

CHILLING EFFECT FELT ON FLORIDA AGENT LICENSING

By R. Michael Underwood

It has never been easy to become licensed to sell financial products in Florida. The state's historical vulnerability to fraud, its large elderly population and the state legislature's response with strict laws have lead industry to expect delays when seeking registration of agents in Florida. The resignation of Florida Office of Financial Regulation Commissioner Don Saxon, effective at the end of September, in response to criticism of lax licensing standards for mortgage brokers, is making the process worse. New standards may result in slower decisions on license applications.

The Office of Financial Regulation's Division of Securities registers individuals to offer and sell securities in or from the state. Such registration is required before an agent can offer investments in mutual funds, variable annuities, stocks, bonds and a variety of other products. Section 517.12(7), Florida Statutes requires each applicant for registration to file a complete set of fingerprints. The Florida Financial Services Commission has implemented this requirement with Rule 69W-600.006, Florida Administrative Code. That rule permits waiver of the fingerprint requirement when the applicant's fingerprints have been processed pursuant to SEC Rule 17f-2 concerning fingerprinting of securities industry personnel. Florida's rule provides, however, that such waiver is effective only if the applicant's fingerprints have been processed "by said person's current employer."

In the wake of Commissioner Saxon's resignation, the Division of Securities' interpretation of Rule 69W-600.006 is changing. This can significantly impact applications for registration of personnel who are leaving an association with one broker-dealer for a new one. Formerly, if an applicant requested and qualified for "temporary registration" with a new broker-

dealer (while technically still registered with the old broker-dealer), the Division of Securities would regard the old broker-dealer as the applicant's "current employer." The Division of Securities no longer feels it can interpret the regulation this way. Because the new broker-dealer is required to submit the applicant's fingerprints to FINRA for processing under SEC rules, Florida believes it must await the results of that review before acting permanently on the application. Under its new interpretation, the Division of Securities will allow "temporary registration" for no more than 25 days without a new fingerprint report. When an agent does not qualify for "temporary registration" or has already left association with a broker-dealer before applying for registration with a new firm, Florida's practice is unchanged. Before acting on the application, the Division of Securities will await processing of the agent's fingerprints submitted to FINRA by the new firm.

FINRA allows member firms 30 days to turn in fingerprints for a new associated person. Using that full 30 days, however, is likely to delay Florida approval. When a Form U-4 application clears FINRA, this triggers pendency of a registration application in Florida. If the Division of Securities has not received the results of FINRA's processing of the agent's fingerprints after 30 days from that point, the lack of a report and any criminal acts that might be disclosed on the missing report will be noted in a deficiency letter. Issuance of that letter tolls the time within which the Division of Securities must act on the application. Firms can avoid this result by promptly submitting fingerprints to FINRA with the agent's Form U-4 application.

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