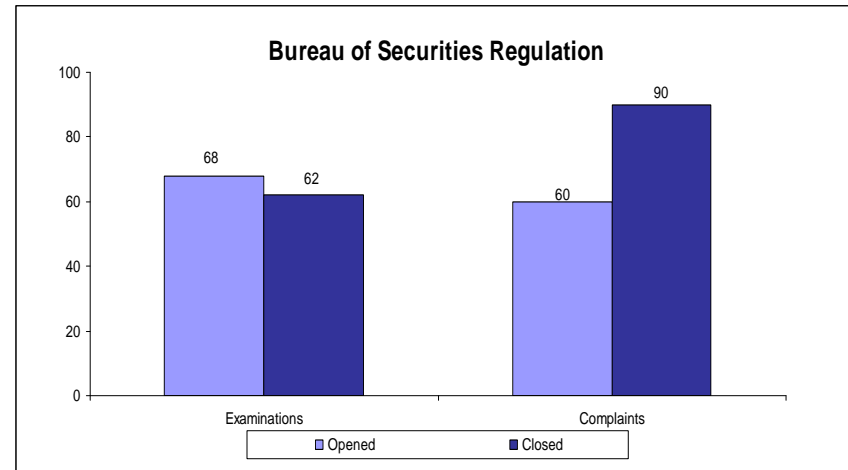


* Due to the effects of the economic recession on state financial institutions and the loss of experienced examiners to the industry and federal regulatory agencies, it is increasingly difficult to issue reports within the 45-day benchmark.

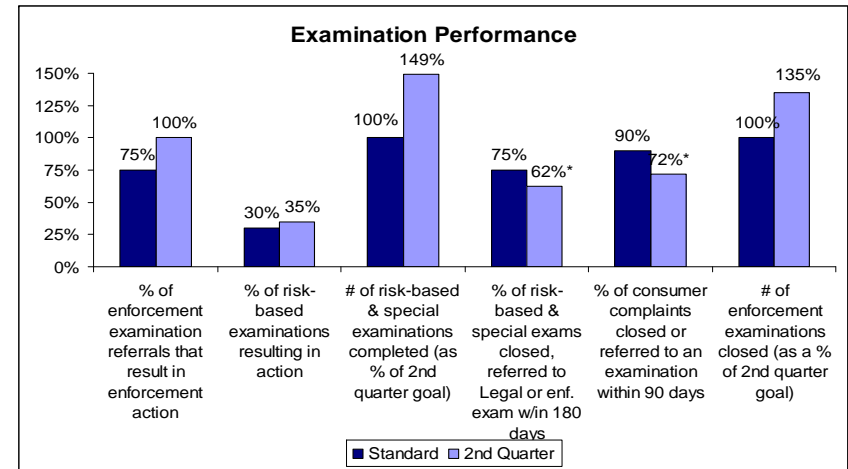
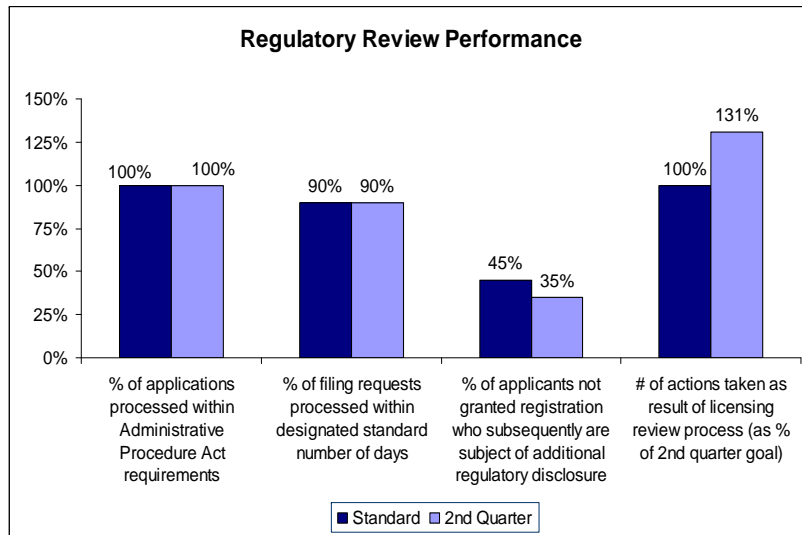
Securities Regulation

Important Statistics for October 1 – December 31, 2009

License Applications Received: 12,378
License Applications Approved: 10,357
Denied/Withdrawn: 363
Licensed with Restrictions: 10



Performance Measures for 2nd Quarter

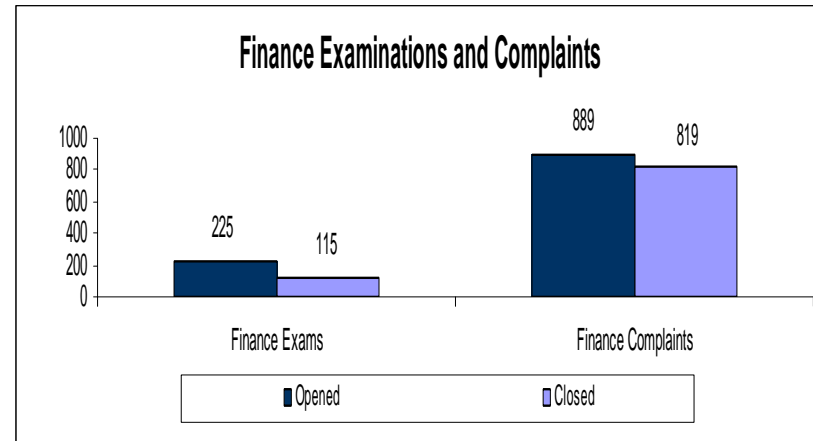


* The Bureau has reallocated resources from risk-based examinations to enforcement examinations which are more complex and time consuming. This has impacted its ability to close risk-based examination and consumer complaints within the identified standard.

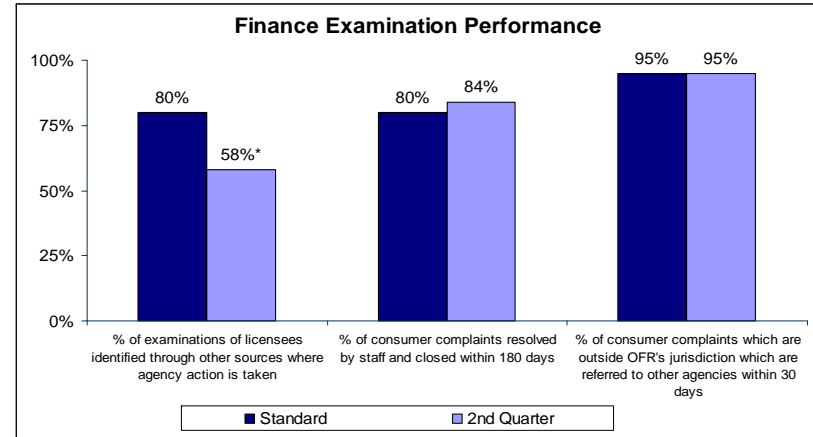
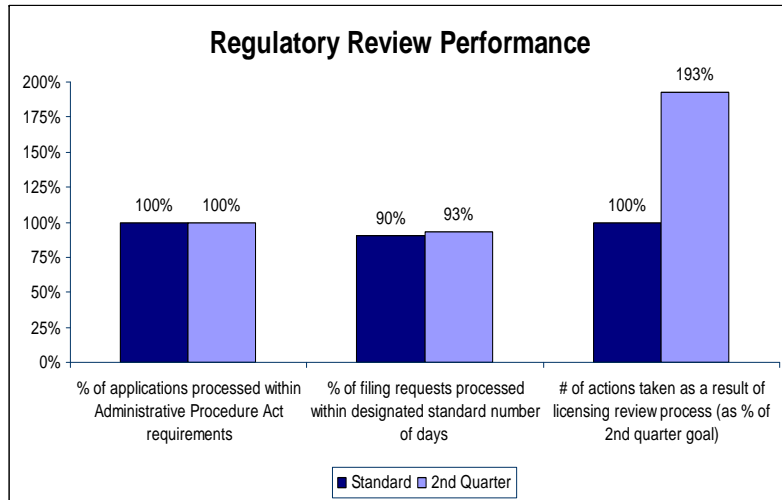
Finance Regulation

Important Statistics for October 1 – December 31, 2009

Finance Applications Received: 5,207
Licenses Approved: 1,407
Denied/Withdrawn: 150



Performance Measures for 2nd Quarter

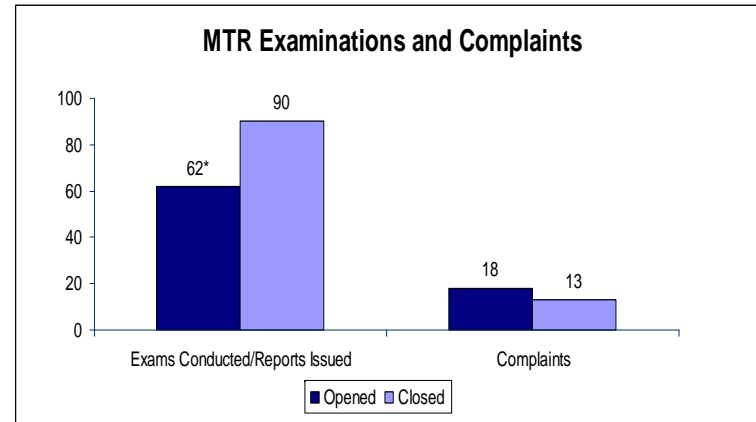


* Due to decreased lending activity, many companies have gone out of business, conducted no business or made very few loans. Because of fewer transactions conducted, fewer violations were identified.

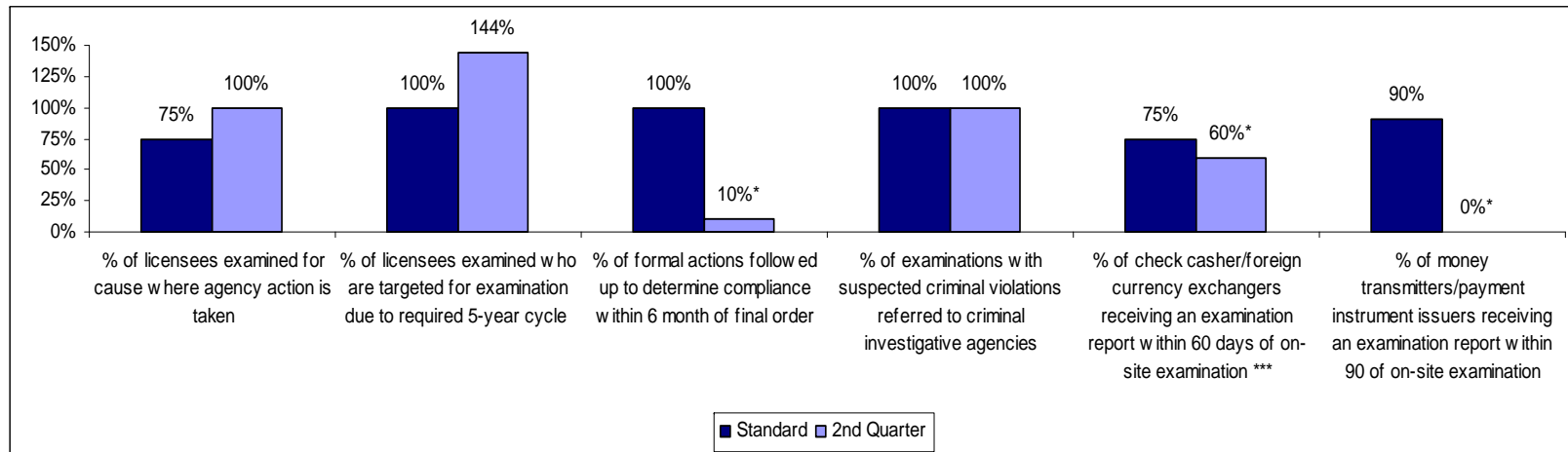
Money Services Businesses Regulation

Important Statistics for October 1 – December 31, 2009

Money Services Businesses Applications
Received: 2,871
Licenses Approved: 2,805
Denied/Withdrawn: 10



Performance Measures for 2nd Quarter



* During the 2nd Quarter, staff resources were focused on meeting the statutory requirement to examine all firms within 5 years. As a result, while the Bureau exceeded that standard by 44%, it lagged in other measures. Focus for 3rd Quarter will be to bring all measures into compliance with standards.

Bureau of Financial Investigations Important Statistics for October 1 – December 31, 2009

Investigations Opened: 29

Investigations Closed: 57

Enforcement Actions:

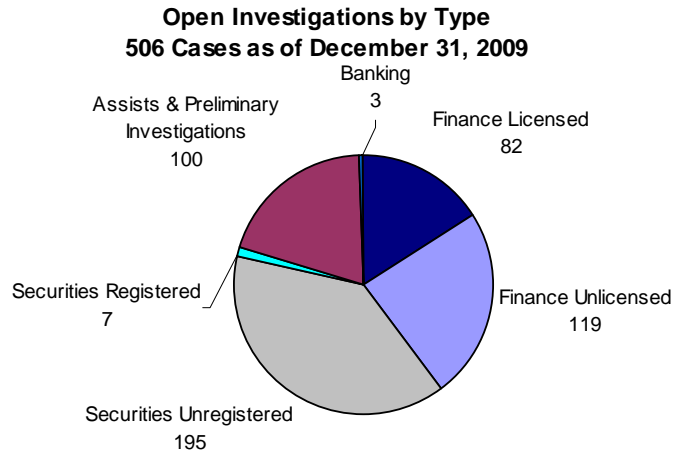
15 Cases Closed with Action

Results:

12 Defendants were sentenced to a total of 63 years imprisonment and 65 years probation

\$19 million in court ordered restitution and

\$110,000 in voluntary restitution



Performance Measures for 2nd Quarter

