

# Fla. Banking Brief: All The Notable Legal Updates In Q1

By **Benjamin Weinberg and Megan Riley** (April 11, 2024)

*In this Expert Analysis series, attorneys provide quarterly recaps discussing the biggest developments in Florida banking regulation and policymaking.*

In the first quarter of 2024, there were several updates in regulations and legislation pertaining to Florida's banking and finance community.

Particularly notable are potential changes that Florida's S.B. 532 may have on the state Securities and Investor Protection Act, and the impact the Consumer Financial Protection Bureau's final rule on credit card penalty fees will have on Florida's larger card issuers.

## **S.B. 532 Ordered Enrolled**

On March 5, S.B. 532 was ordered enrolled, meaning the bill has passed both houses of the Florida legislature and has been converted into an act for presentation to the governor.[1] The bill substantially revises Chapter 517 of the Florida Statutes, known as the Florida Securities and Investor Protection Act.[2]

Per a 1990 article in The Florida Law Journal, the act was originally designed "to protect the public from fraudulent and deceptive practices in connection with the sale of securities." [3] The bill's revisions are based on the recommendations from the Chapter 517 Task Force of the Business Law Section of the Florida Bar and the state Office of Financial Regulation.[4]

The revisions further the original purpose of the act, as the "impetus for the task force [was] to increase the ability of small and developing Florida businesses to raise capital, while at the same time assuring and improving investor protections and enforcement measures to guard against abuse," per the Florida Senate's bill summary.[5]

Many of the revisions are modeled after the Uniform Securities Act, the U.S. Securities and Exchange Commission's rules, and legislation adopted in other states. The OFR is, and will continue to be, ultimately responsible for the administration and enforcement of the provisions contained within the act.[6]

The bill would effectuate the following 10 major changes.

1. As it pertains to the Securities Guaranty Fund, which provides relief to victims of violations under Florida Statutes Chapter 517 who are entitled to monetary damages or restitution but cannot fully recover from the wrongdoer, the bill would:

- a. Remove the "requirement that an investor who has received a final judgement that is unsatisfied must make searches and inquires to ascertain the assets of the



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judgment debtor";

b. Remove the two-year waiting period for payment;

c. Increase "the amount an eligible person may recover from the Fund from \$10,000 to \$15,000"; and

d. Allow recovery up to \$25,000 if the victim is a specified adult.[7]

2. It would remove from the registration exemption:

a. Short-term notes of \$25,000 or more that have a maturity date of nine months or less; and

b. Certain bonds issued by the government, unless the bond is guaranteed by a publicly traded entity.

3. It would require "a person who has six or more clients, rather than more than 15 clients, to register with the OFR as an investment adviser";

4. It would revise the intrastate crowdfunding exemption and rename the title of the section to the "Florida Limited Offering Exemption";

5. It would remove the requirement "that issuers of simplified securities offerings that use the Small Company Offering Registration ... must submit annual financial reports for the first five years following the effective date of an offering";

6. It would allow issuers to participate in "demonstration day (demo-day) presentations and the pre-offering (testing the waters) solicitations and communications";

7. It would increase the civil penalties for violating the act;

8. It would provide that control persons can be jointly and severally liable under the act;

9. It would allow the OFR to recover costs and attorney fees relating to its investigations or enforcement; and

10. It would grant the OFR the authority to impose and collect administrative fines for violations of the act.[8]

If approved by the governor, or if allowed to become law without the governor's approval, the revised act will take effect Oct. 1.[9]

### **Federal Credit Card Penalty Fees Rule's Impact on Florida's Larger Card Issuers**

On March 5, the CFPB issued a final rule on credit card penalty fees.[10] In doing so, the CFPB amended "provisions in Regulation Z, § 1026.52(b) and its accompanying commentary as they relate to credit card penalty fees." [11]

For reasons discussed below, the rule will require several of Florida's larger card issuers to make prompt adjustments to their policies surrounding credit card penalty fees.

The rule ensures that "late fees charged by certain card issuers are reasonable and

proportional as required under the Truth in Lending Act." [12] The CFPB estimates that once the rule goes into effect, the typical late fee will be reduced from \$32 to \$8, saving American families more than \$10 billion a year. [13]

Pursuant to Regulation Z, Title 12 of the Code of Federal Regulations, Section 1026.52(b)(1), a "card issuer must not impose a fee for violating the terms or other requirements of a credit card account under an open-end (not home-secured) consumer credit plan unless the ... card issuer has determined that the dollar amount of the fee represents a reasonable proportion of the total costs incurred by the card issuer as a result of that type of violation" or it complies with the safe harbor provision. [14]

Previously, "the safe harbor for penalty fees were generally \$30 for the initial violation and \$41 for each subsequent violation of the same type that occurs during the same billing cycle or in one of the next six billing cycles," and these amounts were adjusted annually for inflation. [15]

The new rule changes the requirements under the safe harbor provision as it relates to larger card issuers, which the rule defines as "card issuers that together with their affiliates have one million or more open credit card accounts." [16]

This change stems from the CFPB's finding that the safe harbor amounts for larger card issuers were too high — indeed, "higher than is justified based on consumer conduct and to deter future violations;" therefore, such amounts were "not consistent with TILA's statutory requirement that such fees be reasonable and proportional to the omission or violation to which the fee relates." [17]

The rule addresses these concerns in two primary ways as it pertains to larger card issuers:

1. The rule repeals the current safe harbor amounts, and changes the amount to \$8 for the initial late fee and subsequent violations.
2. The rule no longer allows the safe harbor amount to be automatically adjusted with inflation — instead, the CFPB will make adjustments when necessary. [18]

However, "any Larger Card Issuer with costs greater than \$8 per late payment will be able to set a higher fee using the cost analysis provisions" under Section 1026.52(b)(1)(i). [19] The CFPB aims to disincentivize business models built on late fees and instead encourage larger card issuers to turn to alternative methods to facilitate on-time payment, such as raising interest rates and/or reducing credit lines. [20]

The rule takes effect May 14, which is 60 days after the publication of the rule in the Federal Register. [21]

In Florida, the average credit card penalty fee is \$21, suggesting that several of Florida's larger card issuers will need to act swiftly in implementing changes to their policies. [22]

On March 7, the U.S. Chamber of Commerce filed a lawsuit in the U.S. District Court for the Northern District of Texas against the CFPB, attempting to stop the implementation of the rule. [23] Florida's larger card issuers should nevertheless take measures to ensure compliance with the new safe harbor amounts unless, and until, a final decision instructs otherwise.

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[1] CS/CS/SB 523 - Securities, Fla. S., <https://www.flsenate.gov/Committees/billsummaries/2024/html/3499>. The full text of the bill can be found here: <https://www.flsenate.gov/Session/Bill/2024/532/BillText/er/PDF>.

[2] Id.

[3] Michael A. Hanzman, Civil Remedies Under the Florida Securities and Investor Protection Act, Florida Bar Journal, <https://www.floridabar.org/the-florida-bar-journal/civil-remedies-under-the-florida-securities-and-investor-protection-act/>.

[4] See CS/CS/SB 523 - Securities, *supra* note 1.

[5] See *id.*

[6] See *id.*

[7] "A specified adult is a natural person 65 years of age or older, or a natural person 18 years of age or older whose ability to perform the normal activities of daily living or to provide for his or her own care or protection is impaired due to a mental, emotional, sensory, long-term physical, or developmental disability or dysfunction, or brain damage, or the infirmities of aging." *Id.*

[8] *Id.*

[9] See *id.*

[10] Credit Card Penalty Fees (Regulation Z), CFPB (Mar. 5, 2024), [https://files.consumerfinance.gov/f/documents/cfpb\\_credit-card-penalty-fees\\_final-rule\\_2024-01.pdf](https://files.consumerfinance.gov/f/documents/cfpb_credit-card-penalty-fees_final-rule_2024-01.pdf).

[11] *Id.*

[12] Executive Summary of the Credit Card Penalty Fees Final Rule, CFPB (Mar. 5, 2024), [https://files.consumerfinance.gov/f/documents/cfpb\\_credit-card-penalty-fees-rule\\_executive-summary\\_2024-03.pdf](https://files.consumerfinance.gov/f/documents/cfpb_credit-card-penalty-fees-rule_executive-summary_2024-03.pdf).

[13] CFPB Bans Excessive Credit Card Late Fees, Lowers Typical Fee from \$32 to \$8, CFPB (Mar. 5, 2024), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-bans-excessive-credit-card-late-fees-lowers-typical-fee-from-32-to-8/>.

[14] Regulation Z, 12 C.F.R. § 1026.52(b)(1)(i)-(ii).

[15] Executive Summary of the Credit Card Penalty Fees Final Rule, *supra* note 12.

[16] Credit Card Penalty Fees (Regulation Z), *supra* note 10. More than 95% of total

outstanding credit card balances live within larger card issuers. See CFPB Bans Excessive Credit Card Late Fees, Lowers Typical Fee from \$32 to \$8, *supra* note 13.

[17] Credit Card Penalty Fees (Regulation Z), *supra* note 10.

[18] See *id.*; Executive Summary of the Credit Card Penalty Fees Final Rule, *supra* note 12.

[19] Credit Card Penalty Fees (Regulation Z), *supra* note 10.

[20] See CFPB Bans Excessive Credit Card Late Fees, Lowers Typical Fee from \$32 to \$8, *supra* note 13.

[21] See *id.*

[22] See Adam McCann, Credit Card Late Fee Statistics, WalletHub (Mar. 18, 2024), <https://wallethub.com/edu/credit-card-late-fee-statistics/128637>.

[23] See Dave Kovalski, U.S. Chamber files suit against CFPB over rule to limit credit card late fees, FRN (Mar. 11, 2024), <https://financialregnews.com/u-s-chamber-files-suit-against-cfpb-over-rule-to-limit-credit-card-late-fees/>.