

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Date: February 2, 1998 Revised: 02/03/98 \_\_\_\_\_

Subject: Securities Transactions

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Johnson</u>	<u>Deffenbaugh</u>	<u>BI</u>	<u>Fav/2 amendments</u>
2.	_____	_____	<u>WM</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

**I. Summary:**

The bill provides requirements for the Florida Securities Investment Protection Act, (ch. 517, F.S.), to conform to the federal National Securities Markets Improvement Act of 1996. The federal act preempts a state from the regulation of federal covered securities and federal covered advisers. A federal covered adviser that does not have a physical presence in Florida would not be subject to registration fees for branch offices or their representatives, under the provisions of the federal Act. In Florida, the estimated negative fiscal impact of the federal act in lost revenues for branch offices and representatives, not located in Florida, is approximately \$150,000 on an annual basis.

However, the federal act authorizes a state to require a federal covered adviser to file a notice and fee. The bill requires such notification and a \$200 fee, which replaces the current \$200 registration fee.

The bill authorizes the Department of Banking and Finance to establish procedures for the electronic filing of fees and documents for securities registration, applications for securities offering, and applications for the registration of dealers, investment advisers, branch offices, and agents.

The bill also authorizes and appropriates \$75,000 from the Anti-Fraud Trust Fund to the department for the purpose of improving the public's awareness and understanding of prudent investing and funding the investigation and prosecution of administrative action arising under the provisions of ch. 517, F.S.

The bill substantially amends the following sections of the Florida Statutes: 517.021, 517.051, 517.061, 517.081, 517.082, 517.12, 517.1205, 517.131, 517.161, 517.302, and 517.311 and creates section 517.1201.

## **II. Present Situation:**

### **State Law**

Pursuant to chapter 517, F.S., the Department of Banking and Finance is responsible for the regulation and registration of broker dealers, associated persons, investment advisors, and the registration of securities.

Generally, under chapter 517, F.S., a security must be registered with the department prior to the security being offered or sold in Florida. Section 517.051, F.S., enumerates those securities which are not required to be registered with the department. Examples of exempt securities include: securities issued or guaranteed by the United States government, any state, or a national bank, and federal covered securities. The section also exempts notes, drafts, bills of exchange, or banker's acceptance with a unit amount of \$25,000 or more, which is used in current operational business transactions and which have a maturity of 9 months or less. Section 517.081, F.S., specifies the procedures for registration including the documents required and the payment of a \$1000 registration fee.

Section 517.061, F.S., enumerates certain transactions which are exempted from the registration requirements of the chapter. The exemption is self-executing, therefore not requiring any filing with the department prior to claiming such exemption. Examples of the exempt transactions include: a judicial sale, certain sales to banks, and the issuance of notes or bonds in connection with real property.

Section 517.082, F.S., provides that securities offered or sold under the provisions of federal securities laws are generally entitled to registration by notification. Registration by notification occurs when the security has been registered with the Securities and Exchange Commission and the department is notified that the security will be sold in Florida.

Section 517.12, F.S., generally requires all dealers, issuers, and associated persons to register before selling or offering for sale from any location in this state or to any person located in this state. Likewise, investment advisors must register prior to engaging in business in Florida or rendering advice to persons located in this state. This section also sets forth the requirements for the registration of associated persons, dealers, investment advisors, and branch offices in Florida, prior to offering to sell securities in Florida. A dealer is typically a person who engages as a broker or principal in the business of dealing or trading securities issued by another person. An investment advisor is typically a person who engages in the business of advising others as to the advisability of investments in securities. Currently, the definition of an investment advisor, as set forth in s. 517.021, F.S., exempts a licensed attorney or a certified public accountant whose performance of such services is solely incidental to the practice of the respective profession.

Section 517.131, F.S., establishes the Securities Guaranty Fund (Fund), provides for its funding, and provides for the disbursement of funds to individuals. The Fund was established to pay individuals who have received a judgment for monetary damages caused by the acts of a dealer, investment adviser, or associated person. The individual must have unsuccessfully attempted to collect the amount of judgment, that is, the individual who makes a claim against the Fund must still be owed money in connection with the judgment.

Pursuant to s. 517.141, F.S., generally the maximum an individual claimant may receive from the Fund is capped at \$10,000 and the aggregate amount all claimants may receive from the Fund is \$100,000 (if the amount claimed is greater than \$100,000, the amount per claimant will be prorated). For example, a claimant may obtain a judgment against an associated person for \$100,000, and only be able to collect \$50,000 from the associated person. This leaves a \$50,000 difference that the claimant may file for reimbursement from the Fund. However, the claimant would only be eligible to receive up to \$10,000, assuming the claimant qualified under the statutory provisions and the number of other claimants did not exceed nine.

In 1996, s. 517.131(1), F.S. was amended to revise the amount of assessment fees which are deposited into the Fund to 20 percent for all dealers and investment advisers, and 10 percent of all assessment fees collected from associated persons. The maximum balance in the Fund at which the collection of the assessment fee would cease being deposited into the Fund was increased from \$250,000 to \$1,500,000.

Section 517.161, F.S., authorizes the department to deny or revoke any registration granted for a dealer, investment adviser, associated person, or branch office if the department determines that the applicant or registrant has been the subject of a violation of any federal or state securities or commodities law or any rule or regulation ordered by a state or federal agency regulating banking, insurance, finance, real estate, mortgage brokers, or other related or similar industries.

Section 517.302, F.S., provides that any amounts assessed as costs of investigation and prosecution under this subsection are required to be deposited in the Anti-Fraud Trust Fund. Such funds, when authorized by appropriation, may be used for investigation and prosecution of civil and criminal actions arising under the provisions of ch. 517, F.S.

Section 517.311, F.S., prohibits any person registered or required to be registered by the department to misrepresent that such person has been approved by the state or any agency or officer of the state or the United States or agency or officer of the United States.

### **Federal Law**

Federal law requires all securities to be registered with the Securities and Exchange Commission (SEC) unless the securities are specifically exempted under 15 USC s. 77c or the transactions are exempt under 15 USC s. 77d. Those securities required to be registered will undergo a review by the SEC to determine if the disclosures adequately protect the interests of the public.

In 1996, the U.S. Congress enacted the National Securities Markets Improvement Act. The purpose of the legislation is to modernize certain important aspects of the regulatory scheme governing capital markets, including the respective responsibilities of the federal and state authorities over the securities markets, and to eliminate the costs and burdens of duplicative and unnecessary regulation while maintaining important investor protections.

This act preempts the states' authority to require the registration of covered securities advisers. Covered securities are defined by federal law to include those securities listed or authorized for listing on certain national securities exchanges, securities issued by a registered investment company, securities offered to qualified purchasers (as defined by the SEC). The federal law allows the states to retain the authority to investigate and bring enforcement actions with respect to fraud or deceit in connection with securities or securities transactions. The states also retain the authority to collect filing and registration fees in effect on October 11, 1996.

### III. Effect of Proposed Changes:

**Section 1.** Amends s. 517.021, F.S., to clarify the definition of an associated person, with respect to a dealer or an investment adviser, as well as federal covered adviser. An associated person, with respect to a federal covered adviser, is any person who is an investment adviser representative and who has a place of business in Florida, as such terms are defined in Rule 203A-3 of the SEC adopted under the Investment Adviser Act of 1940.

The section also defines the term, a "federal covered adviser" to mean a person who is registered or required to be registered under s. 203 of the Investment Advisers Act of 1940 or who is excluded from the definition of an investment advisor under s. 202(a)(11) of the Investment Advisers Act of 1940, as of July 9, 1997. The term, "federal covered adviser," does not include any person who is excluded from the definition of an investment adviser under subparagraphs (12)(b)1.- 8.

The section is also amended to specify that the term, an investment adviser, does not include a federal covered adviser.

**Section 2.** Amends s. 517.051, F.S., to exclude from registration requirements any security of a fund that is excluded from the definition of an investment company under s. 3(c)(10)(B) of the Investment Company Act of 1940 and provides that Section 6(c) of the federal Philanthropy Protection Act of 1995 would not preempt any provision of this chapter. As a result, Florida preserves its right to require charitable organizations to register with the department to sell their securities in Florida.

**Section 3.** Amends s. 517.061, F.S., to exempt certain securities transactions by a registered dealer from the registration provisions of s. 517.07, F.S., the offer or sale of securities, other than any security that is a federal covered security pursuant to s. 18(b)(1) of the federal Securities Act of 1933 and is not subject to any registration or filing requirements under this act. The department is authorized to deny the exemption with reference to any particular security, other than a federal

covered security. A nonissuer transaction by a registered associated person of a registered dealer and any resale transaction by a sponsor of an unit investment trust is exempt from this section if, at the time of the transaction, certain conditions are met.

**Section 4.** Amends s. 517.081, F.S., to authorize the department to establish, by rule, procedures for depositing fees and filing documents by electronic means provided such procedures provide the department with the data required by this section for securities registration and eliminates an obsolete reference.

**Section 5.** Amends s. 517.082, F.S., to authorize the department to establish by rule procedures for depositing fees and filing of documents electronically for securities registration by notification and to eliminate an obsolete reference.

**Section 6.** Amends s. 517.12, F.S., to prohibit the registration of any person as an associated person of an investment adviser unless the investment adviser with which the applicant seeks registration is in compliance with the notice filing requirements specified in s. 517.1201, F.S., or is lawfully registered with the department pursuant to ch. 517, F.S.

The department is authorized to establish by rule, procedures for depositing fees and filing documents by electronic means for dealers, associated persons, investment advisers, and branch offices, provided such procedures provide the department with the information and data required within this section.

The department is authorized to require, in general, that all dealers comply with net capital and ratio requirements imposed pursuant to the Securities Exchange Act of 1934. Securities dealers who are designated by the Federal Reserve Bank of New York as primary government securities dealers or securities dealers registered as issuers of securities, are exempted from this provision. The department is authorized to require, by rule, a dealer to file with the department any financial or operational information that is required to be filed by the Securities Exchange Act of 1934 or any rules adopted under such act.

The department is authorized to require securities dealers who are designated by the Federal Reserve Bank of New York as primary government securities dealers and securities dealers registered as issuers of securities to maintain a minimum net capital. An investment adviser that maintains its principal place of business in another state is exempt from this requirement, provided such investment adviser is registered in the state where it maintains its principal place of business and is in compliance with such state's net capital requirements.

Every federal covered adviser is required to promptly file with the department notice of the termination of any associated person registered for such dealer or investment adviser in Florida.

**Section 7.** Creates s. 517.1201, F.S., to establish notice filing requirements for federal covered advisers. An individual engaging in business in Florida as a federal covered adviser is required to file with the department a copy of the documents that have been filed or that are required to be

filed with the Securities and Exchange Commission, with a consent to service of process and a filing fee of \$200. A notice of filing is effective upon receipt. Subsequent renewal fees are \$200. If the federal covered adviser has not renewed a notice filing prior to its expiration, the department is authorized to impose a \$200 late payment fee. The department is authorized to require, by rule, that the federal covered adviser file any amendments filed or required to be filed by the Securities and Exchange Commission.

**Section 8.** Amends s. 517.1205, F.S., to specify that the intent of the Legislature that the registration of associated persons required by law is specific to the securities dealer, investment adviser, or federal covered adviser identified at the time such registration is approved by the department.

**Section 9.** Amends s. 517.131, F.S., to require that a portion of the federal covered advisers fees be allocated to the Securities Guaranty Fund.

**Section 10.** Amends s. 517.161, F.S., to provide additional grounds for the department to deny registration under s. 517.12 or to revoke, restrict, or suspend any registration granted by the department. These grounds include: violation of any rule or regulation of any national securities, commodities, or options exchange or national securities, commodities, or options association.

**Section 11.** Amends s. 517.302, F.S., to authorize the department to use funds deposited in the Anti-Fraud Trust Fund for the investigation and prosecution of administrative actions arising under the provisions of chapter 517, F.S. The department is also authorized to use such funds to improve the public's awareness and understanding of prudent investing.

**Section 12.** Amends s. 517.311, F.S., to prohibit any person subject to the notice requirements under any section of ch. 517, F.S., to misrepresent that such person has been recommended or approved by the state or any agency or officer of the state or by the United States or any agency or officer of the United States.

**Section 13.** Appropriates \$75,000 from the Anti-Fraud Trust Fund to the department, for fiscal year 1998-99, to be used to improve the public's awareness and understanding of prudent investing.

**Section 14.** Provides that the Act will take 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.

**V. Economic Impact and Fiscal Note:**

**A. Tax/Fee Issues:**

As a result of the implementation of the federal act, which is codified in state law by this bill, fees for branch offices and representatives of federal covered advisers that do not have a physical location in Florida are eliminated. The department has provided the following estimated impact:

	<u>FY 1997-98</u>	<u>FY 1998-99</u>	<u>FY 1999-2000</u>
Federal covered advisers branch offices: \$100 per office	(\$7,000) 70 offices	(\$7,700) 77 offices	(\$8,470) 85 offices
Federal covered advisers agents: \$40 per agent	(\$144,000) 3600 agents	(\$158,400) 3960 agents	(\$174,240) 4356 agents

**B. Private Sector Impact:**

Due to the enactment of the federal law and the subsequent conforming changes in the Florida law provided by this bill, federal covered advisers will not be required to register and pay fees for branch offices and agents with the department, if they do not maintain a physical location in Florida. However, federal covered advisers will be required to file a notice and a \$200 fee, which replaces the current \$200 registration fee.

**C. Government Sector Impact:**

The bill appropriates \$75,000 from the Anti-Fraud Trust Fund to the department for the purpose of improving the public’s awareness and understanding of prudent investing and for the costs of investigating and prosecuting administrative actions arising under the provisions of ch. 517, F.S.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

#1 by Banking and Insurance:

Excludes persons presently not subject to federal regulation from notice requirements of the department.

#2 by Banking and Insurance:

Clarifies that federal covered advisers, not investment advisers, are subject to the notice filing provisions under s. 517.1201, F.S.