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By Senator Bronson

18-251B-97

1 A bill to be entitled

2 An act relating to securities transactions;
3 amending s. 517.021, F.S.; providing a
4 definition; amending s. 517.051, F.S.; deleting
5 an exemption from securities registration
6 requirements for investment companies; amending
7 s. 517.07, F.S.; prohibiting the sale of
8 certain securities; requiring the Department of
9 Banking and Finance to issue a permit upon
10 granting a registration; amending s. 517.081,
11 F.S.; providing additional authority to the
12 Department of Banking and Finance relating to
13 registration requirements; providing for filing
14 certain alternative information; providing
15 requirements; amending ss. 517.082, 517.101,
16 F.S.; deleting obsolete cross-references;
17 amending s. 517.12, F.S.; exempting commodity
18 trading advisers from certain registration
19 requirements under certain circumstances;
20 providing for a reduced assessment fee under
21 certain circumstances; amending s. 517.1203,
22 F.S.; providing for termination of allocation
23 of certain assessment fee revenues to the
24 Securities Guaranty Fund under certain
25 circumstances; amending s. 517.131, F.S.;
26 specifying an allocation of certain assessment
27 fee revenues to the Securities Guaranty Fund
28 under certain circumstances; providing
29 effective dates.

30
31 Be It Enacted by the Legislature of the State of Florida:

1 Section 1. Effective upon this act becoming a law,
2 subsections (8)-(18) of section 517.021, Florida Statutes, are
3 redesignated as subsections (9)-(19), respectively, and a new
4 subsection (8) is added to that section to read:

5 517.021 Definitions.--When used in this chapter,
6 unless the context otherwise indicates, the following terms
7 have the following respective meanings:

8 (8) "Federal covered security" means any security that
9 is a covered security under s. 18(b) of the Securities Act of
10 1933 or rules and regulations adopted thereunder.

11 Section 2. Effective upon this act becoming a law,
12 section 517.051, Florida Statutes, 1996 Supplement, is amended
13 to read:

14 517.051 Exempt securities.--~~Except as provided in~~
15 ~~subsection-((+))~~, The exemptions provided herein from the
16 registration requirements of s. 517.07 are self-executing and
17 do not require any filing with the department prior to
18 claiming such exemption. Any person who claims entitlement to
19 any of these exemptions bears the burden of proving such
20 entitlement in any proceeding brought under this chapter. The
21 registration provisions of s. 517.07 do not apply to any of
22 the following securities:

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

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

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

5
6 except by an offering circular containing a full and fair
7 disclosure as prescribed by rule of the department.

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

17 (3) A security issued or guaranteed by:

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

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

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

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

30 (4) A security issued or guaranteed, as to principal,
31 interest, or dividend, by a corporation owning or operating a

1 railroad or any other public service utility; provided that
2 such corporation is subject to regulation or supervision
3 whether as to its rates and charges or as to the issue of its
4 own securities by a public commission, board, or officer of
5 the government of the United States, of any state, territory,
6 or insular possession of the United States, of any
7 municipality located therein, of the District of Columbia, or
8 of the Dominion of Canada or of any province thereof; also
9 equipment securities based on chattel mortgages, leases, or
10 agreements for conditional sale of cars, motive power, or
11 other rolling stock mortgaged, leased, or sold to or furnished
12 for the use of or upon such railroad or other public service
13 utility corporation or where the ownership or title of such
14 equipment is pledged or retained in accordance with the
15 provisions of the laws of the United States or of any state or
16 of the Dominion of Canada to secure the payment of such
17 equipment securities; and also bonds, notes, or other
18 evidences of indebtedness issued by a holding corporation and
19 secured by collateral consisting of any securities hereinabove
20 described; provided, further, that the collateral securities
21 equal in fair value at least 125 percent of the par value of
22 the bonds, notes, or other evidences of indebtedness so
23 secured.

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

- 28 (a) A bank,
29 (b) A trust company,
30 (c) A savings institution,
31 (d) A building or savings and loan association,

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1 (e) An international development bank, or

2 (f) A credit union;

3
4 or the initial subscription for equity securities of any
5 institution listed in paragraphs (a)-(f), provided such
6 institution is subject to the examination, supervision, or
7 control of this state.

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

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

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

30 (9) A security issued by a corporation organized and
31 operated exclusively for religious, educational, benevolent,

1 fraternal, charitable, or reformatory purposes and not for
2 pecuniary profit, no part of the net earnings of which
3 corporation inures to the benefit of any private stockholder
4 or individual; provided that no person shall directly or
5 indirectly offer or sell securities under this subsection
6 except by an offering circular containing full and fair
7 disclosure, as prescribed by the rules of the department, of
8 all material information, including, but not limited to, a
9 description of the securities offered and terms of the
10 offering, a description of the nature of the issuer's
11 business, a statement of the purpose of the offering and the
12 intended application by the issuer of the proceeds thereof,
13 and financial statements of the issuer prepared in conformance
14 with generally accepted accounting principles.

15 (10) Any insurance or endowment policy or annuity
16 contract or optional annuity contract or self-insurance
17 agreement issued by a corporation, insurance company,
18 reciprocal insurer, or risk retention group subject to the
19 supervision of the insurance commissioner or bank
20 commissioner, or any agency or officer performing like
21 functions, of any state or territory of the United States or
22 the District of Columbia.

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

29 ~~(a)--An application for exemption shall be filed with~~
30 ~~the department and shall be accompanied by;~~

31

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

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

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

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

15 ~~5. An irrevocable written consent to service and~~
 16 ~~resolution as described in s. 547.101, for any initial~~
 17 ~~registration or upon request by the department.~~

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

20 ~~(b) An exemption under this section is effective when~~
 21 ~~the federal registration statement becomes effective or as of~~
 22 ~~the date the application for exemption is filed with the~~
 23 ~~department, whichever is later, provided, in addition to the~~
 24 ~~items listed in paragraph (a), the department has received~~
 25 ~~written notification of effective registration under the~~
 26 ~~Investment Company Act of 1940 within 40 business days after~~
 27 ~~the date federal registration is granted. Failure to provide~~
 28 ~~to the department the information required by this subsection~~
 29 ~~within 60 days after the date the registration statement~~
 30 ~~becomes effective with the Securities and Exchange Commission~~
 31 ~~is a violation of this chapter.~~

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

4 ~~(d) In lieu of filing with the department the~~
5 ~~application, fees, and documents required for exemption, the~~
6 ~~department may establish procedures for the deposit of fees~~
7 ~~and filing of documents to be made through the Securities~~
8 ~~Registration Depository as developed under contract with the~~
9 ~~North American Securities Administrators Association, Inc.,~~
10 ~~provided such procedures shall provide the department with the~~
11 ~~information and data required by this subsection. If a filer~~
12 ~~chooses not to use the Securities Registration Depository,~~
13 ~~such filings, including the statutory fee, may be made~~
14 ~~directly with the department.~~

15 Section 3. Effective upon this act becoming a law,
16 section 517.07, Florida Statutes, is amended to read:

17 517.07 Registration of securities.--

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

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

~~1 permit when such registration has been granted by the~~
2 ~~department.~~

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

11 ~~(4)(2)~~ A record of the registration of securities
12 shall be kept in the office of the department, in which
13 register of securities shall also be recorded any orders
14 entered by the department with respect to such securities.
15 Such register, and all information with respect to the
16 securities registered therein, shall be open to public
17 inspection.

18 ~~(5)(3)~~ Notwithstanding any other provision of this
19 section, offers of securities required to be registered by
20 this section may be made in this state before the registration
21 of such securities if the offers are made in conformity with
22 rules adopted by the department.

23 Section 4. Paragraph (g) of subsection (3) of section
24 517.081, Florida Statutes, is amended to read:

25 517.081 Registration procedure.--

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

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

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

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

14 b. An issuer who is subject to any of the
15 disqualifications described in 17 C.F.R. s. 230.262, adopted
16 under the Securities Act of 1933, or who has been or is
17 engaged in or is about to engage in an activity that would be
18 grounds for denial, revocation, or suspension under s.
19 517.111. For purposes of this subparagraph, an issuer includes
20 an issuer's director, officer, shareholder who owns at least
21 10 percent of the shares of the issuer, promoter, or selling
22 agent of the securities to be offered, or any officer,
23 director, or partner of such selling agent.

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

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

30 e. Any issuer the department determines to be
31 ineligible if the form would not provide full and fair

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1 disclosure of material information for the type of offering to
2 be registered by the issuer.

3 f. Any corporation that has failed to provide the
4 department with the reports required for a previous offering
5 registered under this subparagraph.

6
7 As a condition precedent to qualifying for use of the
8 simplified offering circular, the corporation must agree to
9 provide the department with annual financial reports
10 containing a balance sheet as of the end of the issuer's
11 fiscal year and a statement of income for that fiscal year,
12 all prepared in accordance with generally accepted accounting
13 principles and accompanied by an independent accountant's
14 report. If the issuer has more than 100 security holders at
15 the end of the fiscal year, the financial statements must be
16 audited. Annual financial reports must be filed with the
17 department within 90 days after the close of the issuer's
18 fiscal year for each of the first 5 years following the
19 effective date of the registration.

20 Section 5. Effective upon this act becoming a law,
21 subsection (1) of section 517.082, Florida Statutes, 1996
22 Supplement, is amended to read:

23 517.082 Notification registration.--

24 (1) Except as provided in subsection (3) ~~or-exempt~~
25 ~~pursuant to s. 517.05(44)~~, securities offered or sold
26 pursuant to a registration statement filed under the
27 Securities Act of 1933 or the Investment Company Act of 1940
28 shall be entitled to registration by notification in the
29 manner provided in subsection (2), provided that prior to the
30 offer or sale the registration statement has become effective.

31

1 Section 6. Effective upon this act becoming a law,
2 subsection (1) of section 517.101, Florida Statutes, 1996
3 Supplement, is amended to read:

4 517.101 Consent to service.--

5 (1) Upon any initial application for registration
6 under s. 517.081 or s. 517.082, ~~upon any application for~~
7 ~~exemption pursuant to s. 517.054(11),~~ or upon request of the
8 department, the issuer shall file with such application the
9 irrevocable written consent of the issuer that in suits,
10 proceedings, and actions growing out of the violation of any
11 provision of this chapter, the service on the department of a
12 notice, process, or pleading therein, authorized by the laws
13 of this state, shall be as valid and binding as if due service
14 had been made on the issuer.

15 Section 7. Subsection (10) of section 517.12, Florida
16 Statutes, 1996 Supplement, is amended and subsection (19) is
17 added to that section to read:

18 517.12 Registration of dealers, associated persons,
19 investment advisers, and branch offices.--

20 (10) An applicant for registration shall pay an
21 assessment fee of \$200, in the case of a dealer or investment
22 adviser, or \$40, in the case of an associated person. The
23 assessment fee of an associated person shall be reduced to \$30
24 upon a determination by final order of the department that
25 sufficient funds have been allocated to the Securities
26 Guaranty Fund under s. 517.1203 to satisfy all valid claims
27 filed under s. 517.1203(2). An associated person not having
28 current fingerprint cards filed with the National Association
29 of Securities Dealers or a national securities exchange
30 registered with the Securities and Exchange Commission shall
31 be assessed an additional fee to cover the cost for said

1 fingerprint cards to be processed by the department. Such fee
2 shall be determined by rule of the department. Each dealer
3 and each investment adviser shall pay an assessment fee of
4 \$100 for each office in this state, except its designated
5 principal office. Such fees become the revenue of the state,
6 except for those assessments provided for under s. 517.131(1)
7 until such time as the Securities Guaranty Fund satisfies the
8 statutory limits, and are not returnable in the event that
9 registration is withdrawn or not granted.

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

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

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

20
21 The exemption provided in this subsection does not apply to a
22 commodity trading adviser who engages in other activities that
23 require registration under this chapter.

24 Section 8. Subsection (1) of section 517.1203, Florida
25 Statutes, 1996 Supplement, is amended to read:

26 517.1203 Allocation and disbursement of assessment
27 fees.--

28 (1) Notwithstanding s. 517.131(1), and until the
29 department determines by final order that sufficient funds
30 have been allocated to the Securities Guaranty Fund under this
31 section to satisfy all valid claims filed in accordance with

1 subsection (2), an additional amount equal to 25 percent of
2 all revenues received as assessment fees pursuant to s.
3 517.12(10) and (11) from persons applying for or renewing
4 registrations as associated persons shall be allocated to the
5 Securities Guaranty Fund and disbursed as provided in this
6 section. This assessment fee shall be part of the regular
7 license fee and shall be transferred to or deposited into the
8 Securities Guaranty Fund. The moneys allocated to the
9 Securities Guaranty Fund under this section shall not be
10 included in the calculation of the allocation of the
11 assessment fees referred to in s. 517.131(1)(b). Moneys
12 allocated under this section in excess of the valid claims
13 filed pursuant to subsection (2) shall be allocated to the
14 Anti-Fraud Trust Fund.

15 Section 9. Paragraph (a) of subsection (1) of section
16 517.131, Florida Statutes, 1996 Supplement, is amended to
17 read:

18 517.131 Securities Guaranty Fund.--

19 (1)(a) The Treasurer shall establish a Securities
20 Guaranty Fund. An amount not exceeding 20 percent of all
21 revenues received as assessment fees pursuant to s. 517.12(10)
22 and (11) for dealers and investment advisers and an amount not
23 exceeding 10 percent of all revenues received as assessment
24 fees pursuant to s. 517.12(10) and (11) for associated persons
25 shall be allocated to the fund. An additional amount not
26 exceeding 3.5 percent of all revenues received as assessment
27 fees for associated persons under s. 517.10(10) and (11) must
28 be allocated to the Securities Guaranty Fund upon a
29 determination by final order of the department that sufficient
30 funds have been allocated to the fund under s. 517.1203 to
31 satisfy all valid claims filed under s. 517.1203(2). This

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1 assessment fee shall be part of the regular license fee and
2 shall be transferred to or deposited in the Securities
3 Guaranty Fund.

4 Section 10. Except as otherwise provided in this act,
5 this act shall take effect October 1, 1997.

6 *****

7
8 SENATE SUMMARY

9 Authorizes the Department of Banking and Finance to adopt
10 simplified offering circular forms for use by certain
11 corporations to register securities of the corporation.
12 Deletes an exemption from securities registration
13 requirements for certain investment companies. Prohibits
14 the sale of certain securities. Requires the department
15 to issue a permit upon granting a registration. Exempts
16 certain commodity trading advisers from registration
17 requirements. Reduces the assessment fees of associated
18 persons. Provides for the discontinuance of additional
19 allocation of funds to the Securities Guaranty Fund upon
20 a determination of the department that funds are
21 sufficient to pay claims. Conforms the percentage that
22 is used to allocate fees to the Securities Guaranty Fund
23 to comply with provisions that reduce the assessment fee
24 of associated persons.
25
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311-1802-97

A bill to be entitled

An act relating to securities transactions;
amending s. 517.021, F.S.; providing
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, 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:

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

6 517.021 Definitions.--When used in this chapter,
7 unless the context otherwise indicates, the following terms
8 have the following respective meanings:

9 (2) "Associated person" means any of the following:

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

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

17 (c) Any natural person, other than a dealer, employed,
18 appointed, or authorized by a dealer, investment adviser, or
19 issuer to sell securities in any manner or act as an
20 investment adviser as defined in this section.

21
22 The partners of a partnership and the executive officers of a
23 corporation or other association registered as a dealer, and
24 any person whose transactions in this state are limited to
25 those transactions described in s. 15(h)(2) of the Securities
26 Exchange Act of 1934, are not "associated persons" within the
27 meaning of this definition.

28 (8) "Federal covered security" means any security that
29 is a covered security under s. 18(b) of the Securities Act of
30 1933 or rules and regulations adopted thereunder.

1 (10)(a) "Investment adviser" includes any person who
2 for compensation engages for all or part of his time, directly
3 or indirectly, or through publications or writings, in the
4 business of advising others as to the value of securities or
5 as to the advisability of investments in, purchasing of, or
6 selling of securities, except a dealer whose performance of
7 these services is solely incidental to the conduct of his
8 business as a dealer and who receives no special compensation
9 for such services.

10 (b) The term "investment adviser" does not include the
11 following:

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

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

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

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

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

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

30 7. Any person whose transactions in this state are
31 limited to those transactions described in s. 222(d) of the

1 Investment Advisers Act of 1940. Those clients listed in
2 subparagraph (5) may not be included when determining the
3 number of clients of an investment adviser for purposes of s.
4 222(d) of the Investment Advisers Act of 1940.

5 Section 2. Effective upon this act becoming a law,
6 section 517.051, Florida Statutes, 1996 Supplement, is amended
7 to read:

8 517.051 Exempt securities.--~~Except as provided in~~
9 ~~subsection-({++)~~, The exemptions provided herein from the
10 registration requirements of s. 517.07 are self-executing and
11 do not require any filing with the department prior to
12 claiming such exemption. Any person who claims entitlement to
13 any of these exemptions bears the burden of proving such
14 entitlement in any proceeding brought under this chapter. The
15 registration provisions of s. 517.07 do not apply to any of
16 the following securities:

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

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

28 (b) With respect to an obligation guaranteed by the
29 guarantor or successor of the guarantor,
30
31

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

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

12 (3) A security issued or guaranteed by:

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

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

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

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

25 (4) A security issued or guaranteed, as to principal,
26 interest, or dividend, by a corporation owning or operating a
27 railroad or any other public service utility; provided that
28 such corporation is subject to regulation or supervision
29 whether as to its rates and charges or as to the issue of its
30 own securities by a public commission, board, or officer of
31 the government of the United States, of any state, territory,

1 or insular possession of the United States, of any
2 municipality located therein, of the District of Columbia, or
3 of the Dominion of Canada or of any province thereof; also
4 equipment securities based on chattel mortgages, leases, or
5 agreements for conditional sale of cars, motive power, or
6 other rolling stock mortgaged, leased, or sold to or furnished
7 for the use of or upon such railroad or other public service
8 utility corporation or where the ownership or title of such
9 equipment is pledged or retained in accordance with the
10 provisions of the laws of the United States or of any state or
11 of the Dominion of Canada to secure the payment of such
12 equipment securities; and also bonds, notes, or other
13 evidences of indebtedness issued by a holding corporation and
14 secured by collateral consisting of any securities hereinabove
15 described; provided, further, that the collateral securities
16 equal in fair value at least 125 percent of the par value of
17 the bonds, notes, or other evidences of indebtedness so
18 secured.

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

- 23 (a) A bank,
24 (b) A trust company,
25 (c) A savings institution,
26 (d) A building or savings and loan association,
27 (e) An international development bank, or
28 (f) A credit union;

29
30 or the initial subscription for equity securities of any
31 institution listed in paragraphs (a)-(f), provided such

1 institution is subject to the examination, supervision, or
2 control of this state.

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

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

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

25 (9) A security issued by a corporation organized and
26 operated exclusively for religious, educational, benevolent,
27 fraternal, charitable, or reformatory purposes and not for
28 pecuniary profit, no part of the net earnings of which
29 corporation inures to the benefit of any private stockholder
30 or individual; provided that no person shall directly or
31 indirectly offer or sell securities under this subsection

1 except by an offering circular containing full and fair
2 disclosure, as prescribed by the rules of the department, of
3 all material information, including, but not limited to, a
4 description of the securities offered and terms of the
5 offering, a description of the nature of the issuer's
6 business, a statement of the purpose of the offering and the
7 intended application by the issuer of the proceeds thereof,
8 and financial statements of the issuer prepared in conformance
9 with generally accepted accounting principles.

10 (10) Any insurance or endowment policy or annuity
11 contract or optional annuity contract or self-insurance
12 agreement issued by a corporation, insurance company,
13 reciprocal insurer, or risk retention group subject to the
14 supervision of the insurance commissioner or bank
15 commissioner, or any agency or officer performing like
16 functions, of any state or territory of the United States or
17 the District of Columbia.

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

24 ~~(12)--An application for exemption shall be filed with~~
25 ~~the department and shall be accompanied by:~~

26 ~~1.--An application for exemption to sell which shall be~~
27 ~~executed by the issuer, any person on whose behalf the~~
28 ~~offering is made, a dealer registered under this chapter, or~~
29 ~~any duly authorized agent of any such person, setting forth~~
30 ~~the name and address of the applicant, the name and address of~~
31

1 ~~the issuer, and the title of the securities to be offered and~~
2 ~~sold.~~

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

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

9 ~~4. A \$17,000 fee.~~

10 ~~5. An irrevocable written consent to service and~~
11 ~~resolution as described in s. 5+7.10+, for any initial~~
12 ~~registration or upon request by the department.~~

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

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

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

30 ~~(d) In lieu of filing with the department the~~
31 ~~application, fees, and documents required for exemption, the~~

1 ~~department may establish procedures for the deposit of fees~~
2 ~~and filing of documents to be made through the Securities~~
3 ~~Registration Depository as developed under contract with the~~
4 ~~North American Securities Administrators Association, Inc.,~~
5 ~~provided such procedures shall provide the department with the~~
6 ~~information and data required by this subsection. If a filer~~
7 ~~chooses not to use the Securities Registration Depository,~~
8 ~~such filings, including the statutory fee, may be made~~
9 ~~directly with the department.~~

10 Section 3. Effective upon this act becoming a law,
11 section 517.07, Florida Statutes, is amended to read:

12 517.07 Registration of securities.--

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

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

29 (3)† The department shall issue a permit when
30 registration has been granted by the department. A permit to
31 sell securities is effective for 1 year from the date it was

1 granted. Registration of securities shall be deemed to
2 include the registration of rights to subscribe to such
3 securities if the application under s. 517.081 or s. 517.082
4 for registration of such securities includes a statement that
5 such rights are to be issued.

6 ~~(4)(2)~~ A record of the registration of securities
7 shall be kept in the office of the department, in which
8 register of securities shall also be recorded any orders
9 entered by the department with respect to such securities.
10 Such register, and all information with respect to the
11 securities registered therein, shall be open to public
12 inspection.

13 ~~(5)(3)~~ Notwithstanding any other provision of this
14 section, offers of securities required to be registered by
15 this section may be made in this state before the registration
16 of such securities if the offers are made in conformity with
17 rules adopted by the department.

18 Section 4. Paragraph (g) of subsection (3) of section
19 517.081, Florida Statutes, is amended to read:

20 517.081 Registration procedure.--

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

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

30 2. The department shall adopt a form for a simplified
31 offering circular to be used solely by corporations to

1 register, under this section, securities of the corporation
2 that are sold in offerings in which the aggregate offering
3 price in any consecutive 12-month period does not exceed the
4 lesser of the aggregate offering price in 17 C.F.R. s. 230.251
5 or \$5 million. The following issuers are ineligible to submit
6 a simplified offering circular adopted under this
7 subparagraph:

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

10 b. An issuer who is subject to any of the
11 disqualifications described in 17 C.F.R. s. 230.262, adopted
12 under the Securities Act of 1933, or who has been or is
13 engaged in or is about to engage in an activity that would be
14 grounds for denial, revocation, or suspension under s.
15 517.111. For purposes of this subparagraph, an issuer includes
16 an issuer's director, officer, shareholder who owns at least
17 10 percent of the shares of the issuer, promoter, or selling
18 agent of the securities to be offered, or any officer,
19 director, or partner of such selling agent.

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

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

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

30
31

1 f. Any corporation that has failed to provide the
2 department with the reports required for a previous offering
3 registered under this subparagraph.

4
5 As a condition precedent to qualifying for use of the
6 simplified offering circular, the corporation must agree to
7 provide the department with annual financial reports
8 containing a balance sheet as of the end of the issuer's
9 fiscal year and a statement of income for that fiscal year,
10 all prepared in accordance with generally accepted accounting
11 principles and accompanied by an independent accountant's
12 report. If the issuer has more than 100 security holders at
13 the end of the fiscal year, the financial statements must be
14 audited. Annual financial reports must be filed with the
15 department within 90 days after the close of the issuer's
16 fiscal year for each of the first 5 years following the
17 effective date of the registration.

18 Section 5. Effective upon this act becoming a law,
19 subsection (1) of section 517.082, Florida Statutes, 1996
20 Supplement, is amended to read:

21 517.082 Notification registration.--

22 (1) Except as provided in subsection (3) or-exempt
23 ~~pursuant to s. 517.05(1)~~, securities offered or sold
24 pursuant to a registration statement filed under the
25 Securities Act of 1933 or the Investment Company Act of 1940
26 shall be entitled to registration by notification in the
27 manner provided in subsection (2), provided that prior to the
28 offer or sale the registration statement has become effective.

29 Section 6. Effective upon this act becoming a law,
30 subsection (1) of section 517.101, Florida Statutes, 1996
31 Supplement, is amended to read:

1 517.101 Consent to service.--

2 (1) Upon any initial application for registration
3 under s. 517.081 or s. 517.082, ~~upon any application for~~
4 ~~exemption pursuant to s. 517.054(4)~~, or upon request of the
5 department, the issuer shall file with such application the
6 irrevocable written consent of the issuer that in suits,
7 proceedings, and actions growing out of the violation of any
8 provision of this chapter, the service on the department of a
9 notice, process, or pleading therein, authorized by the laws
10 of this state, shall be as valid and binding as if due service
11 had been made on the issuer.

12 Section 7. Subsection (10) of section 517.12, Florida
13 Statutes, 1996 Supplement, is amended and subsection (19) is
14 added to that section to read:

15 517.12 Registration of dealers, associated persons,
16 investment advisers, and branch offices.--

17 (10) An applicant for registration shall pay an
18 assessment fee of \$200, in the case of a dealer or investment
19 adviser, or \$40, in the case of an associated person. The
20 assessment fee of an associated person shall be reduced to \$30
21 upon a determination by final order of the department that
22 sufficient funds have been allocated to the Securities
23 Guaranty Fund under s. 517.1203 to satisfy all valid claims
24 filed under s. 517.1203(2). An associated person not having
25 current fingerprint cards filed with the National Association
26 of Securities Dealers or a national securities exchange
27 registered with the Securities and Exchange Commission shall
28 be assessed an additional fee to cover the cost for said
29 fingerprint cards to be processed by the department. Such fee
30 shall be determined by rule of the department. Each dealer
31 and each investment adviser shall pay an assessment fee of

1 \$100 for each office in this state, except its designated
2 principal office. Such fees become the revenue of the state,
3 except for those assessments provided for under s. 517.131(1)
4 until such time as the Securities Guaranty Fund satisfies the
5 statutory limits, and are not returnable in the event that
6 registration is withdrawn or not granted.

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

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

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

17
18 The exemption provided in this subsection does not apply to a
19 commodity trading adviser who engages in other activities that
20 require registration under this chapter.

21 Section 8. Subsection (1) of section 517.1203, Florida
22 Statutes, 1996 Supplement, is amended to read:

23 517.1203 Allocation and disbursement of assessment
24 fees.--

25 (1) Notwithstanding s. 517.131(1), and until the
26 department determines by final order that sufficient funds
27 have been allocated to the Securities Guaranty Fund under this
28 section to satisfy all valid claims filed in accordance with
29 subsection (2), an additional amount equal to 25 percent of
30 all revenues received as assessment fees pursuant to s.
31 517.12(10) and (11) from persons applying for or renewing

Florida House of Representatives - 1997

By the Committee on Financial Services and Representatives
 Safley, Lippman, Sanderson, Bainter, Ball, Edwards, Rayson,
 Effman, Flanagan, Lawson, Dennis and Maygarden

A bill to be entitled

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:

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1 Section 1 Effective upon this act becoming a law,
2 subsection (2) of section 517.021, Florida Statutes, is
3 amended, subsections (8)-(18) of said section are redesignated
4 as subsections (9)-(19), respectively, a new subsection (8) is
5 added to said section, and paragraph (b) of redesignated
6 subsection (11) is amended, to read:

7 517 021 Definitions --When used in this chapter,
8 unless the context otherwise indicates, the following terms
9 have the following respective meanings:

10 (2) "Associated person" means any of the following:

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

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

18 (c) Any natural person, other than a dealer, employed,
19 appointed, or authorized by a dealer, investment adviser, or
20 issuer to sell securities in any manner or act as an
21 investment adviser as defined in this section.

22
23 The partners of a partnership and the executive officers of a
24 corporation or other association registered as a dealer, and
25 any person whose transactions in this state are limited to
26 those transactions described in s. 15(h)(2) of the Securities
27 Exchange Act of 1934, are not "associated persons" within the
28 meaning of this definition.

29 (8) "Federal covered security" means any security that
30 is a covered security under s. 18(b) of the Securities Act of
31 1933 or rules and regulations adopted thereunder.

1 (11)(10)

2 (b) The term "investment adviser" does not include the
3 following:

4 1. Any licensed practicing attorney or certified
5 public accountant who renders or performs any of such services
6 in connection with the regular practice of his profession;

7 2 Any bank authorized to do business in this state;

8 3 Any bank holding company as defined in the Bank
9 Holding Company Act of 1956, as amended, authorized to do
10 business in this state;

11 4 Any trust company having trust powers which it is
12 authorized to exercise in the state, which trust company
13 renders or performs services in a fiduciary capacity
14 incidental to the exercise of its trust powers,

15 5. Any person who renders investment advice
16 exclusively to insurance or investment companies, or

17 6 Any person who does not hold himself out to the
18 general public as an investment adviser and has at least 6 but
19 no more than 15 clients within 12 consecutive months in this
20 state, or:

21 7. Any person whose transactions in this state are
22 limited to those transactions described in s. 222(d) of the
23 Investment Advisers Act of 1940. Those clients listed in
24 subparagraph 5. shall not be included when determining the
25 number of clients of an investment adviser for purposes of s.
26 222(d) of the Investment Advisers Act of 1940.

27 Section 2. Effective upon this act becoming a law,
28 section 517.051, Florida Statutes, 1996 Supplement, is amended
29 to read.

30 517 051 Exempt securities.--Except-as-provided-in
31 subsection-(11); The exemptions provided herein from the

1 registration requirements of s. 517.07 are self-executing and
2 do not require any filing with the department prior to
3 claiming such exemption. Any person who claims entitlement to
4 any of these exemptions bears the burden of proving such
5 entitlement in any proceeding brought under this chapter. The
6 registration provisions of s. 517.07 do not apply to any of
7 the following securities:

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

17 (a) With respect to an obligation issued by the issuer
18 or successor of the issuer, or

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

21
22 except by an offering circular containing a full and fair
23 disclosure as prescribed by rule of the department.

24 (2) A security issued or guaranteed by any foreign
25 government with which the United States is maintaining
26 diplomatic relations at the time of the sale or offer of sale
27 of the security, or by any state, province, or political
28 subdivision thereof having the power of taxation or
29 assessment, which security is recognized at the time it is
30 offered for sale in this state as a valid obligation by such
31

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1 foreign government or by such state, province, or political
2 subdivision thereof issuing the security.

3 (3) A security issued or guaranteed by:

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

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

12 (c) An international bank of which the United States
13 is a member, or

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

16 (4) A security issued or guaranteed, as to principal,
17 interest, or dividend, by a corporation owning or operating a
18 railroad or any other public service utility, provided that
19 such corporation is subject to regulation or supervision
20 whether as to its rates and charges or as to the issue of its
21 own securities by a public commission, board, or officer of
22 the government of the United States, of any state, territory,
23 or insular possession of the United States, of any
24 municipality located therein, of the District of Columbia, or
25 of the Dominion of Canada or of any province thereof; also
26 equipment securities based on chattel mortgages, leases, or
27 agreements for conditional sale of cars, motive power, or
28 other rolling stock mortgaged, leased, or sold to or furnished
29 for the use of or upon such railroad or other public service
30 utility corporation or where the ownership or title of such
31 equipment is pledged or retained in accordance with the

1 provisions of the laws of the United States or of any state or
2 of the Dominion of Canada to secure the payment of such
3 equipment securities; and also bonds, notes, or other
4 evidences of indebtedness issued by a holding corporation and
5 secured by collateral consisting of any securities hereinabove
6 described; provided, further, that the collateral securities
7 equal in fair value at least 125 percent of the par value of
8 the bonds, notes, or other evidences of indebtedness so
9 secured

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

14 (a) A bank,

15 (b) A trust company,

16 (c) A savings institution,

17 (d) A building or savings and loan association,

18 (e) An international development bank, or

19 (f) A credit union;

20
21 or the initial subscription for equity securities of any
22 institution listed in paragraphs (a)-(f), provided such
23 institution is subject to the examination, supervision, or
24 control of this state

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

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

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

17 (9) A security issued by a corporation organized and
18 operated exclusively for religious, educational, benevolent,
19 fraternal, charitable, or reformatory purposes and not for
20 pecuniary profit, no part of the net earnings of which
21 corporation inures to the benefit of any private stockholder
22 or individual; provided that no person shall directly or
23 indirectly offer or sell securities under this subsection
24 except by an offering circular containing full and fair
25 disclosure, as prescribed by the rules of the department, of
26 all material information, including, but not limited to, a
27 description of the securities offered and terms of the
28 offering, a description of the nature of the issuer's
29 business, a statement of the purpose of the offering and the
30 intended application by the issuer of the proceeds thereof,
31

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1 and financial statements of the issuer prepared in conformance
2 with generally accepted accounting principles.

3 (10) Any insurance or endowment policy or annuity
4 contract or optional annuity contract or self-insurance
5 agreement issued by a corporation, insurance company,
6 reciprocal insurer, or risk retention group subject to the
7 supervision of the insurance commissioner or bank
8 commissioner, or any agency or officer performing like
9 functions, of any state or territory of the United States or
10 the District of Columbia

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

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

19 ~~1--An application for exemption to sell which shall be~~
20 ~~executed by the issuer; any person on whose behalf the~~
21 ~~offering is made; a dealer registered under this chapter; or~~
22 ~~any duly authorized agent of any such person; setting forth~~
23 ~~the name and address of the applicant; the name and address of~~
24 ~~the issuer; and the title of the securities to be offered and~~
25 ~~sold:~~

26 ~~2--A copy of the cover page of the initial~~
27 ~~registration statement as filed with the Securities and~~
28 ~~Exchange Commission unless the federal registration is~~
29 ~~effective prior to filing with the department:~~

30 ~~3--A copy of the dated final prospectus or current~~
31 ~~prospectus; whichever is dated later:~~

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1 4:--A-\$1,000-fee:

2 5:--An-irrevocable-written-consent-to-service-and
3 resolution-as-described-in-s:517:101;-for-any-initial
4 registration-or-upon-request-by-the-department:

5 6:--Copies-of-such-documents-filed-with-the-Securities
6 and-Exchange-Commission-as-the-department-may-require:

7 (b)--An-exemption-under-this-section-is-effective-when
8 the-federal-registration-statement-becomes-effective-or-as-of
9 the-date-the-application-for-exemption-is-filed-with-the
10 department;-whichever-is-later;-provided;-in-addition-to-the
11 items-listed-in-paragraph-(a);-the-department-has-received
12 written-notification-of-effective-registration-under-the
13 Investment-Company-Act-of-1940-within-10-business-days-after
14 the-date-federal-registration-is-granted;--Failure-to-provide
15 to-the-department-the-information-required-by-this-subsection
16 within-60-days-after-the-date-the-registration-statement
17 becomes-effective-with-the-Securities-and-Exchange-Commission
18 is-a-violation-of-this-chapter:

19 (c)--The-exemption-is-effective-for-a-period-of-12
20 months-after-the-date-of-effectiveness-in-this-state;-unless
21 renewed-prior-to-expiration:

22 (d)--In-lieu-of-filing-with-the-department-the
23 application;-fees;-and-documents-required-for-exemption;-the
24 department-may-establish-procedures-for-the-deposit-of-fees
25 and-filing-of-documents-to-be-made-through-the-Securities
26 Registration-Depository-as-developed-under-contract-with-the
27 North-American-Securities-Administrators-Association;-Inc;;
28 provided-such-procedures-shall-provide-the-department-with-the
29 information-and-data-required-by-this-subsection:--If-a-filer
30 chooses-not-to-use-the-Securities-Registration-Depository;

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1 such filings; including the statutory fee; may be made
2 directly with the department.

3 Section 3 Effective upon this act becoming a law,
4 section 517.07, Florida Statutes, is amended to read:

5 517.07 Registration of securities.--

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

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

22 (3)(4) The department shall issue a permit when
23 registration has been granted by the department. A permit to
24 sell securities is effective for 1 year from the date it was
25 granted. Registration of securities shall be deemed to
26 include the registration of rights to subscribe to such
27 securities if the application under s 517.081 or s 517.082
28 for registration of such securities includes a statement that
29 such rights are to be issued.

30 (4)(2) A record of the registration of securities
31 shall be kept in the office of the department, in which

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1 register of securities shall also be recorded any orders
2 entered by the department with respect to such securities.
3 Such register, and all information with respect to the
4 securities registered therein, shall be open to public
5 inspection.

6 (5)(3) Notwithstanding any other provision of this
7 section, offers of securities required to be registered by
8 this section may be made in this state before the registration
9 of such securities if the offers are made in conformity with
10 rules adopted by the department.

11 Section 4. Subsection (3) of section 517 081, Florida
12 Statutes, is amended to read:

13 517.081 Registration procedure.--

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

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

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

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

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

30 (e) A balance sheet showing the amount and general
31 character of its assets and liabilities on a day not more than

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1 90 days prior to the date of filing such balance sheet or such
2 longer period of time, not exceeding 6 months, as the
3 department may permit at the written request of the issuer on
4 a showing of good cause therefor.

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

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

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

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

21 b. An issuer who is subject to any of the
22 disqualifications described in 17 C.F.R. s. 230.262, adopted
23 pursuant to the Securities Act of 1933, or who has been or is
24 engaged or is about to engage in an activity that would be
25 grounds for denial, revocation, or suspension under s.
26 517.111. For purposes of this subparagraph, an issuer includes
27 an issuer's director, officer, shareholder who owns at least
28 10 percent of the shares of the issuer, promoter, or selling
29 agent of the securities to be offered or any officer,
30 director, or partner of such selling agent.

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

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

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

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

14
15 As a condition precedent to qualifying for use of the
16 simplified offering circular, a corporation shall agree to
17 provide the department with an annual financial report
18 containing a balance sheet as of the end of the issuer's
19 fiscal year and a statement of income for such year, prepared
20 in accordance with generally accepted accounting principles
21 and accompanied by an independent accountant's report. If the
22 issuer has more than 100 security holders at the end of a
23 fiscal year, the financial statements must be audited. Annual
24 financial reports must be filed with the department within 90
25 days after the close of the issuer's fiscal year for each of
26 the first 5 years following the effective date of the
27 registration.

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

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

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

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

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

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

21 (n) If the issuer is a corporation, there shall be
22 filed with the application a copy of its articles of
23 incorporation with all amendments and of its existing bylaws,
24 if not already on file in the department. If the issuer is a
25 trustee, there shall be filed with the application a copy of
26 all instruments by which the trust is created or declared and
27 in which it is accepted and acknowledged. If the issuer is a
28 partnership, unincorporated association, joint-stock company,
29 or any other form of organization whatsoever, there shall be
30 filed with the application a copy of its articles of
31

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1 partnership or association and all other papers pertaining to
2 its organization, if not already on file in the department.

3 Section 5. Effective upon this act becoming a law,
4 subsection (1) of section 517.082, Florida Statutes, 1996
5 Supplement, is amended to read:

6 517.082 Notification registration.--

7 (1) Except as provided in subsection (3) or-exempt
8 pursuant-to-s--517:054(14), securities offered or sold
9 pursuant to a registration statement filed under the
10 Securities Act of 1933 or the Investment Company Act of 1940
11 shall be entitled to registration by notification in the
12 manner provided in subsection (2), provided that prior to the
13 offer or sale the registration statement has become effective.

14 Section 6. Effective upon this act becoming a law,
5 subsection (1) of section 517 101, Florida Statutes, 1996
16 Supplement, is amended to read:

17 517.101 Consent to service --

18 (1) Upon any initial application for registration
19 under s. 517.081 or s 517.082;-upon-any-application-for
20 exemption-pursuant-to-s--517:054(14); or upon request of the
21 department, the issuer shall file with such application the
22 irrevocable written consent of the issuer that in suits,
23 proceedings, and actions growing out of the violation of any
24 provision of this chapter, the service on the department of a
25 notice, process, or pleading therein, authorized by the laws
26 of this state, shall be as valid and binding as if due service
27 had been made on the issuer.

28 Section 7. Subsection (10) of section 517.12, Florida
9 Statutes, 1996 Supplement, is amended, and a new subsection
30 (19) is added to said section, to read:

31

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1 517.12 Registration of dealers, associated persons,
2 investment advisers, and branch offices.--

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

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

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

30 (b) Advises or exercises trading discretion, with
31 respect to foreign currency options listed and traded

1 exclusively on the Philadelphia Stock Exchange, on behalf of
2 an "appropriate person" as defined by the Commodity Exchange
3 Act.

4
5 The exemption provided in this subsection does not apply to a
6 commodity trading adviser who engages in other activities that
7 require registration under this chapter

8 Section 8. Subsection (1) of section 517.1203, Florida
9 Statutes, 1996 Supplement, is amended to read:

10 517 1203 Allocation and disbursement of assessment
11 fees.--

12 (1) Notwithstanding s. 517 131(1) and until the
13 department determines by final order that sufficient funds
14 have been allocated to the Securities Guaranty Fund pursuant
15 to this section to satisfy all valid claims filed in
16 accordance with subsection (2), an additional amount equal to
17 25 percent of all revenues received as assessment fees
18 pursuant to s. 517 12(10) and (11) from persons applying for
19 or renewing registrations as associated persons shall be
20 allocated to the Securities Guaranty Fund and disbursed as
21 provided in this section This assessment fee shall be part
22 of the regular license fee and shall be transferred to or
23 deposited into the Securities Guaranty Fund. The moneys
24 allocated to the Securities Guaranty Fund under this section
25 shall not be included in the calculation of the allocation of
26 the assessment fees referred to in s. 517.131(1)(b). Moneys
27 allocated under this section in excess of the valid claims
28 filed pursuant to subsection (2) shall be allocated to the
29 Anti-Fraud Trust Fund.

1 Section 9. Paragraph (a) of subsection (1) of section
 2 517.131, Florida Statutes, 1996 Supplement, is amended to
 3 read:

4 517.131 Securities Guaranty Fund.--

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

21 Section 10. Except as otherwise provided herein, this
 22 act shall take effect October 1, 1997.

23 *****

24 HOUSE SUMMARY

25
 26 Deletes an exemption from securities registration
 27 requirements for investment companies. Prohibits the
 28 sale or offer to sell other than specified securities.
 29 Authorizes the Department of Banking and Finance to adopt
 30 simplified offering circular forms for specified issuers
 31 for uniformity purposes. Exempts commodity trading
 advisers from specified registration requirements.
 Reduces assessment fees for associated persons. Revises
 provisions relating to allocations to the Securities
 Guaranty Fund. See bill for details.

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Date: 1 April 1, 1997 Revised: _____

Subject: Securities Transactions

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1	<u>Johnson</u>	<u>Deffenbaugh</u>	<u>BI</u>	<u>Favorable/CS</u>
2	<u> </u>	<u> </u>	<u>WM</u>	<u>Withdrawn</u>
3	<u> </u>	<u> </u>	<u> </u>	<u> </u>
4.	<u> </u>	<u> </u>	<u> </u>	<u> </u>
5.	<u> </u>	<u> </u>	<u> </u>	<u> </u>

I. Summary:

The bill requires the Department of Banking and Finance to adopt a simplified securities offering circular to be used by a corporation to register securities that are sold in the aggregate offering price in an amount not to exceed \$5 million.

The annual assessments on persons registered in Florida as "associated persons" will be reduced from \$40 to \$30. Such reduction will occur after the Department of Banking and Finance determines that all claims against GIC Government Securities, Inc are satisfied.

Consistent with federal law, certain commodity trading advisers registered with the Philadelphia Stock Exchange will be exempt from registering in Florida as "investment advisers" or as "associated persons." The bill clarifies the exemption from registration as an investment adviser for certified public accountants.

A \$1000 registration fee on certain investment companies and mutual funds offering securities in Florida will no longer be required given the changes in federal securities law.

This legislation is estimated to have a recurring negative fiscal impact of \$2.5 million on the General Revenue Fund, due to the elimination of the assessment on investment companies and mutual funds.

This bill substantially amends the following sections of the Florida Statutes: 517 021, 517 051, 517 07, 517 081, 517 082, 517 101, 517 12, 517.1203, and 517.131

II. Present Situation:

State Law

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

Generally, under chapter 517, F.S., a security must be registered with the department prior to the security being offered or sold in Florida. Section 517.051, F.S., enumerates those securities which are not required to be registered with the department. Examples of exempt securities include securities issued or guaranteed by the United States government, any state, or a national bank. The section also exempts notes, drafts, bills of exchange, or banker's acceptance with a unit amount of \$25,000 or more, which is used in current operational business transactions and which have a maturity of 9 months or less. The offer or sale of securities, pursuant to a registration statement filed under the federal Investment Company Act of 1940, by an open-end management company or investment trust is exempted under s. 517.051, F.S., provided certain conditions are met and a fee is submitted to the department. Section 517.081, F.S., specifies the procedures for registration including the documents required and the payment of a \$1000 registration fee.

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

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

Section 517.101, F.S., requires that an application for registration of a security with the department must include an irrevocable written consent to service. The consent to service allows a party which has filed a lawsuit against an issuer of a security for a violation of chapter 517, F.S., to serve the department. Service with the department will be considered the same as serving the issuer for purposes of service of process in a lawsuit.

Section 517.012, F.S., requires all dealers, issuers, and associated persons to register before selling or offering for sale from any location in this state or to any person located in this state. Likewise, investment advisers must register prior to engaging in business in this state or rendering advice to persons located in this state.

Section 517.12, F.S., sets forth the requirements for the registration of associated persons, dealers, investment advisors, and branch offices in Florida, prior to offering to sell securities in

Florida. A dealer is typically a person who engages as a broker or principal in the business of dealing or trading securities issued by another person. An investment advisor is typically a person who engages in the business of advising others as to the advisability of investments in securities. Currently, the definition of investment adviser, as set forth in s. 517.021, F.S., exempts a licensed attorney or certified public accountant who renders or performs investment advice in connection with the regular practice of the respective profession. Therefore, these individuals need not obtain licensure as an investment adviser. An associated person is a person employed by a dealer or investment adviser other than clerical staff.

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

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

Pursuant to s. 517.141, F.S., the maximum an individual claimant may receive from the Fund is capped at \$10,000 and the aggregate amount all claimants may receive from the Fund is \$100,000 (if the amount claimed is greater than \$100,000, the amount per claimant will be prorated). For example, the claimant receives a judgment against an associated person for \$100,000, and is only able to collect \$50,000 from the associated person. This leaves a \$50,000 difference that the claimant may file for reimbursement from the Fund. However, the claimant would only be eligible to receive up to \$10,000, assuming the claimant qualified under the statutory provisions and the number of other claimants totaled nine.

Approximately 800 investors in GIC Government Securities incurred losses amounting to \$40 million. Of the total losses, \$18 million has been paid out through the 1985 recession and bankruptcy proceedings. Prior to October 1, 1996, the department had disbursed over \$1 million from the Fund for GIC claims.

Subsequently, legislation was enacted, effective October 1, 1996, which increased the assessment on associated persons from \$30 to \$40 in 1996 to fund payments, in excess of the \$100,000 reimbursement cap on the Fund, to GIC claimants (and to fund additional personnel for the department). The legislation authorized an allocation of an additional 25 percent of all assessment fee revenues from associated persons' applications and renewal fees to the Fund, under s. 517.1203, F.S. This additional collection is to be used for the payment of claims against the Fund by GIC Government Securities, Inc., investors. According to the department, the total liability associated with the actions of GIC approximately \$25.5 million. The department estimates that

approximately \$10.2 million have been satisfied through bankruptcy. After the GIC claims are satisfied, the 25% portion will be reallocated to the Anti-fraud Trust Fund.

Federal Law

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

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

Federal law requires all securities to be registered with the Securities and Exchange Commission (SEC) unless the securities are specifically exempted under 15 USCS s. 77c or the transactions are exempt under 15 USCS s. 77d. Those securities required to be registered will undergo a review by the SEC to determine if the disclosures adequately protect the interests of the public. Under 15 USCS s. 77c, the federal law grants the SEC the authority to grant an additional exemption to certain small public offerings. To that end, the registration of small corporate offerings are exempted from SEC registration under Rule 504 of Regulation D, Regulation A, or Section 3(a)(11) of the Securities Act of 1933.

Forty-one states accept the simplified form called the Small Corporate Offering Registration (SCOR) form or U-7. This form was designed in 1989 by the North American Securities Administrators Association, Inc. The SCOR Form is in a question and answer format for the purpose of disclosing to potential investors specific information. The SCOR form is used for offerings limited to \$1 million in a 12-month period.

The Philadelphia Stock Exchange offers investment opportunities related to foreign currency options. Those investment advisers are regulated by the Commodity Futures Trading Commission pursuant to Title 7 of the United States Code and must register with the respective states in which their activities occur unless the state has exempted such advisers.

In addition, the bill clarifies the exemption from registration as an investment adviser for certified public accountants.

III. Effect of Proposed Changes:

Section 1. Amends s. 517.021, F.S., to define “federal covered security” to be consistent with the definition provided under s. 18(b) of the Securities Act of 1933. This section is effective upon becoming a law. The definition of investment adviser is revised to exempt out 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 Florida. Any person whose transactions in Florida are limited to transactions described in s. 222(d) of the Investment Advisers Act of 1940 are excluded from the definition of investment adviser. The section also provides that licensed certified public accountants are exempt from the definition of investment adviser only if the performance of such services is solely incidental to the practice of their profession.

Section 2. Amends s. 517.051, F.S., to repeal an exemption from registration requirements granted to securities offered for sale or sold pursuant to the Investment Company Act of 1940. Such exemption is consistent with federal preemption of the registration of such securities. Although not mandated by federal law, the state fee associated with the state registration is also repealed. This section is effective upon becoming a law.

Section 3. Amends s. 517.07, F.S., to specify that it is unlawful to offer or sell a security within Florida unless the security is exempt under s. 517.051, F.S., the transaction is exempt under s. 517.061, F.S., the security is a federal covered security or the security is registered in Florida. This section is effective upon becoming a law.

Section 4. Amends s. 517.081, F.S., to require the Department of Banking and Finance to accept a simplified offering statement from small corporations attempting to raise \$5 million or less, if certain conditions are met. For example, the corporation is required to provide the department with annual financial reports.

Section 5. Amends s. 517.082, F.S., deletes an obsolete cross-reference. This section is effective upon becoming a law.

Section 6. Amends s. 517.101, F.S., deletes an obsolete cross-reference. This section is effective upon becoming a law.

Section 7. Amends s. 517.12, F.S., to provide for the reduction in the amount of the assessment fee charged an “associated person” after certain conditions have been met. This section also exempts from registration requirements those commodity trading advisors who advise sophisticated institutional investors regarding certain foreign currency options.

Section 8. Amends s. 517.1203, F.S., to reduce the registration fee for associated persons from \$40 to \$30 after the Department of Banking and Finance determines sufficient funds have been generated to satisfy claims of GIC investors.

Section 9. Amends s 517.131, F S., to adjust the percentage of revenues distributed to the Securities Guaranty Fund.

Section 10. Provides this act is effective October 1, 1997, unless otherwise authorized.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None

B. Public Records/Open Meetings Issues:

None

C. Trust Funds Restrictions:

None

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This legislation is intended to reduce the costs borne by the private enterprises seeking to raise capital. Corporations electing to raise capital through a small securities offering of \$5 million or less will be permitted to use a simplified offering circular rather than meet the more expensive prospectus requirements.

Investment companies registered with the Commission will no longer be required to pay a \$1000 assessment for securities offered in Florida

Persons registered as "associated persons" will pay reduced assessments in the future after all GIC claims are satisfied. The department estimates that all claims will be satisfied in approximately 7 years

C. Government Sector Impact:

The department estimates that the repeal of the fee on investment company registrations will result in approximately \$2 million reduction in the fees deposited into the General Revenue Fund in FY 1997-98 and thereafter

The exemption from registration for certain commodity trading advisers is estimated to have an insignificant fiscal impact on the General Revenue Fund and the Security Guaranty Fund

In the long run, the reduction in the assessment paid by associated persons will result in a \$1.7 million annual reduction in the revenue deposited into the Anti-Fraud Trust Fund.

VI. Technical Deficiencies:

None

VII. Related Issues:

None.

VIII. Amendments:

None.