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 988
INTRODUCER:	Senator Truenow
SUBJECT:	Securities
DATE:	March 7, 2025
REVISED:	

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

I. Summary:

SB 988 revises provisions of ch. 517, F.S., the "Securities and Investor Protection Act" (Act), which is subject to oversight by the Office of Financial Regulation (OFR). In 2024, the Florida Legislature enacted legislation[1] that substantially revised ch. 517, F.S., which was based on recommendations contained in the report issued by the Chapter 517 Task Force of the Business Law Section of The Florida Bar in coordination with the OFR.[2] The impetus for the task force is to increase the ability of small and developing Florida businesses to raise capital, while at the same time assuring and improving investor protections and enforcement measures to guard against abuse.[3] Many of the provisions in SB 988 clarify provisions that were enacted, relate to provisions enacted in 2024, or provide technical changes.

Exempt Securities Transactions and Exempt Securities

The bill:

- Removes the applicability of certain issuer disqualification provisions under the Securities and Exchange Commission (SEC) Rule 506(d) on certain exempt private placements transactions by institutional securities sellers with institutional investors in Florida, which cures the applicability of the issuer disqualification provisions to the institutional issuers, which is consistent with federal rules. It appears the provision was meant to apply to issuer disqualifications; however, Rule 506(d) applies to issuers as well as significant number of other covered persons. Representatives of the financial services industry expressed concerns regarding this disqualification provision in connection with the effect of prohibiting exempt transactions conducted with institutional investors in Florida, including offerings made

[1] Chapter 2024-168, Laws of Fla.

[2] Report of the Chapter 517 Task Force of the Business Law Section of The Florida Bar, Recommendations and Analysis of Proposed Amendments to the Florida Securities and Investor Protection Act (Nov. 2023). The report is on file with the Florida Senate Committee on Banking and Insurance staff.

[3] *Id.*

pursuant to Rule 144A under the Securities Act. Such transaction continue to be subject to the anti-fraud provisions of ch. 517, F.S.;
- Expands the list of institutional investors covered by the exempt securities transactions, which is consistent with the Uniform Securities Act and federal rules. The institutional investors include financial institutions, insurers, dealers, investment companies, pension or profit-sharing trust, and qualified institutional buyers.
- Revises provisions, relating to the Florida Invest Local Exemption, to require an issuer making an offering under this exemption to file a notice of the offering and a copy of the disclosure statement with OFR.
- Provides that offers and sales made in compliance with s. 517.061(9), F.S., relating to exempt securities transactions of institutional issuers with institutional investors, are not subject to integration with other offerings. These transactions involve sophisticated investors.
- Requires the commission to consider certain factors when designating a foreign securities exchange or foreign securities market by rule in connection with certain exempt transactions.

Investor Protections

The bill revises provisions relating to the Securities Guaranty Fund (fund), which was created to provide relief to victims of securities violations under ch. 517, F.S., and who are entitled to monetary damages or restitution but cannot recover the full amount of such damages or restitution from the wrongdoer. The bill:
- Defines the term, "restitution order" for purpose of eligibility for compensation and revises the minimum information that an applicant must provide to OFR in order to seek payment from the fund, and to specifically include such restitution orders.
- Clarifies the requirements that a person must meet to be eligible for payment from the fund.

Registration Requirements of Dealers, Associated Persons, Intermediaries, and Investment Advisers

The bill:
- Updates provisions relating to the Mergers and Acquisitions model rule to conform to the 2024 revisions to the model rule as a result of 2022 federal law changes and provides rulemaking authority for the Financial Services Commission to adjust earnings and revenue eligibility requirements for privately held companies every five years, if necessary, and;
- Creates and revises definitions and provisions relating to the application process to clarify the population of persons who must submit fingerprints as part of the registration process for dealers, associated persons, investment advisors, and intermediaries. To ensure compliance with the criteria established in Public Law 92-544, the applicants for registration and any associated or affiliated person must be clearly identified for the FBI to continue conducting such background checks.

The bill takes effect upon becoming a law.

The bill does not have a fiscal impact on OFR.

II. Present Situation:

Federal Regulation of Securities

Securities Act of 1933

Following the stock market crash of 1929, the Securities Act of 1933[4] (Securities Act) was enacted to regulate the offers and sales of securities. The Securities Act requires every offer and sale of securities must be registered with the Securities and Exchange Commission (SEC), unless an exemption from registration is available.[5] The Securities Act requires issuers to disclose financial and other significant information regarding securities offered for public sale and prohibits deceit, misrepresentations, and other kinds of fraud in the sale of securities. The Securities Act requires issuers to disclose information deemed relevant to investors as part of the mandatory SEC registration of the securities that those companies offer for sale to the public.[6]

Registered securities offerings, often called public offerings, are available to all types of investors and have more rigorous disclosure requirements. Initial public offerings (IPOs) provide an initial pathway for companies to raise unlimited capital from the public through a registered offering. After its IPO, the company will be a public company with ongoing public reporting requirements.[7]

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[8] 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;[9]
- Rule 506(c) of Regulation D. General Solicitation Offerings allow companies to raise unlimited capital by broadly soliciting investors who meet certain wealth thresholds or have certain professional credentials;[10]
- Rule 504 of Regulation D, 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;[11]
- Regulation Crowdfunding offerings allow eligible companies to raise up to five million dollars in investment capital in a 12-month period from investors via an online portal;[12]

---

[4] Public Law 73-22, as amended through P.L. 117-268, enacted December 23, 2022.
[5] 15 U.S.C. s. 77a *et seq.*
[6] *Id.*
[7] U.S. Securities and Exchange Commission (SEC), *What does it mean to be a public company?* https://www.sec.gov/education/capitalraising/building-blocks/what-does-it-mean-be-a-public-company (last visited Dec. 9, 2024).
[8] SEC, *The Laws That Govern the Securities Industry*, https://www.sec.gov/about/about-securities-laws (last visited Dec. 9, 2024). Security offerings of municipal, state, and the federal government are exempt from registration.
[9] 17 C.F.R. s. 230.506(b).
[10] 17 C.F.R. s. 230.506(c).
[11] 17 C.F.R. s. 230.504.
[12] 17 C.F.R. s. 227.100.

- Intrastate offerings[13] allow companies to raise capital within a single state according to state law. Many states limit the offering to between one million and five million dollars in a 12-month period; and[14]
- 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.[15]

Securities and Exchange Act of 1934

The Securities and Exchange Act of 1934 (Exchange Act) created the SEC as an independent agency to enforce federal securities laws.16 The SEC oversees federal securities laws17 broadly aimed at protecting investors; maintaining fair, orderly, and efficient markets; and facilitating capital formation.18 The SEC has 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), such as the Financial Industry Regulatory Authority, Inc. (FINRA).[19]

Accredited Investors[20]

Regulation D, adopted in 1982, provides several exemptions from the registration requirements of the Securities Act, thereby allowing certain issuers to offer and sell their securities without having to register the offering with the SEC. It was designed to facilitate capital formation by simplifying and clarifying existing exemptions for private or limited offerings, expanding their availability, and providing more uniformity between federal and state exemptions. Regulation D is the most widely used set of exemptions for securities offerings by issuers.

Regulation D includes the definition of "accredited investor" in Rule 501(a).[21] Individuals meeting certain criteria may qualify as an accredited investor. Institutions may qualify as accredited investors based on their status alone or on a combination of their status and the amount of their total assets or investments. Institutions that qualify based on status alone include banks, savings and loan associations, state-registered investment advisers, small business investment companies, investment companies registered under the Investment Company Act, business development companies,[22] employment benefit plans[23]meeting certain conditions.

---

[13] Section (3)(a)(11) of the Securities Act of 1933, 17 C.F.R. s. 230.147 and 17 C.F.R. s. 230.147A.
[14] SEC, 17 CFR Parts 227, 229, 230, 239, 249, 270 and 274; RIN-3235-AM27, Final rule: Facilitating Capital Formation and Expanding Investment Opportunities by Improving Access to Capital in Private Markets, https://www.sec.gov/files/rules/final/2020/33-10884.pdf (last visited Dec. 9, 2024).
[15] 17 C.F.R. s. 230.251.
[16] Public Law 73-291, as amended through P.L. 117-328, enacted December 29, 2022.
[17] Section 15, Securities and Exchange Act of 1934.
[18] Securities and Exchange Commission, Mission, https://www.sec.gov/about/mission (last visited Jan. 28, 2024).
[19] 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. *See* https://www.sec.gov/rules/sro for a list of self-regulatory organizations (SROs) registered with the SEC (last visited Dec. 9, 2024).
[20] See Securities and Exchange Commission, Review of the Accredited Investor Definition under the Dodd-Frank Act (Dec. 14, 2023), https://www.sec.gov/files/review-definition-accredited-investor-2023.pdf (last visited Feb. 25, 2025).
[21] 17 CFR s. 230.501(a), known as Rule 501 (a).
[22] As defined in s. 2(a)(48) of the Investment Company Act.
[23] Within the meaning of the Employee Retirement Income Security Act of 1974 (ERISA).

Institutions qualifying as accredited investors based on a combination of their status and the amount of their total assets or investments include:

- Plans established and maintained by a state, its political subdivisions, or any agency or instrumentality of a state or its political subdivisions, for the benefit of its employees, if such plan has total assets in excess of $5,000,000;
- Employee benefit plans (within the meaning of ERISA) with total assets in excess of $5,000,000;
- Tax exempt charitable organizations, corporations, Massachusetts or similar business trusts, partnerships, or limited liability companies not formed for the specific purpose of acquiring the securities offered, with total assets in excess of $5,000,00053 • Trusts with total assets in excess of $5,000,000, not formed for the specific purpose of acquiring the securities offered, the purchases of which are directed by a person who meets the legal standard of having sufficient knowledge and experience in financial and business matters to be capable of evaluating the merits and risks of the prospective investment under Rule 501(a)(7);
- Any entity, of a type not listed in Rules 501(a)(1), (2), (3), (7), or (8), not formed for the specific purpose of acquiring the securities offered, owning investments in excess of $5,000,000 under Rule 501(a)(9); and
- Entities that are "family offices," under Rule 501(a)(12), which cross references the definition in Rule 202(a)(11)(G)-1 of the Advisers Act, meeting the requirements of Rule 501(a)(12).

SEC Rule 506(d) Disqualification

On July 10, 2013, the SEC adopted the "bad actor" disqualification provisions for Rule 506 of Regulation D under the Securities Act, to implement s. 926 of the Dodd-Frank Wall Street Reform and Consumer Protection Act.[24] As a result of Rule 506(d) bad actor disqualification, an offering is disqualified from relying on Rule 506(b) and 506(c) of Regulation D if the issuer or any other person covered[25] by Rule 506(d) has a relevant criminal conviction, regulatory or court order or other disqualifying event that occurred on or after September 23, 2013, the effective date of the rule amendment.

Private Resales of Securities to Institutional Investors

Corporations often issue unregistered bonds in private placements pursuant to Rule 144A[26] of the Securities Act. In 1990, the SEC approved Rule 144A of the Securities Act. The intent of the rule was to facilitate "a more liquid and efficient institutional resale market for unregistered securities." Institutional investors are considered sophisticated investors, thereby understanding the complexities and risks inherent in private placement securities.

[24] U.S. Securities and Exchange Commission, Disqualification of Felons and Other "Bad Actors" from Rule 506 Offerings and Related Disclosure Requirements (Sep. 19, 2013), SEC.gov | Disqualification of Felons and Other "Bad Actors" from Rule 506 Offerings and Related Disclosure Requirements (last visited Dec. 9, 2024).

[25] "Covered persons" include the issuer, including 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.

[26] 17 C.F.R. s. 230.144A.

Rule 144A is a non-exclusive safe harbor exemption from the registration requirements of the Securities Act for resales of certain securities to qualified institutional buyers, or QIBs.[27] A QIB includes certain entities that, in the aggregate, own and invest on a discretionary basis at least $100 million in securities of unaffiliated issuers.[28] A registered broker-dealer qualifies as a QIB if it owns and invests on a discretionary basis at least $10 million in securities of unaffiliated issuers.[29]

Integration of Offerings[30]

SEC Rule 152 provides a framework for determining whether multiple securities transactions should be considered part of the same offering and contains four non-exclusive safe harbors from integration. The rule is applicable to all issuer capital raising exemptions. Offerings may not be integrated if, based on particular facts and circumstances, the issuer can establish either that each offering complies with the registration requirements of ch. 517, F.S., or that an exemption from registration is available for the particular offering, provided that any transaction or series of transactions that, although in technical compliance with ch. 517, F.S., is part of a plan or scheme to evade the registration requirements of ch. 517, F.S., will not have the effect of avoiding integration.

SEC Rule 152 significantly reduces the risk to companies, especially smaller ones that have continuing and sporadic needs for capital, that multiple offerings will be integrated as one, with the result that otherwise distinct valid exempt offerings will be deemed in violation of the registration provisions.

Florida Regulation of Securities

The federal securities acts expressly allow for concurrent state regulation under blue sky laws,[31] 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.[32]

The Office of Financial Regulation (OFR) is responsible for administering the provisions of ch. 517, F.S. The OFR, along with the Office of Insurance Regulation, are units under the Financial Services Commission (commission). The commission is composed of the Governor, the Attorney

[27] Bloomberg Law, Capital Markets, Overview-Rule 144A Debt Offering (Pre-Transaction Considerations) https://www.bloomberglaw.com/external/document/XCUO8474000000/capital-markets-overview-rule-144a-debt-offering-pre-transaction (last visited Feb. 10, 2025).
[28] See 17 C.F.R. s. 230.144A(a)(1)(i) for a listing of QIBs.
[29] Securities and Exchange Commission, https://www.sec.gov/resources-small-businesses/small-business-compliance-guides/eliminating-prohibition-against-general-solicitation-general-advertising-rule-506-rule-144a (last visited Feb. 25, 2025).
[30] 17 C.F.R. s. 230.172.
[31] 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 Dec. 9, 2024).
[32] SEC, *Blue Sky Laws*, http://www.sec.gov/answers/bluesky.htm (last visited Dec. 9, 2024).

General, the Chief Financial Officer, and the Commissioner of Agriculture.[33] The commission members serve as agency head of OFR and OIR for purposes of rulemaking.[34] The commissioners of OFR and OIR are appointed by the commission.

The scope of the OFR's jurisdiction includes the regulation and registration of 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 ch. 517, F.S.[35] The Division of Securities (division) within the OFR is responsible for administering the Securities and Investor Protection Act (Act). The Act prohibits dealers, associated persons, and issuers from offering or selling securities in this state unless registered with the OFR or specifically exempted.[36] Additionally, all securities in Florida must be registered with the OFR unless they meet one of the exemptions in ss. 517.051 or 517.061, F.S., or are federally covered (i.e., under the exclusive jurisdiction of the SEC). As of December 30, 2024, the division had total registrants in the following categories:

- Dealers: 2,367
- Investment Advisers: 8,559
- Branches: 11,728; and
- Associated Persons: 380,993[37]

Licensure Requirements

Pursuant to s. 517.12, F.S., dealers, associated persons, intermediaries, and investment advisers must submit an application with the OFR for registration to sell, offer for sale, or to facilitate the offer or sale of securities. Each applicant and any direct owners, principals, or indirect owners that are required to be reported on Form BD, Form ADV, or on a form adopted by commission rule are required to electronically submit fingerprints to the Florida Department of Law Enforcement (FDLE) for a state and national criminal history record check (i.e., Level 2 background check). The OFR reviews the results of the Level 2 background checks to determine whether applicants meet licensure requirements. The Federal Bureau of Investigation (FBI) had previously approved the aforementioned list of applicants for fingerprint-based, state and national criminal history record checks, pursuant to s. 517.12, F.S. In 2024, legislation was enacted that revised provisions and definitions relating to these terms.[38] During the 2024 Legislative Session, FDLE provided detailed comments and suggestions regarding the fingerprint provisions in ch. 517, F.S.[39] Specifically, FDLE recommended that OFR should clarify the population subject to the criminal background checks to ensure compliance with the criteria established in Public Law 92-544.

Since 1972, the FBI, with the assistance of the United States Department of Justice, has determined the parameters of Pub. L. 92-544. The criteria are as follows:

- The statute must exist as a result of a legislative enactment;

[33] Section 20.121(3), F.S.
[34] Section 20.121(3)(a), F.S.
[35] Pursuant to s. 20.121(3), F.S. The jurisdiction of the OFR also includes state-chartered financial institutions and finance companies, and other specified entities.
[36] Section 517.12, F.S.
[37] OFR, Senate Bill Analysis of SB 988 (Feb. 25, 2025).
[38] Chapter 2024-168, Laws of Fla.
[39] FDLE 2024 Legislative Bill Analysis of SB 532 (Jan. 22, 2024).

- It must require the fingerprinting of applicants who are to be subjected to a national criminal history background check;
- It must, expressly ("submit to the FBI") or by implication ("submit for a national check"), authorize the use of FBI records for the screening of applicants;
- It must identify the specific category(ies) of licensees/employees falling within its purview, thereby avoiding overbreadth;
- It must not be against public policy; and
- It may not authorize receipt of the criminal history record information (CHRI) by a private entity.[40]

Additionally, FBI policy requires that fingerprints be initially submitted to the state identification bureau (for a check of state records) and thereafter forwarded to the FBI for a "national" criminal history check.[41] State agencies wishing to submit statutes for review must work through their State Identification Bureau (FDLE) or appointed CJIS systems officer.[42]

Exempt Private Placements and SEC Rule 506(d)

As part of the 2024 legislation, s. 517.0616, F.S., was created, which provides that a registration exemption for private placement offerings of securities, pursuant to s. 517.061(9), (10), and (11), s. 517.0611, or s. 517.0612, F.S., is not available to an issuer that would be disqualified under SEC Rule 506(d) at the time the issuer makes an offer for the sale of a security. Rule 506(d) provides that an offering is disqualified from relying on the exemption 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. Members of the financial services industry expressed concerns regarding this disqualification provision in connection with transactions conducted with institutional investors in Florida, including offerings made pursuant to Rule 144A under the Securities Act. At the federal level, the SEC has not applied any of the disqualification provisions for the safe harbors under Regulation D to these s. 4(a)(2) private placements. Pursuant to s. 517.0616, F.S., the disqualification provisions apply to issuers and covered persons for the following registration exemptions:

- Section 517.0616(9), F.S., Institutional Investor Exemption – Exempts the offer or sale of private placement offerings securities to a financial institution, insurer, dealer, investment company, pension or profit-sharing trust, or qualified institutional buyer.
- Section 517.0616(10), F.S., Private Limited Offering Exemption – Exempts from registration the offer or sale of securities by or on behalf of an issuer, of its own securities if the offer or sale is a part of an offering that meets certain conditions, including there are no more than 35 non-accredited purchasers in Florida.
- Section 517.0616(11), F.S., Accredited Investor Exemption – Exempts from registration the offer or sale of securities of an issuer in a transaction that meets certain conditions, including the offer or sale of securities are made only to accredited investors in Florida, and meets other conditions.
- Section 517.0611, F.S., Florida Limited Offering Exemption – Exempts from registration the offer or sale of securities that meet the requirements of the federal exemption for intrastate

[40] Federal Bureau of Investigation Public Law 92-544 — FBI (last visited Jan. 12, 2025).
[41] *Id.*
[42] *Id.*

offerings authorized in Section 3(a)(11) of the Securities Act of 1933, SEC Rule 147, or SEC Rule 147A.

- Section 517.0612, F.S., Florida Invest Local Exemption – Exempts from registration the offer or sale of securities in the amount of $500,000 or less that meet the requirements of the federal exemption for intrastate offerings authorized in s. 3(a)(11) of the Securities Act of 1933, SEC Rule147, or SEC Rule147A.

Due to the potential negative impact on Florida's financial markets associated with the implementation of s. 517.0616, F.S., as applied to transactions described in s. 517.061(9), F.S., effective October 1, 2024, OFR issued a proclamation on October 27, 2024, suspending the disqualification provisions of s. 517.0616, F.S., as applied to transactions described in s. 517.061(9), F.S., relating to the institutional investor exemption (sales to banks, trusts, and institutional investors, etc.).The suspension of this provision remains effective until the expiration or rescission of Executive Orders 24-208 and 24-214, as amended, or further order, whichever is earlier.

Subsequently, the Governor issued Executive Order 25-10 on January 17, 2025, which extended the state of emergency and all provisions of Executive Order 24-208 for 60 days. Further, the Governor issued Executive Order 25-26 on January 31, 2025, which extended the state of emergency and all provisions of Executive Order 24-214 for 60 days.

***Securities Guaranty Fund*[43]**

The Securities Guaranty Fund (fund) was created to provide relief to victims of securities violations under ch. 517, F.S., who are entitled to monetary damages or restitution but cannot recover the full amount of such damages or restitution from the wrongdoer. A person seeking to recover from the fund must meet certain conditions to be eligible for payment from the fund, including the following:

- Holds an unsatisfied final judgment entered on or after October 1, 2024, in which a wrongdoer was found to have violated ss. 517.07, F.S., or 517.301, F.S.;
- Has applied any amounts recovered from the judgment debtor or from any other source to the damages awarded by the court or arbitrator; and
- Is a natural person who was a resident of this state, or is a business entity that was domiciled in this state, at the time of the violation giving rise to the claim; or
- Is a receiver appointed pursuant to s. 517.191(2), F.S., by a court of competent jurisdiction for a wrongdoer order to pay restitution under s. 517.191, F.S., because of a violation of s. 517.07, F.S., or s. 517.301, F.S.

[43] Section 517.131, F.S.

Exempt Transactions Relating to Foreign Securities Markets and Foreign Securities Exchanges

Section 517.061(20), F.S., provides that the registration provisions of s. 517.07, F.S., do not apply to a nonissuer transaction in an outstanding security by or through a dealer registered or exempt from registration under ch. 517, F.S., if the two following conditions are met:

- The issuer is a reporting issuer in a foreign jurisdiction designated by this subsection 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.
- The security is listed on the securities exchange designated by this subsection 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.

Exempt transactions conducted pursuant to this subsection are subject to the antifraud provisions of s. 517.301, F.S.

Further, subsection (20) designates Canada, together with its provinces and territories, is designated as a foreign jurisdiction, and Toronto Stock Exchange, Inc., as a securities exchange. If, after an administrative hearing in compliance with ss. 120.569 and 120.57, F.S., OFR finds that revocation is necessary or appropriate in furtherance of the public interest and for the protection of investors, it may revoke the designation of a securities exchange under this subsection.

Model Rule Exempting Certain Merger and Acquisition Brokers from Registration

Merger and acquisition (M&A) brokers may introduce buyers and sellers, help value the business, recommend terms and structure of the sale, and assist with negotiations in the closing sales of privately held businesses. Smaller transactions may involve the sale of the assets of the business in exchange for cash. However, the ownership of a business may be transferred by means of the purchase, sale, exchange, issuance, merger, repurchase, or redemption of, or other business combinations involving securities. If a transaction involves securities, then state and federal securities laws may apply to the parties and the transactions.

The North American Securities Administrators Association (NASAA) is a voluntary association of securities regulators in the 50 states, the District of Columbia, Puerto Rico, Guam, the U.S. Virgin Islands, the 13 provincial and territorial securities regulators in Canada, and the securities regulator in México.[44] In November 2015, NASAA adopted the Model Rule Exempting Certain Merger and Acquisition Brokers from Registration, which provides a uniform approach to state-level securities regulation and provides an exemption for M&A brokers if certain conditions are met.[45]

[44] The North American Securities Administrators Association About - NASAA (last visited December 9, 2024).
[45] North American Securities Administrators Association, Model Rule Exempting Certain Merger and Acquisition Brokers From Registration, (Adopted Sep. 29, 2015; amended May 6, 2024), Model-Rule-Exempting-Certain-Merger-and-Acquisition-Brokers-From-Registration-_5-6-2024.pdf (last visited Feb. 28, 2025).

In 2016, the Florida Legislature enacted legislation consistent with the model rule.[46] The law creates an exemption from registration with the OFR for a merger and acquisition (M&A) broker facilitating the offer or sale of securities in connection with the transfer of ownership of an eligible privately held company. To be an "eligible privately held company," (1) the acquired company must not have any class of securities registered with the SEC pursuant to Section 12 of the Exchange Act of 1934; or be subject to the reporting obligations of Section 15(d) of the Exchange Act of 1934 or with OFR under s. 517.07,F.S.; and (2) in the fiscal year prior to the engagement of the M&A broker, the company must have (a) earnings before income tax depreciation and amortization of less than $25 million, or (b) gross revenues of less than $250 million.[47]

In 2024, NASAA amended the model rule to align it with recently enacted amendments to subsection 15(b)(13) of the Securities Exchange Act of 1934, which exempts certain merger and acquisition brokers from dealer registration.[48] Although the M&A brokers are exempt from registration, they remain subject to antifraud provisions and enforcement.

III. Effect of Proposed Changes:

Section 1 amends s. 517.021, F.S., to create and revise definitions of terms used in ch. 517. The following new terms are defined to clarify which applicants and persons associated with a license application under s. 517.12, F.S., (e.g., dealer, associated person, intermediary, and investment adviser) are subject to the national criminal background checks:

- Branch manager,
- Corporation,
- Director,
- Limited liability company,
- Limited liability company manager, and
- Trust.

Subsection (18) revises the definition of the term, "intermediary," to mean a person who facilitates through its website the offer or sale of securities of an issuer with a principal place of business in Florida. The terms "corporation," "trust," "partnership," "association," and "other legal entity" previously flagged by the FBI as overly broad are removed from the definition. An intermediary is no longer required, as a natural person to reside in Florida or if an intermediary is a specified entity, it is no longer required to register with the Secretary of State to do business in Florida.

The section provides a technical conforming cross-reference within the definition of the term, "federal covered adviser."

[46] Ch. 2016-111, Laws of Fla.
[47] Section 517.12(21), F.S.
[48] HR 2617, Consolidated Appropriations Act of 2023 (Public Law 117-328). For the statutory exemption to be available, in the fiscal year ending immediately before the fiscal year in which the services of the M&A broker are initially engaged with respect to the M&A transaction, the privately held company must either have earnings before interest, taxes, depreciation, and amortization (EBITDA) of less than $25 million or gross revenues of less than $250 million. *See* Exchange Act s. 15(b)(13)(E)(iii)(II). Congress authorized the SEC to adjust these dollar thresholds for inflation every five years.

Section 2 amends s. 517.061, F.S., relating to exempt security transactions, to expand the categories of institutional investors covered by the exemption under subsection (9) to include:

- 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., respectively, investment adviser relying on the exemption from registering with the SEC 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.
- 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 of more than $5 million.
- A trust, with total assets of more than $5 million, not formed for the specific purpose of acquiring the securities offered, whose purchase is directed by a sophisticated person as described in SEC Rule 506(b)(2)(ii), 17 C.F.R. s. 230.506(b)(2)(ii), as amended.
- An entity, of a type not listed in other paragraphs (a)-(g) or paragraph (j) which owns investments as defined in SEC Rule 2a51-1(b), 17 C.F.R s. 270.2a51-1(b), as amended, of more than $5 million and is not formed for the specific purpose of acquiring the securities offered.
- A family office as defined in SEC Rule 202(a)(11)(G)-1 under the Investment Advisers Act of 1940, 17 C.F.R. 275.202(a)(11)(G)-1), as amended, provided that: (1) The family office has assets under management in excess of $5 million; (2) The family office is not formed for the specific purpose of acquiring the securities offered; and (3) The prospective investment of the family office is directed by a person who has such knowledge and experience in financial and business matters that such family office is capable of evaluating the merits and risks of the prospective investment.
- (j) An entity in which all the equity owners are described in s. 517.061(9)(a) – (i), F.S.

Subsection (11) is revised to require an issuer to file a notice of transaction on a form prescribed by commission rule, an irrevocable written consent to service of civil process similar to that provided in s. 517.101, F.S.

Subsections (18) and (19) are amended to provide technical changes.

Subsection (20), relating to the exempt nonissuer transactions by a dealer, is amended to clarify that the conditions for the exemption must be met at the time of the transaction; to remove the requirement that foreign jurisdictions be designated by this subsection or by rules prescribed by the Financial Services Commission (commission); and to require the commission to consider the following factors when designating a foreign securities exchange or foreign securities market by rule:

- 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 SEC Regulation S Rule 902 (17 C.F.R. s. 230.902).

The section is also amended to remove the designation of Canada, together with its provinces and territories, as a foreign jurisdiction and to remove the designation of the Toronto Stock Exchange, Inc. as a designated securities exchange.

Section 3 amends s. 517.062, F.S., the Florida Invest Local Exemption, which is a micro-offering that is limited to $500,000, to require the issuer to file 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. The registration provisions of s. 517.07, F.S., do not apply to a securities transaction conducted in accordance with this section. However, such transactions are subject to the anti-fraud provisions of s. 517.301, F.S.

Section 4 amends s. 517.0614, F.S., relating to integration of offerings. Subsection (2) is amended to provide that s. 517.061(9), F.S., relating to exempt transactions of institutional investors, is not subject to integration with other offerings. The amended subsection provides that offers and sales made in compliance with any of the following provisions are not subject to integration with other offering:

- Section 517.051 or 517.061, F.S., except for subsections (10) and (11) of s. 517.061, F.S.
- Section 517.0611 or 517.0612, F.S.

Section 5 amends s. 517.0616, F.S., to provide that a registration exemption under s. 517.061(11), 517.0611, or 517.0612, F.S., is not available to an issuer that would be disqualified under SEC Rule 506(d), at the time the issuer makes an offer for the sale of a security. Rule 506(d) provides that an offering is disqualified from relying on a specified exemption if the

issuer or any other person covered by the rule has a relevant criminal conviction, regulatory or court order or other disqualifying event. Subsections (9) and (10) of s. 517.061, F.S., were removed from this section due to concerns that the inclusion of s. 517.061(9), F.S., would prohibit certain transactions with institutional investors in Florida, including offerings made pursuant to SEC Rule 144A under the Securities Act. At the federal level, the SEC has not applied any of the disqualification provisions for the safe harbors under Regulation D to these s. 4(a)(2) private placements.

Subsection (1) is further amended to specify that this section is applicable only to the following named persons: an 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 such sale. Subsection (2) is created to clarify that the disqualification under SEC Rule 506(d) does not apply to any other person or entity listed in such rule.

Under current law, this section prohibits an issuer that would be disqualified under SEC Rule 506(d), at the time the issuer makes an offer for the sale of a security from using a registration exemption under s. 517.061(9), (10), or (11), F.S.; s. 517.0611, F.S.; or s. 517.0612, F.S.

Section 6 amends s. 517.075, F.S., to provide a technical amendment.

Section 7 amends s. 517.081, F.S., relating to registration procedures, to revise the criteria OFR uses to determine whether OFR will record the registration of a security of an applicant. Subsection (9) eliminates the merit review standard that requires OFR to find that an enterprise or business of the issuer is not based upon unsound business principles. However, the "fair, just, and equitable" standard still applies, as provided in subsection (9)(a)4., of this section.

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

- The application is complete.
- The fee imposed pursuant to s. 517.081(8), F.S., 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.
- The enterprise or business of the issuer is not based upon unsound business principles.

Section 8 amends s. 517.12, F.S., relating to registration of dealers, associated persons, intermediaries, and investment advisers. Multiple subsections are revised to address concerns of the Federal Bureau of Investigations that the current terms and categories of persons used within the definitions of these terms do not clearly identify who, for purposes of registration, are subject to a national fingerprint-based criminal history background check, thereby not complying with federal law Pub. L. 92-544.

According to OFR, the amended portions of s. 517.12, F.S., are derived from the Securities and Exchange Commission's Uniform Application for Investment Adviser Registration (Form ADV)

and the Uniform application for Broker-Dealer Registration (Form BD), which are uniform application forms used nationally for the registration of dealers and investment advisers. The persons that are required to submit fingerprints are those natural persons listed on Schedules A and B of the forms.[49]

In subsection (7), the definition of the term, "dealer," is amended to clarify that only certain natural persons affiliated with an entity that has elected to file an application with OFR for registration in Florida to engage in activities requiring registration as a "dealer" are subject to fingerprinting. The definition of the term, "associated person," is amended to provide that only a natural person who has elected to file an application with the OFR for registration in Florida to engage in activities requiring registration as an "associated person" is subject to fingerprinting. Section 1 of the bill, amending s. 517.021, F.S., defines the term, "branch manager," to clarify the definition of associated person. Section 1 of the bill further clarifies the definition of associated person by defining the terms, "general partner," "limited partner," and "partnership."

The definition of the term, "investment adviser," is clarified to provide that only certain natural persons affiliated with an entity that has elected to file an application with OFR for registration in Florida to engage in activities requiring registration as a "investment adviser" be fingerprinted.

Subsection (20) of 517.12, F.S., provides that only certain natural persons affiliated with an entity that has elected to file an application with OFR for registration as an intermediary be fingerprinted. In regard to the registration of an intermediary,

The term, "direct owner," is defined for purposes of specifying who is subject to fingerprinting.

Subsection (22) is amended to update the provisions relating to the NASAA Model Rule Exempting Certain Merger and Acquisition Brokers from Registration. The definition of the term, "business combination related shell company," is created. The definition of the term, "control person," is revised to provide that a person is presumed to be the control person of a company if, *at completion of a transaction, the buyer or group of buyers* meets two, rather than three, statutory conditions:

- Has the power to vote 25 percent or more of a class of voting securities or has the power to sell or direct the sale of 25 percent or more of a class of voting securities; and
- May receive upon dissolution, or has contributed, 25 percent of the capital of a partnership or limited liability company.

The subsection increases the percentage of voting stock and capital contributions from 20 to 25 percent, as described above. The subsection removes one of the current conditions relating to control person, that is a person who "is a director, a general partner, a member or a manager of a limited liability company or is an officer who exercises executive responsibility or has a similar status or function."

Section 9 amends s. 517.131, F.S., relating to the Securities Guaranty Fund (fund). The term, "restitution order," is defined in subsection (1) to mean a court order awarding a specified

[49] Office of Financial Regulation, 2025 Legislative Analysis of SB 988 (Feb. 25, 2025).

monetary amount to a named aggrieved person for a violation of s. 517.07, F.S., or s. 517.301, F.S., to be paid by a named violator.

Subsection (2) is amended to update cross references.

Subsection (3) is amended to clarify the conditions a person must meet to be eligible for payment from the fund. Restitution orders are added to the first two conditions for eligibility. As amended, a person is eligible for payment from the fund if the person:

- Is a judgment creditor in an unsatisfied final judgment or a named beneficiary or victim in an unsatisfied restitution order entered on or after October 1, 2024, in which a wrongdoer was found to have violated s. 517.07 or s. 517.301;
- Has applied any amount recovered from the judgment debtor, a person ordered to pay restitution, or any other source to the damages awarded in a final judgment or restitution order; are a named beneficiary or victim in an unsatisfied restitution order,

Subsection (5) is amended to revise and clarify the minimum information that is required to be provided on an application for payment from the fund and to include restitution orders.

Section 10 amends s. 517.301, F.S., relating to fraudulent transactions and falsification or concealment of facts to replace the term, "business entity," with "person."

Sections 11 and 12 amend ss. 517.211 and 517.517.315, F.S., respectively, to provide technical, conforming amendments.

Section 13 provides the bill takes effect upon becoming a law.

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:

A provision in s. 517.061, F.S., requires the Financial Services Commission (commission) to consider certain factors in designating a foreign securities exchange or

foreign securities market, including "association with a generally recognized community of dealers, financial institutions, or other professional intermediaries with an established operating history." It is unclear what entity would make such a designation of a "generally recognized community."

Two provisions in s. 517.12, F.S., authorize the commission to waive by rule the requirement that specified persons submit fingerprints or the requirement that such fingerprints be processed by the Florida Department of Law Enforcement. However, the law does not provide guidelines for waiver of such fingerprints.

Another provision in s. 517.12, F.S., relating to exempt merger and acquisition brokers, provides that after a securities transaction effectuating the transfer of ownership of a privately held company is completed, any person who acquires securities or assets of the eligible privately held company is deemed active in the management of the assets of the company if the person engages in activities that include, but are not limited to a list of factors. Since this list of factors is not all inclusive, it is unclear what other factors the Office of Insurance Regulation may use in making this determination.

The Legislature may not delegate its constitutional duties to another branch of government.[50] While the Legislature must make fundamental policy decisions, it may delegate the task of implementing that policy to executive agencies with "some minimal standards and guidelines ascertainable by reference to the enactment establishing the program.[51] Moreover, the Legislature can permit "administration of legislative policy by an agency with the expertise and flexibility to deal with complex and fluid conditions."[52]

Florida courts have found an unlawful delegation of legislative authority in the following instances:

- Where the Legislature allowed the Department of State to "in its discretion allow such a candidate to withdraw…";[53] and
- Where the Legislature created a criminal penalty for escape from certain classifications of juvenile detention facilities, but delegated the classification (or determination whether to classify at all) to an agency.[54]

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

[50] See FLA. CONST. art II, s. 3.
[51] Askew v. Cross Key Waterways, 372 So.2d 913, 925 (Fla. 1978).
[52] Microtel, Inc. v. Fla. Public Serv. Comm'n., 464 So.2d 1189, 1191 (Fla. 1991).
[53] Fla. Dep't. of State, Div. of Elections v. Martin, 916 So.2d 763 (Fla. 2005).
[54] D.P. v. State, 597 So.2d 952 (Fla. 1st DCA, 1992)(disapproved on other grounds).

B. Private Sector Impact:

The revisions to provisions relating to s. 517.061(9) and (10), F.S., exempt security transactions will allow the sale of corporate bonds to qualified institutional buyers in Florida to resume.

According to the Florida Department of Law Enforcement (FDLE), the total fiscal impact to the private sector for a state and national criminal history check is $36. Of this total amount, the cost for the national portion of the criminal history record check is $12 and the cost for the state portion is $24, which is deposited into FDLE's Operating Trust Fund.

Livescan service providers may assess additional processing fees, in addition to the cost of the criminal history record check fee imposed by FDLE and the FBI. The number of additional individuals who would be screened under SB 988 is unknown.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

According to the FDLE,[55] the FBI's Criminal Justice Information Law Unit (CJILU) must review the bill due to the legislative changes made to ss. 517.021 and 517.12, F.S. to ensure compliance with Public Law 92-544, relating to . The department respectfully recommends that the OFR continues to work on amending certain language within the applicable sections of ch. 517, F.S., in accordance with the FBI's CJILU guidelines. It should be noted that continued access to national criminal history record information is reliant upon the FBI's approval of the legislative changes.

VIII. Statutes Affected:

This bill amends sections 517.021, 517.061, 517.0612, 517.0614, 517.0616, 517.075, 517.081, 517,12, 517.131, 517.301, 517.211, and 517.315 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.

[55] Florida Department of Law Enforcement, Analysis of SB 988 (Mar. 3, 2025).

B. Amendments:

None.