

CHAPTER 97-224

House Bill No. 1097

An act relating to securities transactions; amending s. 517.021, F.S.; revising definitions; amending s. 517.051, F.S.; deleting an exemption from securities registration requirements for investment companies; amending s. 517.07, F.S.; prohibiting the sale of certain securities; requiring the Department of Banking and Finance to issue a permit upon granting a registration; amending s. 517.081, F.S.; providing additional authority to the Department of Banking and Finance relating to registration requirements; providing for filing certain alternative information; providing requirements; amending ss. 517.082 and 517.101, F.S.; deleting obsolete cross references; amending s. 517.12, F.S.; exempting commodity trading advisers from certain registration requirements under certain circumstances; providing for a reduced assessment fee under certain circumstances; amending s. 517.1203, F.S.; providing for termination of allocation of certain assessment fee revenues to the Securities Guaranty Fund under certain circumstances; amending s. 517.131, F.S.; specifying an allocation of certain assessment fee revenues to the Securities Guaranty Fund under certain circumstances; providing effective dates.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Effective upon this act becoming a law, subsection (2) of section 517.021, Florida Statutes, is amended, present subsections (8) and (9) of that section, are redesignated as subsections (9) and (10), respectively, present subsection (10) is renumbered as subsection (11) and amended, present subsections (11) through (18) are redesignated as subsections (12) through (19), respectively, and a new subsection (8) is added to that section to read:

517.021 Definitions.—When used in this chapter, unless the context otherwise indicates, the following terms have the following respective meanings:

(2) “Associated person” means any of the following:

(a) Any partner, officer, director, or branch manager of a dealer or investment adviser or any person occupying a similar status or performing similar functions;

(b) Any natural person directly or indirectly controlling or controlled by such dealer or investment adviser, other than an employee whose function is only clerical or ministerial; or

(c) Any natural person, 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 this section.

The partners of a partnership and the executive officers of a corporation or other association registered as a dealer, and any person whose transactions in this state are limited to those transactions described in s. 15(h)(2) of the Securities Exchange Act of 1934, are not “associated persons” within the meaning of this definition.

(8) “Federal covered security” means any security that is a covered security under s. 18(b) of the Securities Act of 1933 or rules and regulations adopted thereunder.

(11)(10)(a) “Investment adviser” includes any person who for compensation engages for all or part of his time, directly or indirectly, or through publications or writings, 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 of his business as a dealer and who receives no special compensation for such services.

(b) The term “investment adviser” does not include the following:

1. Any licensed practicing attorney or certified public accountant whose performance who renders or performs any of such services is solely incidental to the in connection with the regular practice of his profession;

2. Any bank authorized to do business in this state;

3. Any bank holding company as defined in the Bank Holding Company Act of 1956, as amended, authorized to do business in this state;

4. Any trust company having trust powers which it is authorized to exercise in the state, which trust company renders or performs services in a fiduciary capacity incidental to the exercise of its trust powers;

5. Any person who renders investment advice exclusively to insurance or investment companies; or

6. Any person who does not hold himself out to the general public as an investment adviser and has no more than 15 clients within 12 consecutive months in this state.

Section 2. Effective July 9, 1997, subsection (11) of section 517.021, Florida Statutes, is amended to read:

517.021 Definitions.—When used in this chapter, unless the context otherwise indicates, the following terms have the following respective meanings:

(11)(a) “Investment adviser” includes any person who for compensation engages for all or part of his time, directly or indirectly, or through publications or writings, 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 of his business as a dealer and who receives no special compensation for such services.

(b) The term “investment adviser” does not include the following:

1. Any licensed practicing attorney or certified public accountant whose performance of such services is solely incidental to the practice of his profession;

2. Any bank authorized to do business in this state;

3. Any bank holding company as defined in the Bank Holding Company Act of 1956, as amended, authorized to do business in this state;

4. Any trust company having trust powers which it is authorized to exercise in the state, which trust company renders or performs services in a fiduciary capacity incidental to the exercise of its trust powers;

5. Any person who renders investment advice exclusively to insurance or investment companies; ~~or~~

6. Any person who does not hold himself out to the general public as an investment adviser and has at least 6 but no more than 15 clients within 12 consecutive months in this state; or;

7. Any person whose transactions in this state are limited to those transactions described in s. 222(d) of the Investment Advisers Act of 1940. Those clients listed in subparagraph 5. may not be included when determining the number of clients of an investment adviser for purposes of s. 222(d) of the Investment Advisers Act of 1940.

Section 3. Effective upon this act becoming a law, section 517.051, Florida Statutes, 1996 Supplement, is amended to read:

517.051 Exempt securities.—~~Except as provided in subsection (11),~~ The exemptions provided herein from the registration requirements of s. 517.07 are self-executing and do not require any filing with the department prior to claiming such exemption. Any person who claims entitlement to any of these exemptions bears the burden of proving such entitlement in any proceeding brought under this chapter. The registration provisions of s. 517.07 do not apply to any of the following securities:

(1) A security issued or guaranteed by the United States or any territory or insular possession of the United States, by the District of Columbia, or by any state of the United States or by any political subdivision or agency or other instrumentality thereof; provided that no person shall directly or indirectly offer or sell securities, other than general obligation bonds, under this subsection if the issuer or guarantor is in default or has been in default any time after December 31, 1975, as to principal or interest:

(a) With respect to an obligation issued by the issuer or successor of the issuer; or

(b) With respect to an obligation guaranteed by the guarantor or successor of the guarantor,

except by an offering circular containing a full and fair disclosure as prescribed by rule of the department.

(2) A security issued or guaranteed by any foreign government with which the United States is maintaining diplomatic relations at the time of the sale or offer of sale of the security, or by any state, province, or political subdivision thereof having the power of taxation or assessment, which security is recognized at the time it is offered for sale in this state as a valid obligation by such foreign government or by such state, province, or political subdivision thereof issuing the security.

(3) A security issued or guaranteed by:

(a) A national bank, a federally chartered savings and loan association, or a federally chartered savings bank, or the initial subscription for equity securities in such national bank, federally chartered savings and loan association, or federally chartered savings bank;

(b) Any federal land bank, joint-stock land bank, or national farm loan association under the provisions of the Federal Farm Loan Act of July 17, 1916;

(c) An international bank of which the United States is a member; or

(d) A corporation created and acting as an instrumentality of the government of the United States.

(4) A security issued or guaranteed, as to principal, interest, or dividend, by a corporation owning or operating a railroad or any other public service utility; provided that such corporation is subject to regulation or supervision whether as to its rates and charges or as to the issue of its own securities by a public commission, board, or officer of the government of the United States, of any state, territory, or insular possession of the United States, of any municipality located therein, of the District of Columbia, or of the Dominion of Canada or of any province thereof; also equipment securities based on chattel mortgages, leases, or agreements for conditional sale of cars, motive power, or other rolling stock mortgaged, leased, or sold to or furnished for the use of or upon such railroad or other public service utility corporation or where the ownership or title of such equipment is pledged or retained in accordance with the provisions of the laws of the United States or of any state or of the Dominion of Canada to secure the payment of such equipment securities; and also bonds, notes, or other evidences of indebtedness issued by a holding corporation and secured by collateral consisting of any securities hereinabove described; provided, further, that the collateral securities equal in fair value at least 125 percent of the par value of the bonds, notes, or other evidences of indebtedness so secured.

(5) A security issued or guaranteed by any of the following which are subject to the examination, supervision, or control of this state or of the Federal Deposit Insurance Corporation or the National Credit Union Association:

(a) A bank,

- (b) A trust company,
- (c) A savings institution,
- (d) A building or savings and loan association,
- (e) An international development bank, or
- (f) A credit union;

or the initial subscription for equity securities of any institution listed in paragraphs (a)-(f), provided such institution is subject to the examination, supervision, or control of this state.

(6) A security, other than common stock, providing for a fixed return, which security has been outstanding in the hands of the public for a period of not less than 5 years, and upon which security no default in payment of principal or failure to pay the fixed return has occurred for an immediately preceding period of 5 years.

(7) Securities of nonprofit agricultural cooperatives organized under the laws of this state when the securities are sold or offered for sale to persons principally engaged in agricultural production or selling agricultural products.

(8) A note, draft, bill of exchange, or banker's acceptance having a unit amount of \$25,000 or more which arises out of a current transaction, or the proceeds of which have been or are to be used for current transactions, and which has a maturity period at the time of issuance not exceeding 9 months exclusive of days of grace, or any renewal thereof which has a maturity period likewise limited. This subsection applies only to prime quality negotiable commercial paper of a type not ordinarily purchased by the general public; that is, paper issued to facilitate well-recognized types of current operational business requirements and of a type eligible for discounting by Federal Reserve banks.

(9) A security issued by a corporation organized and operated exclusively for religious, educational, benevolent, fraternal, charitable, or reformatory purposes and not for pecuniary profit, no part of the net earnings of which corporation inures to the benefit of any private stockholder or individual; provided that no person shall directly or indirectly offer or sell securities under this subsection except by an offering circular containing full and fair disclosure, as prescribed by the rules of the department, of all material information, including, but not limited to, a description of the securities offered and terms of the offering, a description of the nature of the issuer's business, a statement of the purpose of the offering and the intended application by the issuer of the proceeds thereof, and financial statements of the issuer prepared in conformance with generally accepted accounting principles.

(10) Any insurance or endowment policy or annuity contract or optional annuity contract or self-insurance agreement issued by a corporation, insurance company, reciprocal insurer, or risk retention group subject to the

supervision of the insurance commissioner or bank commissioner, or any agency or officer performing like functions, of any state or territory of the United States or the District of Columbia.

~~(11) The offer or sale of securities pursuant to a registration statement filed under the Investment Company Act of 1940 by an open-end management company or unit investment trust shall be entitled to exemption in the manner provided in paragraph (a), provided that prior to the offer or sale the registration statement has become effective.~~

~~(a) An application for exemption shall be filed with the department and shall be accompanied by:~~

~~1. An application for exemption to sell which shall be executed by the issuer, any person on whose behalf the offering is made, a dealer registered under this chapter, or any duly authorized agent of any such person, setting forth the name and address of the applicant, the name and address of the issuer, and the title of the securities to be offered and sold.~~

~~2. A copy of the cover page of the initial registration statement as filed with the Securities and Exchange Commission unless the federal registration is effective prior to filing with the department.~~

~~3. A copy of the dated final prospectus or current prospectus, whichever is dated later.~~

~~4. A \$1,000 fee.~~

~~5. An irrevocable written consent to service and resolution as described in s. 517.101, for any initial registration or upon request by the department.~~

~~6. Copies of such documents filed with the Securities and Exchange Commission as the department may require.~~

~~(b) An exemption under this section is effective when the federal registration statement becomes effective or as of the date the application for exemption is filed with the department, whichever is later, provided, in addition to the items listed in paragraph (a), the department has received written notification of effective registration under the Investment Company Act of 1940 within 10 business days after the date federal registration is granted. Failure to provide to the department the information required by this subsection within 60 days after the date the registration statement becomes effective with the Securities and Exchange Commission is a violation of this chapter.~~

~~(c) The exemption is effective for a period of 12 months after the date of effectiveness in this state, unless renewed prior to expiration.~~

~~(d) In lieu of filing with the department the application, fees, and documents required for exemption, the department may establish procedures for the deposit of fees and filing of documents to be made through the Securities Registration Depository as developed under contract with the North American Securities Administrators Association, Inc., provided such procedures~~

shall provide the department with the information and data required by this subsection. If a filer chooses not to use the Securities Registration Depository, such filings, including the statutory fee, may be made directly with the department.

Section 4. Effective upon this act becoming a law, section 517.07, Florida Statutes, is amended to read:

517.07 Registration of securities.—

(1) It is unlawful and a violation of this chapter for any person to sell or offer to sell a security within this state unless the security is exempt under s. 517.051, is sold in a transaction exempt under s. 517.061, is a federal covered security, or is registered pursuant to this chapter.

(2) No securities that are required to be registered under this chapter except of a class exempt under any of the provisions of s. 517.051 or unless sold in any transaction exempt under any of the provisions of s. 517.061 shall be sold or offered for sale within this state unless such securities have been registered pursuant to this chapter, as hereinafter defined, and unless prior to each sale the purchaser is furnished with a prospectus meeting the requirements of rules adopted by the department. The department shall issue a permit when such registration has been granted by the department.

(3)(4) The department shall issue a permit when registration has been granted by the department. A permit to sell securities is effective for 1 year from the date it was granted. Registration of securities shall be deemed to include the registration of rights to subscribe to such securities if the application under s. 517.081 or s. 517.082 for registration of such securities includes a statement that such rights are to be issued.

(4)(2) A record of the registration of securities shall be kept in the office of the department, in which register of securities shall also be recorded any orders entered by the department with respect to such securities. Such register, and all information with respect to the securities registered therein, shall be open to public inspection.

(5)(3) Notwithstanding any other provision of this section, offers of securities required to be registered by this section may be made in this state before the registration of such securities if the offers are made in conformity with rules adopted by the department.

Section 5. Subsection (3) of section 517.081, Florida Statutes, is amended to read:

517.081 Registration procedure.—

(3) The department may require the applicant to submit to the department the following information concerning the issuer and such other relevant information as the department may in its judgment deem necessary to enable it to ascertain whether such securities shall be registered pursuant to the provisions of this section:

(a) The names and addresses of the directors, trustees, and officers, if the issuer be a corporation, association, or trust; of all the partners, if the issuer be a partnership; or of the issuer, if the issuer be an individual.

(b) The location of the issuer's principal business office and of its principal office in this state, if any.

(c) The general character of the business actually to be transacted by the issuer and the purposes of the proposed issue.

(d) A statement of the capitalization of the issuer.

(e) A balance sheet showing the amount and general character of its assets and liabilities on a day not more than 90 days prior to the date of filing such balance sheet or such longer period of time, not exceeding 6 months, as the department may permit at the written request of the issuer on a showing of good cause therefor.

(f) A detailed statement of the plan upon which the issuer proposes to transact business.

(g)1. A specimen copy of the security and a copy of any circular, prospectus, advertisement, or other description of such securities.

2. The department shall adopt a form for a simplified offering circular to be used solely by corporations to register, under this section, securities of the corporation that are sold in offerings in which the aggregate offering price in any consecutive 12-month period does not exceed the lesser of the aggregate offering price in 17 C.F.R. s. 230.251 or \$5 million. The following issuers shall not be eligible to submit a simplified offering circular adopted pursuant to this subparagraph:

a. An issuer seeking to register securities for resale by persons other than the issuer.

b. An issuer who is subject to any of the disqualifications described in 17 C.F.R. s. 230.262, adopted pursuant to the Securities Act of 1933, or who has been or is engaged or is about to engage in an activity that would be grounds for denial, revocation, or suspension under s. 517.111. For purposes of this subparagraph, an issuer includes an issuer's director, officer, shareholder who owns at least 10 percent of the shares of the issuer, promoter, or selling agent of the securities to be offered or any officer, director, or partner of such selling agent.

c. An issuer who is a development-stage company that either has no specific business plan or purpose or has indicated that its business plan is to merge with an unidentified company or companies.

d. An issuer of offerings in which the specific business or properties cannot be described.

e. Any issuer the department determines is ineligible if the form would not provide full and fair disclosure of material information for the type of offering to be registered by the issuer.

f. Any corporation which has failed to provide the department the reports required for a previous offering registered pursuant to this subparagraph.

As a condition precedent to qualifying for use of the simplified offering circular, a corporation shall agree to provide the department with an annual financial report containing a balance sheet as of the end of the issuer's fiscal year and a statement of income for such year, prepared in accordance with generally accepted accounting principles and accompanied by an independent accountant's report. If the issuer has more than 100 security holders at the end of a fiscal year, the financial statements must be audited. Annual financial reports must be filed with the department within 90 days after the close of the issuer's fiscal year for each of the first 5 years following the effective date of the registration.

(h) A statement of the amount of the issuer's income, expenses, and fixed charges during the last fiscal year or, if in actual business less than 1 year, then for such time as the issuer has been in actual business.

(i) A statement of the issuer's cash sources and application during the last fiscal year or, if in actual business less than 1 year, then for such time as the issuer has been in actual business.

(j) A statement showing the maximum price at which such security is proposed to be sold, together with the maximum amount of commission, including expenses, or other form of remuneration to be paid in cash or otherwise, directly or indirectly, for or in connection with the sale or offering for sale of such securities.

(k) A copy of the opinion or opinions of counsel concerning the legality of the issue or other matters which the department may determine to be relevant to the issue.

(l) A detailed statement showing the items of cash, property, services, patents, good will, and any other consideration in payment for which such securities have been or are to be issued.

(m) The amount of securities to be set aside and disposed of and a statement of all securities issued from time to time for promotional purposes.

(n) If the issuer is a corporation, there shall be filed with the application a copy of its articles of incorporation with all amendments and of its existing bylaws, if not already on file in the department. If the issuer is a trustee, there shall be filed with the application a copy of all instruments by which the trust is created or declared and in which it is accepted and acknowledged. If the issuer is a partnership, unincorporated association, joint-stock company, or any other form of organization whatsoever, there shall be filed with the application a copy of its articles of partnership or association and all other papers pertaining to its organization, if not already on file in the department.

Section 6. Effective upon this act becoming a law, subsection (1) of section 517.082, Florida Statutes, 1996 Supplement, is amended to read:

517.082 Notification registration.—

(1) Except as provided in subsection (3) ~~or exempt pursuant to s. 517.051(11)~~, securities offered or sold pursuant to a registration statement filed under the Securities Act of 1933 or the Investment Company Act of 1940 shall be entitled to registration by notification in the manner provided in subsection (2), provided that prior to the offer or sale the registration statement has become effective.

Section 7. Effective upon this act becoming a law, subsection (1) of section 517.101, Florida Statutes, 1996 Supplement, is amended to read:

517.101 Consent to service.—

(1) Upon any initial application for registration under s. 517.081 or s. 517.082, ~~upon any application for exemption pursuant to s. 517.051(11)~~, or upon request of the department, the issuer shall file with such application the irrevocable written consent of the issuer that in suits, proceedings, and actions growing out of the violation of any provision of this chapter, the service on the department of a notice, process, or pleading therein, authorized by the laws of this state, shall be as valid and binding as if due service had been made on the issuer.

Section 8. Subsection (10) of section 517.12, Florida Statutes, 1996 Supplement, is amended, and a new subsection (19) is added to said section, to read:

517.12 Registration of dealers, associated persons, investment advisers, and branch offices.—

(10) An applicant for registration shall pay an assessment fee of \$200, in the case of a dealer or investment adviser, or \$40, in the case of an associated person. The assessment fee of an associated person shall be reduced to \$30 upon a determination, by final order of the department, that sufficient funds have been allocated to the Securities Guaranty Fund pursuant to s. 517.1203 to satisfy all valid claims filed in accordance with s. 517.1203(2). An associated person not having current fingerprint cards filed with the National Association of Securities Dealers or a national securities exchange registered with the Securities and Exchange Commission shall be assessed an additional fee to cover the cost for said fingerprint cards to be processed by the department. Such fee shall be determined by rule of the department. Each dealer and each investment adviser shall pay an assessment fee of \$100 for each office in this state, except its designated principal office. Such fees become the revenue of the state, except for those assessments provided for under s. 517.131(1) until such time as the Securities Guaranty Fund satisfies the statutory limits, and are not returnable in the event that registration is withdrawn or not granted.

(19) The registration requirements of this section which apply to investment advisers and associated persons do not apply to a commodity trading adviser who:

(a) Is registered as such with the Commodity Futures Trading Commission pursuant to the Commodity Exchange Act.

(b) Advises or exercises trading discretion, with respect to foreign currency options listed and traded exclusively on the Philadelphia Stock Exchange, on behalf of an "appropriate person" as defined by the Commodity Exchange Act.

The exemption provided in this subsection does not apply to a commodity trading adviser who engages in other activities that require registration under this chapter.

Section 9. Subsection (1) of section 517.1203, Florida Statutes, 1996 Supplement, is amended to read:

517.1203 Allocation and disbursement of assessment fees.—

(1) Notwithstanding s. 517.131(1) and until the department determines by final order that sufficient funds have been allocated to the Securities Guaranty Fund pursuant to this section to satisfy all valid claims filed in accordance with subsection (2), an additional amount equal to 25 percent of all revenues received as assessment fees pursuant to s. 517.12(10) and (11) from persons applying for or renewing registrations as associated persons shall be allocated to the Securities Guaranty Fund and disbursed as provided in this section. This assessment fee shall be part of the regular license fee and shall be transferred to or deposited into the Securities Guaranty Fund. The moneys allocated to the Securities Guaranty Fund under this section shall not be included in the calculation of the allocation of the assessment fees referred to in s. 517.131(1)(b). Moneys allocated under this section in excess of the valid claims filed pursuant to subsection (2) shall be allocated to the Anti-Fraud Trust Fund.

Section 10. Paragraph (a) of subsection (1) of section 517.131, Florida Statutes, 1996 Supplement, is amended to read:

517.131 Securities Guaranty Fund.—

(1)(a) The Treasurer shall establish a Securities Guaranty Fund. An amount not exceeding 20 percent of all revenues received as assessment fees pursuant to s. 517.12(10) and (11) for dealers and investment advisers and an amount not exceeding 10 percent of all revenues received as assessment fees pursuant to s. 517.12(10) and (11) for associated persons shall be allocated to the fund. An additional amount not exceeding 3.5 percent of all revenues received as assessment fees for associated persons pursuant to s. 517.12(10) and (11) shall be allocated to the Securities Guaranty Fund upon a determination, by final order of the department, that sufficient funds have been allocated to the fund pursuant to s. 517.1203 to satisfy all valid claims filed in accordance with s. 517.1203(2). This assessment fee shall be part of the regular license fee and shall be transferred to or deposited in the Securities Guaranty Fund.

Section 11. Except as otherwise provided herein, this act shall take effect October 1, 1997.

Became a law without the Governor's approval May 30, 1997.

Filed in Office Secretary of State May 29, 1997.