

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: CS/SB 814

INTRODUCER: Banking and Insurance Committee and Senator Brandes

SUBJECT: Registration of Branch Offices Conducting Securities Transactions

DATE: April 9, 2013 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Knudson	Burgess	BI	Fav/CS
2.			CM	
3.			JU	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

CS/SB 814 requires each securities dealer and investment adviser to submit to the Office of Financial Regulation (OFR) a notice filing of each branch office from which the dealer or adviser conducts business. The notice filing is effective upon OFR receipt of the filing and a filing fee of \$100. As under current law, it is unlawful for a securities dealers or investment adviser to conduct business form a branch office that has not filed with the OFR, the only difference being the bill’s requirement of a notice filing. A key difference between the notice filing process of the bill and registration of a branch office, as required under current law, is that registration of a branch office is only effective after the OFR has reviewed the registration and approved it.

The OFR must summarily suspend a branch office notice filing if the notice filer fails to provide to the OFR all information required as part of a filing within 30 days after the OFR makes a written request for such information. The summary suspension is effective until the notice filer submits the requested information to the OFR, and pays an administrative fine. A notice filing must be revoked by the OFR if the notice filer fails to provide all requested information within 90 days, and may be revoked if the notice filer makes a payment to the OFR via check or electronic funds transmission (EFT) that is dishonored. All fees become state revenue except for

an administrative fine under s. 517.221(3), F.S., for failure to timely provide information requested by the OFR, until the Securities Guaranty Fund satisfies the statutory limits. Fees are not returnable if a branch office notice filing is withdrawn.

The effective date of the bill is October 1, 2013.

This bill creates the following sections of the Florida Statutes: 517.1202

This bill substantially amends the following sections of the Florida Statutes: 517.12, 517.1205, 517.121, 517.161, 517.1611, and 517.211.

II. Present Situation:

Regulation of Securities

The securities industry is subject to both federal and state law and to the state and federal regulatory agencies that implement statutory law. The primary federal regulator is the Securities and Exchange Commission (SEC), which oversees the key participants in the securities industry such as securities exchanges, securities brokers and dealers, investment advisors, and mutual funds.¹ The SEC is concerned primarily with promoting the disclosure of important market-related information, maintaining fair dealing, and protecting against fraud.

The Office of Financial Regulation, through the Division of Securities, regulates the sale of securities in, to, or from Florida by firms, branch offices and individuals affiliated with these firms to determine compliance with Florida law. A securities dealer or investment adviser is prohibited from conducting business from a branch office in Florida unless the branch office is registered with the Office of Financial Regulation (OFR).² A “branch office” is “any location in this state of a dealer or investment adviser at which one or more associated persons regularly conduct the business of rendering investment advice or effecting any transactions in, or inducing or attempting to induce the purchase or sale of, any security.”³ It also includes any location that is held out as a place where such actions occur is also a branch office.

The Financial Industry Regulatory Authority (FINRA), an independent, not-for-profit organization, also is an important regulatory body.⁴ FINRA performs a number of functions, including registering and educating securities industry participants. FINRA operates the Central Registration Depository and the Investment Adviser Registration Depository, which are central databases for registering, reporting, and disclosing information within the securities industry.

¹ See <http://www.sec.gov/about/whatwedo.shtml> (Accessed April 6, 2013).

² S. 517.12(5), F.S.

³ S. 517.021(4), F.S.

⁴ See <http://www.finra.org/AboutFINRA/P125239> (Accessed April 6, 2013).

Registration of Securities Branch Offices

To register a branch office, the securities dealer must file the required form⁵ and pay an application fee.⁶ The branch office must resubmit an updated form upon any changes in personnel or any material fact that render the registration inaccurate.⁷ Branch office registration is effective upon OFR approval, after a review that the registration complies with Florida law. According to representatives of the Office of Financial Regulation, since July 1, 2012, the average amount of time for the OFR to process and approve a broker-dealer branch office is 5 days upon receipt of registration and 6 days for an investment adviser branch office. Approximately 15 percent of branch office registration applications, however, contain deficiencies that delay the approval date and operation of the branch location.

III. Effect of Proposed Changes:

Section 2 creates s. 517.1202, F.S., to provide notice filing requirements for branch offices. The “notice filing” of a branch office is effective upon its receipt of the filing and required fee by the OFR. Each dealer and each investment adviser must pay a filing fee of \$100 for each branch office in the state.⁸ A notice filing consists of a form the Financial Services Commission may prescribe by rule. As under current law, it is unlawful for a securities dealers or investment adviser to conduct business from a branch office that has not filed with the OFR, the only difference being the bill’s requirement of a notice filing. A key difference between the notice filing process of the bill and registration under current law is that registration of a branch office is only effective after the OFR has reviewed the registration and approved it.

Each notice filing expires on December 31 of the year the filing was made, unless the filing is renewed on or before that date. A branch office notice is renewed when the dealer or securities adviser furnishes to the OFR information required by the FSC or OFR, a \$100 renewal fee, and any amount due and owing the office pursuant to an agreement with the OFR. If a branch office registration expires, the dealer or investment adviser may request reinstatement on or before the January 31 following expiration by providing requested information, the \$100 renewal fee, and a \$100 late fee. A branch office reinstatement is effective retroactive to January 1 of that year. The bill authorizes the FSC to require, by rule, a dealer or investment adviser to file amendments to a branch office notice filing.

The OFR must summarily suspend a branch office notice filing if the notice filer fails to provide to the OFR all information required as part of a filing within 30 days after the OFR makes a written request for such information. The summary suspension is effective until the notice filer submits the requested information to the OFR, pays an administrative fine pursuant to s. 517.221(3), F.S.,⁹ and a final order is entered. For purposes of emergency suspension of licenses failure to provide all information required pursuant to branch office notice filing is grounds for the emergency suspension of a license under s. 120.60(6), F.S., because such failure

⁵ The OFR requires the filing of Form BR, Uniform Branch Office Registration Form (Adopted 2005) as authorized under s. 617.12(15)(a)1., F.S.

⁶ R. 69W-600.004(3), F.A.C.

⁷ R. 69W-600.004(3)(c), F.A.C.

⁸ The notice filing fee is the same as the registration fee under current law.

⁹ An administrative fine may not exceed \$10,000.

constitutes an immediate and serious danger to the public health, safety, and welfare. A notice filing must be revoked by the OFR if the notice filer fails to provide all requested information within 90 days. The OFR may revoke a branch office notice if the notice filer makes a payment to the OFR via check or electronic funds transmission (EFT) that is dishonored. A dealer or investment adviser may terminate a branch office notice filing by filing a notice of termination with the OFR, the effective date of which is either as specified in the notice of termination or upon receipt by the OFR if the notice does not specify an effective date.

All fees become state revenue except for an administrative fine under s. 517.221(3), F.S., for failure to timely provide information requested by the OFR, until the Securities Guaranty Fund satisfies the statutory limits. Fees are not returnable if a branch office notice filing is withdrawn.

Sections 1, 3, 4, 5, 6 and 7 make conforming changes to ss. 517.12, 517.1205, 517.121, 517.161(1), 517.1611, and 517.211, F.S., related to the bill requiring branch office notice filings instead of registration.

Section 8 provides an effective date of October 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Proponents of the bill from the securities industry assert delays in the current registration process sometimes adversely affects dealers and investment advisors. A dealer or investment advisor may not conduct business from a branch office that is not properly registered with the OFR. Accordingly, unanticipated delays in the registration process may require the suspension of business activities until the OFR approves the branch registration.

Representatives from the Office of Financial Regulation state that the OFR no longer has enforcement concerns related to improper filings because the revisions to the bill contained in the CS authorize remedies for branch office filings that are inaccurate or do not comply with state law.

C. **Government Sector Impact:**

None. The computer programming changing to the OFR's online registration and licensing system can be accomplished without additional resources.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. **Committee Substitute – Statement of Substantial Changes:**

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

CS by Banking and Insurance on April 9, 2013:

- Strikes the entire original bill.
- Requires each securities dealer and investment adviser to submit to the Office of Financial Regulation (OFR) a notice filing of each branch office from which the dealer or adviser conducts business.
- Makes a notice filing effective upon OFR receipt of the filing and a filing fee of \$100.
- Requires the OFR to summarily suspend a branch office notice filing if the notice filer fails to provide to the OFR all information required as part of a filing within 30 days after the OFR makes a written request for such information.
- Allows reinstatement of form filings under certain circumstances.
- Requires revocation of a form filing by the OFR if the notice filer fails to provide all requested information within 90 days.
- Provides that all branch office filing fees become state revenue except for an administrative fine under s. 517.221(3), F.S., for failure to timely provide information requested by the OFR, until the Securities Guaranty Fund satisfies the statutory limits.

B. **Amendments:**

None.