

Office of Financial Regulation

Quarterly Report to

The Financial Services Commission



J. Thomas Cardwell

Commissioner

March 31, 2010

Commissioner Cardwell's Comments

This quarter, I would like to focus on OFR's greatest asset – our staff. Several of our team members have been individually recognized for their enforcement efforts on behalf of Florida citizens, as well as earning recognition for the Office. We are also improving our team by the addition of several top-notch people.

One of our critical functions is to enforce the banking, securities and finance regulations of our state. Our staff has been recognized for their efforts by various officials:

- OFR led the investigation by the North American Securities Administrators Association (NASAA) into allegations that JP Morgan Chase misled clients into purchasing \$3 billion in auction rate securities (ARS). For their efforts, **Diana Durante**, Securities supervisor in Fort Myers, and **Michael Moore**, assistant general counsel in Fort Myers, received a Davis Productivity Award for obtaining reimbursement for Florida residents of \$68 million and a fine of \$1,293,398.

- Michael Ward**, investigator from West Palm, has been the lead investigator on many fraud cases including a massive hedge fund case involving over \$194 million in losses. Mr. Ward received a

Davis Productivity Award for his efforts to educate prosecutors, agents and police about the finer details of securities fraud.

- The U.S. Attorney, Southern District of Florida, commended OFR for investigative work done by the **Bureau of Financial Investigations** as a member of the Federal-State Mortgage Fraud Strike Force. The U.S. Attorney cited one prosecution investigated by the Miami office where two defendants were convicted of a \$10 million land fraud that victimized over 1,000 individuals. He also cited a case by the West Palm office that resulted in the indictment of four individuals in an alleged scheme to defraud mortgage lenders of over \$5 million. Further, the Bureau's West Palm office was commended for its investigative work in support of the prosecution of two defendants convicted of a \$37 million Ponzi scheme that victimized 260 investors.

- Leanne Sztuk**, Securities manager in West Palm, was awarded the Outstanding Law Enforcement Office Award by the U.S. Department of Justice for her work with the FBI in establishing an undercover sting operation named "Operation Penny Wise." FBI agents in South Florida posed as corrupt hedge fund managers. Her assistance led to the conviction of 12 individuals, recovery of \$750,000 and court ordered restitution totaling \$17 million.

Commissioner Cardwell's Comments (Cont.)

- **Daniel Stotler**, West Palm Investigations, was recognized as Law Enforcement Officer of the year by the U.S. Attorney's Office, Southern District of Florida for his investigative work into a \$5 million advance fee case.
- **Bill Borah**, Securities examiner in Fort Lauderdale, received a Davis Productivity Award for unraveling a \$3.1 million Ponzi scheme by Columbia Partners LP's hedge fund manager, Joel August. August routinely paid withdrawals from new investments and misappropriated \$1.3 million for his personal living expenses. August was sentenced to prison and ordered to pay \$3.1 million in restitution.
- Tampa investigator **Clifford Jones** was commended by Assistant State Attorney **Michael Lennon** (13th Circuit) for his work leading to the conviction of Timothy L. Green, a former mortgage broker, in an alleged equity stripping scheme.

One member of our team was recognized with a Davis Productivity Award for assisting citizens of Florida:

- Investigator **Neptime Diejuste**, was recognized for developing a consumer outreach program to

educate and assist Florida's Haitian community. As part of his efforts, Mr. Diejuste established a Creole helpline which operates out of the Miami office. He also performs numerous hours of voluntary public service appearing on Haitian American radio and television talk shows designed to educate the Haitian community about economic fraud.

OFR team members were awarded Davis Productivity Awards for improving the efficiency of our operations:

- A team from the Division of Financial Institutions (DFI) developed a process for state chartered institutions to pay their semi-annual fees electronically. **John Pullen**, **Kathy Culpepper** and **Janet Anderson** (Legal) tested the project in December 2008 and fully implemented it in June 2009.
- **NancyRae Kjelgaard**, also of DFI, developed an off-site, early warning monitoring database to help identify troubled financial institutions. The system has been recognized by the Conference of State Bank Supervisors (CSBS) as a "best practice" in regulatory processes.

Commissioner Cardwell's Comments (Cont.)

I am happy to announce the addition of two new members to our team:

•**Flora Beal** joined the Office in the position of Communications Director on January 4. Ms. Beal is bi-lingual in English and Spanish, and has 15 years of progressive experience in public relations, internal communications and crisis communications. She earned a Bachelor of Science in Journalism and Mass Communications from Florida International University (FIU), and has received multiple awards for her work.

•**Frank Widmann** has accepted the position of OFR's Director of Securities. From 1997-2007, Mr. Widmann served as Chief of the New Jersey Bureau of Securities and from 1992-1997 served as the state's Chief Securities Regulatory Officer. He currently serves as a Deputy Attorney General for the State of New Jersey; a position he has held since 2007. During his tenure as New Jersey's chief securities regulator, his office brought a number of significant enforcement actions. Mr. Widmann served as the President of the North American Securities Administrators Association (NASAA) in 2004-2005. Within NASAA he has actively participated in major multi-jurisdictional actions. He will start work with the Office in May.

One of our outstanding team members has been given new duties critical to the operations of our Regulatory Enforcement and Licensing (REAL) System and to our agency. **Janice Jackson** was promoted to Special Assistant to the Commissioner for REAL. Ms. Jackson has worked for OFR and the Department of Banking & Finance for the past 12 years primarily in the Division of Securities. She has served in a number of capacities, most recently as Project Manager for the implementation of the REAL System. In her new role, Ms. Jackson will report directly to me and continue to manage all aspects of the REAL System. In addition to daily operations and maintenance of the system, Ms. Jackson will lead our efforts to re-engineer significant work processes leveraging functionality provided by the REAL System, implementing policies related to the future development and use of the system.

We continue to face personnel challenges in the Division of Financial Institutions which stresses resources available to supervise state chartered banks and credit unions. DFI has lost a total of 25 regulatory employees during the last 15 months to resignations and retirements. Two more examiners recently indicated they will accept positions with

Commissioner Cardwell's Comments (Cont.)

federal regulators and at least three additional retirements are expected in 2010. Pursuant to reporting requirements relating to its accreditation by the CSBS, DFI was required to report a turnover level exceeding 15% for the 12-month period ending March 31, 2010. We are actively working on strategies to retain our critical work force and recruit new well qualified employees. DFI has recently dedicated one FTE to concentrate on recruiting and filling vacancies.

Through the dedicated efforts of its staff, OFR is moving forward to carry out its statutory duties, assist consumers, and strengthen enforcement of our laws.

A handwritten signature in black ink, reading "J. Thomas Cardwell". The signature is written in a cursive style with a large initial "J" and "C".

Office of Financial Regulation



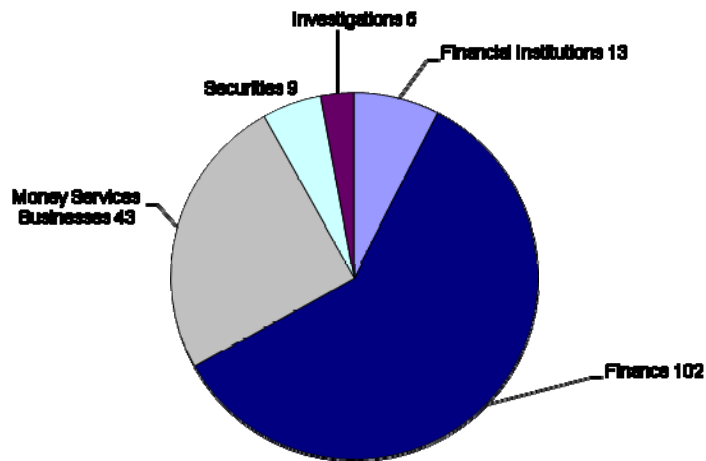
Protect the citizens of Florida by carrying out the banking, securities, and financial laws of the state efficiently and effectively, and to provide regulation of business that promotes the sound growth and development of Florida's economy

Major Initiatives

- OFR continued our sweep of unlicensed loan modification companies. Since January 1st, effective date of the new law, we have filed administrative charges against 20 companies (ten in February and ten in March), for providing loan modification services without a license. TV and print media personnel accompanied OFR staff to deliver a number of the orders to the companies, resulting in significant press coverage to alert consumers about the potential issues in the industry.

172 Final Orders Issued

(January 1 – March 31, 2010)



Significant Events

- **Commissioner Tom Cardwell** was asked to address the **Federal Reserve Board of Governors** (Fed Reserve Board) to discuss the national regulatory scheme. "The Fed wanted to hear from the soldiers on the ground with muddied boots, to get a clear perspective of how the economy is doing. They asked us to speak about our state's economic future to give them a better understanding of the country's future economic recovery and challenges." Joining Florida's top regulator were: California, Michigan, New York and Texas.
- **Commissioner Cardwell** met with **Sheila Bair**, Chairman of the **Federal Deposit Insurance Corporation** (FDIC) and Florida bankers to discuss the role of the FDIC in maintaining safety and soundness of Florida institutions.
- The International Banking Corporations bill (HB 707 by Representative Grady and SB 1264 by Senator Richter) passed both houses on March 24 and was signed by Governor Crist on April 15.



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

- An application by **Florida Shores Bank-Central**, St. Cloud, was filed February 6th.
- Applications by **Banco Davivienda, S.A.**, Columbia, to convert its Miami Edge Act Corporation to an international branch office, were filed on February 8th.
- OFR staff attended a **National Association of Credit Union Supervisors (NASCUS)/National Credit Union Administration (NCUA)** meeting for state regulators to discuss current regulatory trends and economic conditions impacting regulated institutions.
- An increased number of institutions are operating under regulatory agreements. As of March 31, 200 administrative actions were in force or pending implementation.

Industry Trends

The following institutions failed during the quarter:

- **Premier American Bank**, Miami, failed on January 22nd.
- **Florida Community Bank**, Immokalee, failed on January 29th.
- **Marco Community Bank**, Marco Island, failed on February 19th.
- **Sun American Bank**, Boca Raton, failed on March 5th.
- **Old Southern Bank**, Orlando, failed on March 12th.

In addition to the five state chartered banks, **Key West Bank** (Key West), a federal association, failed March 26th.

Nationwide, 41 banks failed during the first three months of 2010; 140 banks were closed during 2009; 25 banks were closed during 2008.



Division of Securities

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

Significant Events

- In January, staff participated in an industry outreach presentation to 120 securities professionals at the **Financial Services Institute Annual Meeting**.
- In January, **Jonathan R. Adkins** was ordered to pay a fine of \$7,500 and to cease and desist from any future violations. The final order was issued against Adkins for conducting unauthorized sales seminars, distributing unapproved sales and advertising literature, and failing to obtain his firm's approval for outside business activity. If Mr. Adkins reapplies for registration, his registration will be subject to heightened supervision.
- In February, a Final Order was issued against **Merrill Lynch, Pierce, Fenner, and Smith, Inc.** in connection with its failure to properly register sales assistants who made sales in Florida. The firm was fined \$640,700.
- In February, a Final Order was entered against **George Miller** for knowingly overcharging several clients approximately \$74,000 in advisory fees to fund the operations of his firm in violation of the anti-fraud provisions of Chapter 517, Florida Statutes. Miller was ordered not to seek registration for a period of 15 years and fined \$5,000. All impacted customers were made whole.
- In March, as part of the Division's ongoing participation in a multi-state investigation of the sale of auction rate securities (ARS), **Credit Suisse** and **Morgan Stanley** agreed to pay fines of \$1,787,700 and \$3,060,449 respectively, pay restitution to retail clients and to make best efforts to seek liquidity solutions for institutional clients in Florida.
- In December 2009, the Division published a Notice of Development of Rulemaking regarding legislation passed in the 2009 Session which requires disciplinary guidelines. No requests for workshops were filed; however, staff contacted several securities industry groups in an effort to seek the input of interested parties. These generated meaningful dialogue and identified several issues. As a result of the input, the proposed rules have been amended and will be republished in the *Florida Administrative Weekly*.



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 54 final orders assessing \$82,000 in administrative fines, of that:
 - ✓ Fined 14 licensees for compliance violations for \$35,000.
 - ✓ Fined 19 mortgage brokerage businesses and one individual for a total of \$47,000 for unlicensed activity.
- Revoked two mortgage lender licenses for failure to maintain a surety bond and one money services business for failure to submit annual financial statements and quarterly reports.
- Three correspondent mortgage lenders agreed to surrender their licenses and not reapply for three years for failure to maintain a surety bond.
- Denied licensure to nine mortgage brokers and five businesses.
- The application of **Dennis O'Donnell d/b/a Auto Experience** was denied due to failure to disclose a plea of *nolo contendere* to title fraud in Volusia County.
- **Jean Joseph** was fined \$5,000 for acting as a mortgage broker without a license.
- **Charles W. Moores** was denied a mortgage broker license due to failure to disclose two criminal convictions.

Bureau of Finance Regulation

- Closed 396 examinations and 1,025 consumer complaint investigations resulting in 54 final orders assessing \$125,475 in administrative fines.
- Revoked 19 mortgage industry licenses based on violations of Chapter 494, Florida Statutes.
- **Jason Vitulano, Joseph Miller, Peter Hartofilis, Robert Hofler** and **Steve Vento** of Boca Raton, were charged with mail and wire fraud, conspiracy and submitting false mortgage loan applications to several lenders with grossly inflated earnings and assets.

Bureau of Money Transmitter Regulation

- The Bureau was responsible for 38 final orders being issued for administrative fines totaling \$101,500.
- The licenses for **Envios R. D. d/b/a Pronto Envios** and their 161 Florida vendor locations were all suspended and issued Emergency Cease and Desist Orders for failure to maintain required net worth and surety bond.



Bureau of Financial Investigations

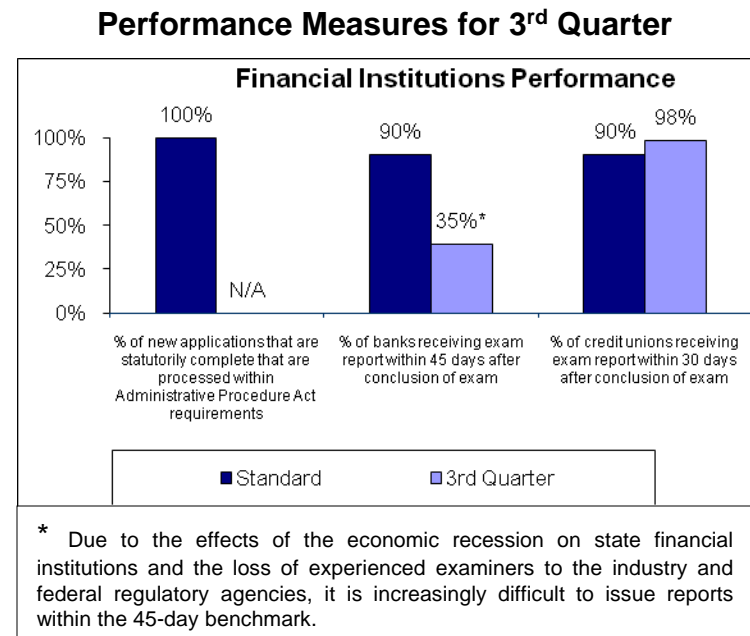
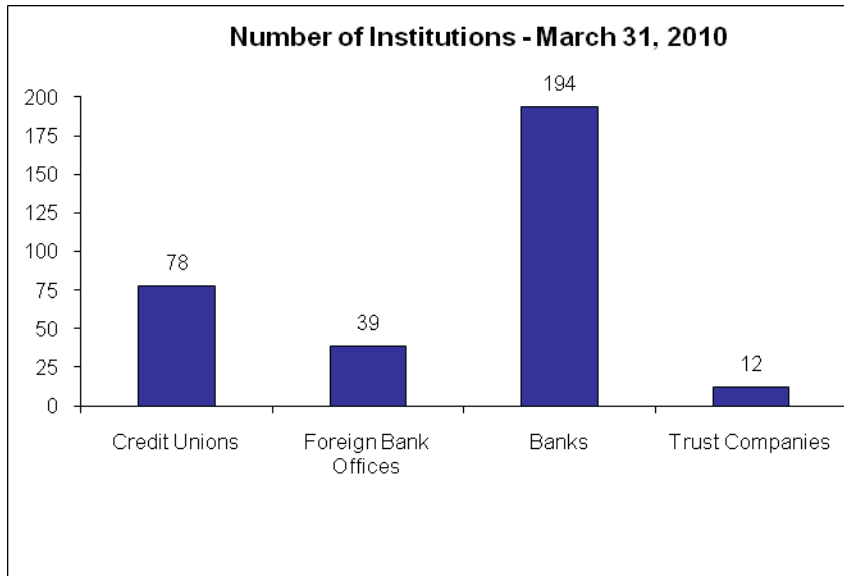
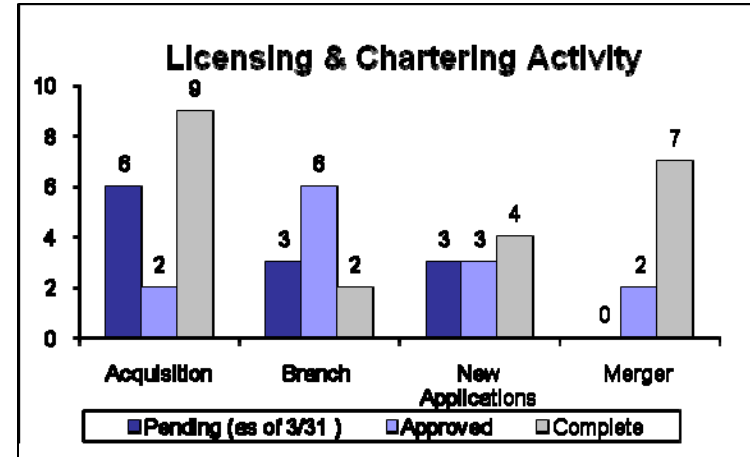
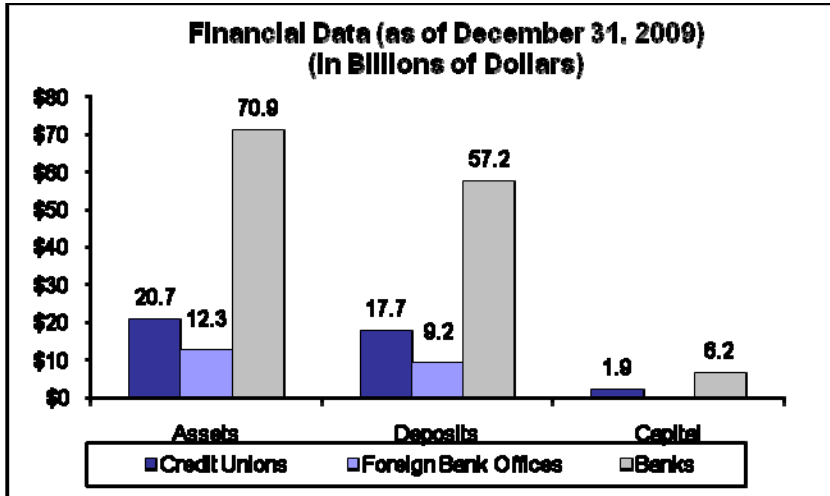
Conducts financial investigations into allegations of fraudulent and unlicensed activity.

Significant Events

- **Scott Leon Johnson** entered a plea of *nolo contendere* to conducting a scheme to defraud and to the sale of unregistered securities, and was sentenced to 30 years probation. Johnson is also required to make restitution to victims in the amount of \$167,790. Investigators alleged Johnson told investors he was operating a foreign exchange trading scheme and would double their money, but in fact diverted investor funds for his personal use. Johnson's plea was the result of a joint investigation between the Bureau of Financial Investigations and the Florida Department of Law Enforcement (FDLE) and was prosecuted by the Sarasota County State Attorney's Office.
- **Daniel Stephen** and **Patricia Depons** entered guilty pleas in federal court on mail fraud and conspiracy to commit mail fraud in connection with a vacant land sale mortgage fraud scheme. Sentencing is scheduled for May, 2010 and each potentially faces up to 40 years of imprisonment. OFR, FDLE and Federal Bureau of Investigations (FBI) investigators alleged that Stephen and Depons misrepresented to potential land buyers they owned certain property and produced fraudulent documents including warranty deeds and closing statements at the loan closings. The scheme ultimately defrauded more than 1,000 victims out of \$10.6 million. The case was prosecuted by the U.S. Attorney's Office, Southern District of Florida, as part of the U.S. Attorney's Mortgage Fraud Strike Force.
- **Hector L. Rivera** pleaded guilty to racketeering for his involvement in a mortgage fraud scheme and was sentenced to eight years imprisonment and ordered to pay \$200,000 in restitution to a mortgage lender and title insurance company. The State Attorney's Office, Fifth Judicial Circuit, requested OFR to investigate allegations that Rivera misrepresented himself as a mortgage broker and branch manager of a correspondent lender located in Ocala and utilized an unauthorized bank account to misappropriate loan proceeds.
- **Michael A. Meisner** was sentenced to 188 months in prison and five years supervised release following his conviction on mail fraud, loan application fraud and tax evasion. His wife, **Victoria Meisner**, was sentenced to 18 months probation for tax evasion. OFR, FBI and IRS investigators alleged Meisner operated a Ponzi scheme by soliciting and accepting \$37 million from over 260 commodity trading investors and paid the investors over \$22 million of new investor money in order to perpetuate the fraud. Investigators alleged Meisner diverted approximately \$6.8 million of the investors' funds to support his grandiose lifestyle. The case was prosecuted by the U.S. Attorney's Office, Southern District of Florida.

Financial Institutions

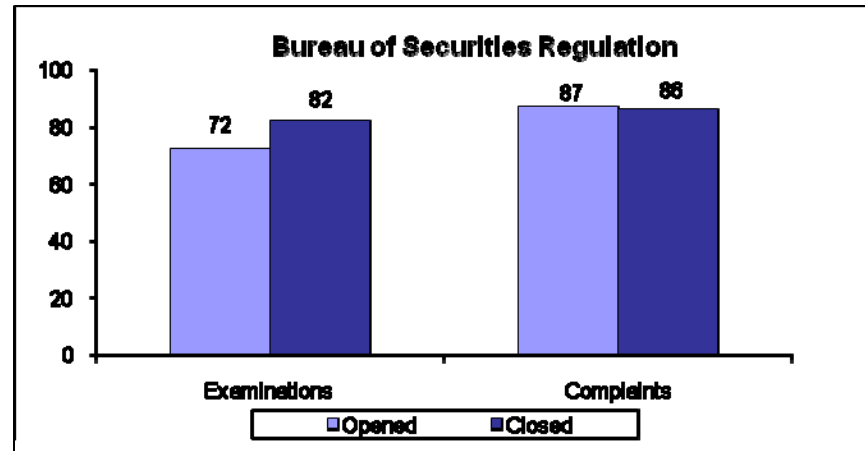
Important Statistics for January 1 – March 31, 2010



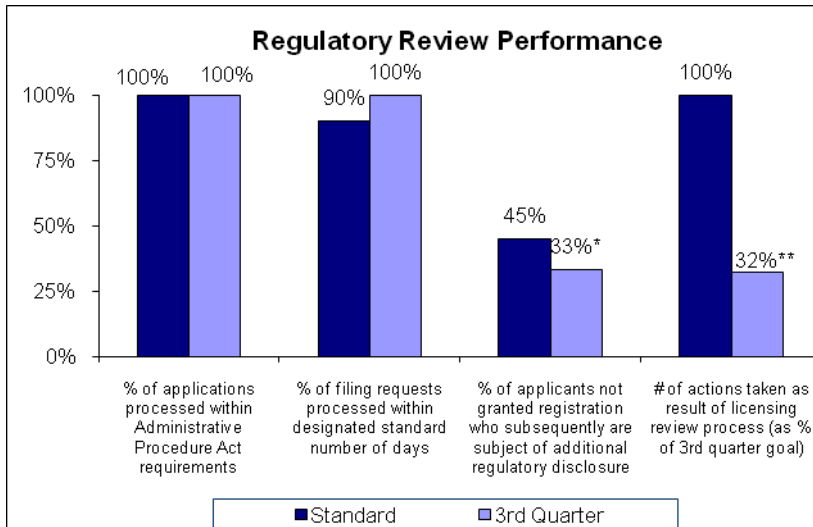
Securities Regulation

Important Statistics for January 1 – March 31, 2010

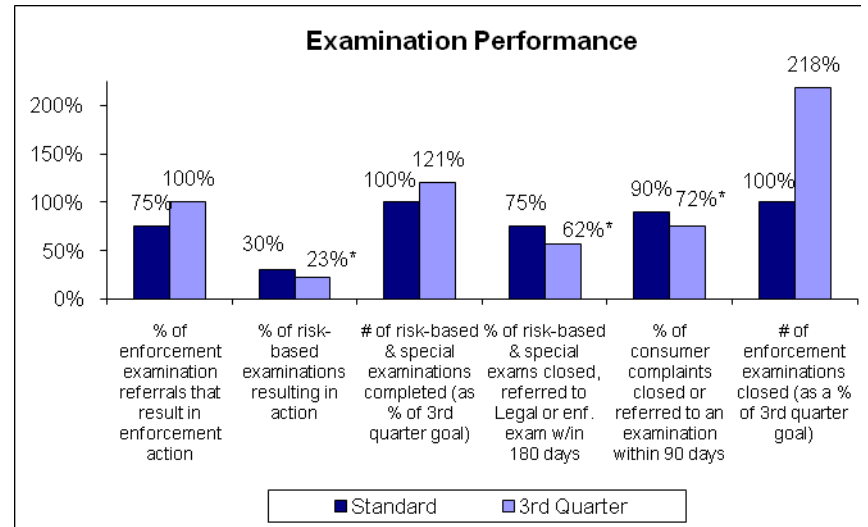
License Applications Received: 18,146
License Applications Approved: 15,027
Denied/Withdrawn: 363
Licensed with Restrictions: 5



Performance Measures for 3rd Quarter



*19% of the applicants that withdrew their application left the industry without registration so they have not been subject to additional regulatory disclosure
 ** The Bureau is reviewing this measure to determine the reason for widely varying results (131% last quarter and 32% this quarter)

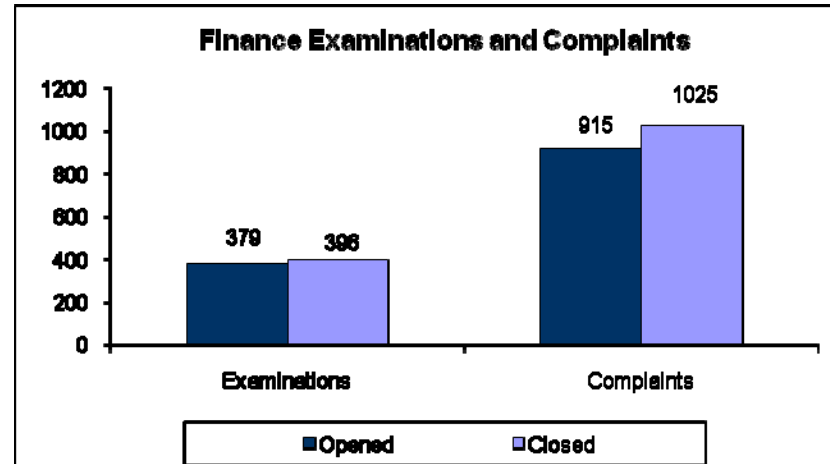


* The Bureau has reallocated resources from risk-based examinations to enforcement examinations which are more complex and time consuming. This has impacted its ability to close risk-based examinations and consumer complaints within the identified standard.

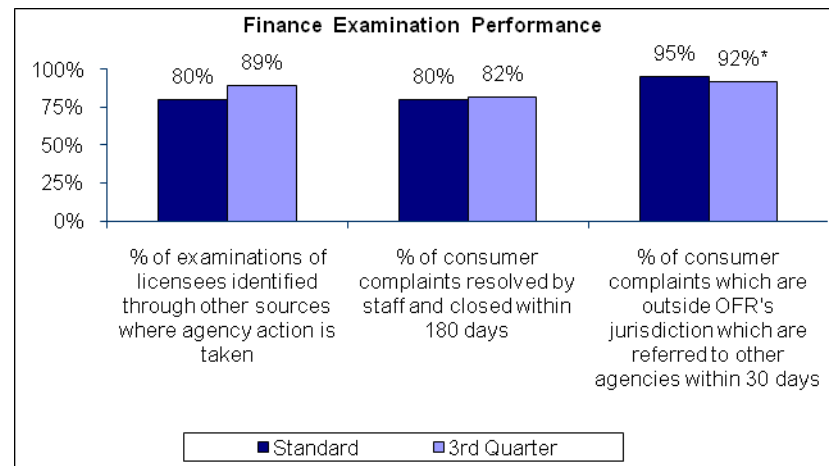
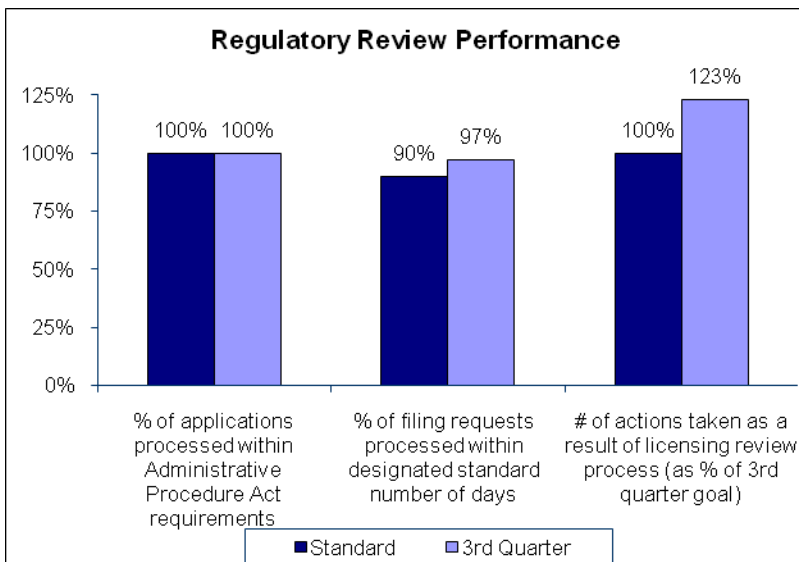
Finance Regulation

Important Statistics for January 1 – March 31, 2010

Finance Applications Received: 1,793
Licenses Approved: 2,510
Denied/Withdrawn: 931



Performance Measures for 3rd Quarter



* An increased volume of collection agency complaints were received during the quarter. The majority of these complaints were unlicensed entities which required significant investigation extending beyond the 30 day standard before a determination of jurisdiction could be made. The complaints were then referred to other agencies or law enforcement.

Money Services Businesses Regulation

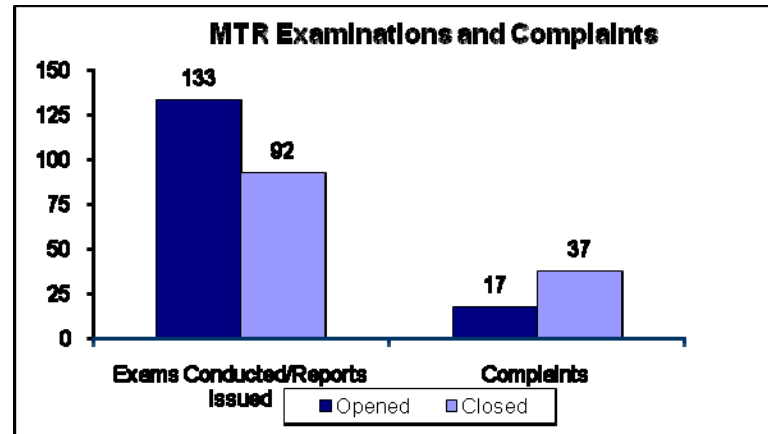
Important Statistics for January 1 – March 31, 2010

Money Services Businesses Applications

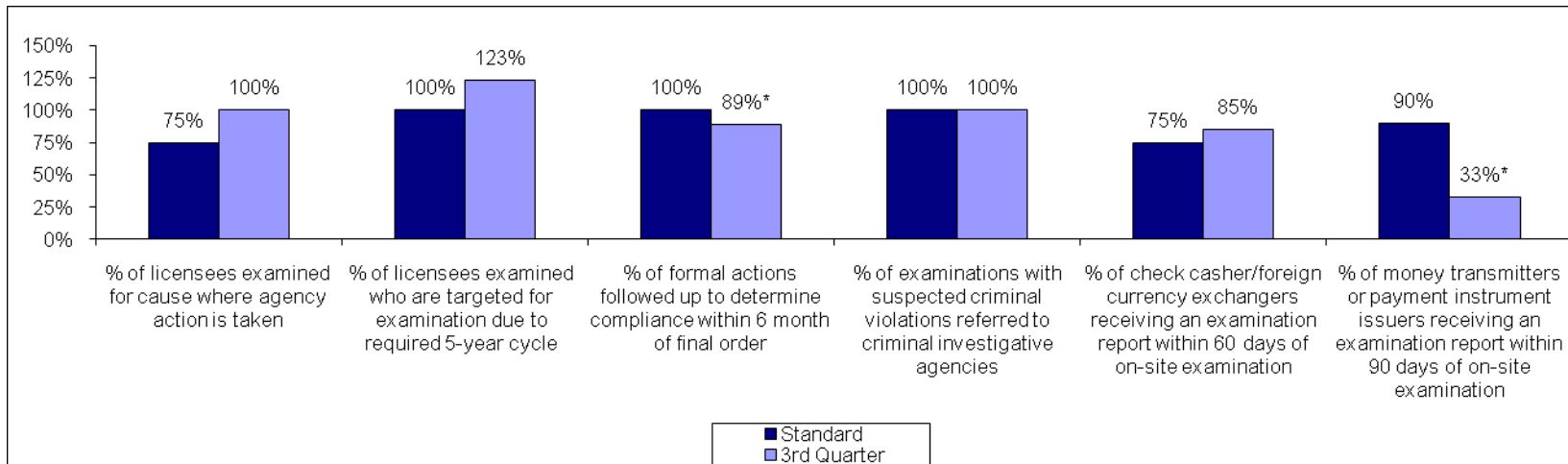
Received: 1,220

Licenses Approved: 1,164

Denied/Withdrawn: 3



Performance Measures for 3rd Quarter



* During the 3rd 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 23%, it lagged in other measures. Focus for 4th Quarter will be to bring all measures into compliance with standards.

Bureau of Financial Investigations

Important Statistics for January 1 – March 31, 2010

Investigations Opened: 23

Investigations Closed: 24

Enforcement Actions:

14 Cases Closed with Action

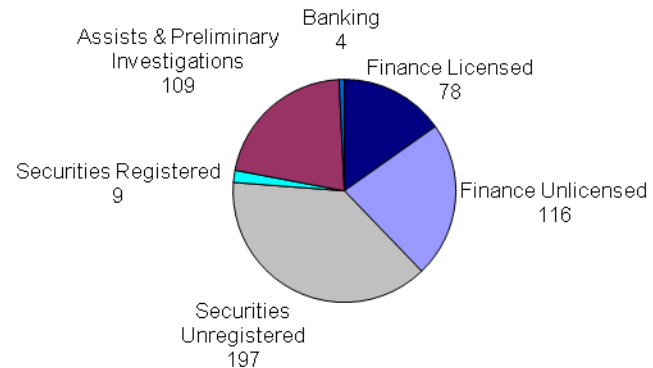
Results:

12 Defendants were sentenced to a total of 23.3 years imprisonment and 128 years probation

\$75 million in court ordered restitution and

\$1.78 million in voluntary restitution

Open Investigations by Type
513 Cases as of March 31, 2010



Performance Measures for 3rd Quarter

