

## CHAPTER 2013-202

### Committee Substitute for House Bill No. 783

An act relating to branch offices conducting securities transactions; amending s. 517.12, F.S.; providing for a branch office notice filing with the Office of Financial Regulation in lieu of registration; creating s. 517.1202, F.S.; prohibiting a securities dealer or investment advisor from conducting business from a branch office unless a specified notice has been filed with the office; providing requirements and procedures with respect to notice filing for branch offices; authorizing the Financial Services Commission to adopt rules relating to such notice filings; providing a fee for a branch office notice filing; providing for expiration, renewal, suspension, revocation, and termination of branch office notice filings under specified circumstances; providing applicability and construction with respect to fees collected for branch office notice filings; amending ss. 517.1205, 517.121, 517.161, 517.1611, and 517.211, F.S.; conforming provisions to changes made by the act with respect to requiring branch office notice filings with the Office of Financial Regulation in lieu of registration; providing an effective date.

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

Section 1. Subsections (5), (6), (10), (11), (12), (14), and (15) of section 517.12, Florida Statutes, are amended to read:

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

(5) No dealer or investment adviser shall conduct business from a branch office within this state unless the branch office is notice-filed with the office pursuant to s. 517.1202 ~~registered with the office pursuant to the provisions of this section.~~

(6) A dealer, associated person, or investment adviser, ~~or branch office~~, in order to obtain registration, must file with the office a written application, on a form which the commission may by rule prescribe. The commission may establish, by rule, procedures for depositing fees and filing documents by electronic means provided such procedures provide the office with the information and data required by this section. Each dealer or investment adviser must also file an irrevocable written consent to service of civil process similar to that provided for in s. 517.101. The application shall contain such information as the commission or office may require concerning such matters as:

(a) The name of the applicant and the address of its principal office and each office in this state.

(b) The applicant's form and place of organization; and, if the applicant is a corporation, a copy of its articles of incorporation and amendments to the

articles of incorporation or, if a partnership, a copy of the partnership agreement.

(c) The applicant's proposed method of doing business and financial condition and history, including a certified financial statement showing all assets and all liabilities, including contingent liabilities of the applicant as of a date not more than 90 days prior to the filing of the application.

(d) The names and addresses of all associated persons of the applicant to be employed in this state and the offices to which they will be assigned.

(10) An applicant for registration shall pay an assessment fee of \$200, in the case of a dealer or investment adviser, or \$50, in the case of an associated person. An associated person may be assessed an additional fee to cover the cost for the fingerprint cards to be processed by the office. Such fee shall be determined by rule of the commission. ~~Each dealer and each investment adviser shall pay an assessment fee of \$100 for each office in this state.~~ 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.

(11) If the office finds that the applicant is of good repute and character and has complied with the provisions of this chapter and the rules made pursuant hereto, it shall register the applicant. The registration of each dealer, investment adviser, ~~branch office~~, and associated person expires on December 31 of the year the registration became effective unless the registrant has renewed his or her registration on or before that date. ~~The commission may establish by rule procedures for renewing the registration of a branch office through the Central Registration Depository.~~ Registration may be renewed by furnishing such information as the commission may require, together with payment of the fee required in subsection (10) for dealers, investment advisers, or associated persons, ~~or branch offices~~ and the payment of any amount lawfully due and owing to the office pursuant to any order of the office or pursuant to any agreement with the office. Any dealer, investment adviser, or associated person, ~~or branch office registrant~~ who has not renewed a registration by the time the current registration expires may request reinstatement of such registration by filing with the office, on or before January 31 of the year following the year of expiration, such information as may be required by the commission, together with payment of the fee required in subsection (10) for dealers, investment advisers, or associated persons, ~~or branch office~~ and a late fee equal to the amount of such fee. Any reinstatement of registration granted by the office during the month of January shall be deemed effective retroactive to January 1 of that year.

(12)(a) The office may issue a license to a dealer, investment adviser, or associated person, ~~or branch office~~ to evidence registration under this chapter. The office may require the return to the office of any license it may issue prior to issuing a new license.

(b) Every dealer, investment adviser, or federal covered adviser shall promptly file with the office, as prescribed by rules adopted by the commission, notice as to the termination of employment of any associated person registered for such dealer or investment adviser in this state and shall also furnish the reason or reasons for such termination.

(c) Each dealer or investment adviser shall designate in writing to, and register with, the office a manager for each office the dealer or investment adviser has in this state.

(14) Every dealer ~~or~~, investment adviser, ~~or branch office~~ registered or required to be registered or branch office notice-filed or required to be notice-filed with the office shall keep records of all currency transactions in excess of \$10,000 and shall file reports, as prescribed under the financial recordkeeping regulations in 31 C.F.R. part 103, with the office when transactions occur in or from this state. All reports required by this subsection to be filed with the office shall be confidential and exempt from s. 119.07(1) except that any law enforcement agency or the Department of Revenue shall have access to, and shall be authorized to inspect and copy, such reports.

(15)(a) In order to facilitate uniformity and streamline procedures for persons who are subject to registration or notification in multiple jurisdictions, the commission may adopt by rule uniform forms that have been approved by the Securities and Exchange Commission, and any subsequent amendments to such forms, if the forms are substantially consistent with the provisions of this chapter. Uniform forms that the commission may adopt to administer this section include, but are not limited to:

1. Form BR, Uniform Branch Office Registration Form, adopted October 2005.

2. Form U4, Uniform Application for Securities Industry Registration or Transfer, adopted October 2005.

3. Form U5, Uniform Termination Notice for Securities Industry Registration, adopted October 2005.

4. Form ADV, Uniform Application for Investment Adviser Registration, adopted October 2003.

5. Form ADV-W, Notice of Withdrawal from Registration as an Investment Adviser, adopted October 2003.

6. Form BD, Uniform Application for Broker-Dealer Registration, adopted July 1999.

7. Form BDW, Uniform Request for Broker-Dealer Withdrawal, adopted August 1999.

(b) In lieu of filing with the office the applications specified in subsection (6), the fees required by subsection (10), the renewals required by subsection

(11), and the termination notices required by subsection (12), the commission may by rule establish procedures for the deposit of such fees and documents with the Central Registration Depository or the Investment Adviser Registration Depository of the Financial Industry Regulatory Authority, as developed under contract with the North American Securities Administrators Association, Inc.

Section 2. Section 517.1202, Florida Statutes, is created to read:

517.1202 Notice-filing requirements for branch offices.—

(1) It is unlawful for a dealer or investment adviser to conduct business from a branch office in this state unless the dealer or investment adviser has made a branch office notice-filing with the office. A notice-filing under this section shall consist of a form that the commission may prescribe by rule. The commission may establish, by rule, procedures for the deposit of fees and filing of documents by electronic means if the procedures provide the office with the information and data required by this section.

(2) A notice filing shall be effective upon receipt by the office of the form and filing fee. Each dealer and each investment adviser shall pay a filing fee of \$100 for each branch office in this state.

(3) A notice filing shall expire on December 31 of the year in which the filing became effective unless the dealer or investment adviser has renewed the filing on or before that date. A dealer or investment adviser may renew a branch office notice filing by furnishing to the office such information as the commission or office may require, together with a renewal fee of \$100 and the payment of any amount due and owing the office pursuant to any agreement with the office. Any dealer or investment adviser who has not renewed a branch office notice filing by the time a current notice filing expires may request reinstatement of such notice filing by filing with the office, on or before January 31 of the year following the year the notice filing expires, such information as the commission or office may require, together with the filing fee of \$100 and a late fee equal to \$100. Any reinstatement of a branch office notice filing granted by the office during the month of January shall be deemed effective retroactive to January 1 of that year.

(4) A branch office notice filing under this section shall be summarily suspended by the office if the notice filer fails to provide to the office, within 30 days after a written request by the office, all of the information required by this section and the rules adopted under this section. The summary suspension shall be in effect for the branch office until such time as the notice filer submits the requested information to the office, pays a fine as prescribed by s. 517.221(3), and a final order is entered. At such time, the suspension shall be lifted. For purposes of s. 120.60(6), failure to provide all information required by this section and the underlying rules constitutes immediate and serious danger to the public health, safety, and welfare. If the notice filer fails to provide all of the requested information within a period of 90 days, the notice filing shall be revoked by the office.

(5) Notification under this section may be revoked by the office if the notice filer makes payment to the office for a branch office notice filing with a check or electronic transmission of funds that is dishonored by the notice filer’s financial institution.

(6) The commission may require, by rule, a dealer or investment adviser who has made a branch office notice filing pursuant to this section to file amendments with the office.

(7) A branch office notice filing may be terminated by filing notice of such termination with the office. Unless another date is specified by the dealer or investment adviser, such notice shall be effective upon its receipt by the office.

(8) All fees collected under this section 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 a branch office notice filing is withdrawn.

Section 3. Section 517.1205, Florida Statutes, is amended to read:

517.1205 Registration of associated persons specific as to securities dealer, investment adviser, or federal covered adviser identified at time of registration approval.—Inasmuch as this chapter is intended to protect investors in securities offerings and other investment transactions regulated by that chapter, its provisions are to be construed to require full and fair disclosure of all, but only, those matters material to the investor’s evaluation of the offering or other transaction. It should, furthermore, be construed to impose the standards provided by law on all those seeking to participate in the state’s securities industry through registration as a securities dealer, investment adviser, or associated person. To this end, it is declared to be 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. Notwithstanding any interpretation of law to the contrary, the historical practice of the Department of Banking and Finance, reflected in its rules, that requires a new application for registration from a previously registered associated person when that person seeks to be associated with a new securities dealer or investment adviser is hereby ratified and approved as consistent with legislative intent. It is, finally, declared to be the intent of the Legislature that while approval of an application for registration of a securities dealer, investment adviser, or associated person,~~or branch office~~ requires a finding of the applicant’s good repute and character, such finding is precluded by a determination that the applicant may be denied registration on grounds provided by law.

Section 4. Subsections (2) and (3) of section 517.121, Florida Statutes, are amended to read:

517.121 Books and records requirements; examinations.—

(2) The office shall, at intermittent periods, examine the affairs and books and records of each registered dealer, investment adviser, ~~branch office, or~~ associated person, or branch office notice-filed with the office, or require such records and reports to be submitted to it as required by rule of the commission, to determine compliance with this act.

(3) Registration under s. 517.12 or notification under s. 517.1202 may be summarily suspended by the office pursuant to s. 120.60(6) if the registrant or notice-filed branch office fails to promptly provide to the office, after a written request, any of the records required by this section and the rules adopted under this section. The suspension may be rescinded if the registrant or notice-filed branch office submits the requested records to the office. For purposes of s. 120.60(6), failure to provide substantially all of such records constitutes immediate and serious danger to the public health, safety, and welfare.

Section 5. Paragraphs (j) and (n) of subsection (1) of section 517.161, Florida Statutes, are amended to read:

517.161 Revocation, denial, or suspension of registration of dealer, investment adviser, or associated person, ~~or branch office.~~—

(1) Registration under s. 517.12 may be denied or any registration granted may be revoked, restricted, or suspended by the office if the office determines that such applicant or registrant; any member, principal, or director of the applicant or registrant or any person having a similar status or performing similar functions; or any person directly or indirectly controlling the applicant or registrant:

(j) Has been convicted of, or has entered a plea of guilty or nolo contendere to, regardless of whether adjudication was withheld, a crime against the laws of this state or any other state or of the United States or of any other country or government which relates to registration as a dealer, investment adviser, issuer of securities, or associated person, ~~or branch office~~; which relates to the application for such registration; or which involves moral turpitude or fraudulent or dishonest dealing;

(n) Made payment to the office for a registration ~~or notice filing~~ with a check or electronic transmission of funds that is dishonored by the applicant's or, registrant's, ~~or notice filer's~~ financial institution.

Section 6. Paragraph (b) of subsection (2) of section 517.1611, Florida Statutes, is amended to read:

517.1611 Guidelines.—

(2) The commission shall adopt by rule disqualifying periods pursuant to which an applicant will be disqualified from eligibility for registration based upon criminal convictions, pleas of nolo contendere, or pleas of guilt, regardless of whether adjudication was withheld, by the applicant; any partner, member, officer, or director of the applicant or any person having a

similar status or performing similar functions; or any person directly or indirectly controlling the applicant.

(b) The disqualifying periods shall be related to crimes involving registration as a dealer, investment adviser, issuer of securities, or associated person, ~~or branch office~~ or the application for such registration or involving moral turpitude or fraudulent or dishonest dealing.

Section 7. Subsection (1) of section 517.211, Florida Statutes, is amended to read:

517.211 Remedies available in cases of unlawful sale.—

(1) Every sale made in violation of either s. 517.07 or s. 517.12(1), (4), (5), (9), (11), (13), (16), or (18) may be rescinded at the election of the purchaser, except a sale made in violation of the provisions of s. ~~517.1202(3)~~ 517.12(11) relating to a renewal of a branch office notification ~~registration~~ shall not be subject to this section, and a sale made in violation of the provisions of s. 517.12(13) relating to filing a change of address amendment shall not be subject to this section. Each person making the sale and every director, officer, partner, or agent of or for the seller, if the director, officer, partner, or agent has personally participated or aided in making the sale, is jointly and severally liable to the purchaser in an action for rescission, if the purchaser still owns the security, or for damages, if the purchaser has sold the security. No purchaser otherwise entitled will have the benefit of this subsection who has refused or failed, within 30 days of receipt, to accept an offer made in writing by the seller, if the purchaser has not sold the security, to take back the security in question and to refund the full amount paid by the purchaser or, if the purchaser has sold the security, to pay the purchaser an amount equal to the difference between the amount paid for the security and the amount received by the purchaser on the sale of the security, together, in either case, with interest on the full amount paid for the security by the purchaser at the legal rate, pursuant to s. 55.03, for the period from the date of payment by the purchaser to the date of repayment, less the amount of any income received by the purchaser on the security.

Section 8. This act shall take effect October 1, 2013.

Approved by the Governor June 14, 2013.

Filed in Office Secretary of State June 14, 2013.