

# FINANCIAL SERVICES COMMISSION, OFFICE OF FINANCIAL REGULATION

## Compliance Economic Review, Group 1 Rules

### 2011 Enhanced Biennial Review, Section 120.745, Florida Statutes

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#### RULE

Rule 69W-600.015, F.A.C.

Financial Reporting Requirements- Statement of Financial Condition – Dealers and Investment Advisers

#### TEXT OF RULE

##### **69W-600.015 Financial Reporting Requirements – Statement of Financial Condition – Dealers and Investment Advisers.**

(1) Except as otherwise specifically noted in this rule, an applicant filing an application for registration as a dealer or investment adviser shall file a balance sheet in accordance with Rule 69W-300.002, F.A.C.

(2) Every dealer registered pursuant to Section 517.12, F.S., and rules thereunder shall file annually with the Office of Financial Regulation, within ninety (90) days after the conclusion of said registrant's fiscal year, audited financial statements as prepared by an independent outside auditor, unless exempted under Rule 69W-300.002, F.A.C.

(a) The Office of Financial Regulation will allow up to a thirty (30) day extension of the filing requirement as set forth in this paragraph provided written request is made prior to the date such audited report is due to be filed, and provided further that good cause for such delay is shown. Good cause shall include excusable neglect or circumstances beyond the control of the registrant.

(b) Every dealer defined as a broker/dealer under Rule 69W-300.002, F.A.C., shall be required to include in such audited financial statements filed verification of said broker/dealer's compliance with the provisions of Rules 69W-600.016 and 69W-600.017, F.A.C.

(c) In lieu of the provisions of paragraph (b) above, the Office of Financial Regulation will accept those statements prepared and filed by a dealer in accordance with the provisions of SEC Rule 17a-5 (17 C.F.R. § 240.17a-5 (2010)) and SEC Rule 17a-10 (17 C.F.R. § 240.17a-10 (2010)).

(3) Every investment adviser registered pursuant to Section 517.12, F.S., and rules thereunder shall file annually with the Office of Financial Regulation, within ninety (90) days after the conclusion of said registrant's fiscal year, financial statements as of fiscal year end, such statements prepared in accordance with the provisions of Rule 69W-300.002, F.A.C.

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

(5) The federal regulations referenced in this rule are hereby incorporated by reference and may be obtained by mail from the Florida Office of Financial Regulation, Division of Securities, 200 E. Gaines Street, Tallahassee, Florida 32399. Copies of the Code of Federal Regulation are also available online through the U.S. Government Printing Office via GPO Access: <http://www.gpoaccess.gov/cfr/index.html>.

*Rulemaking Authority 517.03(1), 517.12(9), 517.121(2) FS. Law Implemented 517.12(9), 517.121(2) FS. History--New 12-5-79, Amended 9-20-82, Formerly 3E-600.15, Amended 6-16-92, 10-30-03, 4-8-04, Formerly 3E-600.015, Amended 11-22-10.*

#### STATEMENT OF JUSTIFICATION

Rule 69W-600.015, F.A.C., implements Sections 517.12(9) and 517.12, F.S. Section 517.12(9), F.S., provides the commission may by rule require dealers to file with the Office of Financial Regulation

(the “Office”) any financial or operational information that is required to be filed by the SEC Exchange Act of 1934 or rules under it. Section 517.12(2), F.S., authorizes the Office to examine at intermittent periods the affairs, books and records of registrants, including investment advisers. The Office may require such records and reports to be submitted to it as required by rule of the commission. Under the rule, investment advisers are required to file annual financial statements with the Office, and dealers are required to file annual audited financial statements unless exempted under Rule 69W-300.002, F.A.C.

The public benefit of the rule is to assure adequate protection for the investing public, by enabling the Office to analyze the financial conditions of registered entities and ensuring that dealers and investment advisers are financially fit to conduct business in Florida. See, e.g, *United States v. Arthur Young & Co.*, 465 U.S. 805, 819 (1984) (“The SEC requires the filing of audited financial statements in order to obviate the fear of loss from reliance on inaccurate information, thereby encouraging public investment in the nation's industries.”).

### STATEMENT OF REGULATORY COSTS

Section 120.541, F.S., sets forth the requirements that agencies must follow in preparing Statements of Estimated Regulatory Costs (SERC). Specifically, paragraphs 120.541(2)(a) through (f), F.S., provide that certain information must be addressed in any SERC. The information requirements as they appear in the statute are cited below, modified for the five-year time period provided by Section 120.745(1)(b)2.a. and (1)(b)2.b., with the Office’s response to each as related to Rule 69W-600.015, F.A.C., Financial Reporting Requirements - Statement of Financial Condition – Dealers and Investment Advisers.

(a) 1. Is the rule directly or indirectly likely to have an adverse impact on economic growth, private sector job creation or employment, or private sector investment in excess of \$1 million in the aggregate in the five-year period beginning on July 1, 2011?

No. The rule requires dealers and investment adviser registrants physically domiciled in Florida to file annually within 90 days of the registrant’s fiscal year end, financial statements necessary for the Office of Financial Regulation to determine compliance with 517.12(9), F.S. and 69W-600.016, F.A.C. This information is basic data that the dealers and investment advisers already create and keep as part of their regular business practices. In addition, when registering, issuer dealer and investment adviser applicants are required to submit a balance sheet with their application.

2. Is the rule directly or indirectly likely to have an adverse impact on business competitiveness, including the ability of persons doing business in the state to compete with persons doing business in other states or domestic markets, productivity, or innovation in excess of \$1 million in the aggregate in the five-year period beginning on July 1, 2011?

No. The rule requires all dealer and investment adviser registrants in the state or outside of the state to maintain the same minimum information in their records for the Office to determine compliance with 517.12(9), F.S. and 69W-600.016, F.A.C. This information is basic data that the dealers and investment advisers already create and keep as part of their regular business practices.

3. Is the rule directly or indirectly likely to increase regulatory costs, including any transactional costs, in excess of \$1 million in the aggregate in the five-year period beginning on July 1, 2011?

Yes. The Office has estimated that dealer and investment adviser registrants spend approximately \$8.5 million over a 5 year period when providing the Office with their financial statements annually. State investment advisers typically file unaudited financial statements which are prepared at minimal costs compared to the issuer dealers that are required to file audited financial statements each year. Based on this estimate, the Office projects that regulatory costs of the rule will exceed \$1 million in the five-year period beginning July 1, 2011.

(See attached Exhibit 1 for data calculations concerning this item.)

However, although there is a cost to submitting financial statements to the Office, the rule requires all dealer and investment adviser registrants in the state or outside of the state to maintain the same minimum information in their records for the Office to determine compliance with 517.12(9), F.S. and 69W-600.016, F.A.C. This information is basic data that the dealers and investment advisers already create and keep as part of their regular business practices.

(b) A good faith estimate of the number of individuals and entities likely to be required to comply with the rule, together with a general description of the types of individuals likely to be affected by the rule.

As of October 19, 2011, the Office of Financial Regulation has approximately 1,214 registered investment advisers and will be receiving an additional approximately an additional 530 investment adviser registrants in January 2012. In addition, there are approximately 2,906 dealers and 83 issuer dealers registered. Registration is required of any person, dealer and/or or investment adviser, who service financial industry services customers through the opening, servicing and managing of customer accounts whether initiated from within or outside this state.

The term “dealer” includes any person, other than an associated person registered under this chapter, who engages, either for all or part of her or his time, directly or indirectly, as broker or principal in the business of offering, buying, selling, or otherwise dealing or trading in securities issued by another person or any issuer who through persons directly compensated or controlled by the issuer engages, either for all or part of her or his time, directly or indirectly, in the business of offering or selling securities which are issued or are proposed to be issued by the issuer. The term “investment adviser” includes any person who receives compensation, directly or indirectly, and engages for all or part of her or his time, directly or indirectly, or through publications or writings, in the business of advising others as to the value of securities or as to the advisability of investments in, purchasing of, or selling of securities, except a dealer whose performance of these services is solely incidental to the conduct of her or his business as a dealer and who receives no special compensation for such services.

(c) A good faith estimate of the cost to the agency, and to any other state and local government entities, of implementing and enforcing the proposed rule, and any anticipated effect on state or local revenues.

The rule does not impose any additional costs on the agency. Further, the implementation and enforcement of the rule is solely the responsibility of the Office of Financial Regulation. Accordingly, no other state or local agencies will be impacted by the proposed rule. There are no anticipated effects on state or local revenue.

(d) A good faith estimate of the transactional costs likely to be incurred by individuals and entities, including local government entities, required to comply with the requirements of the rule. As used in this section, “transactional costs” are direct costs that are readily ascertainable based upon standard business practices, and include filing fees, the cost of obtaining a license, the cost of equipment required to be installed or used or procedures required to be employed in complying with the rule, additional operating costs incurred, the cost of monitoring and reporting, and any other costs necessary to comply with the rule.

There are no transactional costs associated with the implementation of this rule.

(e) An analysis of the impact on small businesses as defined by s. 288.703, and an analysis of the impact on small counties and small cities as defined in s. 120.52. The impact analysis for small businesses must include the basis for the agency’s decision not to implement alternatives that would reduce adverse impacts on small businesses.

The rule requires all dealer and investment adviser registrants in the state or outside of the state to maintain the same minimum information in their records for the Office to determine compliance with 517.121(1), F.S. and 69W-600.016, F.A.C. This information is basic data that dealers and investment advisers should be already keeping as part of their regular business practices. Some of these agencies may be small businesses.

There will no impact on small counties or small cities.

(f) Any additional information that the agency determines may be useful.

None.

(g) In the statement or revised statement, whichever applies, a description of any regulatory alternatives submitted under paragraph (1)(a) and a statement adopting the alternative or a statement of the reasons for rejecting the alternative in favor of the proposed rule.

No lower cost regulatory alternative to the proposed rule has been submitted to the Office.

## EXHIBIT 1

69W-600.015 Financial Reporting

**Group 1: Dealers** = not required to file financial statements with the state of Florida.

- Dealers file quarterly focus reports and Fiscal Year End statements directly with FINRA.

**Group 2: Investment Advisers** = those physically domiciled in Florida file annual financial statements directly with the state of Florida.

(As of October 2011) **528** file unaudited financial statements  
**23** file audited financial statements

**220** from Dodd-Frank legislation expected to file financial statements  
(assuming 50% will file audited = 110 investment advisers audited)

**Group 3: Issuer Dealers** = all file annual audited financial statements directly with the state of Florida.

(As of October 2011) **83** file audited financial statements

### Economic Impact Calculation:

#### **Group 2:**

528 IAs x \$200 (Quick Books comparable software)  
+ (\$0.50 x 5 years for postage x 528 IAs) = \$106,920

23 IAs audited financials x (\$20,000 per year for audit x 5 years)  
+ (\$0.50 x 5 years for postage x 23 IAs) = \$2,300,057.50

110 Dodd-Frank IAs x \$200 (Quick Books comparable software)  
+ (\$0.50 x 5 years for postage x 110 IAs) = \$22,275

110 Dodd-Frank IAs x (\$20,000 per year for audit x 5 years)  
+ (\$0.50 x 5 years for postage x 110 IAs) = \$11,000,275

Total IA Impact = **\$13,429,527.50**

#### **Group 3:**

83 IDs x (\$20,000 per year for audit x 5 years)  
+ (\$0.50 x 5 years for postage x 83 IDs) = \$8,300,207.50

Total ID Impact = **\$8,300,207.50**

TOTAL ECONOMIC IMPACT = **\$21,729,735**