

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Commerce and Tourism

**BILL:** CS/SB 814

**INTRODUCER:** Banking and Insurance Committee and Senator Brandes

**SUBJECT:** Registration of Branch Offices Conducting Securities Transactions

**DATE:** April 12, 2013      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Knudson</u>	<u>Burgess</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Hrdlicka</u>	<u>Hrdlicka</u>	<u>CM</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>JU</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

<b>Please see Section VIII. for Additional Information:</b>	
A. COMMITTEE SUBSTITUTE.....	<input checked="" type="checkbox"/> Statement of Substantial Changes
B. AMENDMENTS.....	<input type="checkbox"/> Technical amendments were recommended
	<input type="checkbox"/> Amendments were recommended
	<input type="checkbox"/> Significant amendments were recommended

**I. Summary:**

CS/SB 814 requires each securities dealer and investment adviser to submit to the Office of Financial Regulation (OFR) a notice filing of each branch office from which the dealer or adviser conducts business. The notice filing is effective upon the OFR's receipt of the filing and a filing fee of \$100. Current law requires an application for registration for each branch office, effective upon approval by the OFR. As under current law, it is unlawful for a securities dealer or investment adviser to conduct business from a branch office that has not filed with the OFR.

The bill provides for suspension or revocation of a branch office notice filing under certain circumstances. It also permits a dealer or investment adviser to terminate a branch office notice filing.

The bill provides that all fees collected for branch office notice filings become state revenue except for assessments under s. 517.131, F.S., until the Securities Guaranty Fund satisfies the statutory limits. Fees are not returnable if a branch office notice filing is withdrawn.

The effective date of the bill is October 1, 2013.

This bill creates s. 517.1202, F.S.

This bill amends ss. 517.12, 517.1205, 517.121, 517.161, 517.1611, and 517.211, F.S.

## **II. Present Situation:**

### **Regulation of Securities**

The securities industry is subject to both federal and state law and to the state and federal regulatory agencies that implement statutory law. The primary federal regulator is the Securities and Exchange Commission (SEC), which oversees the key participants in the securities industry such as securities exchanges, securities brokers and dealers, investment advisors, and mutual funds.<sup>1</sup> The SEC is concerned primarily with promoting the disclosure of important market-related information, maintaining fair dealing, and protecting against fraud.

The Office of Financial Regulation (OFR), through the Division of Securities, regulates the sale of securities in, to, or from Florida by firms, branch offices, and individuals affiliated with these firms to determine compliance with Florida law. A securities dealer or investment adviser is prohibited from conducting business from a branch office in Florida unless the branch office is registered with the OFR.<sup>2</sup> A “branch office” is “any location in this state of a dealer or investment adviser at which 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.”<sup>3</sup> A branch office also includes any location that is held out as a place where such actions occur.

The Financial Industry Regulatory Authority (FINRA) is an independent, not-for-profit regulator of securities firms.<sup>4</sup> FINRA performs a number of functions, including registering and educating securities industry participants. FINRA operates the Central Registration Depository and the Investment Adviser Registration Depository, which are central databases for registering, reporting, and disclosing information within the securities industry.

### **Registration of Securities Branch Offices**

To register a branch office, the securities dealer must file the required form<sup>5</sup> and pay an application fee.<sup>6</sup> The branch office must resubmit an updated form upon any changes in personnel or any material fact that render the registration inaccurate.<sup>7</sup> Branch office registration is effective upon OFR approval, after a review that the registration complies with Florida law.

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<sup>1</sup> See SEC, “The Investor’s Advocate: How the SEC Protects Investors, Maintains Market Integrity, and Facilitates Capital Formation,” available at <http://www.sec.gov/about/whatwedo.shtml> (last accessed 4/11/2013).

<sup>2</sup> Section 517.12(5), F.S.

<sup>3</sup> Section 517.021(4), F.S.

<sup>4</sup> See FINRA, “More About FINRA,” available at <http://www.finra.org/AboutFINRA/P125239> (last accessed 4/11/2013).

<sup>5</sup> The OFR requires the filing of Form BR, Uniform Branch Office Registration Form (adopted 2005) as authorized under s. 517.12(15)(a)1., F.S.

<sup>6</sup> See s. 517.12(10), F.S., and 69W-600.004(3), F.A.C.

<sup>7</sup> See s. 517.12(13), F.S., and 69W-600.004(3)(c), F.A.C.

According to representatives of the Office of Financial Regulation, since July 1, 2012, the average amount of time for the OFR to process and approve a broker-dealer branch office is 5 days upon receipt of registration and 6 days for an investment adviser branch office. Approximately 15 percent of branch office registration applications, however, contain deficiencies that delay the approval date and operation of the branch location.<sup>8</sup>

### III. Effect of Proposed Changes:

**Section 2** creates s. 517.1202, F.S., to provide notice filing requirements for branch offices.

#### Notice Filing

The “notice filing” of a branch office is effective upon receipt of the filing and required fee by the OFR. Each dealer and each investment adviser must pay a filing fee of \$100 for each branch office in the state. A notice filing consists of a form the Financial Services Commission may prescribe by rule.

As under current law, it is unlawful for a securities dealer or investment adviser to conduct business from a branch office that has not filed with the OFR, the only difference being the bill’s requirement of a notice filing. A key difference between the notice filing process of the bill and registration under current law is that registration of a branch office is only effective after the OFR has reviewed the registration and approved it.

#### Renewal

Each notice filing expires on December 31 of the year the filing was made, unless the filing is renewed on or before that date. A branch office notice is renewed when the dealer or securities adviser furnishes to the OFR any required information, a \$100 renewal fee, and any amount due and owing the office pursuant to an agreement with the OFR. If a branch office notice expires, the dealer or investment adviser may request reinstatement on or before the January 31 following expiration by providing requested information, the \$100 renewal fee, and a \$100 late fee. A branch office reinstatement is effective retroactive to January 1 of that year. The bill authorizes the Financial Services Commission to require, by rule, a dealer or investment adviser to file amendments to a branch office notice filing.

#### Suspension and Revocation

The OFR must summarily suspend a branch office notice filing if the notice filer fails to provide to the OFR all information required as part of a filing within 30 days after the OFR makes a written request for such information. The summary suspension is effective until the notice filer submits the requested information to the OFR, pays an administrative fine pursuant to s. 517.221(3), F.S.,<sup>9</sup> and a final order is entered. For purposes of emergency suspension of licenses failure to provide all information required pursuant to branch office notice filing is grounds for the emergency suspension of a license under s. 120.60(6), F.S., because such failure constitutes an immediate and serious danger to the public health, safety, and welfare.

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<sup>8</sup> OFR, 2013 Bill Analysis – SB 814 CS, April 10, 2013 (On file with the Senate Commerce and Tourism Committee).

<sup>9</sup> An administrative fine may not exceed \$10,000.

A notice filing must be revoked by the OFR if the notice filer fails to provide all requested information within 90 days. The OFR may revoke a branch office notice if the notice filer makes a payment to the OFR via check or electronic funds transmission (EFT) that is dishonored. A dealer or investment adviser may terminate a branch office notice filing by filing a notice of termination with the OFR, the effective date of which is either as specified in the notice of termination or upon receipt by the OFR if the notice does not specify an effective date.

### **Fees**

All fees collected for branch office notice filings become state revenue except for assessments under s. 517.131, F.S., until the Securities Guaranty Fund satisfies the statutory limits. Fees are not returnable if a branch office notice filing is withdrawn.

Under current law, fines imposed under s. 517.221(3), F.S., for violations of ch. 517, F.S., an administrative rule, or an agreement entered into with the OFR must be deposited in the Anti-Fraud Trust Fund.

**Sections 1, 3, 4, 5, 6 and 7** make conforming changes to ss. 517.12, 517.1205, 517.121, 517.161, 517.1611, and 517.211, F.S., related to the bill requiring branch office notice filings instead of registration.

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

## **IV. Constitutional Issues:**

### **A. Municipality/County Mandates Restrictions:**

None.

### **B. Public Records/Open Meetings Issues:**

None.

### **C. Trust Funds Restrictions:**

None.

## **V. Fiscal Impact Statement:**

### **A. Tax/Fee Issues:**

None. The notice filing fee and renewal fee created in the bill are the same as the fees under current law.

### **B. Private Sector Impact:**

Proponents of the bill from the securities industry assert delays in the current registration process sometimes adversely affect dealers and investment advisors. A dealer or

investment advisor may not conduct business from a branch office that is not properly registered with the OFR. Accordingly, unanticipated delays in the registration process may require the suspension of business activities until the OFR approves the branch registration. Notice filing for branch offices may resolve this issue.

**C. Government Sector Impact:**

The computer programming changing the OFR's online registration and licensing system can be accomplished within existing resources and are insignificant.<sup>10</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The Office of Financial Regulation states in its analysis of the CS that it "believes the enforcement provisions included in the committee substitute provide needed consumer protections." The CS authorizes remedies for branch office filings that are inaccurate or do not comply with state law. However, the OFR also states that it "believes the greatest protection to citizens of Florida is to maintain the current branch office registration process. Removal of the current registration process would lead to the Office losing its ability to minimize a firm's expansion if systemic supervisory issues or ongoing enforcement actions were present."<sup>11</sup>

**VIII. Additional Information:**

**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Banking and Insurance on April 9, 2013:**

- Strikes the entire original bill.
- Requires each securities dealer and investment adviser to submit to the Office of Financial Regulation (OFR) a notice filing of each branch office from which the dealer or adviser conducts business.
- Makes a notice filing effective upon OFR receipt of the filing and a filing fee of \$100.
- Requires the OFR to summarily suspend a branch office notice filing if the notice filer fails to provide to the OFR all information required as part of a filing within 30 days after the OFR makes a written request for such information.
- Allows reinstatement of form filings under certain circumstances.
- Requires revocation of a form filing by the OFR if the notice filer fails to provide all requested information within 90 days.
- Provides that all branch office filing fees become state revenue, except for an administrative fine under s. 517.221(3), F.S., for failure to timely provide information requested by the OFR, until the Securities Guaranty Fund satisfies the statutory limits.

<sup>10</sup> OFR, 2013 Bill Analysis – SB 814 CS, April 10, 2013 (On file with the Senate Commerce and Tourism Committee).

<sup>11</sup> OFR, 2013 Bill Analysis – SB 814 CS.

B. Amendments:

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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