

**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.)

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Prepared By: The Professional Staff of the Committee on Banking and Insurance

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BILL: CS/SB 1950

INTRODUCER: Banking and Insurance Committee and Senator Gruters

SUBJECT: Financial Institutions

DATE: March 17, 2021

REVISED: \_\_\_\_\_

|    | ANALYST  | STAFF DIRECTOR | REFERENCE | ACTION        |
|----|----------|----------------|-----------|---------------|
| 1. | Schrader | Knudson        | BI        | <b>Fav/CS</b> |
| 2. |          |                | JU        |               |
| 3. |          |                | RC        |               |

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1950 makes a number of revisions to Florida law relating to financial institutions. The bill:

- Allows foreign nationals proposing to own 10 percent or more of any class of voting securities of a proposed or established bank to appear by video during the hearing on the matter;
- Prohibits the direct or indirect charging of a customer a fee by a third-party agent or other entity for an online audit verification of the associated balance of an account which is maintained by a financial institution;
- Revises the required scheduling dates for examination of financial institutions
- Allows the OFR ninety additional days to meet its statutory obligation to examine a financial institution when a federal agency suspends or cancels a previously scheduled examination;
- Clarifies when approval from the OFR is needed when acquiring assets or liabilities of another financial institution;
- Clarifies when approval from the OFR is needed when a mutual financial institution sells its assets to a stock financial institution;
- Revises the definition of “financial institution” for the Florida Control of Money Laundering and Terrorist Financing in Financial Institutions Act;
- Requires credit unions, within 30 days following a meeting where certain persons are elected, to notify the OFR of persons’ names and residence addresses;

- Revises existing requirements to allow credit unions to invest up to 60 percent of the equity of the credit union in real estate and improvements;
- Revises the scope of the OFR's investigation of applicants seeking authority to start a bank or trust company to include the need for bank and trust facilities in a target market as well as in the primary service area, and the ability of a target market to support the proposed bank or trust company;
- Revises a requirement that the proposed president or chief executive officer of a proposed banking corporation must have at least one year of direct experience as an executive officer, director, or regulator of a financial institution within the last 5 years;
- Defines trust representative offices and specifies that a trust representative office in Florida may only engage in specified activities that are ancillary to fiduciary business;
- Requires that persons acquiring a controlling interest in a state bank or state trust company through probate or trust shall notify the office within 90 days after acquiring such interest;
- Defines a "de novo branch" for the purposes of an existing de novo interstate branching provision;
- Authorizes a family trust company or licensed family trust company to maintain the deposit account, required under current law, with any bank that is both insured by the Federal Deposit Insurance Corporation and located in the United States;
- Revises when family trust companies, licensed family trust companies, or foreign licensed family trust companies must file a required annual renewal application;
- Allows international bank agencies and international branches to maintain a required deposit in banks outside of Florida; and
- Requires qualified limited service affiliates to suspend otherwise permissible activities if the jurisdiction of an international trust entity served by the qualified limited service affiliate is identified Financial Action Task Force's list of High-Risk Jurisdictions subject to a Call for Action (black list) or the list of Jurisdictions Under Increased Monitoring (grey list).

The bill has an effective date of July 1, 2021.

## **II. Present Situation:**

### **Regulation of Financial Institutions**

Florida law defines the term "financial institution" broadly; the term includes "state and federal savings or thrift associations, banks, savings banks, trust companies, international bank agencies, international banking corporations, international branches, international representative offices, international administrative offices, international trust entities, international trust company representative offices, qualified limited service affiliates, credit unions, agreement corporations operating pursuant to s. 25 of the Federal Reserve Act, 12 U.S.C. ss. 601 et seq. and Edge Act corporations organized pursuant to s. 25(a) of the Federal Reserve Act, 12 U.S.C. ss. 611 et seq."<sup>1</sup>

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<sup>1</sup> Section 655.005(1)(i), F.S.

However, not all financial institutions are expressly authorized to accept or hold deposits or certificates of deposits.<sup>2</sup>

### ***Dual Regulatory System***

Banks and credit unions may be either state or federally chartered. The OFR is responsible for chartering and supervising state financial institutions, including state-chartered banks and state-chartered credit unions.<sup>3</sup>

National banks are chartered pursuant to the National Bank Act and supervised by the Office of the Comptroller of the Currency (OCC).<sup>4</sup> National banks are required to be members of the Federal Reserve System; state banks may apply for membership.<sup>5</sup> The Federal Reserve is the primary federal regulator of state member banks, and also serves as the primary regulator of bank holding companies and financial holding companies.<sup>6</sup>

Federally-chartered credit unions are chartered and supervised by the National Credit Union Administration (NCUA).<sup>7</sup> Both state- and federally-chartered credit unions must obtain insurance of their accounts and are subject to examination by the NCUA.<sup>8</sup>

### **Consumer Protection Florida Deceptive and Unfair Trade Practices Act (FDUTPA)**

#### ***History and Purpose of FDUTPA***

The Florida Deceptive and Unfair Trade Practices Act (FDUTPA) is a consumer and business protection measure that prohibits unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in trade or commerce.<sup>9</sup> The state attorney or the Department of Legal Affairs may bring actions when it is in the public interest on behalf of consumers or governmental entities.<sup>10</sup> The Office of the State Attorney may enforce violations of the FDUTPA if the violations take place in its jurisdiction. The Department of Legal Affairs has enforcement authority if the violation is multi-jurisdictional, the state attorney defers in writing, or the state attorney fails to act within 90 days after a written complaint is filed.<sup>11</sup> Consumers may also file suit through private actions.<sup>12</sup>

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<sup>2</sup> For instance, holding a deposit does not fall within the enumerated permissible activities of an international representative office, an international administrative office, an international trust company representative office, or a qualified limited service affiliate. See ss. 663.062, 663.063, 663.409, and 663.531, F.S.

<sup>3</sup> Section 655.012(1)(a), F.S.

<sup>4</sup> 12 U.S.C. s. 481.

<sup>5</sup> 12 U.S.C. s. 208.3 and 222.

<sup>6</sup> 12 U.S.C. s. 248.

<sup>7</sup> See 12 U.S.C. s. 1751, et. seq.

<sup>8</sup> Section 657.033, F.S.; 12 U.S.C. s. 1784.

<sup>9</sup> Section 501.202, F.S.

<sup>10</sup> Sections 501.207 and 501.202, F.S. David J. Federbush, *FDUTPA for Civil Antitrust: Additional Conduct, Party, and Geographic Coverage; State Actions for Consumer Restitution*, 76 FLA. B.J. 52, December 2002, available at [http://www.floridabar.org/divcom/jn/jnjournal01.nsf/c0d731e03de9828d852574580042ae7a/99aa165b7d8ac8a485256c8300791ec1!OpenDocument&Highlight=0,business,Division\\*](http://www.floridabar.org/divcom/jn/jnjournal01.nsf/c0d731e03de9828d852574580042ae7a/99aa165b7d8ac8a485256c8300791ec1!OpenDocument&Highlight=0,business,Division*) (last visited on March 13, 2021).

<sup>11</sup> Section 501.203(2), F.S.

<sup>12</sup> Section 501.211, F.S.

***Remedies under the FDUTPA***

The Department of Legal Affairs and the State Attorney, as enforcing authorities, may seek the following remedies:

- Declaratory judgments;
- Injunctive relief;
- Actual damages on behalf of consumers and businesses;
- Cease and desist orders;
- Civil penalties of up to \$10,000 per willful violation; and
- Civil penalties of up to \$15,000 per willful violation where certain aggravating factors are found.<sup>13</sup>

Remedies for private parties are limited to:

- A declaratory judgment and an injunction where a person is aggrieved by a FDUTPA violation; and
- Actual damages, attorney fees and court costs, where a person has suffered a loss due to a FDUTPA violation.<sup>14</sup>

***Exemptions under the FDUTPA***

FDUTPA exempts certain entities from its governance, including:<sup>15</sup>

- Any person or activity regulated under laws administered by the Office of Insurance Regulation of the Financial Services Commission (OIR);
- Banks, credit unions, and savings and loan associations regulated by the OFR;
- Banks, credit unions, or savings and loan associations regulated by federal agencies; or
- Any person or activity regulated under the laws administered by the former Department of Insurance, which are now administered by the Department of Financial Services (DFS).

**Examination of Financial Institutions**

Pursuant to s. 655.045(1), the OFR is required to conduct an examination of each state financial institution at least every 18 months. Section 655.045(1)(a), however, allows the OFR to accept an examination from an appropriate federal regulatory agency or may conduct a joint or concurrent examination of the institution with the federal agency. However, at least once every 36-months, the OFR must conduct an examination of each state financial institution in a manner that allows the preparation of a complete examination report not subject to the right of a federal or other non-Florida entity to limit access to the information contained therein. The alternating, joint, or concurrent examination authorized by this provision reduces regulatory burden on the financial institutions subject to dual regulation, and the OFR works in coordination with these federal agencies when possible.<sup>16</sup>

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<sup>13</sup> Sections 501.207(1), 501.2075, 501.2077, and 501.208, F.S.

<sup>14</sup> Sections 501.211(1)-(2), and 501.2105 F.S.

<sup>15</sup> Section 501.212(4), F.S.

<sup>16</sup> Office of Financial Regulation, *Legislative Bill Analysis of HB 1641* (March 8, 2021) (on file with Senate Banking and Insurance Committee).

According to OFR, many of the documents it must analyze in these examinations are paper files with digital copies not available. As such, examiners must be physically present at an institution to perform examinations. The ongoing COVID-19 pandemic has created issues in adhering to examination schedules. Additionally, other natural disasters (such as hurricanes) can create problematic examination environments.<sup>17</sup>

### **Financial Institution Acquisition of Assets and Assumption of Liabilities**

Current law allows a financial entity, under s. 655.414, F.S., to acquire “all or substantially all” of the assets of, or assume all or any part of the liabilities of, any other financial institution subject to certain conditions. Similarly, subsection (6) of the statute states that a mutual financial institution may not sell “all or substantially all” of its assets to a stock financial institution, subject to certain conditions. For both of these provisions, the term “substantially all” is not defined and may be subject to some conjecture. According to the OFR, this undefined term has caused some confusion in the financial industry.<sup>18</sup>

### **Money Laundering and Terrorist Financing in Financial Institutions Act**

The Florida Control of Money Laundering and Terrorist Financing in Financial Institutions Act, under s. 655.50, F.S., was created to require the submission certain reports to the OFR and the maintenance of certain records involving currency or monetary instruments or suspicious activities where such reports and records deter the use of financial institutions to conceal, move, or provide proceeds relating to criminal or terrorist activities and if such reports and records have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings. Subsection (3) of the act defines “financial institutions” a financial institution, as defined in 31 U.S.C. s. 5312, as amended, including a credit card bank, located in this state. This definition is quite broad, and includes a number of entities over which the OFR generally does not have regulatory authority—such as the United States Postal Service, casinos, travel agencies—or are obsolete—such as telegraph companies.<sup>19</sup>

### **Credit Union Boards of Directors**

Section 657.021(1)-(6), F.S., specifies the minimum requirements for boards of directors for credit unions, including the filling of vacancies, meeting requirements, and conduct requirements. As part of these requirements, subsection (2) requires that directors assuming office in a credit union must make a prescribed oath and a signed copy of the oath must be filed with the OFR within 30 days after election. According to the OFR, at the Federal-level, the NCUA historically required credit unions to submit a record of the names and addresses of the members of the board of directors, members of the committees on a particular form called “Report of Officials.” The OFR had access to these documents through agreements with the NCUA. However, in 2009, the NCUA moved to a web-based system to collect this data and the

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<sup>17</sup> *Id.*

<sup>18</sup> *Supra* note 16.

<sup>19</sup> The world’s last telegram was sent in 2013. Monica Sarkar, *The Day Telegrams Came to a Final STOP*, CNN (July 15, 2013).

forms were no longer collected.<sup>20</sup> At present Florida law does not require state-chartered credit unions to submit a similar report.

### **State-chartered Credit Union Investments in Real Estate and Equipment**

Section 657.042(5), F.S., authorizes state-chartered credit unions to invest up to five percent of their capital in real estate and improvements thereon, furniture, fixtures, and equipment utilized or to be utilized by the credit union for the transaction of business. Exceeding this cap requires approval by the OFR. The National Credit Union Administration (NCUA) previously had a similar restriction; however the NCUA removed this restriction in 2015. In issuing its supervisory letter regarding this change to its regulations, the NCUA noted that “several state supervisory authorities (SSAs) maintain an aggregate fixed asset limit” and that the “guidance does not supersede these limits in any way.”<sup>21</sup> Thus, Florida-chartered credit unions are subject to stricter controls on their investments in real estate, improvements, and equipment than their Federally-chartered counterparts.

### **Target Markets**

According to the American Bankers Association, nearly 75 percent of United States residents most often access their bank accounts via electronic platforms (i.e. via mobile device or personal computer).<sup>22</sup> With this ever-growing trend, and branch traffic slowing, many banks have been closing bank branches at a growing pace and making investments in electronic platforms.<sup>23</sup>

While the trend in banking has been to de-emphasize the local branch, a Florida application for authority to organize a banking corporation or trust company must describe the community where the principal office of the bank will be located<sup>24</sup> and part of the OFR’s approval process looks at the need for, and ability to support, the proposed bank or trust company in the entity’s primary service area.<sup>25</sup> In order for an application to be approved, the local conditions in the primary service area must indicate a reasonable promise of successful operation.<sup>26</sup> The OFR evaluates the viability of the business plan in light of current conditions in the primary service area and the metropolitan statistical area or county, as well as in the industry in general.<sup>27</sup>

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<sup>20</sup> NCUA Supervisory Letter 09-CU-17, “Credit Union Online: Credit Union Profile and 5300 Call Report,” National Credit Union Administration, available at: <https://www.ncua.gov/regulation-supervision/letters-credit-unions-other-guidance/credit-union-online-credit-union-profile-and-5300-call-report> (August 2009).

<sup>21</sup> NCUA Supervisory Letter 15-CU-06, “Fixed Asset Management,” National Credit Union Administration, available at: <https://www.ncua.gov/regulation-supervision/letters-credit-unions-other-guidance/fixed-asset-management> (October 2015).

<sup>22</sup> Survey: Bank Customers Preference for Digital Channels Continues to Grow, American Bankers Association, <https://www.aba.com/about-us/press-room/press-releases/survey-bank-customers-preference-for-digital-channels-continues-to-grow> (November 5, 2019).

<sup>23</sup> *Id.*

<sup>24</sup> Section 658.19, F.S.

<sup>25</sup> Section 658.20, F.S.

<sup>26</sup> Rule 69U-105.206(2)(a), F.A.C.

<sup>27</sup> Rule 69U-105.206(2)(a)1.-2., F.A.C.

### **Applications for Authority to Organize a Banking Corporation or Trust Company**

Section 658.19, F.S., specifies the requirements for an application for authority to organize a banking corporation or trust company, which must be filed with the OFR by the proposed directors, and what the application shall include. Upon the submission of this application, pursuant to s. 658.20, F.S., the OFR must investigate the:

- Character, reputation, financial standing, business experience, and business qualifications of the proposed officers and directors;
- Need for bank or trust facilities or additional bank or trust facilities, as the case may be, in the primary service area where the proposed bank or trust company is to be located; and
- Ability of the primary service area to support the proposed bank or trust company and all other existing bank or trust facilities in the primary service area.

Section 658.20, F.S. also authorizes the OFR to obtain criminal record information from the National Crime Information Center or from the Florida Department of Law Enforcement (FDLE) to conduct the required investigation.

To approve an application, the OFR must find, in part, that:<sup>28</sup>

- Local conditions indicate reasonable promise of successful operation for the proposed state bank or trust company;
- The proposed capitalization is in such amount as the OFR deems adequate;
- The proposed capital structure is in such form as the OFR may require;
- The proposed officers have sufficient financial institution experience, ability, standing, and reputation in order to be approved. As part of this requirement, the proposed president or chief executive officer must have at least one year of direct experience as an executive officer, director, or regulator of a financial institution within the last 5 years;
- The corporate name of the proposed state bank or trust company is approved by the OFR; and
- Provision has been made for suitable quarters at the location specified in the application.

In regards to the requirement that the proposed president or chief executive officer must have at least one year of direct experience as an executive officer, director, or regulator of a financial institution within the last 5 years, the OFR has expressed a concern that this provision narrows the pool of otherwise qualified potential executive officers who may serve in that capacity at a new Florida-chartered bank. By comparison, proposed chief executive officers of proposed nationally chartered banks are not subject to a similar restriction.<sup>29</sup>

### **Trust Representative Offices**

According to 12 C.F.R. s. 9.2(k), a trust representative office is an office of a national bank, other than a main office or a branch, at which the bank engages in certain activities relating to their fiduciary business. Examples of such activities include advertising, marketing, and soliciting for fiduciary business; contacting existing or potential customers, answering questions, and providing information about matters related to their accounts; acting as a liaison between the

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<sup>28</sup> 658.21, F.S.

<sup>29</sup> *Supra* note 16.

trust office and the customer; and inspecting or maintaining custody of fiduciary assets or holding title to real property.

In Florida, the OFR supervises state-chartered banks with trust powers and state-chartered trust companies. The determination of whether an entity qualifies as a “trust company” is dependent on whether an entity has “trust powers” and is engaging in “trust business,” defined as follows:<sup>30</sup>

- “Trust powers” means the rights and powers necessary to act as a fiduciary and, when the context so requires or admits, the term also means the authority granted to a bank, state or federal association, or trust company by, or pursuant to, the laws of this or any other jurisdiction to engage in trust business.
- “Trust business” means the business of acting as a fiduciary when such business is conducted by a bank, a state or federal association, or a trust company, or when conducted by any other business organization for compensation that the OFR does not consider to be de minimis.

Based on this definition, an office that provides just ancillary fiduciary services to a nationally-chartered bank or trust company (or one chartered by another state) would not qualify as a trust company.

### **Controlling Interests in State Banks and Trust Companies**

Under s. 658.28, F.S., for the purposes of determining whether a party has acquired control of a bank or trust company, in general, a party will be presumed to have such control if any of the following are true:

- The party directly or indirectly owns, control, or has the power to vote 25 percent or more of any class of voting securities of the institution;
- The party controls, in any manner, the election of a majority of the directors, trustees, or other governing body of the institution;
- The party owns, controls, or has the power to vote 10 percent or more of any class of voting securities and exercise a controlling influence over management or policies of the institution; or
- The OFR determines, after notice and opportunity for a hearing, that the person or persons directly or indirectly exercises a controlling influence over the bank or trust company.

In addition, the OFR is not limited to the above standards or criteria in determining whether any such person may be deemed to be acting by or through one or more other persons. The presumption above, regarding where a party owns, controls, or has the power to vote 10 percent or more of any class of voting securities and exercise a controlling influence over management or policies of the institution, is rebuttable by notifying the OFR and presenting information rebutting control at an informal conference.<sup>31</sup> After such hearing, if the OFR determines that the party in questions does, in fact, have control of the bank or trust company, the party must file the application required under 658.28(1), F.S.

Section 658.28(1), F.S., also requires persons seeking to purchase or otherwise acquire controlling interest in a state bank or trust company, to first apply with the OFR for a certificate of approval. Approval is based upon the OFR’s determination, after investigation and review,

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<sup>30</sup> Section 658.12, F.S.

<sup>31</sup> 658.28(3), F.S.



that the proposed new owners are qualified by reputation, character, experience, and financial responsibility to control and operate the bank or trust company and that the interests of the other stockholders, if any, the depositors and creditors of the bank or trust company, and the public generally will not be jeopardized by the proposed change.

Florida law does not currently contemplate the acquisition of a controlling interest without prior approval. However, according to the OFR, not every such acquisition is planned. Shares may pass to an unapproved owner by operation of law, such as by way of inheritance. For example, if a controlling shareholder dies and their shares pass to an unapproved beneficiary, the unapproved beneficiary commits an unavoidable, technical violation of statute upon becoming the owner of the shares.<sup>32</sup>

### **De Novo Interstate Branching by State Banks**

Section 658.2953(11)(a), F.S., permits state banks to, with approval of the OFR, establish and maintain a de novo branch or acquire a branch in a state other than Florida by submitting an application to the OFR. Section 658.2953(11)(a), F.S., also allows out-of-state bank meeting certain conditions to establish and maintain a de novo branch or acquire a branch in Florida.

### **Family Trust Companies**

A family trust company provides trust services to wealthy families and cannot provide services to the general public. These services include serving as a trustee of trusts held for the benefit of the family members, as well as providing other fiduciary, investment advisory, wealth management, and administrative services to the family. A family might wish to form a family trust company in order to keep family matters more private than they would be if turned over to an independent trustee, to gain liability protection, to establish its own trust fee structure, and to obtain tax advantages. Traditional trust companies require regulatory oversight, licensing of investment personnel, public disclosure and capitalization requirements considered by practitioners to be overbroad and intrusive for the family trust.

In 2014, the Legislature authorized the creation of family trust companies in Florida.<sup>33</sup> The Florida Family Trust Company Act is codified in ch. 662, F.S. The Act allows for the creation of family trust companies in Florida and provides differing degrees of regulatory oversight by the OFR.

Chapter 662, F.S., creates three types of family trust companies: family trust companies, licensed family trust companies, and foreign licensed family trust companies. A “family trust company” is a corporation or limited liability company that is exclusively owned by one or more family members, is organized or qualified to do business in this state, and acts or proposes to act as a fiduciary to serve one or more family members.<sup>34</sup> A “licensed family trust company” means a family trust company that has been issued a license that has not been revoked or suspended by

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<sup>32</sup> *Supra* note 16.

<sup>33</sup> Ch. 2014-97, Laws of Fla.

<sup>34</sup> *See* s. 662.111(12), F.S. and does not serve as a fiduciary for a person, entity, trust, or estate that is not a family member, except that it may serve as a fiduciary for up to 35 individuals who are not family members if the individuals are current or former employees of the family trust company or one or more trusts, companies, or other entities that are family members

the OFR.<sup>35</sup> A “foreign licensed family trust company” means a family trust company that is licensed by a state other than Florida, or the District of Columbia.<sup>36</sup> Family trust companies that are not licensed and foreign family trust companies must register the OFR and renew such registration annually.<sup>37</sup> Family trust companies and licensed family trust companies must maintain a deposit account with a state-chartered or national financial institution that has a principal or branch office in Florida.<sup>38</sup>

### **Asset Maintenance or Capital Equivalency for International Bank Agencies and International Branches**

International bank agencies and international branches are permitted to conduct activities similar to those of a state-chartered financial institution in regards to loans, extension of credit, or investment. An international bank agency may act as custodian and may furnish investment management, and investment advisory services, to nonresident entities or persons whose principal places of business or domicile are outside the United States and to resident entities or persons with respect to international, foreign, or domestic investments.<sup>39</sup> An international branch has the same rights and privileges as a federally-licensed international branch.<sup>40</sup> Under s. 663.07, F.S., each international bank agency and international branch must maintain, with one or more banks in this state evidence of dollar deposits or investment securities, as specified by the OFR, of the type that may be held by a state bank.

### **Financial Action Task Force (FATF)**

The FATF is an international global money laundering and terrorist financing watchdog group. It is an intergovernmental policy-making body that sets international standards and advocates to bring about national legislative and regulatory reforms.<sup>41</sup> The FATF currently comprises 37 member jurisdictions and 2 regional organizations (the European Council and the Gulf Cooperation Council). These members represent most major global financial centers.<sup>42</sup> As part of its activities, the FATF publishes, three times per year, two public documents that identify jurisdictions with weak measures to combat money laundering and terrorist financing: 1) High-Risk Jurisdictions subject to a Call for Action and 2) Jurisdictions under Increased Monitoring.<sup>43</sup>

#### ***High-Risk Jurisdictions subject to a Call for Action***

According to FATF, the jurisdictions identified on the High-Risk Jurisdictions subject to a Call for Action (also known as the “black list”) have significant strategic deficiencies in their regimes to counter money laundering, terrorist financing, and financing of proliferation. For such

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<sup>35</sup> See s. 662.111(16), F.S.

<sup>36</sup> See s. 662.111(15), F.S.

<sup>37</sup> See ss. 662.122, 662.128, F.S.

<sup>38</sup> Section 662.1225(1), F.S.

<sup>39</sup> Section 663.061, F.S.

<sup>40</sup> Section 663.064, F.S.

<sup>41</sup> *About*, Financial Action Task Force, <https://www.fatf-gafi.org/about/> (last visited March 16, 2021).

<sup>42</sup> *FATF Members and Observers*, Financial Action Task Force, <https://www.fatf-gafi.org/about/membersandobservers/> (last visited March 16, 2021).

<sup>43</sup> *Topic: High-risk and other monitored jurisdictions*, Financial Action Task Force, [https://www.fatf-gafi.org/publications/high-risk-and-other-monitored-jurisdictions/?hf=10&b=0&s=desc\(fatf\\_releasedate\)](https://www.fatf-gafi.org/publications/high-risk-and-other-monitored-jurisdictions/?hf=10&b=0&s=desc(fatf_releasedate)) (last visited March 16, 2021).

jurisdictions, the FATF calls on all of its members and urges all jurisdictions to apply enhanced due diligence, and in the most serious cases, countries are called upon to apply counter-measures to protect the international financial system from the ongoing money laundering, terrorist financing, and proliferation financing risks emanating from the country.<sup>44</sup> Due to the ongoing COVID-19 pandemic, FATF has paused the review process for countries on the list of High-Risk Jurisdictions subject to a Call for Action given that the countries on the list—North Korea and Iran—are already subject to the FATF’s call for countermeasures.<sup>45</sup>

### ***Jurisdictions under Increased Monitoring***

Jurisdictions identified as being under increased monitoring (also known as the “grey list”) by the FATF are actively working with the organization to address strategic deficiencies in their regimes to counter money laundering, terrorist financing, and proliferation financing. Jurisdictions identified as such are subject to increased monitoring, but have committed to swiftly resolve the deficiencies identified by the FATF within an agreed upon timeframe.<sup>46</sup>

### **Qualified Limited Service Affiliates of International Trust Entities (QLSA)**

Part IV of Chapter 663, F.S., regulates QLSAs in Florida. Pursuant to s. 663.530, F.S., a QLSA means a person or entity that is qualified under this part to perform the permissible activities outlined in s. 663.531, F.S., related to or for the benefit of an affiliated international trust entity. This section also defines an “international trust entity” as an international trust company or organization, or any similar business entity, or an affiliated or subsidiary entity that is licensed, chartered, or similarly permitted to conduct trust business in a foreign country or countries under the laws where such entity is organized and supervised. Section 663.531(1), F.S. allows a QLSA to engage in:

- Marketing and liaison services related to or for the benefit of the affiliated international trust entities, directed exclusively at professionals and current or prospective nonresident clients of an affiliated international trust entity;
- Advertising and marketing at trade, industry, or professional events;
- Transmission of documents between the international trust entity and its current or prospective clients or a designee of such clients; and
- Transmission of information about the trust or trust holdings of current clients between current clients or their designees and the international trust entity.

To qualify as a QLSA, the entity must file a written notice with the OFR that includes, in part, a declaration (under penalty of perjury) that jurisdiction of the international trust entity or its

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<sup>44</sup> *Id.*

<sup>45</sup> *High-Risk Jurisdictions subject to a Call for Action - February 2021*, Financial Action Task Force, <http://www.fatf-gafi.org/publications/high-risk-and-other-monitored-jurisdictions/documents/call-for-action-february-2021.html> (last visited March 16, 2021); *High-Risk Jurisdictions subject to a Call for Action - February 2021*, Financial Action Task Force, <http://www.fatf-gafi.org/publications/high-risk-and-other-monitored-jurisdictions/documents/call-for-action-february-2020.html> (February 21, 2020)

<sup>46</sup> *Jurisdictions under Increased Monitoring - February 2021*, Financial Action Task Force, <http://www.fatf-gafi.org/publications/high-risk-and-other-monitored-jurisdictions/documents/increased-monitoring-february-2021.html> (February 2021). Countries currently on the grey list, as of the most recent February 2021 update are: Albania, Barbados, Botswana, Burkina Faso, Cambodia, Cayman Islands, Ghana, Jamaica, Mauritius, Morocco, Myanmar, Nicaragua, Pakistan, Panama, Senegal, Syria, Uganda, Yemen, and Zimbabwe.

offices, subsidiaries, or any affiliates that are directly involved in or facilitate the financial services functions, banking, or fiduciary activities of the international trust entity is not listed on the Financial Action Task Force Public Statement or on its list of jurisdictions with deficiencies in anti-money laundering or counterterrorism.<sup>47</sup> While this is a required disclosure, the OFR asserts that it does not have a mechanism to suspend or revoke the qualification of the QLSA if the jurisdiction of the international trust entity is later added to this list.<sup>48</sup>

### III. Effect of Proposed Changes:

**Section 1** amends s. 120.80(3)(a) to allow a foreign national proposing to own or control 10 percent or more of any class of voting securities of a proposed or established bank, trust company, or capital stock savings association to appear at the public hearing required to be held for such matter via video conference in lieu of appearing personally.

**Section 2** amends s. 475.01, F.S., to update a cross-reference to implement changes made to s. 658.12, F.S. in the bill.

**Section 3** creates s. 501.2076, F.S., to make the direct or indirect charging of a customer a fee, by a third-party agent or other entity, for an online audit verification of the associated balance of an account which is maintained by a financial institution, a violation of the FDUTPA.

**Section 4** amends s. 475.01, F.S., to update a cross-reference to implement changes made to s. 658.12, F.S. in the bill.

**Section 5** amends s. 655.045(1)(a), F.S. to remove the specific date of July 1, 2014, which the scheduling of examinations are pegged to for financial institutions. Instead, examinations would be on a rolling basis, but still be conducted every 18 months as otherwise required. The OFR states that this revision will give it greater flexibility to schedule examinations and work cooperatively with federal regulators.<sup>49</sup>

The section also creates s. 655.045(1)(f), F.S., to allow the OFR an additional 90 days to meet the examination frequency requirement under the section when a federal agency suspends or cancels a previously scheduled examination. The examination requirement would be considered to have been met upon the federal agency in question lifting the suspension and conducting the examination—or the OFR conducting the examination instead.

**Section 6** amends s. 655.414, F.S., to revise language allowing financial entities to acquire “all or substantially all” of the assets of, or assume all or any part of the liabilities of, any other financial institution subject to certain conditions. The bill updates this language to read “50 percent or more.”

Similarly, subsection (6) of the section presently states that a mutual financial institution may not sell “all or substantially all” of its assets to a stock financial institution, without certain conditions being met. The bill also updates this to read “50 percent or more.”

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<sup>47</sup> Section 663.532(1)(i)3., F.S.

<sup>48</sup> *Supra* note 16.

<sup>49</sup> *Id.*

**Section 7** amends s. 655.50, F.S., to revise the definition of “financial institution” for the Florida Control of Money Laundering and Terrorist Financing in Financial Institutions Act. The definition is significantly narrowed to just include a state association, a bank, a trust company, a credit union, a credit card bank, an international bank agency, or an international branch. This would narrow the institutions to which the Act would apply and, according to the OFR, eliminate ambiguity.<sup>50</sup>

**Section 8** creates s. 657.021, F.S., to require credit unions, within 30 days following a meeting where any director, officer, member of the supervisory or audit committee, member of the credit committee, or credit manager is elected or appointed, shall submit to the OFR the names and residence addresses of the elected person or persons on a specified form. The provision also directs the OFR to adopt rules to create the form.

**Section 9** amends s. 657.042, F.S., to allow credit unions to invest up to 60 percent of the equity of the credit union in in real estate and improvements thereon, furniture, fixtures, and equipment utilized or to be utilized by the credit union for the transaction of business. The bill also clarifies that leasehold interests are also subject to limitation. This revision makes the credit union limitations in this area similar to state-chartered banks.<sup>51</sup>

**Section 10** amends s. 658.12, F.S., to create a definition for “target market” to mean the group of clients or potential clients from whom a bank or proposed bank expects to draw deposits and to whom a bank focuses or intends to focus its marketing efforts. The term also means the group of clients or potential clients from whom a trust company, a trust department of a bank or association, a proposed trust company, or a proposed trust department of a bank or an association expects to draw its fiduciary accounts and to whom it focuses or intends to focus its marketing efforts.

**Section 11** amends s. 658.20, F.S., to incorporate the definition of target market created in **Section 10** and effectively expand the scope of the OFR’s investigation (regarding an application for authority to organize a bank or trust company) to include the need for bank and trust facilities in a target market as well as in the primary service area, and the ability of a target market to support the proposed bank or trust company.

**Section 12** amends s. 658.21, F.S. to revise a requirement that, for the OFR to approve an application for authority to organize a banking corporation or trust company, the proposed president or chief executive officer must have at least one year of direct experience as an executive officer, director, or regulator of a financial institution within the last 5 years. The revision eliminates the requirement that the 1 year of experience be within the last 5 years.

**Section 13** creates s. 658.265, F.S. to define trust representative offices and specify the activities a trust representative office in Florida may engage in, which are, as follows:

- Advertising, marketing, and soliciting for fiduciary business.

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<sup>50</sup> *Id.*

<sup>51</sup> *See* s. Section 658.67(7)(a)1.

- Contacting existing or potential customers, answering questions, and providing information about matters related to customer accounts.
- Acting as a liaison between the bank or trust company and the customer, including, but not limited to, forwarding requests for distribution or changes in investment objectives or forwarding forms and funds received from the customer.
- Inspecting or maintaining custody of fiduciary assets or holding title to real property.

The section also specifies that trust representative offices may not engage in any activities considered to be fiduciary in nature.

**Section 14** amends s. 658.28, F.S., to create a requirement that persons acquiring a controlling interest in a state bank or state trust company through probate or trust shall notify the office within 90 days after acquiring such interest. The bill also stipulates that this interest does not give rise to a presumption of control unless such persons votes the shares or the office has issued a certificate of approval in response to an application approval of change control pursuant to subsection (1) of the section.

**Section 15** amends s. 658.2953, F.S., to create a definition of “de novo branch” to mean a branch of a financial institution which is originally established by the financial institution as a branch and does not become a branch of such financial institution as a result of specified transactions. This clarifies the applicability of s. 658.2953(11), F.S., which regulates de novo interstate branching, but currently does not define the term.

**Section 16** amends s. 662.1225, F.S., to allow a family trust company or licensed family trust company to maintain the deposit account, required under the section, with any bank that is both insured by the Federal Deposit Insurance Corporation and located in the United States. Under current law, such companies were limited to only state-chartered or national financial institution that has a principal or branch office in Florida.

**Section 17** amends s. 662.128, F.S., to require family trust companies, licensed family trust companies, or foreign licensed family trust companies to file an annual renewal application no later than 45 days after the anniversary of the filing of either the initial application or the prior year’s renewal application. The previous requirement under 662.128, F.S., has also been retained in the section, specifying that such entities must file their renewal 45 days after the end of each calendar year. As presently written, this may require entities, other than those whose anniversary dates fall within the first 45 days of the year, to file two renewals each year.

**Section 18** amends s. 633.07, F.S., to allow international bank agencies and international branches to maintain the required deposit amount under the section with one or more banks insured by the Federal Deposit Insurance Corporation and located within the United States. Under current law, the deposit had to be maintained at a bank in Florida.

**Section 19** amends s. 663.552, F.S. to require qualified limited service affiliates (QLSA) to suspend the activities the QLSA is otherwise permitted to engage in, under 663.408, F.S., if the QLSA or the OFR becomes aware that the jurisdiction of an international trust entity served by said QLSA is included on the Financial Action Task Force (FATF) list of High-Risk Jurisdictions subject to a Call for Action (black list) or list of Jurisdictions Under Increased

Monitoring (grey list). Such a suspension of activities must continue until the jurisdiction in question is removed from these FATF black list or grey list.

As of the most recent February 2021 update, the following countries are on the FATF grey list: Albania, Barbados, Botswana, Burkina Faso, Cambodia, Cayman Islands, Ghana, Jamaica, Mauritius, Morocco, Myanmar, Nicaragua, Pakistan, Panama, Senegal, Syria, Uganda, Yemen, and Zimbabwe. Presently, North Korea and Iran are on the FATF black list.

**Section 20** amends s. 736.0802, F.S., to update a cross-reference to implement changes made to s. 658.12, F.S. in the bill.

**Section 21** provides for an effective date of July 1, 2021 for the bill.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

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

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

**Section 5** of the bill could lead to the OFR taking on additional examination costs in the event that a federal agency suspends or cancels a financial institution examination and the OFR ends up conducting the examination in that agency's stead.

VI. Technical Deficiencies:

In **Section 17** of the bill, as mentioned above, the new provision may require family trust companies, licensed family trust companies, or foreign licensed family, other than those whose anniversary dates fall within the first 45 days of the year, to file two renewals each year. It is unclear if this was the initial intention; however, the OFR suggests revision of the bill to clarify this provision in their analysis of the bill.<sup>52</sup>

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 120.80, 475.01, 518.117, 655.045, 655.414, 655.50, 657.021, 657.042, 658.12, 658.20, 658.21, 658.28, 658.2953, 662.1225, 662.128, 663.07, 663.532, and 736.0802.

This bill creates the following sections of the Florida Statutes: 501.2076 and 658.265.

IX. 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 March 16, 2021:**

The committee substitute:

- Deletes language authorizing the OFR Commissioner to delay financial institutions during certain emergency conditions and replaces it with a provision to allow the OFR ninety additional days to meet the financial institution examination requirement when a federal agency suspends or cancels a previously scheduled examination.
- Clarifies a provision allowing financial entities to acquire “50 percent or more” of the assets of, or assume all or any part of the liabilities of, any other financial institution, under certain conditions.
- Clarifies a provision stating that mutual financial institution may not sell “50 percent or more” of its assets to a stock financial institution, without certain conditions being met.
- Deletes a provision authorizing the OFR to not publish registration applications for a family trust company or a foreign licensed family trust company in the Florida Administrative Register.

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<sup>52</sup> *Supra* note 16.



- Requires QLSA's to suspend previously permissible activities if the OFR or the QLSA becomes aware that a jurisdiction of an international trust entity served by the QLSA is included on the FATF black list or the or list Jurisdictions Under Increased Monitoring (grey list).

B. Amendments:

None.