

# FLORIDA HOUSE OF REPRESENTATIVES BILL ANALYSIS

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**BILL #:** [CS/HB 379](#)

**TITLE:** Securities

**SPONSOR(S):** Barnaby

**COMPANION BILL:** [SB 988](#) (Truenow)

**LINKED BILLS:** None

**RELATED BILLS:** None

## Committee References

[Insurance & Banking](#)

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[Commerce](#)

## SUMMARY

### Effect of the Bill:

The Florida Securities and Investor Protection Act (the Act) governs the registration and examination of firms, branches, and individuals offering investment services in the state. The Office of Financial Regulation Division of Securities (OFR) is responsible for administering and enforcing compliance with the Act.

The bill makes many changes throughout the Act. In general, the bill:

- Expands the list of securities transactions that are exempt from registration;
- Requires the Financial Services Commission to consider certain factors when designating a foreign securities exchange or foreign securities market by rule;
- Amends the Florida Invest Local Exemption to require an issuer to file a written consent to service of process with OFR prior to commencing an offer;
- Removes the requirement for OFR to find that an issuer's enterprise or business is not based on unsound business principles in order to approve the issuer's application for registration;
- Limits the application of the Act's disqualification provision as it relates to SEC Rule 506(d);
- Specifies certain persons that must submit fingerprints to the Department of Law Enforcement; and
- Clarifies certain eligibility and application requirements for persons seeking payment from the Securities Guaranty Fund.

### Fiscal or Economic Impact:

The bill has an indeterminate impact on the private sector and an indeterminate impact on state government.

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## ANALYSIS

### **EFFECT OF THE BILL:**

The bill makes many changes throughout the [Florida Securities and Investor Protection Act \(Act\)](#), which is codified in chapter 517, F.S.

### Definitions

The bill creates definitions for the following terms, as such terms are used in the Act:

- "[Branch manager](#)" means a natural person who administers or supervises the affairs or operations of a branch office.

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- “Corporation” has the same meaning as the terms “corporation,” “domestic corporation,” “foreign corporation,” “nonprofit corporation,” or “foreign nonprofit corporation” are defined under the Florida Business Corporation Act.<sup>1</sup>
- “Director” means a person appointed or elected to sit on a board that manages the affairs of a corporation or other organization by electing or exercising control over its officers.
- “General partner” means a co-owner or manager of a partnership who has unlimited liability for the partnership’s debts, including a “general partner” as that term is defined in the Florida Revised Uniform Limited Partnership Act of 2005.<sup>2</sup>
- “Limited liability company” has the same meaning as the terms “limited liability company” or “foreign limited liability company” are defined under the Florida Revised Limited Liability Company Act.<sup>3</sup>
- “Limited liability company manager” or “limited liability managing member” means a person who is responsible alone or in concert with others for performing the management functions of a limited liability company.
- “Limited partner” means a co-owner of a partnership who has limited liability for the partnership’s debts, including a “limited partner” as that term is defined in the Florida Revised Uniform Limited Partnership Act of 2005.<sup>4</sup>
- “Partnership” means two or more persons carrying on as co-owners of a business and including a “limited partnership,” “limited liability limited partnership,” “foreign limited partnership,” or “foreign limited liability limited partnership,” as those terms are defined in the Florida Revised Uniform Limited Partnership Act.
- “Shareholder” means a person who owns at least one share of a corporation and whose ownership is reflected in the records of the corporation.
- “Trust” has the same meaning as defined under the Florida Probate Code.<sup>5</sup> (Section [1](#).)

The bill amends the definition of “intermediary” to mean a person that facilitates through its website the offer or sale of securities of an issuer with a principal place of business in this state. (Section [1](#).)

<sup>1</sup> “Corporation” or “domestic corporation” means a corporation for profit, which is not a foreign corporation, incorporated under chapter 607, F.S., the Florida Business Corporation Act. [S. 607.01401\(13\), F.S.](#) “Foreign corporation” means an entity incorporated or organized under laws other than the laws of Florida which would be a corporation for profit if incorporated under the laws of Florida. [S. 607.01401\(36\), F.S.](#)

<sup>2</sup> “General partner” means: (a) with respect to a limited partnership, a person that becomes a general partner under [s. 620.1401, F.S.](#), or was a general partner in a limited partnership when the limited partnership became subject to the Florida Revised Uniform Limited Partnership Act of 2005 pursuant to [ss. 620.2204\(1\) or \(2\), F.S.](#); (b) with respect to a foreign limited partnership, a person that has rights, powers, and obligations similar to those of a general partner in a limited partnership. [S. 620.1102\(9\), F.S.](#)

<sup>3</sup> “Limited liability company,” except in the phrase “foreign limited liability company,” means an entity formed or existing under chapter 605, F.S., the Florida Revised Limited Liability Company Act, or an entity that becomes subject to chapter 605 pursuant to ss. 605.1001-605.1072, F.S. [S. 605.0102\(36\), F.S.](#) “Foreign limited liability company” means an unincorporated entity that was formed in a jurisdiction other than Florida and is denominated by that law as a limited liability company. [S. 605.0102\(26\), F.S.](#)

<sup>4</sup> “Limited partner” means: (a) with respect to a limited partnership, a person that becomes a limited partner under [s. 620.1301, F.S.](#) or was a limited partner in a limited partnership when the limited partnership became subject to the Florida Revised Uniform Limited Partnership Act of 2005 pursuant to [ss. 620.2204\(1\) or \(2\), F.S.](#); (b) with respect to a foreign limited partnership, a person that has rights, powers, and obligations similar to those of a limited partner in a limited partnership. [S. 620.1102\(11\), F.S.](#)

<sup>5</sup> “Trust” means an express trust, private or charitable, with additions to it, wherever and however created. It also includes a trust created or determined by a judgment or decree under which the trust is to be administered in the manner of an express trust. “Trust” excludes other constructive trusts, and it excludes resulting trusts; conservatorships; custodial arrangements pursuant to the Florida Uniform Transfers to Minors Act; business trusts providing for certificates to be issued to beneficiaries; common trust funds; land trusts under [s. 689.071, F.S.](#), except to the extent provided in [s. 689.071\(7\), F.S.](#); trusts created by the form of the account or by the deposit agreement at a financial institution; voting trusts; security arrangements; liquidation trusts; trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind; and any arrangement under which a person is nominee or escrowee for another. [S. 731.201\(38\), F.S.](#)

## Exempt Transactions

The bill expands the list of securities transactions that are currently exempt from registration under the Act. Under the bill, the offer or sale of securities to the following individuals are exempt:

- A savings and loan association, building and loan association, cooperative bank, homestead association, or credit union, which is supervised and examined by a state or federal authority having supervision over any such institution.
- A federal covered adviser, investment adviser registered pursuant to the laws of a state, exempt reporting adviser or private fund adviser as those terms are defined in [s. 517.12\(23\)\(a\)2. and 3. F.S.](#)<sup>6</sup> respectively, investment adviser relying on the exemption from registering with the Securities and Exchange Commission under s. 203(l) or (m) of the Investment Advisers Act of 1940, as amended, business development company as defined in s. 2(a)(48) of the Investment Company Act of 1940, as amended, or business development company as defined in s. 202(a)(22) of the Investment Advisers Act of 1940, as amended.
- A small business investment company licensed by the Small Business Administration under s. 301(c) of the Small Business Investment Act of 1958, as amended, or rural business investment company as defined in s. 384A of the Consolidated Farm and Rural Development Act.
- A plan established and maintained by a state, a political subdivision thereof, or any agency or instrumentality of a state or a political subdivision, for the benefit of its employees, if such plan has total assets in excess of \$5 million, an employee benefit plan within the meaning of the Employee Retirement Income Security Act of 1974 if the investment decision is made by a plan fiduciary, as described in s. 3(21) of such act, which is a bank, savings and loan association, insurance company, or federal covered adviser, or if the employee benefit plan has total assets in excess of \$5 million or, if a self-directed plan, with investment decisions made solely by persons that are accredited investors. (Section [2.](#))

The bill also exempts the offer or sale of securities to the following entities:

- An organization described in s. 501(c)(3) of the Internal Revenue Code, corporation, Massachusetts trust or similar business trust, partnership, or limited liability company, not formed for the specific purpose of acquiring the securities offered, with total assets in excess of \$5 million.
- A trust, with total assets in excess of \$5 million, not formed for the specific purpose of acquiring the securities offered, whose purchase is directed by a sophisticated person as described in Securities and Exchange Commission Rule 506(b)(2)(ii),<sup>7</sup> as amended.
- An entity of a type not listed above which owns investments as defined in Securities and Exchange Commission Rule 2a51-1(b),<sup>8</sup> as amended, in excess of \$5 million and is not formed for the specific purpose of acquiring the securities offered.
- A family office as defined in Securities and Exchange Commission Rule 202(a)(11)(G)-1 under the Investment Advisers Act of 1940,<sup>9</sup> as amended, provided that:
  - The family office has assets under management in excess of \$5 million;
  - The family office is not formed for the specific purpose of acquiring the securities offered; and
  - The prospective investment of the family office is directed by a person who has knowledge and experience in financial and business matters that the family office is capable of evaluating the merits and risks of the prospective investment.
- An entity in which all of the equity owners are one of the types of entities described above or is a bank, trust company, savings institution, insurance company, dealer, investment company as defined in the Investment Company Act of 1940, as amended, pension or profit-sharing trust, or qualified institutional buyer, whether any of such entities is acting in its individual or fiduciary capacity. (Section [2.](#))

The bill amends the requirements for an issuer claiming the exemption identified in subsection (11) of the Florida statute that lists the Act's exempt transactions.<sup>10</sup> The bill requires that the issuer, within 15 days after the first sale

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<sup>6</sup> The bill rennumbers current subsection (22) in [s. 517.12. F.S.](#) to (23). Under [s. 517.12\(22\)\(a\)2. F.S.](#), "exempt reporting adviser" has the same meaning as in the Glossary of Terms to Form ADV, the uniform application for investment adviser registration, 17 C.F.R. s. 279.1. Under [s. 517.12\(22\)\(a\)3. F.S.](#), "private fund adviser" means an investment adviser who provides advice to solely one or more qualifying private funds.

<sup>7</sup> 17 C.F.R. s. 230.506(b)(2)(ii).

<sup>8</sup> 17 C.F.R. s. 270.2a51-1(b).

<sup>9</sup> 17 C.F.R. s. 275.202(a)(11)(G)-1

in Florida, file with OFR an irrevocable written consent to service of civil process, similar to that provided in [s. 517.101, F.S.](#) in addition to the materials currently required to be filed with OFR under subsection (11) of such statute.<sup>11</sup> (Section [2.](#))

### **[Foreign Securities Exchange](#)**

The bill clarifies that the conditions to claim the Act's exemption relating to foreign securities markets must be met at the time of the transaction that is the subject of the claimed exemption. (Section [2.](#))

The bill also removes the Act's designation of Canada, together with its provinces and territories, as a foreign jurisdiction, and also removes the Act's designation of the Toronto Stock Exchange, Inc., as a foreign securities exchange. Going forward, foreign securities markets and foreign securities exchanges will be designated by rule of the Financial Services Commission (Commission). (Section [2.](#))

Moreover, under the bill, the Commission must consider certain factors when designating a foreign securities exchange or foreign securities market under the Act. The factors to consider include the foreign securities market's or foreign security exchange's:

- Organization under foreign law.
- Association with a generally recognized community of dealers, financial institutions, or other professional intermediaries with an established operating history.
- Oversight by a governmental or self-regulatory body.
- Oversight standards set by general law.
- Reporting of securities transactions on a regular basis to a governmental or self-regulatory body.
- A system for exchange of price quotations through common communications media.
- An organized clearance and settlement system.
- Listing in Securities and Exchange Commission Regulation S Rule 902. (Section [2.](#))

### **[Florida Invest Local Exemption](#)**

The bill requires that an issuer making an offering under the Florida Invest Local Exemption must file with OFR, in addition to the disclosure statement required by the exemption, a notice of transaction on a form prescribed by Commission rule, and an irrevocable written consent to service of civil process, similar to that provided in [s. 517.101, F.S.](#) (Section [3.](#))

### **[“Bad Actor” Disqualification](#)**

The bill limits the application of the Act's disqualification provision to only certain persons and entities subject to SEC Rule 506(d).<sup>12</sup> Under the bill, a registration exemption provided by the Act is not available to an issuer if, *at the time the issuer makes an offer for the sale of a security*, any of the following entities would be disqualified under SEC Rule 506(d):

- The issuer;
- A predecessor of the issuer;
- An affiliated issuer;
- A director, executive officer, or other officer of the issuer participating in the offering;
- A general partner or managing member of the issuer;
- A beneficial owner of 20 percent or more of the issuer's outstanding voting equity securities, calculated on the basis of voting power; or
- A promoter connected with the issuer in any capacity at the time of the sale. (Section [5.](#))

For the avoidance of doubt, the bill clarifies that the disqualification under SEC Rule 506(d) does not apply to any other person or entity listed in such Rule other than those expressly listed in the bill. (Section [5.](#))

### **[Registration Requirements](#)**

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<sup>10</sup> See [s. 517.061, F.S.](#)

<sup>11</sup> The other materials to be filed include a notice of transaction and a copy of the general announcement of the sale. [S. 517.061\(11\)\(f\), F.S.](#)

<sup>12</sup> 17 C.F.R. s. 230.506(d).

The bill eliminates the requirement that OFR find, in order to approve a security for registration under the Act, that the enterprise or business of the security's issuer is not based upon unsound business principles. The bill does not remove any of the other findings that OFR must make in order to register a security under the Act. (Section [7](#).)

### **Requirements to Submit Fingerprints**

The bill significantly revises the Act's current requirements for submitting fingerprints to the Department of Law Enforcement (DLE). Under the bill, the following natural persons must submit a full set of fingerprints to DLE or to a vendor, entity, or agency authorized under [s. 943.053\(13\), F.S.](#) for live-scan processing in accordance with rules adopted by the Commission:

- A natural person filing with OFR an application for registration as an associated person or intermediary.
- A natural person who holds the title of president, treasurer, chief executive officer, chief financial officer, chief operations officer, chief legal officer, chief compliance officer, or director for an applicant that is a dealer, investment adviser, or intermediary.
- A natural person who is a 5 percent or more owner of an applicant that is a dealer, investment adviser, or intermediary.
- With respect to each 5 percent or more owner of an applicant that is a dealer, investment adviser, or intermediary that is a corporation, partnership, trust, or limited liability company, each natural person who is a 25 percent or more owner or trustee of such entity, and each natural person who is a 25 percent or more owner or trustee at each level up the chain of ownership up to, but not including, an entity subject to sections 12 or 15(d) of the Securities Exchange Act of 1934. (Section [8](#).)

For purposes of the bill's requirements relating to fingerprinting for the above individuals, the term "owner" means:

- A shareholder who owns a percentage of a class of voting securities of a dealer or investment adviser applicant, and includes any person who owns, beneficially owns, has the right to vote, or has the power to sell or direct the sale of, the percentage of a class of a voting security of the dealer or investment adviser applicant specified in sub-subparagraph c. or d. above. For purposes of this provision, a person beneficially owns the securities if the securities are:
  - Owned by the shareholder's child, stepchild, grandchild, parent, stepparent, grandparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, sharing the same residence; or
  - Securities that the shareholder has the right to acquire, within 60 days, through the exercise of any option, warrant, or right to purchase the securities.
- A general partner of a partnership, and a limited partner of a partnership who has the right to receive upon dissolution, or has contributed, a percentage of the capital of a dealer or investment adviser applicant.
- A trustee of a trust that owns a percentage of a class of a voting security of an applicant that is a dealer, investment adviser, or intermediary, or that has the right to receive upon dissolution, or has contributed, a percentage of the capital of such applicant.
- A member of a limited liability company who has the right to receive upon dissolution, or has contributed, a percentage of the capital of an applicant that is a dealer, investment adviser, or intermediary, and all limited liability company managers of a dealer or investment adviser applicant. (Section [8](#).)

Under the bill, a vendor, entity, or agency authorized under [s. 943.053\(13\), F.S.](#), to submit fingerprints electronically to the DLE must submit the fingerprints to DLE for state processing, and DLE must then forward the fingerprints to the Federal Bureau of Investigation (FBI) for national processing. The bill requires that the fees for state and federal fingerprint processing must be borne by the person subject to the criminal history record check. (Section [8](#).)

The bill requires OFR to review the results of the state and federal criminal history record checks and determine whether the applicant is disqualified from registration. Under the bill, the Commission may waive by rule the bill's requirement that the persons listed in the bill submit fingerprints or the bill's requirement that such fingerprints be processed by DLE or the FBI. (Section [8](#).)

### **Exemption from Registration for Certain M&A Brokers**

The bill essentially adopts the changes adopted by the North American Securities Administrators Association (NASAA) in May of 2024 to the NASAA’s Model Rule Exempting Certain Merger & Acquisition Brokers (M&A Brokers) from Registration (Model Rule). Specifically, the bill adopts the Model Rule’s definition of “business combination related shell company,” which defines the term as a shell company that is formed by an entity that is not a shell company solely for the purpose of:

- Changing the corporate domicile of the entity solely within the United States; or
- Completing a business combination transaction, as defined in 17 C.F.R. s. 230.165(f), among one or more entities other than the company itself, none of which is a shell company. (Section [8](#).)

The bill requires that an M&A broker, for purposes of the Act’s exemption, must receive additional written assurances, prior to the completion of a securities transaction, from any person that, after the transaction is completed, will be active in the management of the eligible privately held company or the business conducted with the assets of such company. (Section [8](#).)

The bill also provides that an M&A broker engaged in a transaction exempt under [s. 517.061\(7\), F.S.](#) is exempt from registration unless the M&A broker:

- Directly or indirectly, in connection with the transfer of ownership of an eligible privately held company, receives, holds, transmits, or has custody of the funds or securities to be exchanged by the parties to the transaction;
- Engages on behalf of an issuer in a public offering of any class of securities which is registered, or which is required to be registered, with the SEC under the Securities Exchange Act of 1934, or with OFR under [s. 517.07, F.S.](#); or for which the issuer files, or is required to file, periodic information, documents, and reports under s. 15(d) of the Securities Exchange Act of 1934;
- Engages on behalf of any party in a transaction involving a shell company, other than a business combination related shell company;
- Directly, or indirectly through any of its affiliates, provides financing related to the transfer of ownership of an eligible privately held company;
- Assists any party to obtain financing from an unaffiliated third party without:
  - Complying with all other applicable laws in connection with such assistance; and
  - Disclosing any compensation in writing to the party;
- Represents both the buyer and the seller in the same transaction without providing clear written disclosure as to the parties the broker represents and obtaining written consent from both parties to the joint representation;
- Facilitates a transaction with a group of buyers formed with the assistance of the M&A broker to acquire the eligible privately held company;
- Engages in a transaction involving the transfer of ownership of an eligible privately held company to a passive buyer or group of passive buyers;
- Binds a party to a transfer of ownership of an eligible privately held company; or
- Is subject to, or an officer, director, member, manager, partner, or employee of the broker is subject to, the certain disciplinary actions. (Section [8](#).)

### [Securities Guaranty Fund](#)

The bill creates a definition for the term “restitution order,” as such term is used in the Act’s provisions relating to the Securities Guaranty Fund. The bill defines the term as a court order awarding a specified monetary amount to a named aggrieved party for a violation of [s. 517.07, F.S.](#) or [s. 517.301, F.S.](#), to be paid by a named violator. (Section [9](#).)

The bill revises the conditions that a person must meet to be eligible for payment from the Securities Guaranty Fund to cover instances involving restitution orders. The bill also revises the minimum information that is required to be included on an application for payment from the Securities Guaranty Fund to cover instances involving restitution orders. (Section [9](#).)

## **RULEMAKING:**

The bill removes the Act's designation of specific foreign securities exchanges and foreign securities markets and, in its place, requires the Commission to designate such foreign exchanges and markets by rule and requires the Commission to consider certain factors when making such designation. The bill also allows the Commission to modify the dollar figures for the eligibility of a privately held company, for purposes of the Act's exemption related to merger and acquisition brokers, by rule.

New rules will need to be adopted to implement the above-referenced changes made by the bill.<sup>13</sup>

***Lawmaking is a legislative power; however, the Legislature may delegate a portion of such power to executive branch agencies to create rules that have the force of law. To exercise this delegated power, an agency must have a grant of rulemaking authority and a law to implement.***

## **FISCAL OR ECONOMIC IMPACT:**

### **STATE GOVERNMENT:**

The revenue collected for the state portion of a state and national criminal history record check is \$24, which goes into the Department of Law Enforcement's Operating Trust Fund.<sup>14</sup> The impact of the bill's provisions relating to the Act's fingerprinting requirements is unknown at this time.<sup>15</sup>

### **PRIVATE SECTOR:**

The bill has a minimal positive impact on the private sector, as the bill modernizes Florida's securities laws to align with recent developments in federal securities laws and model securities laws for states.

## **RELEVANT INFORMATION**

### **SUBJECT OVERVIEW:**

#### **Federal Securities Laws**

There are several major federal securities laws that govern securities offerings in the United States. The Securities Exchange Act of 1933 (the 1933 Act) generally requires that investors receive financial and other significant information concerning securities being offered for public sale, and prohibits deceit, misrepresentations, and other fraud in the sale of securities.<sup>16</sup>

With the Securities Exchange Act of 1934 (1934 Act), Congress created the Securities and Exchange Commission (SEC).<sup>17</sup> The SEC's authority under the 1934 Act includes, but is not limited to, the power to register, regulate, and oversee brokerage firms, transfer agents, clearing agencies, and the nation's securities self-regulatory organizations (SROs).<sup>18</sup> The various securities exchanges, such as the New York Stock Exchange, the NASDAQ Stock Market, and the Chicago Board of Options are SROs.<sup>19</sup> The Financial Industry Regulatory Authority (FINRA) is also an SRO.<sup>20</sup>

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<sup>13</sup> *Supra*, note 54, at p. 11.

<sup>14</sup> Florida Department of Law Enforcement, Agency Analysis of 2025 HB 379, p. 3 (Feb. 7, 2025).

<sup>15</sup> *Id.*

<sup>16</sup> U.S. Securities and Exchange Commission, *Statutes and Regulations*, <https://www.sec.gov/rules-regulations/statutes-regulations#secact1933> (last visited Feb. 28, 2025).

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

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

Other federal securities laws include the Trust Indenture Act of 1939, Investment Company Act of 1940, Investment Advisers Act of 1940, Sarbanes-Oxley Act of 2002, Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, and Jumpstart Our Business Startups Act of 2012.<sup>21</sup>

### **Florida's Securities Laws**

In addition to the federal securities laws, every state has its own set of securities laws, which are commonly referred to as "Blue Sky Laws."<sup>22</sup> Like the federal securities laws, Blue Sky Laws are designed to protect investors against fraudulent sales practices and activities.<sup>23</sup> Chapter 517, F.S., codifies the [Florida Securities and Investor Protection Act \(Act\)](#), which governs the registration and examination of firms, branches, and individuals offering investment services in the state.<sup>24</sup>

The Act prohibits dealers and associated persons from offering or selling securities in Florida unless registered with the Office of Financial Regulation (OFR) or specifically exempted.<sup>25</sup> Additionally, all securities in Florida must be registered with OFR unless they meet one of the exemptions under the Act,<sup>26</sup> or are federally covered (i.e., under the exclusive jurisdiction of the SEC).<sup>27</sup>

Failure to meet the precise requirements of the Act's exemptions can subject the violator to civil, criminal, and administrative liability for the sale of unregistered securities, which is a third-degree felony.<sup>28</sup> Civil remedies under the Act include rescission and damages.<sup>29</sup>

### **Office of Financial Regulation: Division of Securities**

The Division of Securities (Division), housed within the Office of Financial Regulation (OFR),<sup>30</sup> is responsible for administering and enforcing compliance with the Act.<sup>31</sup> The Division carries out its duties through its two bureaus. The Bureau of Registration registers securities firms and their employees to conduct business in, to, or from the state.<sup>32</sup> The Bureau of Enforcement receives and processes consumer complaints regarding securities industry activities and participants, conducts examinations of securities firms and their employees, and develops enforcement actions brought by OFR for violations of the Act.<sup>33</sup>

As of June 30, 2023, the Division had total active registrants in the following areas:

- Dealers and investment adviser firms: 10,701
- Branch offices: 11,667
- Individual associated persons: 373,710
- Crowdfunding intermediaries: 2<sup>34</sup>

### **Exempt Transactions**

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<sup>21</sup> For further information on the various federal securities laws, see <https://www.sec.gov/rules-regulations/statutes-regulations#secact1933> (last visited Feb. 28, 2025).

<sup>22</sup> U.S. Securities and Exchange Commission, *Blue Sky Laws*, <https://www.investor.gov/introduction-investing/investing-basics/glossary/blue-sky-laws> (last visited Feb. 28, 2025).

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

<sup>24</sup> *Id.*

<sup>25</sup> See [s. 517.12, F.S.](#)

<sup>26</sup> See [ss. 517.051, F.S.](#) and [517.061, F.S.](#)

<sup>27</sup> [S. 517.07, F.S.](#) If a security is registered with the SEC, [s. 517.082, F.S.](#) requires the broker or issuer to notify OFR that the security is registered with the SEC.

<sup>28</sup> [S. 517.302\(1\), F.S.](#)

<sup>29</sup> [S. 517.211, F.S.](#)

<sup>30</sup> The Financial Services Commission, comprised of the Governor and the Cabinet, serves as OFR's agency head for purposes of rulemaking and appoints OFR's Commissioner, who serves as the agency head for purposes of final agency action for all areas within OFR's regulatory authority. [S. 20.121\(3\), F.S.](#)

<sup>31</sup> Office of Financial Regulation, *Long Range Program Plan*, Sep. 2023, at p. 22, <http://floridafiscalportal.state.fl.us/Document.aspx?ID=28240&DocType=PDF> (last visited Feb. 28, 2025).

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.* Florida ranks third in the nation in the number of registered dealers, investment advisers, and their registered associated persons, and fourth in the number of registered branch offices.



Certain securities transactions are exempt from the registration requirements of the Act.<sup>35</sup> Other than one exception,<sup>36</sup> the exemptions are self-executing and do not require any filing with OFR before being claimed.<sup>37</sup>

Any person who claims an exemption bears the burden of proving they are entitled to the exemption in any proceeding brought under the Act.<sup>38</sup> Further, although the Act's registration requirements do not apply to transactions that are explicitly exempt, such transactions are subject to the Act's anti-fraud provisions.<sup>39</sup>

### **Foreign Securities Exchanges**

The Act's registration requirements do not apply to a nonissuer transaction in an outstanding security effected by or through a dealer registered or exempt from registration under the Act if all of the following are true:

- The issuer is a reporting issuer in a foreign jurisdiction identified by statute or by commission rule, and the issuer has been subject to continuous reporting requirements in such foreign jurisdiction for not less than 180 days before the transaction; and
- The security is listed on the securities exchange designated by statute or by commission rule, is a security of the same issuer which is of senior or substantially equal rank to the listed security, or is a warrant or right to purchase or subscribe to any such security.<sup>40</sup>

For purposes of this exemption, the Act designates Canada, together with its provinces and territories, as a foreign jurisdiction, and the Toronto Stock Exchange, Inc., as a securities exchange.<sup>41</sup> If, after an administrative hearing, OFR finds that revocation of a statutory designation is necessary or appropriate in furtherance of the public interest and for the protection of investors, OFR may revoke the designation of a securities exchange.<sup>42</sup>

### **Florida Invest Local Exemption**

In 2024, the Florida Invest Local Exemption (FIL Exemption), based in part on Georgia's "Invest Georgia Exemption,"<sup>43</sup> was created under the Act.<sup>44</sup> The FIL Exemption exempts the offer and sale of securities from the Act's registration requirements when such securities are part of an intrastate offering that meets certain requirements.<sup>45</sup> An offering under the FIL exemption is limited to \$500,000, and any one investor may not invest more than \$10,000 unless the investor is accredited, a specified employee, or a 10% or more shareholder.<sup>46</sup>

Under the FIL Exemption, an offer or sale of security by an issuer is exempt from the Act's registration requirements if the following conditions are met:

- The issuer must be a for-profit business entity registered with the Department of State with its principal place of business in this state.<sup>47</sup>
- The issuer is not, before or as a result of the offering:
  - An investment company;
  - Subject to the reporting requirements of the 1934 Act;
  - A business entity with an undefined business plan, that lacks a business plan, that lacks a stated investment goal for the funds being raised, or that plans to engage in a merger or acquisition with an unspecified business entity; or
  - Disqualified pursuant to [s. 517.0616, F.S.](#)<sup>48</sup>

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<sup>35</sup> For a list of exempt transactions, see [s. 517.061, F.S.](#)

<sup>36</sup> [S. 517.061\(11\), F.S.](#), is the exception.

<sup>37</sup> [S. 517.061, F.S.](#)

<sup>38</sup> *Id.*

<sup>39</sup> See [s. 517.301, F.S.](#)

<sup>40</sup> [S. 517.061\(20\), F.S.](#)

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> For more information on the Georgia Invest Local Exemption, see Georgia Secretary of State Securities Division, *Invest Georgia Exemption*, <https://sos.ga.gov/sites/default/files/2023-05/IGE%20pamphlet-web.pdf> (last visited Mar. 1, 2025).

<sup>44</sup> See ch. 2024-168, Laws of Fla.

<sup>45</sup> See [s. 517.0612, F.S.](#)

<sup>46</sup> [Ss. 517.0612\(5\), \(6\)\(a\), F.S.](#)

<sup>47</sup> [S. 517.0612\(4\), F.S.](#)

<sup>48</sup> [S. 517.0612\(4\)\(a\)-\(d\), F.S.](#)

- Further, the transaction must meet the requirements of the federal exemption for intrastate offerings in s. 3(a)(11) of the 1933 Act and SEC Rule 147 or SEC Rule 147A.<sup>49</sup>

An issuer making an offering under the FIL Exemption must file a notice of the offering and a copy of the disclosure statement with OFR, on a form prescribed by Commission rule, no less than 5 days before the offering commences.<sup>50</sup> If there are any material changes to the submitted information, the issuer must, within 3 days after such material change, file an amended notice with OFR.<sup>51</sup>

### [Disqualification of “Bad Actors” Under SEC Rule 506\(d\)](#)

A registration exemption provided by the Act is not available to an issuer if the issuer would be disqualified under SEC Rule 506(d)<sup>52</sup> at the time the issuer makes an offer for the sale of a security.<sup>53</sup> Under the SEC Rule 506(d) “bad actor” disqualification, an offering is disqualified from relying on the exemptions in Rule 506(b) and 506(c) of Regulation D if the issuer or any other person covered by Rule 506(d) has a relevant criminal conviction, regulatory or court order, or other disqualifying event.<sup>54</sup>

The persons covered by SEC Rule 506(d) includes:

- The issuer, including its predecessors and affiliated issuers;
- Directors, general partners, and managing members of the issuer;
- Executive officers of the issuer, and other officers of the issuers that participate in the offering;
- 20 percent beneficial owners of the issuer, calculated on the basis of total voting power;
- Promoters connected to the issuer;
- For pooled investment fund issuers, the fund’s investment manager and its principals; and
- Persons compensated for soliciting investors, including their directors, general partners and managing members.<sup>55</sup>

In 2024, industry members expressed concern that the inclusion of current [s. 517.061\(9\), F.S.](#), in the Act’s disqualification provision would prohibit certain transactions with institutional investors in Florida, including offerings pursuant to Rule 144A under the Securities Act of 1933.<sup>56</sup>

### [Registration Requirements](#)

Under the Act, OFR must record the registration of a security in OFR’s register of securities if, upon examination of an application, it finds that all of the following requirements are met:

- The application is complete;
- The fee to register<sup>57</sup> has been paid;
- The sale of the security would not be fraudulent and would not work or tend to work a fraud upon the purchaser;
- The terms of the sale of such securities would be fair, just, and equitable; and
- The enterprise or business of the issuer is not based upon unsound business principles.<sup>58</sup>

<sup>49</sup> [S. 517.0612\(3\), F.S.](#)

<sup>50</sup> [S. 517.0612\(10\), F.S.](#)

<sup>51</sup> *Id.*

<sup>52</sup> 17 C.F.R. § 230.506(d).

<sup>53</sup> [S. 517.0616, F.S.](#)

<sup>54</sup> U.S. Securities and Exchange Commission, *Disqualification of Felons and Other “Bad Actors” from Rule 506 Offerings and Related Disclosure Requirements*, Sep. 2013, [https://www.sec.gov/resources-small-businesses/small-business-compliance-guides/disqualification-felons-other-bad-actors-rule-506-offerings-related-disclosure-requirements#P9\\_40](https://www.sec.gov/resources-small-businesses/small-business-compliance-guides/disqualification-felons-other-bad-actors-rule-506-offerings-related-disclosure-requirements#P9_40) (last visited Mar. 1, 2025).

<sup>55</sup> *Id.* See also 17 C.F.R. § 230.506(d)(1).

<sup>56</sup> Office of Financial Regulation, Agency Analysis of 2025 House Bill 379, at p. 3 (Feb. 12, 2025).

<sup>57</sup> An issuer filing an application under the Act must, at the time of filing, pay OFR a nonreturnable fee of \$1,000 per application for each offering that exceeds the amount provided in s. 3(b) of the Securities Act of 1933, as amended, or \$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. [S. 517.081\(8\), F.S.](#)

<sup>58</sup> [S. 517.081\(9\)\(a\), F.S.](#)

## [Requirements to Submit Fingerprints](#)

The Act specifies certain information that the Commission or OFR may require for an applicant seeking registration,<sup>59</sup> and requires any direct owners, principals, or indirect owners of an applicant that are required to be reported on the application for registration to submit fingerprints for live-scan processing.<sup>60</sup>

In December 2023, the FBI communicated to OFR's liaison at DLE that the Act's fingerprinting requirements were insufficient for the FBI to continue providing fingerprint services to OFR.<sup>61</sup> The FBI cited Pub. L. 92-544, 86 Stat. 1115 (1972) and indicated the categories of individuals subject to the Act's fingerprinting requirements were unclear and overly broad and that additional definitions were needed.<sup>62</sup>

## [Exemption for Certain M&A Brokers from Registration](#)

The Act provides an exemption from registration requirements for certain merger and acquisition (M&A) brokers.<sup>63,64</sup> The Act's exemption is based off of a model rule promulgated by the North American Securities Administrators Association's (NASAA).<sup>65</sup> The NASAA is a voluntary, international, association whose membership consists of 67 state, provincial, and territorial securities administrators.<sup>66</sup> Formed in 1919, NASAA is the oldest international organization devoted to investor protection.<sup>67</sup> NASAA advocates on behalf of state securities agencies in the United States that are responsible for capital formation and investor protection.<sup>68</sup> NASAA also coordinates training and education seminars for securities agency staff<sup>69</sup> and creates model rules for implementation amongst its members.<sup>70</sup>

NASAA adopted the NASAA Model Rule Exempting Certain M&A Brokers from Registration (Model Rule) in September of 2015.<sup>71</sup> The Model Rule was subsequently incorporated into the Act in July of 2016.<sup>72</sup> NASAA amended the Model Rule in May of 2024, to update the Model Rule in light of certain amendments that were made to subsection 15(b)(13) of the Securities and Exchange Act of 1934.<sup>73</sup>

Under the Act's exemption, prior to the completion of any securities transaction, an M&A broker must receive written assurances from the control person with the largest percentage of ownership for both the buyer and seller engaged in the transaction that, after the transaction is completed, will be a control person of an eligible privately held company.<sup>74</sup>

Currently, an M&A broker engaged in a transaction exempt from [s. 517.061\(7\), F.S.](#), is exempt from registration under the Act unless the M&A broker:

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<sup>59</sup> See [s. 517.12\(6\)\(a\)-\(d\), F.S.](#)

<sup>60</sup> [S. 517.12\(6\), F.S.](#)

<sup>61</sup> *Supra*, note 54, at p. 5.

<sup>62</sup> *Id.*

<sup>63</sup> For purposes of this exemption, a broker is considered an M&A broker if he or she, or any person associated with him or her, engages in the business of effecting securities transactions solely in connection with the transfer of ownership of an eligible privately held company, regardless of whether the broker acts on behalf of a seller or buyer, through the purchase, sale, exchange, issuance, repurchase, or redemption of, or a business combination involving, securities or assets of the eligible privately held company. [S. 517.12\(21\)\(a\)4., F.S.](#)

<sup>64</sup> See [s. 517.12\(21\), F.S.](#), for the Act's exemption for M&A brokers.

<sup>65</sup> See North American Securities Administrators Association, *Model Rule Exempting Certain Merger & Acquisition Brokers From Registration*, <https://www.nasaa.org/wp-content/uploads/2024/05/Model-Rule-Exempting-Certain-Merger-and-Acquisition-Brokers-From-Registration-5-6-2024.pdf> (last visited Mar. 1, 2025).

<sup>66</sup> NASAA, *Welcome to NASAA*, <https://www.nasaa.org/about/> (last visited Mar. 1, 2025).

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> See, e.g., NASAA, *NASAA Model Rule on Investment Adviser Representative Continuing Education (Model Rule 2002-411(h) or 1956-204(B)(6)-CE)*, <https://www.nasaa.org/wp-content/uploads/2020/10/NASAA-IAR-CE-Model-Rule.pdf> (last visited Mar. 1, 2025).

<sup>71</sup> *Supra* note 63, at p. 1.

<sup>72</sup> *Supra* note 54, at p. 6. See also, ch. 2016-111, Laws of Fla.

<sup>73</sup> *Supra* note 54, at p. 6.

<sup>74</sup> [S. 517.12\(21\)\(b\), F.S.](#)

- Directly or indirectly, in connection with the transfer of ownership of an eligible privately held company, receives, holds, transmits, or has custody of the funds or securities to be exchanged by the parties to the transaction;
- Engages on behalf of an issuer in a public offering of any class of securities which is registered, or which is required to be registered, with the SEC under the Securities Exchange Act of 1934, or with OFR under [s. 517.07, F.S.](#); or for which the issuer files, or is required to file, periodic information, documents, and reports under s. 15(d) of the Securities Exchange Act of 1934;
- Engages on behalf of any party in a transaction involving a public shell company;
- Is subject to a suspension or revocation of registration under s. 15(b)(4) of the Securities Exchange Act of 1934;
- Is subject to a statutory disqualification described in s. 3(a)(39) of the Securities Exchange Act of 1934;
- Is subject to a disqualification under the SEC Rule 506(d); or
- Is subject to a final order described in s. 15(b)(4)(H) of the Securities Exchange Act of 1934.<sup>75</sup>

### **Securities Guaranty Fund**

The Securities Guaranty Fund (Fund) was established for the purpose of providing monetary relief to victims of securities violations under the Act, specifically to those who are entitled to monetary damages or restitution and cannot recover the full amount of such monetary damages or restitution from the wrongdoer.<sup>76</sup> The Fund is funded by a percentage of revenues received as assessment fees by OFR.<sup>77</sup>

Under the Act, a person must meet the following conditions to be eligible for payment from the Fund:

- The person holds an unsatisfied final judgement in which a wrongdoer was found to have violated [ss. 517.07](#) or [517.301, F.S.](#);
- The person has applied any amounts recovered from the judgment debtor or from any other source to the damages awarded by the court or arbitrator; and
- The person is a natural person who was a resident of Florida, or is a business entity that was domiciled in Florida, at the time of the violation giving rise to the claim.<sup>78</sup>

Additionally, the Act requires an eligible person, or receiver on behalf of an eligible person, seeking payment from the Fund to file a written application with OFR on a form that the Commission may prescribe by rule.<sup>79</sup> The application must be filed with OFR within one year after the date of the final judgement, the date on which the restitution order became ripe for execution, or the date of any appealable decision thereon.

The application for payment from the Fund must contain, at a minimum, the following information:

- The eligible person's and, if applicable, the receiver's full names, addresses, and contact information.
- The person ordered to pay restitution.
- If the eligible person is a business entity, the eligible person's type and place of organization and, as applicable, a copy, as amended, of its articles of incorporation, articles of organization, trust agreement, or partnership agreement.
- Any final judgment and a copy thereof.
- Any restitution order pursuant to [s. 517.191\(3\), F.S.](#) and a copy thereof.
- An affidavit from the eligible person stating either one of the following:
  - That the eligible person has made all reasonable searches and inquiries to ascertain whether the judgment debtor possesses real or personal property or other assets subject to being sold or applied in satisfaction of the final judgment and, by the eligible person's search, that the eligible person has not discovered any property or assets.

<sup>75</sup> [S. 517.12\(21\)\(c\), F.S.](#)

<sup>76</sup> [S. 517.131\(2\), F.S.](#)

<sup>77</sup> [S. 517.131\(1\)\(a\), F.S.](#) A maximum of 20% of all revenues received as assessment fees pursuant to [ss. 517.12\(9\) and \(10\), F.S.](#), for dealers and investment advisers (or [s. 517.1201, F.S.](#) for federal covered advisers), and a maximum of 10% of all revenues received as assessment fees pursuant to [ss. 517.12\(9\) and \(10\), F.S.](#), for associated persons must be part of the regular registration fee and must be transferred to the Fund.

<sup>78</sup> [S. 517.131\(3\), F.S.](#)

<sup>79</sup> [S. 517.131\(5\), F.S.](#)

- That the eligible person has taken necessary action on the property and assets of the wrongdoers but the final judgment remains unsatisfied.
- If the application is filed by the receiver, an affidavit from the receiver stating the amount of restitution owed to the eligible person on whose behalf the claim is filed; the amount of any money, property, or assets paid to the eligible person on whose behalf the claim is filed by the person over whom the receiver is appointed; and the amount of any unsatisfied portion of any eligible person's order of restitution.
- The eligible person's residence or domicile at the time of the violation of [s. 517.07, F.S.](#) or [517.301, F.S.](#) which resulted in the eligible person's monetary damages.
- The amount of any unsatisfied portion of the eligible person's final judgment.
- Whether an appeal or motion to vacate an arbitration award has been filed.<sup>80</sup>

**RECENT LEGISLATION:**

YEAR	BILL #	HOUSE SPONSOR(S)	SENATE SPONSOR	OTHER INFORMATION
2024	<a href="#">CS/CS/HB 311</a>	Barnaby	Brodeur	The 2024 legislation that made significant substantive changes throughout the Act.
2023	<a href="#">CS/CS/HB 253</a>	Barnaby	Gruters	The 2023 legislation that made technical amendments throughout the Act.

**BILL HISTORY**

COMMITTEE REFERENCE	ACTION	DATE	STAFF DIRECTOR/ POLICY CHIEF	ANALYSIS PREPARED BY
<a href="#">Insurance &amp; Banking Subcommittee</a>	17 Y, 0 N, As CS	3/5/2025	Lloyd	Fletcher
THE CHANGES ADOPTED BY THE COMMITTEE:	<ul style="list-style-type: none"> <li>● Revised the definition for the term “corporation;” and creates definitions for the terms “general partner,” “limited partner,” “partnership,” and “shareholder.”</li> <li>● Regarding dealers and investment advisers, clarified the individuals who must submit fingerprints for live-scan processing for registration applications. This clarification addressed concerns raised by the Florida Department of Law Enforcement (FDLE).</li> <li>● Regarding intermediaries, clarified the individuals who must submit fingerprints for live-scan processing for registration applications. This clarification addressed concerns raised by FDLE.</li> </ul>			
<a href="#">Commerce Committee</a>				

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**THIS BILL ANALYSIS HAS BEEN UPDATED TO INCORPORATE ALL OF THE CHANGES DESCRIBED ABOVE.**  
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<sup>80</sup> *Id.*