A bill to be entitled

An act relating to financial institutions; amending s. 120.80, F.S.; providing that the failure of foreign nationals to participate through video conference in certain hearings is grounds for denial of certain applications; amending s. 475.01, F.S.; conforming a cross-reference; amending s. 518.117, F.S.; conforming a cross-reference; amending s. 655.045, F.S.; revising the circumstances under which the Office of Financial Regulation is required to conduct certain examinations; authorizing the office to delay examinations of state financial institutions under certain circumstances; specifying that examination requirements are deemed met under certain circumstances; requiring copies of certain examination reports to be furnished to state financial institutions; requiring certain directors to review such reports and acknowledge receipt of such reports; amending s. 655.414, F.S.; revising the entities that may acquire liabilities and assets, and the liabilities and assets that may be acquired, according to certain procedures, conditions, and limitations; specifying the basis for calculating percentages of assets or liabilities; revising the assets a mutual financial institution may sell, subject to certain

conditions; amending s. 655.50, F.S.; revising the definition of the term "financial institution"; amending s. 657.021, F.S.; requiring credit unions to submit specified information to the office after certain meetings; repealing s. 657.028(6), F.S., relating to credit union board member, committee member, and officer election and appointment record reporting requirements; amending s. 658.12, F.S.; defining the term "target market"; amending s. 658.20, F.S.; requiring the office, upon receiving applications for authority to organize a bank or trust company, to investigate the need for new bank facilities in a primary service area or for a target market and the ability of such service area or target market to support new and existing bank facilities; amending s. 658.21, F.S.; revising financial institution application approval requirements to include consideration of target market conditions; authorizing the office to waive a requirement that certain proposed financial institution presidents or chief executive officers have certain experience within a specified timeframe; amending s. 658.28, F.S.; requiring a person or group to notify the office within a specified timeframe upon acquiring a controlling interest in a state bank or state trust

company; amending s. 658.2953, F.S.; defining the term "de novo branch"; amending s. 662.1225, F.S.; revising the type of institution with which certain family trust companies are required to maintain a deposit account; amending s. 662.128, F.S.; revising the timeframe for filing renewal applications for certain family trust companies; amending s. 663.07, F.S.; revising the banks with which international bank agencies or branches shall maintain certain deposits or investment securities; amending s. 663.532, F.S.; revising references to lists of jurisdictions used for qualifying qualified limited service affiliates; requiring limited service affiliates to suspend certain permissible activities under certain circumstances; specifying that such suspensions remain in effect until certain conditions are met; amending s. 736.0802, F.S.; conforming a cross-reference; reenacting s. 658.165(1), F.S., relating to banker's banks, for the purpose of incorporating amendments made by the act; providing an effective date.

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

Section 1. Paragraph (a) of subsection (3) of section 120.80, Florida Statutes, is amended to read:

120.80 Exceptions and special requirements; agencies.—

(3) OFFICE OF FINANCIAL REGULATION.—

(a) Notwithstanding s. 120.60(1), in proceedings for the issuance, denial, renewal, or amendment of a license or approval of a merger pursuant to title XXXVIII:

1.a. The Office of Financial Regulation of the Financial Services Commission shall have published in the Florida Administrative Register notice of the application within 21 days after receipt.

b. Within 21 days after publication of notice, any person may request a hearing. Failure to request a hearing within 21 days after notice constitutes a waiver of any right to a hearing. The Office of Financial Regulation or an applicant may request a hearing at any time prior to the issuance of a final order. Hearings shall be conducted pursuant to ss. 120.569 and 120.57, except that the Financial Services Commission shall by rule provide for participation by the general public.

2. Should a hearing be requested as provided by sub-subparagraph 1.b., the applicant or licensee shall publish at its own cost a notice of the hearing in a newspaper of general circulation in the area affected by the application. The Financial Services Commission may by rule specify the format and size of the notice.

3. Notwithstanding s. 120.60(1), and except as provided in subparagraph 4., an application for license for a new bank, new

trust company, new credit union, new savings and loan association, or new licensed family trust company must be approved or denied within 180 days after receipt of the original application or receipt of the timely requested additional information or correction of errors or omissions. An application for such a license or for acquisition of such control which is not approved or denied within the 180-day period or within 30 days after conclusion of a public hearing on the application, whichever is later, shall be deemed approved subject to the satisfactory completion of conditions required by statute as a prerequisite to license and approval of insurance of accounts for a new bank, a new savings and loan association, a new credit union, or a new licensed family trust company by the appropriate insurer.

4. In the case of an application for license to establish a new bank, trust company, or capital stock savings association in which a foreign national proposes to own or control 10 percent or more of any class of voting securities, and in the case of an application by a foreign national for approval to acquire control of a bank, trust company, or capital stock savings association, the Office of Financial Regulation shall request that a public hearing be conducted pursuant to ss. 120.569 and 120.57. Notice of such hearing shall be published by the applicant as provided in subparagraph 2. The failure of such foreign national to appear personally at or to participate

through video conference in the hearing shall be grounds for denial of the application. Notwithstanding s. 120.60(1) and subparagraph 3., every application involving a foreign national shall be approved or denied within 1 year after receipt of the original application or any timely requested additional information or the correction of any errors or omissions, or within 30 days after the conclusion of the public hearing on the application, whichever is later.

Section 2. Subsection (4) of section 475.01, Florida Statutes, is amended to read:

475.01 Definitions.—

(4) A broker acting as a trustee of a trust created under chapter 689 is subject to the provisions of this chapter unless the trustee is a bank, state or federal association, or trust company possessing trust powers as defined in s. 658.12 ~~s. 658.12(23)~~.

Section 3. Section 518.117, Florida Statutes, is amended to read:

518.117 Permissible investments of fiduciary funds.—A fiduciary that is authorized by lawful authority to engage in trust business as defined in s. 658.12 ~~s. 658.12(20)~~ may invest fiduciary funds in accordance with s. 660.417 so long as the investment otherwise complies with this chapter.

Section 4. Paragraph (a) of subsection (1) and subsection (4) of section 655.045, Florida Statutes, are amended, and

paragraph (f) is added to subsection (1) of that section, to read:

655.045 Examinations, reports, and internal audits; penalty.—

(1) The office shall conduct an examination of the condition of each state financial institution at least every 18 months. The office may conduct more frequent examinations based upon the risk profile of the financial institution, prior examination results, or significant changes in the institution or its operations. The office may use continuous, phase, or other flexible scheduling examination methods for very large or complex state financial institutions and financial institutions owned or controlled by a multi-financial institution holding company. The office shall consider examination guidelines from federal regulatory agencies in order to facilitate, coordinate, and standardize examination processes.

(a) The office may accept an examination of a state financial institution made by an appropriate federal regulatory agency or may conduct a joint or concurrent examination of the institution with the federal agency. However, if the office accepts an examination in accordance with this paragraph, the office shall conduct at least once during each 36-month period beginning July 1, 2023 ~~2014~~, a subsequent ~~the office shall conduct an~~ examination of each state financial institution in a manner that allows the preparation of a complete examination

report not subject to the right of a federal or other non-Florida entity to limit access to the information contained therein. The office may furnish a copy of all examinations or reviews made of financial institutions or their affiliates to the state or federal agencies participating in the examination, investigation, or review, or as otherwise authorized under s. 655.057.

(f) In coordinating an examination required under this section, if a federal agency suspends or cancels a previously scheduled examination of a state financial institution, the office has an additional 90 days to meet the examination requirement of this section. In such case, the requirement is deemed met by the federal agency conducting the examination or upon the office conducting the examination instead.

(4) A copy of the report of each examination must be furnished to the state financial institution ~~entity~~ examined and presented to the board of directors at its next regular or special meeting. Each director shall review the report and acknowledge receipt of the report and such review by signing and dating the prescribed signature page of the report and returning a copy of the signed page to the office.

Section 5. Section 655.414, Florida Statutes, is amended to read:

655.414 Acquisition of assets; assumption of liabilities.—With prior approval of the office, and upon such conditions as

the commission prescribes by rule, a financial institution ~~entity~~ may acquire 50 percent or more ~~all or substantially all~~ of the assets of, liabilities of, or a combination of assets and ~~or assume all or any part of the~~ liabilities of, any other financial institution in accordance with the procedures and subject to the following conditions and limitations:

(1) CALCULATION OF ASSET OR LIABILITY PERCENTAGES.—Percentages of assets or liabilities must be calculated based on the most recent quarterly reporting date.

(2) ADOPTION OF A PLAN.—The board of directors of the acquiring or assuming financial entity and the board of directors of the transferring financial institution must adopt, by a majority vote, a plan for such acquisition, assumption, or sale on terms that are mutually agreed upon. The plan must include:

(a) The names and types of financial institutions involved.

(b) A statement setting forth the material terms of the proposed acquisition, assumption, or sale, including the plan for disposition of all assets and liabilities not subject to the plan.

(c) A provision for liquidation, if applicable, of the transferring financial institution upon execution of the plan, or a provision setting forth the business plan for the continued operation of each financial institution after the execution of

the plan.

(d) A statement that the entire transaction is subject to written approval of the office and approval of the members or stockholders of the transferring financial institution.

(e) If a stock financial institution is the transferring financial institution and the proposed sale is not for cash, a clear and concise statement that dissenting stockholders of the institution are entitled to the rights set forth in s. 658.44(4) and (5).

(f) The proposed effective date of the acquisition, assumption, or sale and such other information and provisions as necessary to execute the transaction or as required by the office.

(3)~~(2)~~ APPROVAL OF OFFICE.—Following approval by the board of directors of each participating financial institution, the plan, together with certified copies of the authorizing resolutions adopted by the boards and a completed application with a nonrefundable filing fee, must be forwarded to the office for approval or disapproval. The office shall approve the plan of acquisition, assumption, or sale if it appears that:

(a) The resulting financial entity or entities would have an adequate capital structure in relation to their activities and their deposit liabilities;

(b) The plan is fair to all parties; and

(c) The plan is not contrary to the public interest.

If the office disapproves the plan, it shall state its objections and give the parties an opportunity to amend the plan to overcome such objections.

(4) ~~(3)~~ VOTE OF MEMBERS OR STOCKHOLDERS.—If the office approves the plan, it may be submitted to the members or stockholders of the transferring financial institution at an annual meeting or at a special meeting called to consider such action. Upon a majority vote of the total number of votes eligible to be cast or, in the case of a credit union, a majority vote of the members present at the meeting, the plan is adopted.

(5) ~~(4)~~ ADOPTED PLAN; CERTIFICATE; ABANDONMENT.—

(a) If the plan is adopted by the members or stockholders of the transferring financial institution, the president or vice president and the cashier, manager, or corporate secretary of such institution shall submit the adopted plan to the office, together with a certified copy of the resolution of the members or stockholders approving it.

(b) Upon receipt of the certified copies and evidence that the participating financial institutions have complied with all applicable state and federal law and rules, the office shall certify, in writing, to the participants that the plan has been approved.

(c) Notwithstanding approval of the members or

stockholders or certification by the office, the board of directors of the transferring financial institution may abandon such a transaction without further action or approval by the members or stockholders, subject to the rights of third parties under any contracts relating thereto.

(6) ~~(5)~~ FEDERALLY CHARTERED OR OUT-OF-STATE INSTITUTION AS A PARTICIPANT.—If one of the participants in a transaction under this section is a federally chartered financial institution or an out-of-state financial institution, all participants must also comply with requirements imposed by federal and other state law for the acquisition, assumption, or sale and provide evidence of such compliance to the office as a condition precedent to the issuance of a certificate authorizing the transaction; however, if the purchasing or assuming financial institution is a federal or out-of-state state-chartered financial institution and the transferring state financial entity will be liquidated, approval of the office is not required.

(7) ~~(6)~~ STOCK INSTITUTION ACQUIRING MUTUAL INSTITUTION.—A mutual financial institution may not sell 50 percent or more ~~all or substantially all~~ of its assets to a stock financial institution until it has first converted into a capital stock financial institution in accordance with s. 665.033(1) and (2). For this purpose, references in s. 665.033(1) and (2) to associations also refer to credit unions but, in the case of a

credit union, the provision concerning proxy statements does not apply.

Section 6. Paragraph (c) of subsection (3) of section 655.50, Florida Statutes, is amended to read:

655.50 Florida Control of Money Laundering and Terrorist Financing in Financial Institutions Act.—

(3) As used in this section, the term:

(c) "Financial institution" has the same meaning as in s. 655.005(1)(i), excluding an international representative office, an international administrative office, or a qualified limited service affiliate ~~means a financial institution, as defined in 31 U.S.C. s. 5312, as amended, including a credit card bank, located in this state~~.

Section 7. Present subsections (2) through (8) of section 657.021, Florida Statutes, are redesignated as subsections (3) through (9), respectively, and a new subsection (2) is added to that section, to read:

657.021 Board of directors; executive committee responsibilities; oaths; reports to the office.—

(2) Within the 30 days following the annual meeting or any other meeting at which any director, officer, member of the supervisory or audit committee, member of the credit committee, or credit manager is elected or appointed, the credit union shall submit to the office the names and residence addresses of the elected or appointed person or persons on a form adopted by

the commission and provided by the office.

Section 8. Subsection (6) of section 657.028, Florida Statutes, is amended to read:

657.028 Activities of directors, officers, committee members, employees, and agents.—

~~(6) Within 30 days after election or appointment, a record of the names and addresses of the members of the board, members of committees, all officers of the credit union, and the credit manager shall be filed with the office on forms prescribed by the commission.~~

Section 9. Present subsections (20) through (24) of section 658.12, Florida Statutes, are redesignated as subsections (21) through (25), respectively, and a new subsection (20) is added to that section, to read:

658.12 Definitions.—Subject to other definitions contained in the financial institutions codes and unless the context otherwise requires:

(20) "Target market" means the group of clients or potential clients from whom:

(a) A bank or proposed bank expects to draw deposits and to whom the bank or proposed bank focuses or intends to focus its marketing efforts; or

(b) A trust company, a trust department of a bank or association, a proposed trust company, or a proposed trust department of a bank or association expects to draw its

fiduciary accounts and to whom the trust company, the trust department of a bank or association, the proposed trust company, or the proposed trust department of a bank or association focuses or intends to focus its marketing efforts.

Section 10. Paragraphs (b) and (c) of subsection (1) of section 658.20, Florida Statutes, are amended to read:

658.20 Investigation by office.—

(1) Upon the filing of an application, the office shall make an investigation of:

(b) The need for bank or trust facilities or additional bank or trust facilities, as the case may be, in the primary service area where the proposed bank or trust company is to be located or the need for the target market that the bank or trust company intends to engage with in business.

(c) The ability of the primary service area or target market to support the proposed bank or trust company and all other existing bank or trust facilities that serve the same primary service area or target market ~~in the primary service area~~.

Section 11. Subsections (1) and (4) of section 658.21, Florida Statutes, are amended to read:

658.21 Approval of application; findings required.—The office shall approve the application if it finds that:

(1) Local and target market conditions indicate reasonable promise of successful operation for the proposed state bank or

trust company. In determining whether an applicant meets the requirements of this subsection, the office shall consider all materially relevant factors, including:

(a) The purpose, objectives, and business philosophy of the proposed state bank or trust company.

(b) The projected financial performance of the proposed bank or trust company.

(c) The feasibility of the proposed bank or trust company, as stated in the business plan, particularly with respect to asset and liability growth and management.

(4)(a) The proposed officers have sufficient financial institution experience, ability, standing, and reputation and the proposed directors have sufficient business experience, ability, standing, and reputation to indicate reasonable promise of successful operation, and none of the proposed officers or directors has been convicted of, or pled guilty or nolo contendere to, any violation of s. 655.50, relating to the control of money laundering and terrorist financing; chapter 896, relating to offenses related to financial institutions; or similar state or federal law.

(b) At least two of the proposed directors who are not also proposed officers must have had at least 1 year of direct experience as an executive officer, regulator, or director of a financial institution within the 5 years before the date of the application. However, if the applicant demonstrates that at

least one of the proposed directors has very substantial experience as an executive officer, director, or regulator of a financial institution more than 5 years before the date of the application, the office may modify the requirement and allow the applicant to have only one director who has direct financial institution experience within the last 5 years.

(c) The proposed president or chief executive officer must have had at least 1 year of direct experience as an executive officer, director, or regulator of a financial institution within the last 5 years. The office may waive this requirement after considering:

1. The adequacy of the overall experience and expertise of the proposed president or chief executive officer;

2. The likelihood of successful operation of the proposed state bank or trust company pursuant to subsection (1);

3. The adequacy of the proposed capitalization under subsection (2);

4. The proposed capital structure under subsection (3);

5. The experience of the other proposed officers and directors; and

6. Any other relevant data or information.

Section 12. Present subsections (2), (3), and (4) of section 658.28, Florida Statutes, are redesignated as subsections (3), (4), and (5), respectively, and a new subsection (2) is added to that section, to read:

658.28 Acquisition of control of a bank or trust company.—

(2) If a person or a group of persons, directly or indirectly, acquires a controlling interest in a state bank or state trust company, as contemplated by this section, through probate or trust, the person or group of persons shall notify the office within 90 days after acquiring such an interest. Such an interest does not give rise to a presumption of control until the person or group of persons votes the shares or the office has issued a certificate of approval in response to an application pursuant to subsection (1).

Section 13. Present paragraphs (a), (b), and (c) of subsection (11) of section 658.2953, Florida Statutes, are redesignated as paragraphs (b), (c), and (d), respectively, and a new paragraph (a) is added to that subsection, to read:

658.2953 Interstate branching.—

(11) DE NOVO INTERSTATE BRANCHING ~~BY STATE BANKS~~.—

(a) As used in this subsection, the term "de novo branch" means a branch of a bank which is originally established by the bank as a branch and does not become a branch of such bank as a result of:

1. The bank's acquisition of another bank or of a branch of another bank; or

2. The conversion, merger, or consolidation of any bank or branch.

Section 14. Paragraph (d) of subsection (1) of section

662.1225, Florida Statutes, is amended to read:

662.1225 Requirements for a family trust company, licensed family trust company, or foreign licensed family trust company.—

(1) A family trust company or a licensed family trust company shall maintain:

(d) A deposit account with:

1. A bank located in the United States and insured by the Federal Deposit Insurance Corporation; or

2. A credit union located in the United States and insured by the National Credit Union Administration ~~with a state-chartered or national financial institution that has a principal or branch office in this state~~.

Section 15. Subsection (1) of section 662.128, Florida Statutes, is amended to read:

662.128 Annual renewal.—

(1) ~~Within 45 days after the end of each calendar year,~~ A family trust company, licensed family trust company, or foreign licensed family trust company shall file an ~~its~~ annual renewal application with the office on an annual basis no later than 45 days after the anniversary of the filing of either the initial application or the prior year's renewal application.

Section 16. Subsection (1) of section 663.07, Florida Statutes, is amended to read:

663.07 Asset maintenance or capital equivalency.—

(1) Each international bank agency and international

branch shall:

(a) Maintain with one or more banks insured by the Federal Deposit Insurance Corporation and located within the United States ~~in this state~~, in such amounts as the office specifies, evidence of dollar deposits or investment securities of the type that may be held by a state bank for its own account pursuant to s. 658.67. The aggregate amount of dollar deposits and investment securities for an international bank agency or international branch shall, at a minimum, equal the greater of:

1. Four million dollars; or

2. Seven percent of the total liabilities of the international bank agency or international branch excluding accrued expenses and amounts due and other liabilities to affiliated branches, offices, agencies, or entities; or

(b) Maintain other appropriate reserves, taking into consideration the nature of the business being conducted by the international bank agency or international branch.

The commission shall prescribe, by rule, the deposit, safekeeping, pledge, withdrawal, recordkeeping, and other arrangements for funds and securities maintained under this subsection. The deposits and securities used to satisfy the capital equivalency requirements of this subsection shall be held, to the extent feasible, in one or more state or national banks located in this state or in a federal reserve bank.

Section 17. Present subsections (4), (5), and (6) of section 663.532, Florida Statutes, are redesignated as subsections (5), (6), and (7), respectively, a new subsection (4) is added to that section, and paragraphs (i) and (j) of subsection (1) of that section are amended, to read:

663.532 Qualification.—

(1) To qualify as a qualified limited service affiliate under this part, a proposed qualified limited service affiliate must file a written notice with the office, in the manner and on a form prescribed by the commission. Such written notice must include:

(i) A declaration under penalty of perjury signed by the executive officer, manager, or managing member of the proposed qualified limited service affiliate that, to the best of his or her knowledge:

1. No employee, representative, or agent provides, or will provide, banking services; promotes or sells, or will promote or sell, investments; or accepts, or will accept, custody of assets.

2. No employee, representative, or agent acts, or will act, as a fiduciary in this state, which includes, but is not limited to, accepting the fiduciary appointment, executing the fiduciary documents that create the fiduciary relationship, or making discretionary decisions regarding the investment or distribution of fiduciary accounts.

3. The jurisdiction of the international trust entity or its offices, subsidiaries, or any affiliates that are directly involved in or facilitate the financial services functions, banking, or fiduciary activities of the international trust entity is not listed on the Financial Action Task Force's list of High-Risk Jurisdictions subject to a Call for Action or list of Jurisdictions under Increased Monitoring ~~Force Public Statement or on its list of jurisdictions with deficiencies in anti-money laundering or counterterrorism~~.

(j) For each international trust entity that the proposed qualified limited service affiliate will provide services for in this state, the following:

1. The name of the international trust entity;

2. A list of the current officers and directors of the international trust entity;

3. Any country where the international trust entity is organized or authorized to do business;

4. The name of the home-country regulator;

5. Proof that the international trust entity has been authorized by charter, license, or similar authorization by its home-country regulator to engage in trust business;

6. Proof that the international trust entity lawfully exists and is in good standing under the laws of the jurisdiction where it is chartered, licensed, or organized;

7. A statement that the international trust entity is not

in bankruptcy, conservatorship, receivership, liquidation, or in a similar status under the laws of any country;

8. Proof that the international trust entity is not operating under the direct control of the government or the regulatory or supervisory authority of the jurisdiction of its incorporation, through government intervention or any other extraordinary actions, and confirmation that it has not been in such a status or under such control at any time within the prior 3 years;

9. Proof and confirmation that the proposed qualified limited service affiliate is affiliated with the international trust entities provided in the notice; and

10. Proof that the jurisdictions where the international trust entity or its offices, subsidiaries, or any affiliates that are directly involved in or that facilitate the financial services functions, banking, or fiduciary activities of the international trust entity are not listed on the Financial Action Task Force's list of High-Risk Jurisdictions subject to a Call for Action or list of Jurisdictions under Increased Monitoring ~~Force Public Statement or on its list of jurisdictions with deficiencies in anti-money laundering or counterterrorism~~.

The proposed qualified limited service affiliate may provide additional information in the form of exhibits when attempting

to satisfy any of the qualification requirements. All information that the proposed qualified limited service affiliate desires to present to support the written notice must be submitted with the notice.

(4) The qualified limited service affiliate shall suspend the permissible activities provided in s. 663.531 relating to a specific jurisdiction if the qualified limited service affiliate becomes aware that the jurisdiction of an international trust entity served by the qualified limited service affiliate is included on the Financial Action Task Force's list of High-Risk Jurisdictions subject to a Call for Action or list of Jurisdictions under Increased Monitoring. Suspensions under this subsection must remain in effect until the jurisdiction is removed from the Financial Action Task Force's list of High Risk Jurisdictions subject to a Call for Action or list of Jurisdictions under Increased Monitoring.

Section 18. Paragraph (a) of subsection (5) of section 736.0802, Florida Statutes, is amended to read:

736.0802 Duty of loyalty.—

(5)(a) An investment by a trustee authorized by lawful authority to engage in trust business, as defined in s. 658.12 ~~s. 658.12(20)~~, in investment instruments, as defined in s. 660.25(6), that are owned or controlled by the trustee or its affiliate, or from which the trustee or its affiliate receives compensation for providing services in a capacity other than as

trustee, is not presumed to be affected by a conflict between personal and fiduciary interests provided the investment otherwise complies with chapters 518 and 660 and the trustee complies with the requirements of this subsection.

Section 19. For the purpose of incorporating the amendment made by this act to section 658.20, Florida Statutes, in a references thereto, subsection (1) of section 658.165, Florida Statutes, is reenacted to read:

658.165 Banker's banks; formation; applicability of financial institutions codes; exceptions.—

(1) If authorized by the office, a corporation may be formed under the laws of this state for the purpose of becoming a banker's bank. An application for authority to organize a banker's bank is subject to ss. 658.19, 658.20, and 658.21, except that s. 658.20(1)(b) and (c) and the minimum stock ownership requirements for the organizing directors provided in s. 658.21(2) do not apply.

Section 20. This act shall take effect July 1, 2022.