**HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS**

**BILL #:** CS/CS/HB 253 Regulation of Securities
**SPONSOR(S):** Commerce Committee and Insurance & Banking Subcommittee, Barnaby and others
**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SB 180

**FINAL HOUSE FLOOR ACTION:** 117 **Y's** 0 **N's** **GOVERNOR'S ACTION:** Approved

**SUMMARY ANALYSIS**

CS/CS/HB 253 passed the House on May 2, 2023, as CS/SB 180.

The Florida Securities and Investor Protection Act (the Act) regulates securities issued, offered, and sold in the state of Florida. The Florida Office of Financial Regulation (OFR) regulates and registers the offer and sale of securities in, to, or from Florida by firms, branch offices, and individuals affiliated with these firms. The Act currently prohibits dealers, associated persons, and issuers from offering or selling securities in this state unless registered with the OFR or specifically exempted. Additionally, all securities in Florida must be registered with the OFR unless they meet a statutory exemption or are federally covered (i.e., under the exclusive jurisdiction of the United States Securities Exchange Commission (SEC)).

The bill:

- Eliminates the requirement for an issuer to register with OFR when selling securities.
- Reduces the issuer filing fee for certain security offerings.
- Creates a continuing education requirement based on the North American Securities Administration Association (NASAA) model rule applicable to associated persons of investment advisers and federal covered advisers. Currently, 12 states have adopted continuing education rules based on the NASAA model rule.
- Creates a registration exemption for investment advisers to private funds based on a NASAA model rule.
- Repeals the authority of OFR to require the filing of escrow agreements and to hold escrow funds.
- Makes technical, clarifying, and modernizing updates throughout the Act, especially in regard to registration requirements and exemptions.
- Introduces or amends various definitions, including adding regulation of limited liability companies, when acting as an issuer, throughout the Act.

The bill has no impact on local government. It has an insignificant negative impact on state government revenues and no impact on state government expenditures. The bill has an indeterminate, likely minimal, negative fiscal impact on the private sector.

The Governor's approved the bill on June 9, 2023, ch. 2023-205, L.O.F., and will become effective on October 1, 2023.

# I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

**Background**

Federal Securities Regulation

The federal Securities Exchange Act of 1934 (1934 Act) requires registration of securities market participants like broker-dealers and exchanges.[1] Generally, any person acting as "broker" or "dealer" as defined in the 1934 Act must be registered with the United States Securities and Exchange Commission (SEC) and join a self-regulatory organization (SRO), like the Financial Industry Regulatory Authority (FINRA) or a national securities exchange. The 1934 Act broadly defines "broker" as "any person engaged in the business of effecting transactions in securities for the account of others," which the SEC has interpreted to include involvement in any of the key aspects of a securities transaction, including solicitation, negotiation, and execution.[2] A "dealer" is "any person engaged in the business of buying and selling securities for such person's own account through a broker or otherwise.[3]

Certain entities in the securities industry are often referred to as "broker-dealers" because such entities are considered "brokers" when executing trades on behalf of customers, but are "dealers" when executing trades for their own account. In addition to being registered with the SEC, broker-dealers must comply with state registration requirements.

State Securities Regulation

In addition to federal securities laws, "Blue Sky Laws" are state laws that protect the investing public from fraudulent sales practices and activities.[4] In Florida, the Securities and Investor Protection Act, ch. 517, F.S. (Act), regulates securities issued, offered, and sold in the state of Florida. The Florida Office of Financial Regulation's (OFR) Division of Securities (Division) regulates and registers the offer and sale of securities in, to, or from Florida by firms, branch offices, and individuals affiliated with these firms in accordance with the Act and Rule Chapter 69W, Florida Administrative Code. [5]

As of December 31, 2022, the Division had total registrants in the following areas:

- Dealers: 2,421
- Investment advisers: 8,096
- Branch offices: 11,435
- Associated Persons: 361,200[6]

The Act prohibits dealers, associated persons, and issuers from offering or selling securities in this state unless registered with OFR or specifically exempted.[7] Additionally, all securities in Florida must be registered with 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).[8] Failure to meet the precise

[1] 15 U.S.C. §§ 78c(a)(4) and 78o; U.S. Securities and Exchange Commission, *Guide to Broker-Dealer Registration*, http://www.sec.gov/divisions/marketreg/bdguide.htm#II (last visited Mar. 19, 2023).
[2] *Id.*
[3] 15 U.S.C. § 78c(a)(5).
[4] U.S. SECURITIES & EXCHANGE COMMISSION, *Blue Sky Laws*, http://www.sec.gov/answers/bluesky.htm (last visited Mar. 19, 2023).
[5] Pursuant to s. 20.121(3), F.S., the Financial Services Commission (the Governor and Cabinet) serves as the OFR's agency head for purposes of rulemaking and appoints the OFR's Commissioner, who serves as the agency head for purposes of final agency action for all areas within the OFR's regulatory authority.
[6] Office of Financial Regulation, Agency Analysis of 2023 House Bill 253, p. 2 (Mar. 1, 2023).
[7] s. 517.12, F.S.
[8] 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.

requirements of these exemptions can subject the issuer to civil, criminal, and administrative liability for the sale of unregistered securities, which is a third-degree felony in Florida.[9] Civil remedies under the Act include rescission and damages.[10] In addition, issuers must comply with disclosure requirements in state and federal laws that provide potential investors with full and fair disclosures regarding the securities.

The Act requires the following individuals or businesses to be registered with OFR under s. 517.12, F.S., before selling or offering to sell any securities in or from offices in this state, or selling securities to persons in this state from offices outside this state:[11]

- Dealers, which include:[12]
  - Any person, other than an associated person registered under ch. 517, F.S., who engages as a broker or principal in the business of offering, buying, selling, or otherwise dealing or trading in securities issued by another person.
  - Any issuer who through persons directly compensated or controlled by the issuer engages in the business of offering or selling securities which are issued (or proposed to be issued) by the issuer.
- Investment advisers, which include any person who receives compensation and engages in the business of advising others as to the value of securities or as to the advisability of investments in, purchasing of, or selling of securities, except a dealer whose performance of these services is solely incidental to the conduct their business as a dealer and who receives no special compensation for such services.[13] Investment advisors do not include a "federal covered adviser."[14]
- Associated persons, which include:[15]
  - With respect to a dealer or investment adviser, any of the following:
    - Any partner, officer, director, or branch manager of a dealer or investment adviser or any person occupying a similar status or performing similar functions;
    - Any individual directly or indirectly controlling or controlled by such dealer or investment adviser, other than an employee whose function is only clerical or ministerial; or
    - Any individual, other than a dealer, employed, appointed, or authorized by a dealer, investment adviser, or issuer to sell securities in any manner or act as an investment adviser as defined in s. 517.021, F.S.
  - With respect to a federal covered adviser, any person who is an investment adviser representative and who has a place of business in this state.

Self-Regulatory Organizations

Formed as a result of a 2007 merger between the National Association of Securities Dealers and certain operational arms of the New York Stock Exchange,[16] FINRA is the largest private self-regulatory organization for all securities firms doing business in the United States.[17] In addition to operating the largest securities arbitration forum in the United States, FINRA operates the Central Registration

[9] S. 517.302(1), F.S.
[10] S. 517.211(3-5), F.S.
[11] S. 517.12(1), F.S.
[12] S. 517.021(6)(a), F.S. The term "dealer", as defined under Florida law, encompasses the definitions of "broker" and "dealer" under federal law.
[13] S. 517.021(14)(a), F.S.
[14] S. 517.021(9), (14)(b)9., F.S. A federal covered adviser must be registered under federal law and must provide a notice-filing to OFR. Ss. 517.021 and 517.1201, F.S.
[15] S. 517.021(2), F.S.
[16] FINRA, *NASD and NYSE Member Regulation Combine to Form the Financial Industry Regulatory Authority,* https://www.finra.org/media-center/news-releases/2007/nasd-and-nyse-member-regulation-combine-form-financial-industry (last visited Mar. 19, 2023).
[17] FINRA, https://www.finra.org/#/ (last visited Mar. 19, 2023).

Depository and the Investment Adviser Registration Depository, both which are central databases for registration, reporting, and disclosure information for the securities industry.[18]

NASAA's Model Rule on Investment Adviser Representative Continuing Education

The North American Securities Administrators Association (NASAA) is a voluntary, international, association whose membership consists of 67 state, provincial, and territorial securities administrators.[19] Formed in 1919, NASAA is the "oldest international organization devoted to investor protection."[20] NASAA advocates on behalf of state securities agencies in North America that are responsible for capital formation and investor protection.[21] NASAA also coordinates training and education seminars for securities agency staff[22] and creates model rules for implementation amongst its members.[23]

On November 30, 2020, NASAA adopted a model rule for the implementation of continuing education (CE) programs for investment adviser representatives (IARs).[24] Among other things, the model rule:

- Requires IARs of both state-registered and federal covered investment advisers seeking registration or renewal of IAR registration to complete 12 CE credits each year;
- Provides that IARs must complete six credits of regulatory and ethics content and six credits of compliance and practice content;
- Allows IARs to select courses that appeal to their interests and suit their business models, so long as such courses meet the credit requirements and are approved content for the CE program;
- Permits IARs to satisfy either some or all of the model rule's CE requirements through completion of the IAR's home state's CE requirements and completion of CE courses required to be completed by IARs who maintain certain professional designations and those required to be completed for registration as an agent of a dealer, provided certain criteria are met;
- Provides that course providers and course content must be approved by NASAA; and
- Requires an IAR who does not complete the CE requirement by the annual deadline to renew as "CE inactive."

Under the model rule, IARs are responsible for ensuring that completed CE credits are reported to FINRA, NASAA's vendor for program tracking. NASAA has implemented a course reporting fee of $3 per credit hour. Individual course costs will vary depending on the course and provider selected.

Currently, 12 NASAA member jurisdictions have adopted CE requirements similar to those proposed in the rule, namely, Arkansas, Colorado, Kentucky, Maryland, Michigan, Mississippi, Oklahoma, Oregon, South Carolina, Vermont, Washington, D.C., and Wisconsin.[25]

On October 8, 2013, NASAA adopted an amended model rule providing a registration exemption for investment advisers to private funds. The model rule:

- Requires that a private fund adviser:
  - Is not subject to certain disqualifications;
  - Must submit required reports and amendments to the state regulator; and
  - Is required to pay relevant state fees.

[18] NASAA, *CRD & IARD*, https://www.nasaa.org/industry-resources/crd-iard/ (last visited Mar. 19, 2023).
[19] NASAA, *Welcome to NASAA*, https://www.nasaa.org/about-us/ (last visited Mar. 19, 2023).
[20] *Id.*
[21] *Id.*
[22] *Id.*
[23] *See* 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. 19, 2023).
[24] *Id.*
[25] NASAA, https://www.nasaa.org/industry-resources/investment-advisers/investment-adviser-representative-continuing-education/iar-ce-map/ (last visited, Mar. 19, 2023).

- Provides additional requirements for private fund advisers to "3(c)(1) funds."[26] This includes a restriction where the beneficial owners of the fund must have a net worth which would meet the standard of a "qualified client" under SEC rule.[27]

**Effect of the Bill**

Definitions

The bill creates the following definitions:

- "Accredited investor" has the same definition as that in SEC Rule 501, 17 C.F.R. s. 230.501, which includes:
  - Any bank, savings and loan associations, other institutions defined in section 3(a) of the federal Securities Act of 1933 (1933 Act), brokers or dealers, investment advisers, insurance companies, or investment companies;
  - Any private business development company as defined in section 202(a)(22) of the Investment Advisers Act of 1940;
  - Any organization described in section 501(c)(3) of the Internal Revenue Code that is not formed for the specific purpose of acquiring securities offered with total assets in excess of $5,000,000;
  - Any director, executive officer, or general partner of the issuer of the securities being offered or sold, or any director, executive officer, or general partner of a general partner of that issuer; or
  - Any natural person whose individual net worth, or joint net worth with that person's spouse or spousal equivalent, exceeds $1,000,000 (subject to specific calculation restrictions).

The bill amends the following definitions:

- "Associated person" is now defined by a party's relation to a dealer or to an investment adviser.
  - With respect to a dealer, an associated person is a natural person who is employed, appointed, or authorized by a dealer and who represents the dealer in effecting the purchase or sale of a security.
    - The term does not include a dealer or a partner, officer, or director of a dealer unless such person is specified in the group above. The term also does not include a dealer's employee whose function is only clerical or ministerial.
  - With respect to an investment adviser, an associated person is an individual, including, but not limited to, a partner, officer, director, or branch manager who is employed by or associated with, or is subject to the supervision or control of an investment adviser registered under this chapter, and such person:
    - Makes recommendations or otherwise gives investment advice regarding securities;
    - Manages client accounts or portfolios;
    - Determines which recommendations or advice regarding securities should be given;
    - Receives compensation to solicit, offer, or negotiate for the sale of investment advisory services; or
    - Supervises employees who perform a function outlined above.
  - With respect to an investment adviser, associated person does not include an investment adviser or an employee whose function is only clerical or ministerial.

[26] Section 3(c)(1) of the Investment Company Act describes a company that is beneficially owned by no more than 100 persons (250 if a qualifying venture capital fund) and is not seeking a public offering of its securities.

[27] 17. C.F.R. s. 275.205-3. As of August 16, 2021, the assets-under-management amount required equaled $1.1 million while the dollar amount threshold of the net worth test equaled $2.2 million. *See* U.S. Securities and Exchange Commission, *Fact Sheet: Inflation Adjustments of Qualified Client Thresholds*, https://www.sec.gov/rules/final/2021/ia-5904-fact-sheet.pdf (last visited April 11, 2023).

- "Dealer" is defined as any person, other than an associated person of a dealer, that engages, for all or part of the person's time, directly or indirectly, as agent or principal in the business of offering, buying, selling, or otherwise dealing or trading in securities issued by another person. The term does not include the following:
    - A licensed practicing attorney who renders or performs any services in connection with the regular practice of the attorney's profession.
    - A bank authorized to do business in the state, except a nonbank subsidiary of a bank.
    - A trust company having trust powers that it is authorized to exercise in this state, which renders or performs services in a fiduciary capacity incidental to the exercise of its trust powers.
    - A wholesaler selling exclusively to dealers.
    - A person buying and selling for the person's own account exclusively through a registered dealer or stock exchange.
    - An issuer.
    - A natural person representing an issuer in the purchase, sale, or distribution of the issuer's own securities if such person meets certain criteria.
- "Guaranty" is amended to clarify that a "writing" means "an agreement in writing."
- "Intermediary" is amended to clarify that an intermediary facilitates an offer or sale of a security of an issuer with a principal place of business in Florida through the intermediary's website.
- "Investment adviser" is amended to have a parallel structure to the new definition of "dealer."

The bill also amends various definitions to include the use of gender-neutral terms, to provide inclusion of any amendments to referenced federal securities law, and to specifically include references to limited liability companies.

*Viatical Settlements*

The bill amends s. 517.072, F.S. to include provisions relating to viatical settlements for organizational purposes that use to reside in s. 517.081, F.S. The provisions were not substantially changed.

*Registration Procedure*

The bill amends s. 517.081, F.S. to allow for all issuers meeting certain criteria, instead of just corporations, to use simplified offering circular to register securities. The bill reduces the issuer filing fee of $1,000 to $200 for offerings that are below the amount provided in s. 3(b) of the 1933 Act. The bill also provides that the office shall deem an application to register a security abandoned if the issuer has failed to complete a timely application, as specified by commission rule.

The bill provides that an issuer of a security who is a general partner, trustee, manager and managing member is not eligible to submit a simplified offering circular.

*Registration by Notification; Federal Registration Statements*

The bill provides that the office will consider an application for registration by notification abandoned if the SEC has not declared effective the applicant's federal registration statement within 180 days after the applicant's filing.

*Revocation or Denial of Registration of Securities*

The bill amends this section to include "investigations" in addition to "examinations" in various provisions as these provisions are applicable to both examinations and investigations conducted by the office.

The bill replaces the "demonstrated any evidence of unworthiness" standard for revocation or denial of a securities registration with the "engaged in any action that would be grounds for revocation, denial, or suspension under s. 517.161(1), F.S." standard.

The bill removes the standard of "is in any other way dishonest." The bill also removes the standard of revoking or denying a registration based on an issuer failing to timely complete any application for registration filed with the office. This provision is, instead, incorporated within ss. 517.081 and 517.082, F.S.

The bill requires that the office must provide notice of the entry of an order suspending the rights to sell securities to the issuer personally or by mail. This amendment eliminates the ability of the office to provide such notice by telephone confirmed in writing or by telegraph.

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

The bill eliminates the requirement that issuers register with the office to sell securities. The bill also clarifies which exempt transactions the registration requirement applies to as well as the meaning of "securities business."

The bill eliminates the requirement that the office finds the applicant to be of "good repute and character." Instead, the office is tasked with finding that the applicant complied with the "applicable registration provisions." The bill provides the office shall register the application "unless the applicant is otherwise disqualified for registration pursuant to law."

The bill creates a new registration exemption for investment advisers to qualifying private funds based on a NASAA model rule. A qualifying private fund includes:

- Qualifying private funds under SEC rule,
- Venture capital funds under SEC rule, and
- Venture capital operating companies defined by U.S. Department of Labor rule.

The proposed exemption differs somewhat from the NASAA model rule as the private fund adviser is not required to pay a fee, under the bill, and 3(c)(1) funds must be owned by "accredited investors" and not "qualified clients."[28]

*Continuing Education Requirements for Associated Persons of Investment Advisers and Federal Covered Advisers*

The bill creates s. 517.1214, F.S. which provides a continuing education requirement for the associated persons of an investment adviser or a federally covered adviser. Starting in the year ending December 31, 2024, the associated person of an investment adviser or a federal covered investment adviser shall complete continuing educational content offered by a person that NASAA or NASAA's designee has authorized to provide the required continuing education content. The continuing education requirement follows an annual reporting period that starts on January 1 and ends on December 31. An associated person's initial reporting period commences the first day of the first full reporting period after the individual is required to be registered with the state.

The continuing education requirement consists of a total of 12 hours of continuing education content split into two broad categories:

- Six credits of approved continuing education content that addresses ethical and regulatory obligations, with at least 3 hours of the content covering the topic of ethics; and

[28] A net worth in excess of $1 million is required to be an accredited investor which is an easier standard to meet than that of a qualified client. *See* 17 C.F.T. s. 230.501(a)(5); *Supra* note 26.

- Six credits of approved continuing educational content that addresses an associated person's skills and knowledge regarding financial products, investment features, and practices in the investment advisory industry.

An associated person who is also a registered associated person of a FINRA member dealer and is in compliance with FINRA's continuing education requirements will be considered to be in compliance with the continuing education requirements of this section provided that the FINRA continuing education content is approved by NASAA.

Credits of continuing education completed by an associated person who currently holds a credential that qualifies for an examination waiver by passing any test prescribed in s. 15(b)(7) of the Securities Exchange Act of 1934 will be found to comply with the continuing education requirement upon meeting certain conditions. This condition entails that the associated person completes the credits of continuing education as a condition for maintaining the credential during the relevant reporting period; the credits of continuing education completed were mandatory to maintain the credential; and the continuing education content provided by the credentialing organization during the relevant reporting period is approved by NASAA.

The bill provides that an associated person is responsible for ensuring that the provider of continuing education content reports the associated person's completion of the requirements. Additionally, completed continuing education content that exceeds the requirements of this section cannot be carried over into a following year.

An associated person that fails to comply with this section by the end of a reporting period must register as "CE Inactive" and must complete the continuing education content requirements for the year they failed to comply with the requirements and the current reporting year in order to register as an associated person again. An associated person who is "CE Inactive" at the close of the next calendar year is ineligible for associated person registration or renewal of associated person registration.

An associated person required to be registered in Florida who is registered as an associated person in the individual's home state is considered to be in compliance with this section if the associated person's home state requires at least 12 hours of CE credit annually and such person is in compliance with the home state's CE requirements.

An associated person who was previously registered under s. 517.12, F.S. and became unregistered must complete the continuing education requirements for all reporting periods that occurred between the time that the associated person became unregistered and when the person became registered again under s. 517.12, F.S. unless the associated person takes and passes the required examinations or the examination requirements are waived in connection with the subsequent application for registration.

*Rules of Conduct and Prohibited Business Practices for Dealers, Dealers' Associated Persons and Intermediaries*

The bill amends this section to include intermediaries.

*Revocation, Denial, or Suspension of Registration of Dealer, Investment Adviser, Intermediary, or Associated Person*

The bill amends this section to add failure to pay, or attempting to avoid paying, certain final judgments, arbitration awards, fines, civil penalties, orders of restitution and disgorgement, or similar monetary payment obligations as grounds for denying, suspending, or revoking a registration.

*Escrow Agreement*

The bill repeals s. 517.181, F.S. which allowed the office to require an escrow agreement for securities that had been issued for certain intangible assets. The escrow agreement would require that the security be delivered in escrow to the office or other depository satisfactory to the office. The security would be released from escrow upon showing that the issuer is currently operating a sound business.

*Criminal Punishment Code; Offense Severity Ranking Chart*

The bill removes issuers from the listed parties that would face felony charges for violating s. 517.12(1), F.S. as issuers are no longer required to register with the office.

*Miscellaneous*

The bill eliminates the bad business repute and the unworthiness standard from various sections of the chapter. The bill also eliminates the use of the term "small loan companies" in various sections of the chapter.

The bill amends various sections to:

- Replace the term "insolvent" with "cannot pay its debts as they become due in the usual course of business;"
- Replace the term "advisors" with "advisers" and gendered language with gender-neutral language;
- Provide clarity by specifically including limited liabilities companies in the regulations throughout ch. 517, F.S.; and
- Update cross-references.

The bill provides an effective date of October 1, 2023.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill would have a negative, although insignificant, fiscal impact on state government as the bill reduces the issuer fee for certain transactions.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill has an indeterminate fiscal impact on the private sector. Specifically, the bill requires associated persons of investment advisers and federal covered advisers to complete continuing education requirements on an annual basis. Costs incurred by associated persons who are required to comply with the requirement will vary. NASAA has implemented a course reporting fee of $3 per credit hour. Therefore, an associated person will be required to pay a minimum of $36 per year in addition to any training costs to meet the CE requirements. Training costs are indeterminable and will vary depending on the selected continuing education course and provider, whether the associated person is in compliance with FINRA CE requirements, and whether the associated person holds and maintains certain professional designations.[29]

D. FISCAL COMMENTS:

None.

[29] Florida Office of Financial Regulation, Agency Analysis of 2023 House Bill 253, p. 7 (Mar. 1, 2023).