

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 783 Branch Offices Conducting Securities Transactions

SPONSOR(S): Insurance & Banking Subcommittee; Eagle

TIED BILLS: **IDEN./SIM. BILLS:** SB 814

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	13 Y, 0 N, As CS	Bauer	Cooper
2) Regulatory Affairs Committee	16 Y, 0 N	Bauer	Hamon

SUMMARY ANALYSIS

The securities industry is regulated on the federal level by the U.S. Securities and Exchange Commission. At the state level, the Florida Office of Financial Regulation ("OFR") regulates the sale of securities and rendering of investment advice in, to, or from Florida by firms, branch offices, and individuals affiliated with these firms pursuant to the Florida Securities and Investor Protection Act, Chapter 517, Florida Statutes.

Florida currently uses a registration process for securities dealers, associated persons, investment advisers, and branch offices. The Act provides that no dealer or investment adviser shall conduct business from a branch office within this state unless the branch office is registered with the OFR. A branch office is a location in Florida where associated persons of a securities dealer or investment adviser conducts the business of rendering investment advice or effectuates the purchase or sale of securities. Firms must ensure that the information contained in their branch office registration applications are current and accurate, and must file a new registration if the information changes and must provide additional information requested by the OFR if the application is incomplete. Currently, the average processing time for a branch office registration application is 5-6 days. Until the application for registration is approved, a branch office may not conduct business.

CS/HB 783 amends various provisions of ch. 517, F.S. and creates s. 517.1202, F.S. to provide notice filing requirements specifically for branch offices. These processes include filing fees, expiration, renewal, and termination of a branch office notice filing. The bill provides that branch office notice filing is effective upon the OFR's receipt of a notice filing, and conforms several provisions to provide for the changes made to the current registration requirements for branch offices. The bill authorizes the OFR to suspend or to revoke a notice filing when a branch office fails to comply with specified requirements, and provides the Financial Services Commission with authority to adopt rules to implement the bill.

The bill does not have a fiscal impact on state and local governments. The bill may have a positive impact on the private sector by eliminating the lapse in business operations while awaiting registration approval.

The bill provides for an effective date of October 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

The securities industry is regulated by the following:

- The U.S. Securities and Exchange Commission (SEC), the federal agency with primary responsibility for regulating the securities industry and for enforcing federal securities laws.
- State securities regulators, such as the Florida Office of Financial Regulation (the OFR), which regulate and register entities and individuals in the securities industry.
 - The OFR's Division of Securities regulates the sale of securities in, to, or from Florida by firms, branch offices, and individuals affiliated with these firms to compliance with the Florida Securities and Investor Protection Act, Chapter 517, F.S. (the Act) and Chapter 69W, Florida Administrative Code.
 - Pursuant to s. 20.121(3)(a), F.S., the Financial Services Commission (the Governor and Cabinet) serves as the OFR's agency head for purposes of rulemaking and appoints the OFR's Commissioner, who serves as the agency head for purposes of final agency action for all areas within the OFR's regulatory authority.
- The Financial Industry Regulatory Authority, Inc. (FINRA), which is a private, self-regulatory organization for all securities firms doing business in the United States.¹ FINRA operates the Central Registration Depository and the Investment Adviser Registration Depository, which are central databases for registration, reporting, and disclosure information for the securities industry.

Registration is conceptually distinct from "notice filing," which the Act allows federal covered investment advisers (federal IAs) to use and transmit to all desired states through the Investment Adviser Registration Depository.² Notice filing for federal IAs consists of providing the OFR with copies of documents submitted to the SEC, a consent to service of process, and a filing fee. A notice filing is effective upon receipt.³ The difference between state-registered IAs and federal covered IAs is that the latter have more than \$100 million in assets under management and are required to be registered under the federal Investment Advisors Act of 1940.⁴ In addition, branch offices of federal covered investment advisers are not required to register with the OFR.

Florida currently uses a registration process for securities dealers, associated persons, state-covered investment advisers, and branch offices. The Act provides that no dealer or investment adviser shall conduct business from a branch office within this state unless the branch office is registered with the OFR.⁵ "Branch office" means any location in this state of a dealer or investment adviser where one or more associated persons regularly conduct the business of rendering investment advice or effecting any transactions in, or inducing or attempting to induce, the purchase or sale of any security, or any location that is held out as such.⁶

Branch offices must register with the OFR by filing a written application form prescribed by commission rule and paying an application fee.⁷ Issuer-dealers and non-FINRA dealers are required to file requests for branch office registration through the OFR's online licensing and registration system.⁸ In contrast, investment advisers apply for branch office registration through the Central Registration Depository.⁹ The

¹ About FINRA, <http://www.finra.org/AboutFINRA/> (last accessed March 4, 2013).

² Section 517.12(4), F.S.

³ Section 517.1201, F.S.

⁴ Section 517.021(9), F.S. The federal investment Advisors Act of 1940 is codified at 15 U.S.C. §80b-1 *et seq.* Section 410 of the federal Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 raised the threshold from \$25 million to \$100 million.

⁵ Section 517.12(5), F.S.

⁶ Section 517.021(4), F.S. Branch offices of federal IAs are not required to register with the OFR.

⁷ Rule 69W-600.004(3), F.A.C.

⁸ Rules 69W-600.004(3)(c) and 69W-301.002(2)(i-j), F.A.C.

⁹ Rule 69W-301.002(2)(h), F.A.C.

application form is FINRA's Uniform Branch Office Registration (Form BR).¹⁰ Once registered, branch offices are required to ensure that the information in the application remains accurate. If any information changes, such as changes in supervisory personnel, changes in any material fact (such as a new location of a branch office) or method of business,¹¹ the branch office must resubmit an amended Form BR. Failure to amend the application is a violation of the Act, and can subject the branch office and associated person to denial, revocation, restriction, or suspension of a registration under s. 517.12, F.S.¹² In addition, the OFR has authority under current law to deny, revoke, restrict, or suspend registration if such applicant or registrant violates any provision of the Act or any rule or order made under the Act.¹³

Registration of a branch office enables the OFR to determine that dealers, associated persons, and investment advisers in Florida maintain proper and adequate supervision. The OFR verifies that the supervisor holds the required licenses and that the supervisor is within the geographical area to adequately manage the persons located at the branch office seeking registration. For example, the OFR would have a regulatory concern if a branch office registered in Ft. Lauderdale was actually being supervised by a person in New York City. Registration of branch offices also allows the OFR to minimize expansion if a firm has systemic supervisory issues or ongoing enforcement actions.¹⁴

Currently, the Act provides oversight authority over branch office registrants through the following provisions:

- Section 517.1205, F.S., regarding registration of associated persons specific as to a securities dealer, investment adviser, or federal covered adviser identified at the time of registration approval.
- Section 517.121(2), F.S., regarding books and records requirements for registrants and the OFR's examination authority.
- Section 517.161(1)(j), F.S., regarding the OFR's authority to revoke, deny, or suspend a registration if certain conditions exist.
- Section 517.1611(2)(b), F.S., regarding the commission's authority to adopt rules to disqualify applicants (including branch offices) from registration, based upon criminal backgrounds.
- Section 517.211(1), F.S., regarding investors' right to rescind the purchase of stock upon the occurrence of specified violations. This provision excludes a branch office's failure to renew its registration.¹⁵

Since July 1, 2012, the average timeframe for the OFR to process and approve broker-dealer branch office is 5 days and investment adviser branch office is 6 days. According to the OFR, historically about 15% of branch office registration applications contain deficiencies, which result in a delay of the approval date and operation of the branch location.¹⁶

The industry has noted that while the OFR has improved its registration processing time,¹⁷ the current registration process can adversely impact registered associated person who must file a new registration form to reflect a change their firm affiliation, branch office location, and so forth, and suspend business while awaiting the OFR's approval.

Effect of CS/HB 783

¹⁰ See FINRA Branch Office Registration, at <http://www.finra.org/Industry/Compliance/Registration/CRD/FilingGuidance/P014964> (last accessed March 13, 2013). The Form BR has been approved by the SEC and was developed by FINRA, the New York Stock Exchange, and the North American Securities Administrators Association to enable firms to register their branch offices electronically.

¹¹ Section 517.12(13), F.S. and Rule 69W-500.004(3)(c), F.A.C.

¹² Section 517.161(1)(a), F.S.

¹³ Section 517.161(1)(a), F.S.

¹⁴ Bill analysis from the OFR (received March 8, 2013), on file with the Insurance & Banking Subcommittee staff

¹⁵ This exclusion for branch offices from the strict liability provision was enacted in 2000. See Ch. 2000-123, L.O.F.

¹⁶ *Ibid.*

¹⁷ Financial Services Institute Briefing Memo (January 2013), on file with the Insurance & Banking Subcommittee staff. This memo states that from June 2, 2010 to February 28, 2011, the average branch office application processing time by OFR was 11.5 days.

From April 1, 2011 to August 21, 2011, the average branch office application was processed in 5.4 days.

Because notice filing and registration are conceptually distinct, Sections 1 and 2 of the bill amend s. 517.12 F.S. and create s. 517.1202, F.S., respectively, to change the current registration requirement to a notice filing system specifically for branch offices. Under the bill, notice filing becomes effective upon the OFR's receipt of the notice filing form and filing fee of \$100 for each branch office in this state. The bill requires branch offices to renew their notice filings by December 31 every year. The bill provides authority to the Financial Services Commission to adopt rules relating to notice filings, including requiring dealers and investment advisers to file amendments with the OFR to keep their branch office notice filings current.

The bill also provides the OFR with some enforcement authority similar to those over registrants, such as the ability to revoke a notification if the notice filer pays for a notice filing with a check or electronic funds transmission that is dishonored by his or her financial institution. The bill also provides OFR with authority to summarily suspend a branch office's notice filing if the notice filer fails to provide additional information within 30 days of a written request by the OFR. Additionally, the bill provides that fees collected under s. 517.1202, F.S., become revenue of the state, unless otherwise specified.

Sections 3-7 of the bill amend ss. 517.1205, 517.121, 517.161, 517.1611, and 517.211 to conform to the changes made by the bill with respect to branch office notice filings in lieu of registration.

B. SECTION DIRECTORY:

Section 1 amends s. 517.12, F.S., to provide for a branch office notice filing with the Office of Financial Regulation in lieu of registration and to make conforming changes.

Section 2 creates s. 517.1202, F.S., to provide notice filing requirements and procedures for branch offices, to authorize the Financial Services Commission to adopt rules relating to notice filings, to provide for the expiration, renewal, suspension, revocation, and termination of branch office notice filings under specified circumstances, and to provide applicability and construction with respect to fees collected for branch office notice filings.

Section 3 amends s. 517.1205, F.S., regarding registration of associated persons, to conform to the changes for branch offices.

Section 4 amends s. 517.121, F.S., regarding books and records requirements and examinations, to conform to the changes for branch offices.

Section 5 amends s. 517.161, F.S., regarding revocation, denial, or suspension of dealers, investment advisers, and associated persons, to conform to the changes for branch offices.

Section 6 amends s. 517.1611, F.S., regarding guidelines, to conform to the changes for branch offices.

Section 7 amends s. 517.211, F.S., regarding remedies available in cases of unlawful sale, to conform to the changes for branch offices.

Section 8 provides an effective date of October 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None. Implementation of this bill will require some computer programming changes to the OFR's online registration and licensing system; however, the OFR has reported that these modifications will not result in added costs to the agency.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a positive impact on the private sector by eliminating the lapse in branch operations while awaiting registration approval.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

If enacted, the bill would necessitate amendments to Rule 69W-300, F.A.C.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 19, 2013, the Insurance & Banking Subcommittee considered and adopted a strike-all amendment to the bill. The amendment made the following changes:

- Created new section, s. 517.1202, F.S., specifically for branch office notice filings.
- Amended and conformed various provisions of ch. 517, F.S., to clarify the distinction between notice filing and registration.
- Authorized the OFR to take corrective action, including summary suspension, against a branch office that fails to comply with specified requirements.
- Clarified the notice filing requirements and form for branch offices.
- Provided an effective date of October 1, 2013.

The Insurance & Banking Subcommittee reported the bill favorably as a committee substitute. This analysis is drafted to the committee substitute as passed by the Insurance & Banking Subcommittee.