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 Banking and Insurance

BILL: SB 180

INTRODUCER: Senator Gruters

SUBJECT: Securities Transactions

DATE: March 28, 2023 REVISED: ________ ________ ________ ________

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Knudson	BI	**Pre-meeting**
2.			AEG	
3.			FP	

I. Summary:

SB 180 revises provisions of ch. 517, F.S., the Securities and Investor Protection Act, which regulates securities transactions. The Office of Financial Regulation (OFR) regulates and registers the offer and sale of securities in, to, or from Florida by firms, branch offices, and individuals associated with these firms in accordance with the act. The Division of Securities within the OFR is responsible for administering the act.

The bill provides many technical, clarifying, and conforming changes to ch. 517, F.S. Many provisions of ch. 517, F.S., are outdated or do not incorporate recent model acts or federal rule changes, which are designed to promote capital formation for small businesses and provide more investment opportunities for investors. For example, the bill increases the maximum amount of an intrastate crowdfund offering from $1 million to $5 million to be consistent with changes in recent federal regulations relating to interstate crowdfunding.

The bill allows the OFR to recover any costs and attorney's fees related to the OFR's investigation in an action for injunctive relief or the OFR's enforcement of any restraining order or injunction. Further, the bill allows the OFR to hold any control person of a controlled person found to have violated any provision of ch. 517, F.S., or of any rule adopted thereunder, jointly and severally liable with, and to the same extent as, such controlled person in any action brought under this section unless the control person acted in good faith and did not directly or indirectly induce the acts that caused the violation. Finally, the bill allows the OFR to hold a person who knowingly or recklessly provides substantial assistance to another person in violation of a provision of ch. 517, F.S., liable to the same extent as the person to whom such assistance is provided, for purposes of this section.

The bill incorporates provisions of the following model acts and rules:

- The North American Securities Administrators Association's (NASAA's) Model Rule on Investment Adviser Representative Continuing Education.

- NASAA's Model Rule to Require Continuing Education by Investment Adviser Representatives. An associate or representative would be required to complete 12 hours of continuing educations.
- Uniform Securities Act of the Uniform Law Commission.

The bill decreases the $1,000 filing fee to $200 for offerings that do not exceed the maximum amount provided in s. 3(b) of the Securities Act of 1933. The maximum amount currently provided in s. 3(b) of the Securities Act of 1933 is $5 million.

The bill eliminates the requirement for an issuer to register with the OFR. Currently, issuers are required to disclose all material facts about themselves when registering an offering of securities.

There is no anticipated fiscal impact on state or local governments.

The bill takes effect October 1, 2023.

II. Present Situation:

Federal Regulation of Securities

Securities Act of 1933

Following the stock market crash of 1929, the Securities Act of 1933[1] was enacted to regulate the offers and sales of securities. The Securities Act requires issuers to disclose financial and other significant information on securities offered for public sale and prohibits deceit, misrepresentations, and other kinds of fraud in the sale of securities. The act requires issuers to disclose information deemed germane to investors as part of the mandatory SEC registration of the securities that those companies offer for sale to the public.[2] For example, potential investors must be given an offering prospectus containing registration data. Registered securities offerings, often called public offerings, are available to all types of investors and have more rigorous disclosure requirements.

By contrast, securities offerings that are exempt from SEC registration are referred to as private offerings and are mainly available to more sophisticated investors. The SEC exempts certain small offerings from registration requirements to foster capital formation by lowering the cost of offering securities to the public. Examples of exempt offerings[3] include:

- Rule 506(b) Private Placement Offerings allow companies to raise unlimited capital from investors with whom the company has a relationship and who meet certain wealth thresholds or have certain professional credentials.[4]

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[1] Public Law 73-22, as amended through P.L. 117-268, enacted December 23, 2022.
[2] *Id.*
[3] SEC.gov | The Laws That Govern the Securities Industry (last visited March 5, 2023). Security offerings of municipal, state, and the federal government are exempt from registration.
[4] 17 C.F.R. s. 230.506(b).

- Rule 506(c) General Solicitation Offerings allow companies to raise unlimited capital by broadly soliciting investors who meet certain wealth thresholds or have certain professional credentials.[5]
- Rule 504 Limited Offerings allow companies to raise up to $10 million in a 12-month period, in many cases from investors with whom the company has a relationship.[6]
- Regulation Crowdfunding Offerings allow eligible companies to raise up to $5 million in investment capital in a 12-month period from investors via an online portal.[7]
- Intrastate offerings[8] allow companies to raise capital within a single state according to state law. Many states limit the offering to between $1 million and $5 million in a 12-month period.
- Regulation A Offerings allow eligible companies to raise up to $20 million in a 12-month period in a Tier I offering and up to $75 million through a similar, but less extensive registered offering.[9]

Securities and Exchange Act of 1934

The Securities and Exchange Act of 1934 created the Securities and Exchange Commission (SEC) as an independent agency to enforce federal securities laws.[10] The SEC oversees federal securities laws[11] broadly aimed at (1) protecting investors; (2) maintaining fair, orderly, and efficient markets; and (3) facilitating capital formation.[12] The SEC has broad regulatory authority over significant parts of the securities industry, including stock exchanges, mutual funds, investment advisers, brokerage firms, as well as securities self-regulatory organizations (SROs).

Besides regulating market participants, the SEC plays an important role in the regulation of other regulatory bodies, such as the Financial Industry Regulatory Authority, Inc. (FINRA), which is a SRO[13] registered with SEC as a national securities association, the Municipal Securities Rulemaking Board (MSRB), the Securities Investor Protection Corporation, the Public Company Accounting Oversight Board, and the Financial Accounting Standards Board. With regard to broader marketplace regulation, the SEC coordinates with the Commodity Futures Trading Commission (CFTC), a separate federal financial regulator overseeing derivatives and commodities markets, regarding issues involving securities-based derivatives.[14]

Demo Days

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[5] 17 C.F.R. s. 230.506(c).
[6] 17 C.F.R. s. 230.504.
[7] 17 C.F.R. s. 227.100. Florida's intrastate crowdfunding law, s. 517.0611, F.S., has not been updated since it was created to reflect to reflect the increase in the maximum offering from $1 million to $5 million.
[8] 17 C.F.R. s. 230.147 and 17 C.F.R. s. 230.147A
[9] 17 C.F.R. s. 230.251, *et seq.*
[10] Public Law 73-291, as amended through P.L. 117-328, enacted December 29, 2022.
[11] Section 15, Securities and Exchange Act of 1934.
[12] Securities and Exchange Commission, "What We Do," at SEC.gov | What We Do (last visited March 5, 2023).
[13] National securities exchanges (e.g., the New York Stock Exchange) and clearing and settlement systems may register as SROs with the SEC or CFTC, making them subject to SEC or CFTC oversight. A list of self-regulatory organizations (SROs) registered with the SEC can be found at https://www.sec.gov/rules/sro.shtml.
[14] CFTC, "The Commission," https://www.cftc.gov/About/AboutTheCommission (last visited Mar. 1, 2023).

Demo days" and similar events are generally organized by a group or entity (e.g., a university, angel investors, an accelerator, or an incubator) that invites issuers to present their businesses to potential investors, with the aim of securing investment. Pursuant to Rule 148, an issuer will not be deemed to have engaged in general solicitation if the communications are made in connection with a seminar or meeting sponsored by a college, university, or other institution of higher education, a state or local government or instrumentality of a state or local government, a nonprofit organization, or an angel investor group, incubator, or accelerator.[15] Rule 148 specifies that advertising for the event may not reference any specific offering of securities by the issuer and limits the information that may be conveyed at the event regarding the offering of securities by or on behalf of the issuer.

Further, the rule provides that the sponsor of a Demo Day may not:
- Make investment recommendations or provide investment advice to attendees of the event;
- Engage in any investment negotiations between the issuer and investors attending the event;
- Charge attendees of the event any fees, other than reasonable administrative fees;
- Receive any compensation for making introductions between event attendees and issuers, or for investment negotiations between the parties; or
- Receive any compensation with respect to the event that would require it to register as a broker or dealer under the Exchange Act, or as an investment adviser under the Advisers Act.

Solicitation of Interest or Test the Waters[16]

Rule 241 allows an issuer or any person authorized to act on behalf of an issuer may communicate orally or in writing to determine whether there is any interest in a contemplated offering of securities exempt from registration under the Securities Act. According to the SEC, this rule will further the public interest by allowing issuers to gauge market interest, tailor the size and other terms of the offering (possibly with input from potential investors), and reduce the costs of conducting an exempt offering.[17]

Rule 241 further requires the testing-the-waters materials to provide specified disclosures notifying potential investors about the limitations of the generic solicitation. The issuer's communications must state that:
- The issuer is considering an offering of securities exempt from registration under the Act, but has not determined a specific exemption from registration the issuer intends to rely on for the subsequent offer and sale of the securities;
- No money or other consideration is being solicited, and if sent in response, will not be accepted;
- No offer to buy the securities can be accepted and no part of the purchase price can be received until the issuer determines the exemption under which the offering is intended to be

[15] Rule 148 (17 C.F.R. s. 230.148).
[16] Rule 241 (17 C.F.R. s. 230.241).
[17] *See*, e.g., Transcript of SEC Small Business Capital Formation Advisory Committee (May 8, 2020), https://www.sec.gov/info/smallbus/acsec/sbcfac-transcript-050820.pdf ("Startups and young companies, by their nature, are capital constrained. Expanding that test-the-waters rule provides businesses the flexibility to explore the optimal avenue for raising capital before spending multiple thousands of dollars on legal fees.") (last visited Mar.10, 2023)

conducted and, where applicable, the filing, disclosure, or qualification requirements of such exemption are met; and
- A person's indication of interest involves no obligation or commitment of any kind. The rule additionally provides that the communication may include a means for a person to indicate interest in a potential offering and an issuer may require such indication to include the person's name, address, telephone number, and/or email address.

Regulation Crowdfunding

Regulation Crowdfunding provides an exemption from registration for certain crowdfunding transactions including limits on the amount an issuer may raise; limits on the amount an individual may invest; and a requirement that the transactions be conducted through an intermediary that is registered as either a broker-dealer or a "funding portal."

The exemption from registration provided by Section 4(a)(6) is available provided that "the aggregate amount sold to all investors by the issuer, including any amount sold in reliance on the exemption provided under during the 12-month period preceding the date of such transaction, is not more than $5,000,000."

In addition, Regulation Crowdfunding also limits the amount individual investors are allowed to invest across all Regulation Crowdfunding offerings over the course of a 12-month period. The limitation on how much an individual can invest during that period depends on his or her net worth and annual income and may not exceed $107,000. Individual investors are limited to:
- The greater of $2,200 or five percent of the lesser of the investor's annual income or net worth, if either of an investor's annual income or net worth is less than $107,000; or
- 10 percent of the lesser of his or her annual income or net worth, if both annual income and net worth are equal to or more than $107,000.[18]

Intrastate Exemptions Rules 147 and 147A[19]

Securities Act Section 3(a)(11) provides an exemption from registration under the Securities Act for "[a]ny security which is part of an issue offered and sold only to persons resident within a single State or Territory, where the issuer of such security is a person resident and doing business within, or, if a corporation, incorporated by and doing business within, such State or Territory." In 1974, the Commission adopted Rule 147 under the Securities Act to provide objective standards for local businesses seeking to rely on section 3(a)(11). Due to developments in modern business practices and communications technology in the years since Rule 147 was originally adopted, the SEC determined that it was necessary to update the requirements of Rule 147 to ensure its continued utility and to adopt Rule 147A.

Rule 147, as amended, has the following requirements: 1) the company must be organized in the state where it offers and sells securities; 2) the company must have its "principal place of business" in-state and satisfy at least one "doing business" requirement that demonstrates the in-state nature of the company's business; 3) offers and sales of securities can only be made to in-

[18] See 17 C.F.R. s. 227.100(a)(2), Regulation Crowdfunding.
[19] (17 CFR s. 230.147 and 17 CFR s. 230.147A)

state residents or persons who the company reasonably believes are in-state residents; and 4) the company obtains a written representation from each purchaser providing the residency of that purchaser.

Rule 147A was adopted in October 2016 by the SEC pursuant to its general exemptive authority under Section 28 of the Securities Act, and therefore, Rule 147A is not subject to the statutory limitations of section 3(a)(11). Rule 147A is substantially identical to Rule 147 except that it: 1) allows offers to be accessible to out-of-state residents, so long as sales are only made to in-state residents; and 2) permits a company to be incorporated or organized out-of-state, so long as the company has its "principal place of business" in-state and satisfies at least one "doing business" requirement that demonstrates the in-state nature of the company's business. Rule 147A also permits issuers to engage in general solicitation and general advertising of their offerings, using any form of mass media, including unrestricted, publicly-available Internet websites, so long as sales of securities so offered are made only to residents of the state or territory in which the issuer has its principal place of business.

Both Rule 147A and amended Rule 147 require issuers to include a prominent disclosure with all offering materials stating that sales will be made only to residents of the same state or territory as the issuer.

Proposed SEC Finders Exemption

In 2020, the SEC voted to propose a new limited, conditional exemption from broker registration requirements for finders who assist issuers with raising capital in private markets from accredited investors.[20] The proposed exemption would permit natural persons to engage in certain limited activities involving accredited investors without registering with the SEC as brokers. The proposal has yet to be adopted.

Florida Regulation of Securities

The federal securities acts expressly allow for concurrent state regulation under blue sky laws,[21] which are designed to protect investors against fraudulent sales practices and activities. Most state laws typically require companies making offerings of securities to register their offerings before they can be sold in a particular state, unless a specific state exemption is available. The laws also license brokerage firms, their brokers, and investment adviser representatives.[22]

The Office of Financial Regulation (OFR) regulates and registers the offer and sale of securities in, to, or from Florida by firms, branch offices, and individuals associated with these firms in

[20] SEC, SEC Proposes Conditional Exemption for Finders Assisting Small Businesses with Capital Raising (Oct. 7, 2020) https://www.sec.gov/news/press-release/2020-248 (last visited March. 1, 2023).
[21] The term "blue sky" derives from the characterization of baseless and broad speculative investment schemes, which such laws targeted. Cornell Law School, Blue Sky Laws https://www.law.cornell.edu/wex/blue_sky_law#:~:text=In%20the%20early%201900s%2C%20decades,schemes%20which%20such%20laws%20targeted. (last visited Mar. 1, 2023).
[22] U.S. Securities and Exchange Commission, Blue Sky Laws, http://www.sec.gov/answers/bluesky.htm (last visited Mar. 1, 2023).

accordance with the act.[23] The Division of Securities within the OFR is responsible for administering the Securities and Investor Protection Act.[24]

The act prohibits dealers, associated persons, and issuers from offering or selling securities in this state unless registered with the OFR or specifically exempted.[25] Additionally, all securities in Florida must be registered with the OFR unless they meet one of the exemptions in s. 517.051 or s. 517.061, F.S., or are federally covered (i.e., under the exclusive jurisdiction of the SEC).

As of December 31, 2022, the Division had total registrants in the following categories:
- Dealers: 2,421
- Investment Advisers: 8,096
- Branches: 11,435
- Associated Persons: 361,200[26]

Intrastate Crowdfunding

In 2015, the Florida Legislature enacted an intrastate crowdfunding exemption. The issuer, intermediary, investor, and transaction must comply with the federal intrastate exemption requirements. The law[27] exempts an issuer and the offering for a 12-month online offering up to $1 million of securities, requires registration for the intermediary, and mirrors the federal law's investment limitations for investors at the time (2015). The law requires issuer notice-filings and intermediary registrations with the OFR, initial and periodic disclosures to investors, an escrow agreement for investor funds, a right of rescission, and financial reporting to investors and to the OFR.

Model Acts and Model Rules

Uniform Securities Act[28]

The Uniform Law Commission (ULC, also known as the National Conference of Commissioners on Uniform State Laws), established in 1892, provides states with non-partisan uniform model acts. In 2002, the Uniform Law Commission updated the Uniform Securities Act, which provides basic investor protection from securities fraud, complementing the federal Securities and Exchange Act, and only applies to securities not regulated by the SEC.

Model Accredited Investor Exemption[29]

[23] 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.
[24] Chapter 517, F.S.
[25] Section 517.12, F.S.
[26] Office of Financial Regulation, Analysis of SB 180 (Jan. 25, 2023).
[27] Section 517.0611, F.S.
[28] Securities Act - Uniform Law Commission (uniformlaws.org) (last visited Mar. 10, 2023).
[29] https://www.nasaa.org/wp-content/uploads/2011/07/24-Model_Accredited_Investor_Exemption.pdf (Apr. 27, 1997) (last visited Mar. 20, 2023).

In 1997, the North American Securities Administrators Association (NASAA) [30] members approved the "Model Accredited Investor Exemption" (the AI Exemption). The AI exemption exempts the offer or sale of a security by an issuer from the security registration process in a transaction meeting certain requirements. Specifically, the AI exemption limits the sale of securities to accredited investors and the issuer must not be subject to disqualification. The AI exemption also requires that an issuer file a notice of transaction, a consent to service of process, and a copy of the general announcement with the Office within 15 days after the first sale in the state. The majority of states have adopted the AI exemption.[31]

Model Rule to Require Continuing Education by Investment Adviser Representatives

In 2020, the North American Securities Administrators Association (NASAA) approved the *Model Rule to Require Continuing Education by Investment Adviser Representatives.*[32] Twelve states have adopted the model.[33]

Chapter 517 Task Force of The Florida Bar Business Law Section

In 2022, the Business Law Section of The Florida Bar created the Chapter 517 Task Force. The Task Force will review and make legislative recommendations to ch. 517, F.S. In particular, the Task Force's mission is to comprehensively review Florida's securities laws and to propose a revision with the purpose of bringing Chapter 517 in line with the Uniform Securities Act and address current issues presented by the existing statutes.

III. Effect of Proposed Changes:

Section 1. Definitions (s. 517.021, F.S.) The following definitions are created:

- The term "accredited investor" is currently defined each time it is used throughout ch. 517, F.S. The purpose of the change is to eliminate redundancy and maintain consistency. The Commission is directed to adopt such definition by rule considering certain factors.
- The definition of the term, "control person," is currently defined in s. 517.12, F.S., and is transferred to this section and amended to align the definition with the definition of "control person" in ch. 560, F.S.
- The term, "natural person," is defined for clarity.
- The terms "angel investor group," "business accelerator," and "business incubator" currently do not exist in ch. 517, F.S. and their addition is necessitated by the inclusion of the "demo day" provisions. A "demo day," as proposed, is substantially similar to a "demo day" under SEC Rule 148 and allows an issuer to participate in a seminar or meeting with prospective investors and other issuers subject to strict limits on issuer communications. Such meetings or seminars may only be sponsored by certain persons and they cannot involve any investment recommendations, negotiations, or commitments to invest.

[30] NASAA is a nonprofit association of securities regulators in the United States, Canada, and Mexico. www.nasaa.org (last visited Mar. 1, 2023).

[31] Office of Financial Regulation, Analysis of SB 180 (Jan. 25, 2023).

[32] Model Rule NASAA-IAR-CE-Model-Rule.pdf (Nov. 24, 2020) (last visited Mar. 2, 2023).

[33] Arkansas, Colorado, Kentucky, Maryland, Michigan, Mississippi, Oklahoma, Oregon, South Carolina, Vermont, Wisconsin, and the District of Columbia. IAR CE Map - NASAA (last visited Mar. 20, 2023).

- The term, “target offering amount,” is currently used in s. 517.0611, F.S., but not defined. The section is amended to define the term for clarity.
- The term, “associated person,” is clarified to define what “associated person” means as the term relates to Tier I and Tier II dealers, investment advisers, and federal covered advisers.
- The term, “dealer,” is amended to separate dealers into “Tier I dealers” and “Tier II dealers.” Tier I dealers are persons who engage for all or part of the person’s time, directly or indirectly, as agent or principal in the business of offering, buying, selling, or otherwise dealing or trading in securities issued by another person. Tier II dealers, or capital connectors, are natural persons or entities that, for direct or indirect compensation, introduce or refer accredited investors to an issuer with a principal place of business in this state, or introduce or refer an issuer with a principal place of business in this state, to one or more accredited investors, solely for the purpose of a potential offer or sale of securities of the issuer in an issuer transaction in this state.
- The terms “guaranty” and intermediary are amended for clarity.
- The term “investment adviser” is amended to have a parallel structure to the definition of “dealer” in this section. The exclusion found in subsection (16)(b)8. is amended to mirror the national de minimis standard (15 USC 80b-18a(d)). The national de minimis standard preempts the states from requiring an investment adviser to register in a state if the investment adviser (1) does not have a place of business located within the State; and (2) during the preceding 12-month period, has had fewer than 6 clients who are residents of that State.

Section 2. Exempt Transactions (s. 517.061, F.S.)
Subsection (9) is revised to conform it to the Uniform Securities Act. Technical changes are also made.

Subsection (11) is amended to shorten the specified time period from 6 months to 60 days and to allow the OFR to specify factors to be considered for purposes of determining whether offers and sales of securities constitute part of the same offering under Florida’s private placement exemption.

Subsection (23) is added to adopt the NASAA’s Model Accredited Investor Exemption. The model exempts the offer or sale of a security by an issuer from the security registration process in a transaction if certain requirements are met. Specifically, the model limits the sale of securities to accredited investors and the issuer must not be subject to disqualification. The model also requires that an issuer file a notice of transaction, a consent to service of process, and a copy of the general announcement with the OFR within 15 days after the first sale in the state.

Section 3. Intrastate Crowdfunding (s. 517.0611, F.S.) The following changes are made to the section:

- Allows offerings to be conducted in compliance with SEC Rule 147A.
- Eliminate the requirement that an issuer under this section be formed in Florida and derive its revenues primarily from operations in Florida, thereby expanding the companies eligible to use the exemption.
- Requires that investor funds, through an escrow agreement or trust account arrangement entered into with an independent third party, be deposited in a federally insured account for

the benefit of the investors. All funds must remain in such account until such time as either the target offering amount has been reached, the offering has been terminated, or the offering has expired. All funds are required to be used in accordance with the uses of proceeds represented to prospective investors.

- Increase the total amount that an issuer can raise within a 12-month period from $1 million to $5 million, consistent with the federal crowdfunding rules.
- Amends section to include limited liability companies and make technical clarifying changes.

Section 4. Pre-offering Communications (s. 517.065, F.S.) This new section:

- Allows issuers to "test the waters," similar to SEC Rule 241, by engaging in pre-offering oral or written communications with prospective investors to determine whether there is any interest in a contemplated securities offering. The antifraud provisions apply to these communications. (Subsection 1)
- Allows issuers to participate in "demo day" presentations similar to SEC Rule 148. Pre-offering communications made in connection with a "demo day" are not deemed to be in violation of s. 517.07 and are not deemed to constitute general solicitation or general advertising under s. 517.061(11), F.S. The ability to engage in this limited form of public disclosure is important for smaller companies and start-ups trying to attract potential investors. Likewise, the safe harbor protects the promotors of small company showcasing events – the business incubators and accelerators -- from being required to register as dealers, provided the safe harbor restrictions are followed. (Subsection 2)

Section 5. Viatical Settlement Investments (s. 517.072, F.S.) This section is amended to transfer provisions previously in s. 517.081, F.S. relating to viatical settlements.

Section 6. Registration Procedures (s. 517.081, F.S.) The following changes are made:

- Allows all issuers meeting certain criteria, not only corporations, to use a simplified offering circular to register securities.
- Eliminate the Commission's ability to fix by rule the maximum discounts, commissions, expenses, remuneration, and other compensation as these terms are best negotiated by the parties participating in an offering.
- Decreases the filing fee to $200 for offerings which does not exceed the maximum amount provided in s. 3(b) of the Securities Act of 1933. The maximum amount currently provided in s. 3(b) of the Securities Act of 1933 is $5 million.
- Authorizes the Commission to specify by rule the time period for completing an application to register securities. If the application is not timely completed, the application shall be deemed abandoned.
- Provides conforming change to transfer provisions to 517.072, F.S., relating to viatical settlements.

Section 7. Registration by Notification; federal registration statements (s. 517.082)

- Allows securities offered or sold pursuant to a notification statement filed under the Securities Act of 1933, as amended, to register by notification when the offering price at the time of effectiveness with the SEC is $5 or less per share.
- Allows the OFR to deem an application abandoned if an applicant's federal registration statement is not declared effective by the SEC within 180 days of the filing of such application for registration by notification with the OFR.

Section 8. Revocation or denial of registration of securities (s. 517.111, F.S.). This section is amended in the following manner:

- Removes “failure to timely complete an application” as grounds for denial as this provision is incorporated in the registration sections (ss. 517.081 and 517.082, F.S.).
- Replaces the term, “insolvency,” with the definition. “The issuer cannot pay its debts as they become due in the usual course of business,” for clarity.
- Includes “investigation” in addition to “examination” in various provisions as these provisions are applicable to both examinations and investigations conducted by the OFR.
- Includes limited liability companies.
- Removes the phrase “is in any other way dishonest or” because the standard is too vague.
- Eliminate the phrase “demonstrated any evidence of unworthiness,” a vague standard, and replaces it with “has engaged in any action that would be grounds for revocation, denial, or suspension under s. 517.161(1),” a clearer standard.
- Eliminates the ability of the OFR to notice the entry of an order pursuant to this section by “telephone confirmed in writing, or by telegraph to the issuer” as these methods are outdated and not used elsewhere in ch. 517, F.S.

Section 9. Registration of dealers, associated persons, intermediaries, and investment advisers. (s. 517.12, F.S.) The section provides the following changes:

- Removes the requirement that issuers register with OFR. This registration requirement is not necessary because issuers are required to disclose all material facts about themselves when registering an offering of securities. Further, the majority of states do not have this requirement.
- Separates dealers into Tier I dealers and Tier II dealers and describes the registration requirements for each category.
- Clarifies which exempt transactions the registration requirements apply to and to clarify the meaning of “securities business.”
- Removes the term “small loan companies” as the term is not defined.
- Eliminates the requirement that the OFR find an applicant is of “good repute and character.” This standard is not defined, and its meaning is unclear.
- Replaces the phrase “any person directly or indirectly controlling the applicant” with “control person.”
- Amends the section to specifically include limited liability companies, and provides technical changes.

Section 10. Continuing education requirements for associated persons of investment advisers and federal covered advisers (Section 517.1214, F.S.) The newly created section provides creates the following provisions:

- Adopts NASAA’s Model Rule on Investment Adviser Representative Continuing Education. Requires associated persons of investment advisers and federal covered advisers seeking registration or renewal of registration with the OFR to complete 12 continuing education (CE) credits each year. An associated person must complete six credits of continuing education content that address ethical and regulatory obligations and six credits of continuing education content that address product knowledge and industry practices. Associated persons of investment advisers and federal covered advisers who are also registered as associated persons of FINRA member dealers and who comply with FINRA’s continuing education requirements are considered to be in compliance with the products and practices requirement. Further, credits

of continuing education completed by an associated person who completes such credits as a condition of maintaining certain professional designations or associated persons in compliance with their home state's continuing education requirements may satisfy the continuing education requirements of this section.
- Provides that continuing education credits in excess of the required 12 cannot be carried forward. An associated person who fails to comply with this section by the end of each year will renew as "CE inactive." An associated person who is CE inactive at the close of the next calendar year is not eligible for associated person registration or renewal of associated person registration.

Section 11. Rules of conduct and prohibited business practices for dealers and their associated persons. (s. 517.1217). The section provides the following changes:
- Amends the section to include intermediaries.
- Amends to specifically identify the activities that a Tier II dealer can and cannot engage in. Authorizes the Commission to adopt by rule to establish rules of conduct and prohibited business practices for Tier II dealers and their associated persons.

Section 12. Revocation, denial, or suspension of registration of dealer, investment adviser, intermediary, or associated person. (s. 517.161, F.S.) The section provides the following:
- Replaces the phrase "person directly or indirectly controlling" with "control person" and removes the term "broker" for consistency.
- Removes the "unworthiness to transact business" and the "of bad business repute" standards because they are vague.
- Clarifies the meaning of "insolvent" as "unable to pay its debts as they become due in the usual course of business" and to remove the term "small loan companies" as it is undefined and its meaning is unclear.
- Adds failure to pay, or attempting to avoid paying, certain final judgments, arbitration awards, fines, civil penalties, orders of restitution and disgorgement, or similar monetary payment obligations as grounds for denying, suspending, or revoking a registration.
- Amends section to include limited liability companies.

Section 13. Guidelines. (s. 517.1611, F.S.) This section is amended to replace the phrase "any person directly or indirectly controlling the applicant" with "control person."

Section 14. Escrow agreement. (s. 517.181, F.S) This section requires the impound of securities to be held for issuance contingent on a milestone being reached, such as receipt of a patent. This section is repealed as it is not utilized, and no federal counterpart exists.

Section 15. Injunction to restrain violations; civil penalties; enforcement by Attorney General (s. 517.191, F.S.) The section makes the following changes:

Allows the OFR to recover any costs and attorney's fees related to the OFR's investigation in an action for injunctive relief or the OFR's enforcement of any restraining order or injunction.

Allows the OFR to hold any control person of a controlled person found to have violated any provision of ch. 517, F.S., or of any rule adopted thereunder, jointly and severally liable with, and

to the same extent as, such controlled person in any action brought under this section unless the control person acted in good faith and did not directly or indirectly induce the acts that caused the violation.

Allows the OFR to hold a person who knowingly or recklessly provides substantial assistance to another person in violation of a provision of ch. 517, F.S., or of any rule adopted thereunder, liable to the same extent as the person to whom such assistance is provided, for purposes of this section.

Section 16. Investigations; examinations; subpoenas; hearings; witnesses (s. 517.201, F.S.) This section is amended for clarity and to specifically include limited liability companies.

Section 17. Criminal Punishment Code; offense severity ranking chart (s. 922.0022, F.S.) This section is revised to provide technical changes.

Section 18 Exempt securities (s. 517.051, F.S.) The section provides technical changes.

Section 19. Requirements, rules of conduct, and prohibited business acts (s. 517.1215, F.S.) This section provides technical changes.

Section 20. Cuba, prospectus disclosure of doing business with, required (s. 517.075, F.S.) This section provides technical, conforming changes.

Section 21 Securities Guaranty Fund (s. 517.131, F.S.) This section provides technical, conforming changes.

Section 22. Remedies available in cases of unlawful sales (s. 517.211, F.S.) This section provides technical, conforming changes.

Section 23 Fees (s. 517.315, F.S.) This section provides technical, conforming changes.

Section 24 Definitions (s. 626. 9911, F.S.) This section provides technical, conforming changes.

Section 25 Bond of guardian (s. 744.351, F.S.) This section provides technical, conforming changes.

Section 26 provides the bill takes effect October 1, 2023.

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:

Many of the provisions in the bill are designed to promote capital formation for small businesses and opportunities for Florida investors.

An issuer filing an application to register securities is currently required to pay a filing fee of $1,000 per application. The bill maintains the $1,000 filing fee for offerings that exceed the amount provided in s. 3(b) of the Securities Act of 1933, as amended, which is $5 million, but reduces the fee to $200 per application for each offering that does not exceed the amount provided in s. 3(b) of the Securities Act of 1933, as amended.

The bill requires associated persons of investment advisers to attain 12 continuing education credits each year to maintain their registration and will incur continuing education reporting fee of $3 per credit hour.[34]

C. Government Sector Impact:

There is a potential fiscal impact to OFR due to the revisions required to the REAL system to accommodate the changes required to implement the bill. The range of costs for changes, based on the IT impact is between $30,000 and $150,000 depending on which path is chosen. No additional appropriation will be required. Any changes up to the upper limit of the estimate can be absorbed within the OFR's existing budget.[35]

VI. Technical Deficiencies:

None.

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[34] IAR Continuing Education FAQ - NASAA (Oct. 8, 2021) (last visited Mar. 20, 2023).

[35] OFR, Analysis of SB 180 (Jan. 25, 2023).

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 517.021, 517.061, 517.0611, 517.072, 517.517.081, 517.082, 517.111, 517.12, 517.1217, 517.161, 517.1611, 517.181, 517.191, 517.201, 921.0022, 517.051, 517.1215, 517.075, 517.131, 517.211, 517.315, 626.9911, and 744.351 of the Florida Statutes.

This bill creates section 517.065 of the Florida Statutes.
This bill repeals section 517.181, of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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