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CS/HB 783

2013 Legislature

1
2 An act relating to branch offices conducting
3 securities transactions; amending s. 517.12, F.S.;
4 providing for a branch office notice filing with the
5 Office of Financial Regulation in lieu of
6 registration; creating s. 517.1202, F.S.; prohibiting
7 a securities dealer or investment advisor from
8 conducting business from a branch office unless a
9 specified notice has been filed with the office;
10 providing requirements and procedures with respect to
11 notice filing for branch offices; authorizing the
12 Financial Services Commission to adopt rules relating
13 to such notice filings; providing a fee for a branch
14 office notice filing; providing for expiration,
15 renewal, suspension, revocation, and termination of
16 branch office notice filings under specified
17 circumstances; providing applicability and
18 construction with respect to fees collected for branch
19 office notice filings; amending ss. 517.1205, 517.121,
20 517.161, 517.1611, and 517.211, F.S.; conforming
21 provisions to changes made by the act with respect to
22 requiring branch office notice filings with the Office
23 of Financial Regulation in lieu of registration;
24 providing an effective date.

25
26 Be It Enacted by the Legislature of the State of Florida:

27
28 Section 1. Subsections (5), (6), (10), (11), (12), (14),

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29 and (15) of section 517.12, Florida Statutes, are amended to
30 read:

31 517.12 Registration of dealers, associated persons, and
32 investment advisers, ~~and branch offices.~~

33 (5) No dealer or investment adviser shall conduct business
34 from a branch office within this state unless the branch office
35 is notice-filed with the office pursuant to s. 517.1202
36 ~~registered with the office pursuant to the provisions of this~~
37 ~~section.~~

38 (6) A dealer, associated person, or investment adviser, ~~or~~
39 ~~branch office,~~ in order to obtain registration, must file with
40 the office a written application, on a form which the commission
41 may by rule prescribe. The commission may establish, by rule,
42 procedures for depositing fees and filing documents by
43 electronic means provided such procedures provide the office
44 with the information and data required by this section. Each
45 dealer or investment adviser must also file an irrevocable
46 written consent to service of civil process similar to that
47 provided for in s. 517.101. The application shall contain such
48 information as the commission or office may require concerning
49 such matters as:

50 (a) The name of the applicant and the address of its
51 principal office and each office in this state.

52 (b) The applicant's form and place of organization; and,
53 if the applicant is a corporation, a copy of its articles of
54 incorporation and amendments to the articles of incorporation
55 or, if a partnership, a copy of the partnership agreement.

56 (c) The applicant's proposed method of doing business and

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57 | financial condition and history, including a certified financial
58 | statement showing all assets and all liabilities, including
59 | contingent liabilities of the applicant as of a date not more
60 | than 90 days prior to the filing of the application.

61 | (d) The names and addresses of all associated persons of
62 | the applicant to be employed in this state and the offices to
63 | which they will be assigned.

64 | (10) An applicant for registration shall pay an assessment
65 | fee of \$200, in the case of a dealer or investment adviser, or
66 | \$50, in the case of an associated person. An associated person
67 | may be assessed an additional fee to cover the cost for the
68 | fingerprint cards to be processed by the office. Such fee shall
69 | be determined by rule of the commission. ~~Each dealer and each~~
70 | ~~investment adviser shall pay an assessment fee of \$100 for each~~
71 | ~~office in this state.~~ Such fees become the revenue of the state,
72 | except for those assessments provided for under s. 517.131(1)
73 | until such time as the Securities Guaranty Fund satisfies the
74 | statutory limits, and are not returnable in the event that
75 | registration is withdrawn or not granted.

76 | (11) If the office finds that the applicant is of good
77 | repute and character and has complied with the provisions of
78 | this chapter and the rules made pursuant hereto, it shall
79 | register the applicant. The registration of each dealer,
80 | investment adviser, ~~branch office,~~ and associated person expires
81 | on December 31 of the year the registration became effective
82 | unless the registrant has renewed his or her registration on or
83 | before that date. ~~The commission may establish by rule~~
84 | ~~procedures for renewing the registration of a branch office~~

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85 | ~~through the Central Registration Depository.~~ Registration may be
86 | renewed by furnishing such information as the commission may
87 | require, together with payment of the fee required in subsection
88 | (10) for dealers, investment advisers, or associated persons, ~~or~~
89 | ~~branch offices~~ and the payment of any amount lawfully due and
90 | owing to the office pursuant to any order of the office or
91 | pursuant to any agreement with the office. Any dealer,
92 | investment adviser, or associated person, ~~or branch office~~
93 | ~~registrant~~ who has not renewed a registration by the time the
94 | current registration expires may request reinstatement of such
95 | registration by filing with the office, on or before January 31
96 | of the year following the year of expiration, such information
97 | as may be required by the commission, together with payment of
98 | the fee required in subsection (10) for dealers, investment
99 | advisers, or associated persons, ~~or branch office~~ and a late fee
100 | equal to the amount of such fee. Any reinstatement of
101 | registration granted by the office during the month of January
102 | shall be deemed effective retroactive to January 1 of that year.

103 | (12) (a) The office may issue a license to a dealer,
104 | investment adviser, or associated person, ~~or branch office~~ to
105 | evidence registration under this chapter. The office may require
106 | the return to the office of any license it may issue prior to
107 | issuing a new license.

108 | (b) Every dealer, investment adviser, or federal covered
109 | adviser shall promptly file with the office, as prescribed by
110 | rules adopted by the commission, notice as to the termination of
111 | employment of any associated person registered for such dealer
112 | or investment adviser in this state and shall also furnish the

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113 | reason or reasons for such termination.

114 | (c) Each dealer or investment adviser shall designate in
115 | writing to, and register with, the office a manager for each
116 | office the dealer or investment adviser has in this state.

117 | (14) Every dealer or, investment adviser, ~~or branch office~~
118 | registered or required to be registered or branch office notice-
119 | filed or required to be notice-filed with the office shall keep
120 | records of all currency transactions in excess of \$10,000 and
121 | shall file reports, as prescribed under the financial
122 | recordkeeping regulations in 31 C.F.R. part 103, with the office
123 | when transactions occur in or from this state. All reports
124 | required by this subsection to be filed with the office shall be
125 | confidential and exempt from s. 119.07(1) except that any law
126 | enforcement agency or the Department of Revenue shall have
127 | access to, and shall be authorized to inspect and copy, such
128 | reports.

129 | (15) (a) In order to facilitate uniformity and streamline
130 | procedures for persons who are subject to registration or
131 | notification in multiple jurisdictions, the commission may adopt
132 | by rule uniform forms that have been approved by the Securities
133 | and Exchange Commission, and any subsequent amendments to such
134 | forms, if the forms are substantially consistent with the
135 | provisions of this chapter. Uniform forms that the commission
136 | may adopt to administer this section include, but are not
137 | limited to:

138 | 1. Form BR, Uniform Branch Office Registration Form,
139 | adopted October 2005.

140 | 2. Form U4, Uniform Application for Securities Industry

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141 Registration or Transfer, adopted October 2005.

142 3. Form U5, Uniform Termination Notice for Securities
143 Industry Registration, adopted October 2005.

144 4. Form ADV, Uniform Application for Investment Adviser
145 Registration, adopted October 2003.

146 5. Form ADV-W, Notice of Withdrawal from Registration as
147 an Investment Adviser, adopted October 2003.

148 6. Form BD, Uniform Application for Broker-Dealer
149 Registration, adopted July 1999.

150 7. Form BDW, Uniform Request for Broker-Dealer Withdrawal,
151 adopted August 1999.

152 (b) In lieu of filing with the office the applications
153 specified in subsection (6), the fees required by subsection
154 (10), the renewals required by subsection (11), and the
155 termination notices required by subsection (12), the commission
156 may by rule establish procedures for the deposit of such fees
157 and documents with the Central Registration Depository or the
158 Investment Adviser Registration Depository of the Financial
159 Industry Regulatory Authority, as developed under contract with
160 the North American Securities Administrators Association, Inc.

161 Section 2. Section 517.1202, Florida Statutes, is created
162 to read:

163 517.1202 Notice-filing requirements for branch offices.-

164 (1) It is unlawful for a dealer or investment adviser to
165 conduct business from a branch office in this state unless the
166 dealer or investment adviser has made a branch office notice-
167 filing with the office. A notice-filing under this section shall
168 consist of a form that the commission may prescribe by rule. The

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169 commission may establish, by rule, procedures for the deposit of
170 fees and filing of documents by electronic means if the
171 procedures provide the office with the information and data
172 required by this section.

173 (2) A notice filing shall be effective upon receipt by the
174 office of the form and filing fee. Each dealer and each
175 investment adviser shall pay a filing fee of \$100 for each
176 branch office in this state.

177 (3) A notice filing shall expire on December 31 of the
178 year in which the filing became effective unless the dealer or
179 investment adviser has renewed the filing on or before that
180 date. A dealer or investment adviser may renew a branch office
181 notice filing by furnishing to the office such information as
182 the commission or office may require, together with a renewal
183 fee of \$100 and the payment of any amount due and owing the
184 office pursuant to any agreement with the office. Any dealer or
185 investment adviser who has not renewed a branch office notice
186 filing by the time a current notice filing expires may request
187 reinstatement of such notice filing by filing with the office,
188 on or before January 31 of the year following the year the
189 notice filing expires, such information as the commission or
190 office may require, together with the filing fee of \$100 and a
191 late fee equal to \$100. Any reinstatement of a branch office
192 notice filing granted by the office during the month of January
193 shall be deemed effective retroactive to January 1 of that year.

194 (4) A branch office notice filing under this section shall
195 be summarily suspended by the office if the notice filer fails
196 to provide to the office, within 30 days after a written request

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197 by the office, all of the information required by this section
 198 and the rules adopted under this section. The summary suspension
 199 shall be in effect for the branch office until such time as the
 200 notice filer submits the requested information to the office,
 201 pays a fine as prescribed by s. 517.221(3), and a final order is
 202 entered. At such time, the suspension shall be lifted. For
 203 purposes of s. 120.60(6), failure to provide all information
 204 required by this section and the underlying rules constitutes
 205 immediate and serious danger to the public health, safety, and
 206 welfare. If the notice filer fails to provide all of the
 207 requested information within a period of 90 days, the notice
 208 filing shall be revoked by the office.

209 (5) Notification under this section may be revoked by the
 210 office if the notice filer makes payment to the office for a
 211 branch office notice filing with a check or electronic
 212 transmission of funds that is dishonored by the notice filer's
 213 financial institution.

214 (6) The commission may require, by rule, a dealer or
 215 investment adviser who has made a branch office notice filing
 216 pursuant to this section to file amendments with the office.

217 (7) A branch office notice filing may be terminated by
 218 filing notice of such termination with the office. Unless
 219 another date is specified by the dealer or investment adviser,
 220 such notice shall be effective upon its receipt by the office.

221 (8) All fees collected under this section become the
 222 revenue of the state, except for those assessments provided for
 223 under s. 517.131(1) until such time as the Securities Guaranty
 224 Fund satisfies the statutory limits, and are not returnable in

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225 | the event that a branch office notice filing is withdrawn.

226 | Section 3. Section 517.1205, Florida Statutes, is amended
227 | to read:

228 | 517.1205 Registration of associated persons specific as to
229 | securities dealer, investment adviser, or federal covered
230 | adviser identified at time of registration approval.—Inasmuch as
231 | this chapter is intended to protect investors in securities
232 | offerings and other investment transactions regulated by that
233 | chapter, its provisions are to be construed to require full and
234 | fair disclosure of all, but only, those matters material to the
235 | investor's evaluation of the offering or other transaction. It
236 | should, furthermore, be construed to impose the standards
237 | provided by law on all those seeking to participate in the
238 | state's securities industry through registration as a securities
239 | dealer, investment adviser, or associated person. To this end,
240 | it is declared to be the intent of the Legislature that the
241 | registration of associated persons required by law is specific
242 | to the securities dealer, investment adviser, or federal covered
243 | adviser identified at the time such registration is approved.
244 | Notwithstanding any interpretation of law to the contrary, the
245 | historical practice of the Department of Banking and Finance,
246 | reflected in its rules, that requires a new application for
247 | registration from a previously registered associated person when
248 | that person seeks to be associated with a new securities dealer
249 | or investment adviser is hereby ratified and approved as
250 | consistent with legislative intent. It is, finally, declared to
251 | be the intent of the Legislature that while approval of an
252 | application for registration of a securities dealer, investment

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253 | adviser, or associated person, ~~or branch office~~ requires a
254 | finding of the applicant's good repute and character, such
255 | finding is precluded by a determination that the applicant may
256 | be denied registration on grounds provided by law.

257 | Section 4. Subsections (2) and (3) of section 517.121,
258 | Florida Statutes, are amended to read:

259 | 517.121 Books and records requirements; examinations.—

260 | (2) The office shall, at intermittent periods, examine the
261 | affairs and books and records of each registered dealer,
262 | investment adviser, ~~branch office, or~~ associated person, or
263 | branch office notice-filed with the office, or require such
264 | records and reports to be submitted to it as required by rule of
265 | the commission, to determine compliance with this act.

266 | (3) Registration under s. 517.12 or notification under s.
267 | 517.1202 may be summarily suspended by the office pursuant to s.
268 | 120.60(6) if the registrant or notice-filed branch office fails
269 | to promptly provide to the office, after a written request, any
270 | of the records required by this section and the rules adopted
271 | under this section. The suspension may be rescinded if the
272 | registrant or notice-filed branch office submits the requested
273 | records to the office. For purposes of s. 120.60(6), failure to
274 | provide substantially all of such records constitutes immediate
275 | and serious danger to the public health, safety, and welfare.

276 | Section 5. Paragraphs (j) and (n) of subsection (1) of
277 | section 517.161, Florida Statutes, are amended to read:

278 | 517.161 Revocation, denial, or suspension of registration
279 | of dealer, investment adviser, or associated person, ~~or branch~~
280 | ~~office.~~—

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281 (1) Registration under s. 517.12 may be denied or any
282 registration granted may be revoked, restricted, or suspended by
283 the office if the office determines that such applicant or
284 registrant; any member, principal, or director of the applicant
285 or registrant or any person having a similar status or
286 performing similar functions; or any person directly or
287 indirectly controlling the applicant or registrant:

288 (j) Has been convicted of, or has entered a plea of guilty
289 or nolo contendere to, regardless of whether adjudication was
290 withheld, a crime against the laws of this state or any other
291 state or of the United States or of any other country or
292 government which relates to registration as a dealer, investment
293 adviser, issuer of securities, or associated person, ~~or branch~~
294 ~~office~~; which relates to the application for such registration;
295 or which involves moral turpitude or fraudulent or dishonest
296 dealing;

297 (n) Made payment to the office for a registration ~~or~~
298 ~~notice filing~~ with a check or electronic transmission of funds
299 that is dishonored by the applicant's or registrant's, ~~or~~
300 ~~notice filer's~~ financial institution.

301 Section 6. Paragraph (b) of subsection (2) of section
302 517.1611, Florida Statutes, is amended to read:

303 517.1611 Guidelines.—

304 (2) The commission shall adopt by rule disqualifying
305 periods pursuant to which an applicant will be disqualified from
306 eligibility for registration based upon criminal convictions,
307 pleas of nolo contendere, or pleas of guilt, regardless of
308 whether adjudication was withheld, by the applicant; any

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309 partner, member, officer, or director of the applicant or any
310 person having a similar status or performing similar functions;
311 or any person directly or indirectly controlling the applicant.

312 (b) The disqualifying periods shall be related to crimes
313 involving registration as a dealer, investment adviser, issuer
314 of securities, or associated person, ~~or branch office~~ or the
315 application for such registration or involving moral turpitude
316 or fraudulent or dishonest dealing.

317 Section 7. Subsection (1) of section 517.211, Florida
318 Statutes, is amended to read:

319 517.211 Remedies available in cases of unlawful sale.—

320 (1) Every sale made in violation of either s. 517.07 or s.
321 517.12(1), (4), (5), (9), (11), (13), (16), or (18) may be
322 rescinded at the election of the purchaser, except a sale made
323 in violation of the provisions of s. 517.1202(3) ~~517.12(11)~~
324 relating to a renewal of a branch office notification
325 ~~registration~~ shall not be subject to this section, and a sale
326 made in violation of the provisions of s. 517.12(13) relating to
327 filing a change of address amendment shall not be subject to
328 this section. Each person making the sale and every director,
329 officer, partner, or agent of or for the seller, if the
330 director, officer, partner, or agent has personally participated
331 or aided in making the sale, is jointly and severally liable to
332 the purchaser in an action for rescission, if the purchaser
333 still owns the security, or for damages, if the purchaser has
334 sold the security. No purchaser otherwise entitled will have the
335 benefit of this subsection who has refused or failed, within 30
336 days of receipt, to accept an offer made in writing by the

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337 | seller, if the purchaser has not sold the security, to take back
338 | the security in question and to refund the full amount paid by
339 | the purchaser or, if the purchaser has sold the security, to pay
340 | the purchaser an amount equal to the difference between the
341 | amount paid for the security and the amount received by the
342 | purchaser on the sale of the security, together, in either case,
343 | with interest on the full amount paid for the security by the
344 | purchaser at the legal rate, pursuant to s. 55.03, for the
345 | period from the date of payment by the purchaser to the date of
346 | repayment, less the amount of any income received by the
347 | purchaser on the security.

348 | Section 8. This act shall take effect October 1, 2013.