REPORT OF THE CHAPTER 517 TASK FORCE OF THE BUSINESS LAW SECTION OF THE FLORIDA BAR

RECOMMENDATIONS AND ANALYSIS OF PROPOSED AMENDMENTS TO THE FLORIDA SECURITIES AND INVESTOR PROTECTION ACT

SEPTEMBER 2023

Anti-Fraud Provisions 517.301 103

Background

The Executive Council of the Business Law Section of The Florida Bar appointed a Task Force in September 2022, to consider amendments to Ch. 517 of the Florida Statutes, The Florida Securities and Investor Protection Act. Will Blair was appointed Chair of the Task Force and Stuart Cohn was appointed Academic Chair. Roland Chase was subsequently appointed Vice Chair. The Task Force divided into subgroups examining various portions of Ch. 517. We have worked in close cooperation with the Office of Financial Regulation (the "OFR") and its staff. During our deliberations, the OFR, with our cooperation, presented to the 2023 legislative session proposed amendments to Ch. 517 that were limited to administrative and clarification aspects of Ch. 517, as the OFR and legislative staff was aware that our Task Force was working on more substantive changes to the statute. The OFR bill was enacted, and we are now presenting our recommendations for substantive amendments to the statute.

The impetus for our reform recommendations is to improve the ability of small and developing businesses in Florida to raise capital, while at the same time both assuring and improving investor protection and enforcement measures to guard against abuse. Florida's securities statute has not been materially amended for many years. As a result, a number of salutary measures taken both federally and by many states regarding small business financing have not been incorporated into Florida's law. One measure that was adopted in Florida –a crowdfunding exemption – was so restrictive in its terms and requirements that it has never been used by Florida businesses to raise capital. OFR, which includes the Division of Securities, fully supports our reform effort and has worked closely with us in preparing our recommendations.

Summary of Principal Recommendations

The Task Force recommendations contain both substantive amendments to the current statute as well as numerous non-substantive wording or numbering changes that we believe necessary for clarification, context, or appropriate placement purposes. The principal substantive recommendations are:

Registration Exemptions: Several significant proposals are made regarding exemptions from registration. Currently small businesses in Florida that seek to raise capital can only rely on two exemptions under Florida law (in addition to those available under preempting federal law): (1) a limited offering exemption in 517.061(11) and (2) the crowdfunding exemption in 517.0611, which has never been used. Our proposals retain the limited offering exemption, with some modification, and significantly amend the crowdfunding exemption. In addition, we are recommending adoption of an accredited investor exemption that has been adopted by a majority of states and a micro-offering exemption that is modeled after a successful exemption developed in Georgia.

Marketing Capacities: We are proposing to allow greater access to potential investors through so-called "demo-day" presentations and pre-offering testing the waters. Both proposals are based on current federal rules and format and include substantial investor protection requirements.

Control Person Liability: Sections 517.191 and 517.211 have been amended to add control person liability provisions. Control person liability has long been present in the federal securities statutes and is also in the Uniform Securities Act. There is a defense for control persons who are able to show that they were not responsible for the controlled person's act that resulted in a securities law violation. Creating such additional liability is an investor protection measure and is consistent with securities laws in other states. The definition of “control person” taken from SEC Rule 405 has been added to the definitions section, s. 517.021.

Aiding and Abetting: The statute currently provides for civil liability against aiders and abettors of a securities law violation. The proposal expands this liability to actions brought by the State of Florida.

Registration Procedures: A proposed amendment eliminates the requirement for 5 years of annual reports and audited financial statements applicable to simplified offerings that use the Small Company Offering Registration (“SCOR”). The statutory requirement is inconsistent with federal standards and exceeds the requirements imposed in Florida on other state registered offerings. The Task Force discussed several potential material changes, including revisions to the merit review standards, but concluded that further study and data was necessary before any such proposals could be made.

Investment Adviser Registration: Currently investment advisers are required to be registered in Florida if they have more than 15 Florida clients. After reviewing the standards in other states and federally, we are proposing reducing the number required for registration to 6 or more. This is an investor protection measure as it will require registration by persons who act as investment advisers to multiple clients.

Penalties: The maximum civil and administrative penalties that can be assessed in an action by the Attorney General under s. 517.191 has been increased from $10,000 to $20,000. This is consistent with penalty provisions in other states.

Vulnerable Adults: To protect the senior citizen population in Florida, and consistent with the Vulnerable Adults legislation in Ch. 517.34(1)(b), fines assessed in civil and administrative actions by the Attorney General under s. 517.191 for securities violations targeting seniors and vulnerable adults, as defined by statute, may be doubled.

Security Guarantee Fund: To facilitate an investor's recovery from the fund, we propose to eliminate the onerous requirement in s. 517.131 that the investor who has received a final judgment that is unsatisfied must make searches and inquiries to ascertain the assets of the judgment debtor, including a writ of execution if the office so requires. The office has the authority in the current statute to waive this requirement, but we believe it appropriate to eliminate this provision.

Clarification Proposals: Many of our proposals involve a re-writing of the current statute in a manner that we believe clarifies the provisions and places them in a more appropriate context. For example, the order of registration exemptions in s. 517.061 has been changed to what we believe is a more appropriate subject-matter based order and the anti-fraud provisions in current ss. 517.301, 517.311 and 517.312 have been consolidated into a single s. 517.301. Such clarifying or context-oriented revisions are throughout the proposals, but except where noted, the revisions make no material change to the substance of the existing statute.

Proposed Amendments

In this Report, the Task Force's proposed revisions to the statutory text are shown with additions (only) appearing in red, with the following exceptions: Crowdfunding (s. 517.0611), Securities Guaranty Fund (s. 517.131), Payment from Fund (s. 517.141) and Enforcement by the Office (s. 517.191). For these exceptions, the Report includes both a clean and redlined version of the proposed statutory revisions, with redlines showing both additions and deletions.

Definitions: S. 517.021

The following new definitions are proposed. The Accelerator, Incubator and Angel Investor Group definitions relate to the new demo-day provision in Ch. 517.0615. The Accredited Investor definition has been amended to fix a glitch in the current statute. The Boiler Room definition was amended to reflect the broader spectrum of communication means available today. A Business Entity definition has been added to expand the list of entities subject to the chapter. A Control Person definition has been added because of the proposed addition of control person liability. The Investment Adviser definition was amended to reduce the number of investment clients from 15 to 6 for registration purposes. A definition of Clients was added to the Investment Adviser provision for clarification purposes, as more fully described in the discussion of s. 517.12 below.

Accelerator means an organization that gives companies in the early stages of development access to workspace, mentorship, investors or other financial or management support.

Accredited investor shall be defined by rule of the commission in accordance with the Securities and Exchange Commission Rule 501, 17 C.F.R. s. 230.501, as amended.

Angel investor group means a group of accredited investors that holds regular meetings and has defined processes and procedures for making investment decisions, either individually or among the membership of the group as a whole, and is neither associated nor affiliated with a dealer or an investment adviser nor an agent or associated person thereof.

Boiler room means an enterprise in which two or more persons in a common scheme or enterprise solicit potential investors through telephone calls, electronic mail, text messages, social media, chat rooms, or other electronic means.

Business entity means any corporation, partnership, limited partnership, company, limited liability company, proprietorship, firm, enterprise, franchise, association, self-employed individual, or trust, whether fictitiously named or not, doing business in this state.

Control person means an individual or entity that possesses the power, directly or indirectly, to direct the management or policies of a company through ownership of securities, by contract or otherwise.

Incubator means the same as the term accelerator and means an organization that gives companies in the early stages of development access to workspace, mentorship, investors or other financial or management support.

Investment adviser means a person, other than an associated person of an investment adviser or a federal covered adviser, that receives compensation, directly or indirectly, and engages for all or part of the person's time, directly or indirectly, or through publications or writings, in the business of advising others as to the value of securities or as to the advisability of investments in, purchasing of, or selling of securities.

(b) The term does not include the following:

1. A dealer or associated person of a dealer whose performance of services in paragraph (a) is solely incidental to the conduct of the dealer's or associated person's business as a dealer and who does not receive special compensation for those services.

2. A licensed practicing attorney or certified public accountant whose performance of such services is solely incidental to the practice of the attorney's or accountant's profession.

3. A bank authorized to do business in this state.

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

5. A trust company having trust powers, as defined in s. 658.12, which it is authorized to exercise in this state, which trust company renders or performs investment advisory services in a fiduciary capacity incidental to the exercise of its trust powers.

6. A person that renders investment advice exclusively to insurance or investment companies.

7.a. A person that has fewer than six clients during the preceding 12 months who are residents of this state.

b. For the purpose of subparagraph 7., "client" has the same meaning as the term "client" defined by Securities and Exchange Commission Rule 275.222-2 [17 C.F.R. s. 275.222-2], as amended. Also, for purposes of this subparagraph, "client" does not mean other investment advisers, federal covered advisers, or dealers (registered or notice filed in this state unless exempt), banks, savings and loan associations, trust companies, insurance companies, investment companies, pension and profit-sharing trusts (other than self-employed individual retirement plans), or governmental agencies or instrumentalities, whether acting for themselves or as trustees with investment control.

8. A federal covered adviser.

9. The United States, a state, or any political subdivision of a state, or any agency, authority, or instrumentality of any one or more of the foregoing, or any business entity that is wholly owned directly or indirectly by any one or more of the foregoing, or any officer, agent, or employee of any of the foregoing acting as such in the course of his or her official duty.

Registration Exemptions: S. 517.051, 517.061, 517.0611 and 517.0612

Registration exemptions are divided between exemptions based on the nature of the securities (s. 517.051) and exemptions based on the form of the offering and sale (s. 517.061, 0611, and 0612). There are no limitations on the offer, sale or resale of securities that are exempt under s. 517.051 other than the statutory requirements pertaining to the various exemptions. The exemptions in 517.061, 0611, and 0612 are transactional, meaning that any security obtained under a particular exemption cannot be freely re-traded except through a subsequent transaction that is registered or is also exempt from registration.

The Task Force examined each registration exemption in Ch. 517 in light of its purpose, clarity and effect, comparing each exemption to its counterpart, if any, in the Uniform Securities Act of 2002 ("USA" or "Uniform Securities Act") and federal statutes and rules. In addition, we have added additional exemptions that we believe are appropriate to facilitate small business financing, consistent with investor protection goals. We have also reordered the exemptions in s. 517.061 to provide a more rational ordering.

<u>SECURITIES EXEMPTIONS UNDER S. 517.501</u>

517.051(1): U.S., State and Local Government Securities

This provision has been retained except to exclude certain industrial revenue bonds and commercial development bonds. The exclusion is based on the increased risk to investors under such bonds, which depend upon revenue streams for their support, unless the bonds are guaranteed by a publicly traded entity described in s. 18(b)(1) of the Securities Act of 1933, as amended. To accommodate this exclusion, we propose revising the section into subsections.

517.051(1): (a) A security issued or guaranteed by the United States or any territory or insular possession of the United States, by the District of Columbia, or by any state of the United States or by any political subdivision or agency or other instrumentality thereof;

(b) No person shall directly or indirectly offer or sell securities, other than general obligation bonds, under this section if the issuer or guarantor is in default or has been in default any time after December 31, 1975, as to principal or interest:

(i) With respect to an obligation issued by the issuer or successor of the issuer, or

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

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

(c) The provisions of subsection 1(a) shall not apply to any obligations or securities that are industrial or commercial development bonds as defined in 17 C.F.R. 230.131, as amended, unless payments are made or unconditionally guaranteed by a person whose securities are exempt from registration under Section 18(b)(1) of the Securities Act of 1933.

517.051(3): National Banks

The Task Force concluded that the analogous provision in the USA, s. 201(3)(B), is more clearly drafted than the current statute, including by virtue of a general reference to depository institutions. The only change we propose to the USA provision is adding the word "regulated" prior to "depository" in subsection (c).

517.051(3): a security issued by and representing or that will represent an interest in or a direct obligation of, or be guaranteed by:

(A) an international banking institution;

(B) a banking institution organized under the laws of the United States; a member bank of the Federal Reserve System; or a depository institution a substantial portion of the business of which consists or will consist of receiving deposits or share accounts that are insured to the maximum amount authorized by statute by the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund, or a successor authorized by federal law or exercising fiduciary powers that are similar to those permitted for national banks under the authority of the Comptroller of Currency pursuant to Section 1 of Public Law 87-722 (12 U.S.C. Section 92a); or

(C) any other regulated depository institution.

517.051(4): Railroads and Public Utilities

This is a complex provision relating to railroads and public utilities. The consensus was to retain the provision as is. We made no amendments other than to change the reference to corporations to "business entity" and to add "other common carriers" as in s. 201(5) of the Uniform Securities Act.

517.051(4): A security issued or guaranteed, as to principal, interest, or dividend, by a business entity owning or operating a railroad, other common carrier, or any other public service utility; provided that such business entity is subject to regulation or supervision whether as to its rates and charges or as to the issue of its own securities by a public commission, board, or officer of the government of the United States, of any state, territory, or insular possession of the United States, of any municipality located therein, of the District of Columbia, or of the Dominion of Canada or of any province thereof; also equipment securities based on chattel mortgages, leases, or agreements for conditional sale of cars, motive power, or other rolling stock mortgaged, leased, or sold to or furnished for the use of or upon such railroad or other public service utility corporation or where the ownership or title of such equipment is pledged or retained in accordance with the provisions of the laws of the United States or of any state or of the Dominion of Canada to secure the payment of such equipment securities; and also bonds, notes, or other evidences of indebtedness issued by a holding corporation and secured by collateral consisting of any securities hereinabove described; provided, further, that the collateral securities equal in fair value at least 125 percent of the par value of the bonds, notes, or other evidences of indebtedness so secured.

517.051(7): Cooperatives

Florida currently has a registration exemption for only two types of cooperatives ---- agricultural and residential cooperatives. The Uniform Securities Act of 2002 has a broad exemption covering *<u>all</u>* *forms of cooperatives. The Task Force concluded that there was no major policy reason not to expand the exemption to all not-for-profit cooperatives, per the USA provision, organized under State law or qualified to be treated as a cooperative under the Internal Revenue Code. We propose to retain the existing exemptions for agricultural and residential cooperatives and add a subsection (c) for all other cooperatives.*

The residential cooperative exemption is currently a transaction exemption in 517.061. We are proposing certain modifications as shown and moving that exemption to the 517.051 securities exemptions, which is consistent with the Uniform Securities Act, and we believe more consistent with the exemption's purpose. As a result, both the initial issuance and any resale of a residential cooperative unit are exempt from registration.

517.051(7) (a) Securities of nonprofit agricultural cooperatives organized under the laws of this state when the securities are sold or offered for sale to persons principally engaged in agricultural production or selling agricultural products.

(b) A member's or owner's interest in a business entity which represents ownership, or entitles the holder of the interest to possession and occupancy, of a specific residential unit in property owned by such business entity and organized and operated on a cooperative basis, solely for residential purposes.

(c) A member's or owner's interest in, or a retention certificate or like security given in lieu of a cash patronage dividend issued by, a not-for-profit membership entity operated either as a cooperative under the cooperative laws of a State or in accordance with the cooperative provisions of Subchapter T of the United States Internal Revenue Code, as amended, but not a member's or owner's interest, retention certificate, or like security sold or transferred to a person other than (i) a bona fide member of the not-for-profit membership entity or (ii) a person who becomes a bona fide member of the not-for-profit membership entity at the time of or in connection with the sale or transfer.

517.051(8): Minimum $25,000 9-month note: DELETED

The Task Force proposes deletion of this exemption. It has been the subject of abusive efforts to evade registration requirements through the issuance of short-term note to nonaccredited investors. There is no analogy in the Uniform Securities Act. If such notes cannot be sold under federal exemptions that preempt state registration, they should be subject to state registration.

517.051(8): Not-for-profit entities [former #9]

The only change is numbering, changing corporation to business entity, and adding "as amended" where appropriate.

517.051(8): A security issued by a business entity organized and operated exclusively for religious, educational, benevolent, fraternal, charitable, or reformatory purposes and not for pecuniary profit, no part of the net earnings of which inures to the benefit of any private stockholder or individual, or any security of a fund that is excluded from the definition of an investment company under s. 3(c)(10)(B) of the Investment Company Act of 1940, as amended; provided that no person shall directly or indirectly offer or sell securities under this subsection except by an offering circular containing full and fair disclosure, as prescribed by the rules of the commission, of all material information, including, but not limited to, a description of the securities offered and terms of the offering, a description of the nature of the issuer's business, a statement of the purpose of the offering and the intended application by the issuer of the proceeds thereof, and financial statements of the issuer prepared in conformance with United States generally accepted accounting principles. Section 6(c) of the Philanthropy Protection Act of 1995, Pub. L. No. 104-62, shall not preempt any provision of this chapter.

EXEMPTIONS UNDER 517.061

WE PROPOSE TO CHANGE THE ORDER OF EXEMPTIONS IN 517.061 TO CREATE A MORE COHERENT STRUCTURE OF EXEMPTIONS. WE HAVE INCLUDED HEADINGS FOR EACH SECTION FOR CONVENIENCE PURPOSES ALTHOUGH WE ARE AWARE THAT SUCH HEADINGS WILL NOT BE UTILIZED IN THE STATUTE. THE NUMBER OF THE PROVISION IN THE CURRENT STATUTE IS NOTED.

ISSUER NON-CAPITAL RAISING TRANSACTIONS

517.061(1) JUDICIAL AND OTHER REGULATED SALES [CURRENT S. 517.061(1)]

In subsection (1)(a) we propose adding an exemption for sales effected through assignments for the benefit of creditors.

Subsection (1)(b) is broadly based on the Uniform Securities Act s. 202(9). It involves an exchange in which securities are involved and the fairness of the transaction has been passed upon by an authorized agency or court. We adopted the language of the federal analog, s. 3(a)(10) of the Securities Act of 1933, as amended, which was determined to be a better drafted *provision than that of the USA. This exemption is added as 517.061(1)(b) inasmuch as 517.061(1)(a) similarly relates to judicial approval of a securities transaction.*

517.061(1)(a): Any judicial, executor's, administrator's, guardian's, or conservator's sale, or at any sale by a receiver or trustee in insolvency or bankruptcy, or at any sale by an Assignee as defined in s. 727.103(2) with respect to an Assignment as defined in s. 727.103(4), or any transaction incident to a judicially approved reorganization in which a security is issued in exchange for one or more outstanding securities, claims, or property interests.

(b) Except for a security exchanged in a case under title 11 of the United States Code, any security which is issued in exchange for one or more bona fide outstanding securities, claims or property interests, or partly in such exchange and partly for cash, where the terms and conditions of such issuance and exchange are approved, after a hearing upon the fairness of such terms and conditions at which all persons to whom it is proposed to issue securities in such exchange shall have the right to appear, by any court, or by any official or agency of the United States, or by any state or territorial banking or insurance commission or other governmental authority expressly authorized by law to grant such approval.

517.061(3): DIVIDENDS AND DISTRIBUTIONS [CURRENT S. 517.061(4)]

The Uniform Securities Act provision is substantially similar to the current statute but more complete as to the range of dividend transactions. We therefore propose substituting the current provision with the USA analog.

517.061(3): A transaction involving a stock dividend or equivalent equity distribution, whether the corporation or other business organization distributing the dividend or equivalent equity distribution is the issuer or not, if nothing of value is given by stockholders or other equity holders for the dividend or equivalent equity distribution other than the surrender of a right to a cash or property dividend if each stockholder or other equity holder may elect to take the dividend or equivalent equity distribution in cash, property, or stock.

517.061(4): TRANSFERS EXCLUSIVELY TO ISSUER'S OWN SECURITY HOLDERS [CURRENT S. 517.061(6)]

We were unable to discern a justifiable reason for the current provision's limit of the exemption to transferable warrants exercisable within not more than 90 days of issuance, nor why Florida's provision (unlike the USA) differentiates between nontransferable and transferable warrants. Experienced securities attorneys were contacted in an attempt to understand if there was any compelling reason for Florida's distinction between transferrable and nontransferable warrants. No reason was advanced. As a result, the consensus was to adopt the USA provision that makes no distinction among warrants.

517.061(4): A transaction under an offer to existing security holders of the issuer, including persons that at the date of the transaction are holders of convertible securities, options, or warrants, if a commission or other remuneration is not paid or given, directly or indirectly, for soliciting a security holder in this State.

517.061(5): REORGANIZATIONS [CURRENT S. 517.061(5)]

No change except to change "corporation" to "business entity."

517.061(5): The issuance of securities to such equity security holders or other creditors of a business entity in the process of a reorganization of such business entity, made in good faith and not for the purpose of avoiding the provisions of this chapter, either in exchange for the securities of such equity security holders or claims of such creditors or partly for cash and partly in exchange for the securities or claims of such equity security holders or creditors.

517.061(6) MERGERS, SHARE EXCHANGES [CURRENT S. 517.061(9)]

The consensus was to adopt the substantially similar but better drafted Uniform Securities Act provision.

517.061(6): A transaction involving the distribution of the securities of an issuer to the security holders of another person in connection with a merger, consolidation, exchange of securities, sale of assets, or other reorganization to which the issuer, or its parent or subsidiary and the other person, or its parent or subsidiary, are parties.

S. 517.061(8): STOCK OPTION AND OTHER PLANS [CURRENT S. 517.061(15)]

This provision deals with securities offered under stock option or purchase plans. The consensus was that Uniform Securities Act s. 202.21 is a more complete and preferred provision, as it covers more variables that may exist among option plans.

517.061(8): The offer or sale of securities under a bona fide employees' stock purchase, savings, option, profit-sharing, pension, or similar employees' benefit plan, including any securities, plan interests, and guarantees issued under a compensatory benefit plan or compensation contract, contained in a record, established by the issuer, its parents, its majority-owned subsidiaries, or the majority-owned subsidiaries of the issuer's parent for the participation of their employees, including offers or sales of such securities to:

(A) directors, general partners, managers, trustees, if the issuer is a business trust, officers, consultants, and advisors;

(B) family members who acquire such securities from persons listed in subsection (A) through gifts or domestic relations orders;

(C) former employees, directors, general partners, managers, trustees, officers, consultants, and advisors if those individuals were employed by or providing services to the issuer when the securities were offered; and

(D) insurance agents who are exclusive insurance agents of the issuer, or the issuer's subsidiaries or parents, or who derive more than 50 percent of their annual income from those organizations.

ISSUER CAPITAL-RAISING TRANSACTIONS

517.061(9): SALE TO BANKS, INSURANCE COMPANIES [CURRENT S. 517.061(7)]

No material change is proposed. The final clause of the current statute that prohibits a "scheme to evade" the securities laws has been deleted as we have proposed a general provision to that effect in 517.0613. The term "qualified institutional buyer" is defined in s. 517.021.

517.061(9): The offer or sale of securities to a bank, trust company, savings institution, insurance company, dealer, investment company as defined by the Investment Company Act of 1940, as amended, pension or profit-sharing trust, or qualified institutional buyer, whether any of such entities is acting in its individual or fiduciary capacity.

517.061(10) LIMITED OFFERING EXEMPTION [CURRENT S. 517.061(11)]

This is the primary registration exemption for capital-raising purposes. It was modeled after the SEC Rule 505 exemption which no longer exists. The exemption is principally used by issuers that limit their offers and sales to Florida residents.

The material proposed changes to this exemption are:

1. *The disclosure document is required to include information regarding a purchaser's right of voidability.*
2. *The compensation provision limited to dealers has been deleted as the statute already precludes compensation to non-dealers.*
3. *The 3-day voidability provision has been altered to limit it to three days from the date of purchase.*
4. *Certain additional purchasers have been added in subsections (b)(5) and (6) to the list of excluded purchasers for purposes of the 35 purchaser limit. The added provisions have been taken from the analogous SEC Rule 501 exclusions for counting purchasers.*
5. *The integration provisions relating to this exemption have been deleted. The consensus was that Ch. 517 should have a stand-alone integration provision, rather than one that is a subsection only of this exemption. The consensus was to adopt an integration provision that would apply to all Ch. 517 transactions. As a result, the integration provisions in s. 517.061(11)(c) and (d) are eliminated. The new integration provision is in proposed 517.0614.*

517.061(10) (a) The offer or sale, by or on behalf of an issuer, of its own securities, which offer or sale is part of an offering made in accordance with all of the following conditions:

1. There are no more than 35 purchasers, or the issuer reasonably believes that there are no more than 35 purchasers, of the securities of the issuer in this state during an offering made in reliance upon this subsection or, if such offering continues for a period in excess of 12 months, in any consecutive 12-month period.

2. Neither the issuer nor any person acting on behalf of the issuer offers or sells securities pursuant to this subsection by means of any form of general solicitation or general advertising in this state.

3. Before the sale, each purchaser or the purchaser's representative, if any, is provided with, or given reasonable access to, full and fair disclosure of all material information, which shall include written notification of a purchaser’s right to void the sale pursuant to subsection 10(a)4.

4. Any sale made pursuant to this exemption is voidable by the purchaser within 3 days after the first tender of consideration is made by such purchaser to the issuer by sending an email to the issuer’s email address set forth in the disclosure document provided to the purchaser or purchaser’s representatives or by hand delivery, courier service or other method by which written proof of delivery to the issuer of the purchaser’s election to rescind the purchase is evidenced.

(b) The following purchasers are excluded from the calculation of the number of purchasers under subparagraph (a)1.:

1. A relative, spouse, or relative of the spouse of a purchaser who has the same primary residence as the purchaser.

2. A trust or estate in which a purchaser, any of the persons related to such purchaser specified in subparagraph 1., and any business entity specified in subparagraph 3. collectively have more than 50 percent of the beneficial interest (excluding contingent interest).

3. A business entity in which a purchaser, any of the persons related to such purchaser specified in subparagraph 1., and any trust or estate specified in subparagraph 2. collectively are beneficial owners of more than 50 percent of the equity securities or equity interest.

4. Any accredited investor.

(c) For purposes of the number of purchasers under subparagraph (a)1.:

1. A business entity shall be counted as one purchaser. If, however, that entity is organized for the specific purpose of acquiring the securities offered and is not an accredited investor, then each beneficial owner of equity securities or equity interests in the entity shall count as a separate purchaser.

2. A non-contributory employee benefit plan within the meaning of Title I of the Employee Retirement Income Security Act of 1974 shall be counted as one purchaser where the trustee makes all investment decisions for the plan.

517.061(11) ACCREDITED INVESTOR EXEMPTION

The Task Force believes that this is a needed and important exemption for small businesses that cannot meet the requirements of SEC Rule 506 for private offerings. This exemption, which follows the North American Securities Administrators Association ("NASAA") model, has been adopted by a majority of states. This exemption will also exempt offers and sales from registration under federal securities law if the offers and sales comply with the federal intrastate exemption. The exemption includes express limitations on resale by purchasers.

Notice filing for this exemption is, we believe, appropriate and is included in our proposal as it allows the administrator to monitor compliance with the exemption provisions.

The only change from the NAASA model we propose making is to eliminate the limit of 25 words for describing the business, as the limit was considered to be too short for adequate disclosure.

517.061(11): The offer or sale of a security by an issuer in a transaction that meets the requirements of this section.

(a) Sales of securities shall be made only to persons who are or the issuer reasonably believes are accredited investors.

(b) The exemption is not available to an issuer that is in the development stage that either has no specific business plan or purpose or has indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies, or other entity or person.

(c) The issuer reasonably believes that all purchasers are purchasing for investment and not with the view to or for sale in connection with a distribution of the security. Any resale of a security sold in reliance on this exemption within 12 months of sale shall be presumed to be with a view to distribution and not for investment, except a resale pursuant to a registration statement effective under this chapter or pursuant to an exemption available under this chapter, the Securities Act of 1933, as amended, or the rules and regulation adopted thereunder.

(d) (1) A general announcement of the proposed offering may be made by any means.

(2) The general announcement shall include only the following information, unless additional information is specifically permitted by the Commission:

(a) The name, address and telephone number of the issuer of the securities;

(b) The name, a brief description and price (if known) of any security to be issued;

(c) A brief description of the business;

(d) The type, number and aggregate amount of securities being offered;

(e) The name, address and telephone number of the person to contact for additional information; and

(f) A statement that: (i) sales will only be made to accredited investors; (ii) no money or other consideration is being solicited or will be accepted by way of this general announcement; and (iii) the securities have not been registered with or approved by any state securities agency or the U.S. Securities and Exchange Commission and are being offered and sold pursuant to an exemption from registration.

(f) The issuer, in connection with an offer, may provide information in addition to the general announcement under paragraph (e), if such information:

(1) is delivered through an electronic database that is restricted to persons who have been pre-qualified as accredited investors; or

(2) is delivered after the issuer reasonably believes that the prospective purchaser is an accredited investor.

(g) No telephone solicitation shall be permitted unless prior to placing the call, the issuer reasonably believes that the prospective purchaser to be solicited is an accredited investor.

(h) Dissemination of the general announcement of the proposed offering to persons who are not accredited investors shall not disqualify the issuer from claiming the exemption under this rule.

(i) The issuer shall file with the Department a notice of transaction, a consent to service of process, and a copy of the general announcement, within 15 days after the first sale in this state. The commission may establish by rule procedures for filing documents by electronic means.

NONISSUER TRANSACTIONS

517.061(12) NONISSUER ISOLATED SALES [CURRENT S. 517.061(3)]

The final paragraph of current s. 517.061(3) regarding a one-year ownership of the securities raises a concern that despite the exemption allowed in subsection (b) for transactions exempt *under Section 4(a)(1) of the Securities Act of 1933, as amended, which should invoke the protections of Rule 144 thereunder, a court might possibly interpret the last paragraph as requiring at least a one-year holding period under Florida law in order to not be considered an underwriter. After discussion, it was agreed to add to the end of (b) "or under Securities and Exchange Commission rules and regulations" and to delete the provision's final paragraph.*

The conditions set forth in subsection (a) relate to the limited offering exemption, which has now been renumbered as 517.061(10). The requirement that the sale be by a <u>bona fide</u> owner of the securities has been added.

517.061(12): The isolated sale or offer for sale of securities when made by or on behalf of a bona fide owner of such securities not the issuer or underwriter of the securities, who disposes of such securities for the owner's own account, and such sale is not made directly or indirectly for the benefit of the issuer or an underwriter of such securities or for the direct or indirect promotion of any scheme or enterprise with the intent of violating or evading any provision of this chapter. For purposes of this subsection, isolated offers or sales include, but are not limited to, an isolated offer or sale made by or on behalf of a bona fide owner of such securities, but not the issuer or underwriter of such securities if:

(a) The offer or sale of securities is in a transaction satisfying all of the requirements of subparagraphs (10)(a)1., 2., and 3. and paragraph (10)(b); or

(b) The offer or sale of securities is in a transaction exempt under s. 4(a)(1) of the Securities Act of 1933, as amended, or under Securities and Exchange Commission rules or regulations.

<u>517.061(13) NONISSUER TRANSACTIONS BY SECURED PARTIES [CURRENT S. 517.061(2)]</u>

The only proposed change is the addition of sales by certain secured parties.

517.061(13): By or for the account of a pledgeholder, a secured party as defined in s. 679.1021(1)(ttt), or mortgagee selling or offering for sale or delivery in the ordinary course of business and not for the purposes of avoiding the provisions of this chapter, to liquidate a bona fide debt, a security pledged in good faith as security for such debt.

DEALER TRANSACTIONS**S. 517.061(14): UNSOLICITED DEALER TRANSACTIONS [CURRENT S. 517.061(13)]**

We propose adding to this exemption transactions through certain federal registered investment advisers, taken from the Uniform Securities Act.

517.061(14): (a) An unsolicited purchase or sale of securities on order of, and as the agent for, another by a dealer registered pursuant to the provisions of s. 517.12; provided that this exemption applies solely and exclusively to such registered dealers and does not authorize or permit the purchase or sale of securities on order of, and as agent for, another by any person other than a dealer so registered; and provided, further, that such purchase or sale is not directly or indirectly for the benefit of the issuer or an underwriter of such securities or for the direct or indirect promotion of any scheme or enterprise with the intent of violation or evading any provision of this chapter.

(b) A nonissuer transaction with a federal covered investment adviser with investments under management in excess of $100,000,000 acting in the exercise of discretionary authority in a signed record for the account of others.

S. 517.061(15): OPTION SALES BY DEALERS [CURRENT S. 517.061(16)]

This provision relates to the sale of a securities option through a registered dealer. The consensus was to make no change except for clarifying language. We propose to eliminate Subsection (e) of the current statute regarding a "scheme to violate or evade" because of the overall new 517.0613 applying that notion to all exemptions.

S. 517.061(15): The sale by or through a registered dealer of any securities option if at the time of the sale of the option all of the following conditions are met:

(a) The performance of the terms of the option is guaranteed by any dealer registered under the federal Securities Exchange Act of 1934, as amended, which guaranty and dealer are in compliance with such requirements or rules as may be approved or adopted by the commission; or

(b) Such options transactions are cleared by the Options Clearing Corporation or any other clearinghouse recognized by the office; and

(c) The option is not sold by or for the benefit of the issuer of the underlying security; and

(d) The underlying security may be purchased or sold on a recognized securities exchange registered under the Securities Exchange Act of 1934, as amended.

S. 517.061(16): NONISSUER SECONDARY SALES [CURRENT S. 517.061(17)]

This exemption was amended to preclude its use by control persons, which is consistent with SEC Rule 144. Otherwise, no change is proposed except for clarifying language.

517.061(16): (a) The offer or sale of securities, as agent or principal, by a dealer registered pursuant to s. 517.12, when such securities are offered or sold at a price reasonably related to the current market price of such securities, provided such securities are:

1. Securities of an issuer for which reports are required to be filed by s. 13 or s. 15(d) of the Securities Exchange Act of 1934, as amended;

2. Securities of a company registered under the Investment Company Act of 1940, as amended;

3. Securities of an insurance company, as that term is defined in s. 2(a)(17) of the Investment Company Act of 1940, as amended; or

4. Securities, other than any security that is a federal covered security pursuant to s. 18(b)(1) of the Securities Act of 1933, as amended, and is not subject to any registration or filing requirements under this chapter, which securities have been listed or approved for listing upon notice of issuance by a securities exchange registered pursuant to the Securities Exchange Act of 1934, as amended, and also all securities senior to any securities so listed or approved for listing upon notice of issuance, or represented by subscription rights which have been so listed or approved for listing upon notice of issuance, or evidences of indebtedness guaranteed by an issuer with a class of securities listed or approved for listing upon notice of issuance by such securities exchange, such securities to be exempt only so long as such listings or approvals remain in effect. The exemption provided for herein does not apply when the securities are suspended from listing approval for listing or trading.

(b) The exemption provided in this subsection does not apply if the sale is made for the direct or indirect benefit of an issuer or a control person of such issuer or if such securities constitute the whole or part of an unsold allotment to, or subscription or participation by, a dealer as an underwriter of such securities.

(c) This exemption is not available for any securities which have been denied registration pursuant to s. 517.111. Additionally, the office may deny this exemption with reference to any particular security, other than a federal covered security, by order published in such manner as the office finds proper.

S. 517.061(17): NONISSUER TRANSACTIONS OF SECURITIES OUTSTANDING AT LEAST 90 DAYS [CURRENT S. 517.061(20)]

The current statute mistakenly requires all five conditions for this exemption, which is not appropriate given the nature of the five conditions. We propose retaining the mandatory conditions of (a)-(c), along with either one of (d) and (e). The other material change proposed is the addition in subsection (e)(2) of securities that are traded through an SEC-registered alternative trading system, which requires registered brokers to have substantial information about the issuer in its files. Minor clarifying language has also been added.

S. 517.061(17): Any nonissuer transaction by a registered dealer, and any resale transaction by a sponsor of a unit investment trust registered under the Investment Company Act of 1940, as amended, in a security of a class that has been outstanding in the hands of the public for at least 90 days; provided, at the time of the transaction the following conditions in subparagraphs (a), (b) and (c) and either subparagraph (d) or (e) are met:

(a) The issuer of the security is actually engaged in business and is not in the organization stage or in bankruptcy or receivership and is not a blank check, blind pool, or shell company whose primary plan of business is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person;

(b) The security is sold at a price reasonably related to the current market price of the security;

(c) The security does not constitute the whole or part of an unsold allotment to, or a subscription or participation by, the dealer as an underwriter of the security;

(d) The security is listed in a nationally recognized securities manual designated by rule of the commission or a document filed with and is publicly viewable through the Securities and Exchange Commission electronic data gathering and retrieval system and which contains:

1. A description of the business and operations of the issuer;

2. The names of the issuer's officers and directors, if any, or, in the case of an issuer not domiciled in the United States, the corporate equivalents of such persons in the issuer's country of domicile;

3. An audited balance sheet of the issuer as of a date within 18 months before such transaction or, in the case of a reorganization or merger in which parties to the reorganization or merger had such audited balance sheet, a pro forma balance sheet; and

4. An audited income statement for each of the issuer's immediately preceding 2 fiscal years, or for the period of existence of the issuer, if in existence for less than 2 years or, in the case of a reorganization or merger in which the parties to the reorganization or merger had such audited income statement, a pro forma income statement.

(e) 1. The issuer of the security has a class of equity securities listed on a national securities exchange registered under the Securities Exchange Act of 1934, as amended.

2. The security is offered, purchased or sold through an alternative trading system registered under Securities and Exchange Commission Regulation ATS, 17 C.F.R. 242.301, as amended.

3. The issuer of the security is a unit investment trust registered under the Investment Company Act of 1940, as amended.

4. The issuer of the security has been engaged in continuous business, including predecessors, for at least 3 years; or

5. The issuer of the security has total assets of at least $2 million based on an audited balance sheet as of a date within 18 months before such transaction or, in the case of a reorganization or merger in which parties to the reorganization or merger had such audited balance sheet, a pro forma balance sheet.

517.061(19) TRADING IN FOREIGN SECURITIES [NEW EXEMPTION]

The consensus was to propose adopting this new exemption from USA s. 202(23) which relates to the buying or selling of securities of foreign companies through foreign brokers. The Florida administrator has the authority to determine the permissible foreign jurisdictions and to revoke an exemption for a particular jurisdiction following an administrative hearing. Canada and the Toronto Stock Exchange are specifically named exemptions within this provision.

517.061(19): A nonissuer transaction in an outstanding security by or through a broker-dealer registered or exempt from registration under this chapter, if the issuer is a reporting issuer in a foreign jurisdiction designated by this paragraph or by rule adopted or order issued under this chapter; has been subject to continuous reporting requirements in the foreign jurisdiction for not less than 180 days before the transaction; and the security is listed on the foreign jurisdiction's securities exchange that has been designated by this paragraph or by rule adopted or order issued under this chapter, or is a security of the same issuer that is of senior or substantially equal rank to the listed security or is a warrant or right to purchase or subscribe to any of the foregoing. For purposes of this paragraph, Canada, together with its provinces and territories, is a designated foreign jurisdiction and The Toronto Stock Exchange, Inc., is a designated securities exchange.

After an administrative hearing in compliance with the state administrative procedure act, the administrator, by rule adopted or order issued under this chapter, may revoke the designation of a securities exchange under this paragraph, if the administrator finds that revocation is necessary or appropriate in the public interest and for the protection of investors.

S. 517.061(20): RULE-MADE EXEMPTIONS [CURRENT S. 517.061(19)]

No change is proposed to this provision other than clarifying language.

517.061(20): Other transactions defined by rules as transactions exempted from the registration provisions of s. 517.07, which rules the commission may adopt from time to time, but only after a finding by the office that the application of the provisions of s. 517.07 to a particular transaction is not necessary in the public interest and for the protection of investors because of the small dollar amount of securities involved or the limited character of the offering. In conjunction with its adoption of such rules, the commission may also provide in such rules that persons selling or offering for sale securities in a transaction exempted by rule adopted pursuant to this section are exempt from the registration requirements of s. 517.12. No rule so adopted may have the effect of narrowing or limiting any exemption provided for by statute.

517.0611 CROWDFUNDING

The crowdfunding exemption in current 517.0611 is so laden with technical and burdensome requirements that to date it has not been used by a single Florida business. In order to facilitate the ability of small Florida businesses to obtain capital, this exemption needs to be amended in several major respects. Some background:

1. *The federal crowdfunding exemption was adopted in 2015. It is set forth in ss. 4(a)(6) and 4A of the Securities Act of 1933, as amended, and SEC Rules 227.100-503. The exemption is replete with substantial and significant technical requirements. The*

exemption has been utilized but the numbers are not substantial and by far most companies rely on Regulation D Rule 506(b) and 506(c) exemptions if they can.

2. *To assist small companies, many states have adopted their own intrastate crowdfunding exemption. The state exemptions generally modify the requirements imposed by the federal crowdfunding exemption. For example, among the states that, in contrast to the federal exemption, do not require an intermediary to administer the exemption are Arizona, Colorado, Delaware, Georgia, Illinois, Massachusetts, Michigan, Oregon, Virginia and Washington (based on a survey conducted two years ago).*
3. *Florida adopted a crowdfunding exemption in 2015 that mirrors the federal exemption. It is set forth in s. 517.0611. It contains no significant modification from the federal exemption.*
4. *We have been advised by OFR that to date there has not been a single offering under Florida's crowdfunding provision.*

Following analysis of this exemption, and analogous exemptions in other states, the following proposed changes to the crowdfunding exemption are:

1. ***Expand companies eligible to use the exemption** by eliminating the requirement that the company be incorporated in Florida. Therefore, a Florida-based corporation or LLC formed in another state, such as Delaware, can raise capital under this exemption provided that Florida is the company's principal place of business as determined by objective criteria set forth in SEC Rule 147A. This change is consistent with SEC Rule 147A.*
2. ***Increase in amount a company can raise** under the exemption within a 12-month period from $1 million to $5 million. The SEC recently amended its crowdfunding exemption to allow for a $5 million maximum amount. In today's economy, limiting a company to raising $1 million in a 12-month period may be too restrictive for many businesses.*
3. ***A flat $10,000 maximum that a non-accredited investor can invest** in crowdfunding offerings in a 12-month period. This proposal avoids the confusion and potential liability based on the formula-based limitations in the current statute. For accredited investors, there is no investment limitation in the current statute or our proposal.*
4. ***Modification of the requirement that the offering be administered by a dealer or an intermediary**. The requirement that the issuer employ a third-party dealer or registered*

intermediary to administer the offering has been retained only for offerings in excess of $2.5 million. The requirement in the current statute applies to all offerings and is regarded by the Task Force as the greatest impediment to the use of the crowdfunding exemption, as it is costly to the issuer and hinders the ability of the issuer to market its offering effectively and directly. Moreover, issuers seeking relatively low amounts of capital may not be able to find an intermediary willing to take on the responsibilities and risks for such a small offering. As noted, a number of states have entirely eliminated this requirement from their crowdfunding exemptions. We considered a total elimination of the requirement but decided that for offerings in excess of $2.5 million the issuer can afford the time and expense to engage a dealer or intermediary. For all other offerings the issuer may choose whether to use an intermediary.

If the issuer chooses not to use an intermediary, the issuer is obligated to perform the duties that would otherwise be performed by an intermediary, including assuring that the investors are advised of the risks of the offering, are qualified, and that the disclosure materials are given to all potential investors.

Section 517.12 of the current statute contains provisions for the registration of intermediaries. Those have been retained.

5. ***Elimination of the mandatory third-party escrow of funds****. The current statute requires that the issuer set a minimum target amount and that all proceeds from the sale of securities be deposited with a third-party escrow agent until the target amount has been reached. While seemingly unobtrusive, in practice the escrow requirement is a major impediment for smaller companies. Task Force members confirmed that banks and other institutions are not willing to serve as escrow agents for small companies for reasons of administrative costs and potential liabilities. The proposal eliminates the mandatory third-party escrow requirement but requires the issuer to deposit the proceeds in a federally insured bank authorized to do business in Florida. The funds will remain on deposit until the target amount has been reached. If the target amount is not reached within a pre-determined, disclosed time period, the issuer is obligated to return all funds to the investors.*
6. ***Limited general solicitation and advertising****. The current statute has no provision that permits the issuer to solicit potential investors and use general advertising, other than*

through an intermediary. The proposal allows the issuer to engage in solicitation and advertising of the offering, which we believe is necessary for small companies to be able to attract potential investors. Any statements made in the solicitation process are subject to the anti-fraud enforcement provisions of the statute.

8. ***Elimination of the required annual reports to investors****. The proposal eliminates this requirement. No other exemption from registration has this requirement, and both the corporation and limited liability company statutes allow for inspection of financial statements and other records by shareholders or members.*
9. ***Three-day voidability provision****: This provision, contained in Florida's current limited offering exemption in Ch. 517.061(11), is proposed to be added to the crowdfunding statute, as modified by the Task Force. It allows an investor to rescind the transaction within 3 days after purchase.*
10. ***Financial statement disclosures****. The proposed bill retains the substantial disclosure obligations of issuers to prospective investors. Because of the change in maximum offering amounts, the financial disclosure obligations have been revised for differing offering amounts and clarified as to the required types of financial statements.*

It was determined that given the length and complexity of this exemption, it should continue to have a separate section rather than be part of 517.061.

[The following is a clean copy of the proposed Crowdfunding exemption.]

517.0611: (1) This section may be cited as the "Florida Intrastate Crowdfunding Exemption."

(2) An offer or sale of a security by an issuer is an exempt transaction under s. 517.061 if the offer or sale is conducted in accordance with this section.

(3) The offer or sale of securities must be conducted in accordance with the requirements of the federal exemption for intrastate offerings in s. 3(a)(11) of the Securities Act of 1933, 15 U.S.C. s. 77c(a)(11), as amended,_ Securities and Exchange Commission Rule 147, 17 C.F.R. s. 230.147, as amended, or_Securities and Exchange Commission Rule 147A, as amended, 17 C.F.R. s. 230.147A.

(4) An issuer must:

(a) Be a for-profit business entity that maintains its principal place of business and derives its revenues primarily from operations in this state.

(b) Conduct transactions for an offering in excess of $2,500,000 through a dealer registered with the office or an intermediary registered under s. 517.12. For offerings under $2,500,000 the issuer may, but is not required to, use such a dealer or intermediary.

(c) Not be, either before or as a result of the offering, an investment company as defined in s. 3 of the Investment Company Act of 1940, as amended, 15 U.S.C. s. 80a-3, or subject to the reporting requirements of s. 13 or s. 15(d) of the Securities Exchange Act of 1934, as amended, 15 U.S.C. s. 78m or s. 78***o***(d).

(d) Not be an organization with an undefined business operation, a company that lacks a business plan, a company that lacks a stated investment goal for the funds being raised, or a company that plans to engage in a merger or acquisition with an unspecified business entity.

(e) Not be subject to a disqualification established by the commission or office or a disqualification described in s. 517.1616 or Securities and Exchange Commission Rule 506(d), 17 C.F.R. 230.506(d), as amended. Each director, officer, manager, managing member, general partner or person occupying a similar status or performing a similar function, or person holding more than 20 percent of the equity interest of the issuer, is subject to this requirement.

(f) Cause all funds received from investors to be deposited in an account in a federally insured financial institution authorized to do business in this state and maintain all such funds in the account until such time as either the target offering amount has been reached, the offering has been terminated, or the offering has expired. If the target amount has not been reached within the period specified by the issuer in the disclosure document provided to investors or the offering is terminated or expires, the issuer must within 10 business days refund the funds to all investors.

(g) Use all funds in accordance with the use of proceeds represented to prospective investors.

(5) The issuer must file a notice of the offering with the office, in writing or in electronic form, in a format prescribed by commission rule, together with a nonrefundable filing fee of $200. The filing fee shall be deposited into the Regulatory Trust Fund of the office. The commission may adopt rules establishing procedures for the deposit of fees and the filing of documents by electronic means if the procedures provide the office with the information and data required by this section. A notice is effective upon receipt, by the office, of the completed form, filing fee, and an irrevocable written consent to service of civil process, similar to that provided for in s. 517.101. The notice may be terminated by filing with the office a notice of termination. The notice and offering expire 12 months after filing the notice with the office and are not eligible for renewal. The notice must:

(a) Be filed with the office at least 10 days before the issuer commences an offering of securities or the offering is displayed on a website of an intermediary in reliance upon the exemption provided by this section.

(b) Indicate that the issuer is conducting an offering in reliance upon the exemption provided by this section.

(c) Contain the name and contact information, including an email address, of the issuer.

(d) Identify any predecessors, owners, officers, directors, general partners, managers, managing members, or any person occupying a similar status or performing a similar function of the issuer, including that person's title, status as a partner, trustee, sole proprietor or a similar role, and ownership percentage.

(e) Identify the federally insured financial institution into which investor funds will be deposited.

(f) If applicable, include the intermediary's email and website address where the issuer's securities will be offered.

(g) State the target offering amount and the date not to exceed 360 days, by which the target amount must be reached in order for the offering not to be terminated.

(6) The issuer must amend the notice form within 10 business days after any material information contained in the notice becomes inaccurate for any reason. The commission may require, by rule, an issuer who has filed a notice under this section to file amendments with the office.

(7) The issuer may engage in general advertising and general solicitation of the offer to prospective investors. Any oral or written statements made in advertising or solicitation of the offer are subject to the enforcement provisions of this chapter in the event of any material misstatement or non-disclosure of material information. Any general advertising or other general announcement must state that the offering is limited and open only to residents of the state of Florida.

(8) The issuer must provide a disclosure statement to (i) the dealer or intermediary, if applicable, (ii) the office at the time that the notice is filed, and (iii) to each prospective investor at least 3 days prior to the investor’s commitment to purchase or payment of any consideration. The disclosure statement must contain material information about the issuer and the offering, including:

(a) The name, legal status, physical address, email and website address of the issuer.

(b) The names of the directors, officers, managers, managing members, general partners and any person occupying a similar status or performing a similar function, and the name and ownership level of each person holding more than 20 percent of issuer's equity interests.

(c) A description of the current business and anticipated business plan of the issuer.

(d) A description of the stated purpose and intended use of the proceeds of the offering.

(e) The target offering amount and the deadline to reach the target offering amount~~.~~

(f) The price to the public of the securities~~.~~

(g) A description of the ownership and capital structure of the issuer, including:

~~1.~~ The terms of the securities being offered and each class of security of the issuer, including how those terms may be modified, and a summary of the differences between such securities, including how the rights of the securities being offered may be materially limited, diluted, or qualified by rights of any other class of security of the issuer.

-2. A description of how the exercise of the rights held by the principal equity holder of the issuer could negatively impact the purchasers of the securities being offered.

(h) A statement that the security being offered is not registered under federal or state securities laws and that the securities are subject to the limitation on resale contained in SEC Rule 147 or 147A.

(i) Any issuer plans, formal or informal, to offer additional securities in the future.

(j) The risks to purchasers of the securities relating to minority ownership in the issuer.

(k) A description of the financial condition of the issuer.

1. For offerings that, in combination with all other offerings of the issuer within the preceding 12-month period, have offering amounts of $500,000 or less, financial statements of the issuer may be but are not required to be included.

2. For offerings that, in combination with all other offerings of the issuer within the preceding 12-month period, have offering amounts of more than $500,000, but not more than $2,500,000, the description must include financial statements prepared in accordance with generally accepted accounting principles and reviewed by a certified public accountant, as defined in s. 473.302, who is independent of the issuer, using professional standards and procedures for such review or standards and procedures established by the commission by rule for such purpose.

3. For offerings that, in combination with all other offerings of the issuer within the preceding 12-month period, have offering amounts of more than $2,500,000, the description must include audited financial statements prepared in accordance with generally accepted accounting principles by a certified public accountant, as defined in s. 473.302, who is independent of the issuer, and other requirements as the commission may establish by rule.

(k) The following statements in boldface, conspicuous type on the front page of the disclosure statement:

(1) Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

(2) These securities are offered under, and will be sold in reliance upon, an exemption from the registration requirements of federal and Florida securities laws. Neither the federal government nor any agency of the State of Florida has reviewed the accuracy or completeness of any offering materials. In making an investment decision, investors must rely on their own examination of the issuer and the terms of the offering, including the merits and risks involved. These securities are subject to restrictions on transferability and resale and may not be transferred or resold except as specifically authorized by applicable federal and state securities laws. Investing in these

securities involves a speculative risk, and investors should be able to bear the loss of their entire investment.

(9) The sum of all cash and other consideration received for sales of a security under this section may not exceed $5 million, less the aggregate amount received for all sales of securities by the issuer within the 12 months preceding the first offer or sale made in reliance upon this exemption. Offers or sales to a person owning 20 percent or more of the outstanding equity interests of any class or classes of securities or to an officer, director, manager, managing member, general partner, or trustee, or a person occupying a similar status, do not count toward this limitation.

(10) Unless the investor is an accredited investor, the aggregate amount sold by an issuer to an investor in a 12-month period may not exceed $10,000.

(11) A notice-filing under this section shall be summarily suspended by the office:

(a) if the payment for the filing is dishonored by the financial institution upon which the funds are drawn. For purposes of s. 120.60(6), failure to pay the required notice filing fee constitutes an immediate and serious danger to the public health, safety, and welfare. The office shall enter a final order revoking a notice-filing in which the payment for the filing is dishonored by the financial institution upon which the funds are drawn; or;

(b) A notice filing under this section shall be summarily suspended by the office if the issuer made a material false statement in the issuer's notice-filing. The summary suspension shall remain in effect until a final order is entered by the office. For purposes of s. 120.60(6), a material false statement made in the issuer's notice-filing constitutes an immediate and serious danger to the public health, safety, and welfare. If an issuer made a material false statement in the issuer's notice-filing, the office shall enter a final order revoking the notice-filing, issue a fine as prescribed by s. 517.221(3), and issue permanent bars under s. 517.221(4) to the issuer and all owners, officers, directors, general partners and control persons, or any person occupying a similar status or performing a similar function of the issuer, including title, status as a partner, trustee, sole proprietor, or similar role, and ownership percentage.

(12) If issuer employs the services of an intermediary, the intermediary must:

(a) Take measures, as established by commission rule, to reduce the risk of fraud with respect to the offering and transactions thereunder.

(b) Provide information on its website regarding the high risk of investment in and limitation on the resale of exempt securities and the potential for loss of an entire investment. The information must include but is not necessarily limited to:

1. A description of the financial institution into which investor funds will be deposited and the conditions for the use of such funds by the issuer.

2. A description of whether financial information provided by the issuer has been audited by an independent certified public accountant, as defined in s. 473.302.

(c) Obtain from each prospective investor a zip code or residence address, a copy of a driver's license, and, if requested by the issuer or intermediary, any other indicia of residency in order for the issuer or intermediary to reasonably believe that the potential investor is a resident of the state. The commission may adopt rules authorizing additional forms of identification and prescribing the process for verifying any identification presented by the prospective investor.

(d) Obtain information sufficient for the issuer to reasonably believe that a particular prospective investor is an accredited investor.

(e) Provide a monthly update for each offering, after the first full month after the date of the offering. The update must be accessible on the intermediary's website and must display the date and amount of each sale of securities, and each cancellation of commitment to invest, in the previous calendar month.

(f) Take reasonable steps to protect personal information collected from investors, as required by s. 501.171.

(g) Prohibit its directors and officers~~,~~ managing members, general partners, employees and agents from having any financial interest in the issuer using its services.

(13) An intermediary not registered as a dealer under s. 517.12(6) may not:

(a) Offer investment advice or recommendations. A refusal by an intermediary to post an offering that it deems not credible or that represents a potential for fraud may not be construed as an offer of investment advice or recommendation.

(b) Solicit purchases, sales, or offers to buy securities offered or displayed on its website.

(c) Compensate employees, agents, or other persons for the solicitation of, or based on the sale of, securities offered or displayed on its website.

(d) Hold, manage, possess, or otherwise handle investor funds or securities.

(e) Compensate promoters, finders, or lead generators for providing the intermediary with the personal identifying information of any prospective investor.

(f) Engage in any other activities set forth by commission rule.

(14) If a dealer or intermediary is not employed by the issuer for an offering under this exemption, the issuer shall undertake each of the obligations set forth in subsections (12)(c), (d), (e), and (f).

(15) Any sale made pursuant to this exemption is voidable by the purchaser within 3 days after the first tender of consideration is made by such purchaser to the issuer by sending an email to the issuer's email address set forth in the disclosure document provided to purchasers or

purchaser’s representatives or by hand delivery, courier service or other method by which written proof of delivery to the issuer of the purchaser’s election to rescind the purchase is evidenced.

517.0611

[The following is a marked copy of the proposed Crowdfunding exemption, reflecting the current statute marked with proposed changes]

(1) This section may be cited as the “Florida Intrastate Crowdfunding Exemption.”

-2) Notwithstanding any other provision of this chapter, an offer or sale of a security by an issuer is an exempt transaction under s. 517.061 if the offer or sale is conducted in accordance with this section.

-3) The offer or sale of securities under this section must be conducted in accordance with the requirements of the federal exemption for intrastate offerings in s. 3(a)(11) of the Securities Act of 1933, 15 U.S.C. s. 77c(a)(11), ~~and United States~~ as amended, Securities and Exchange Commission Rule 147, 17 C.F.R. s. 230.147, ~~adopted pursuant to the~~ as amended, or Securities ~~Act of 1933~~and Exchange Commission Rule 147A, as amended, 17 C.F.R. s. 230.147A

-4) An issuer must:

(a) Be a for-profit business entity ~~formed under the laws of the state~~ of Florida, ~~be registered with the Secretary of State, or~~ that maintains its principal place of business ~~in the~~ this state, and ~~in either case~~ derives its revenues primarily from operations in ~~the~~ this state.

(b) Conduct transactions for ~~the~~ an offering in excess of $2,500,000 through a dealer registered with the office or an intermediary registered under s. 517.12. For offerings under $2,500,000 the issuer may, but is not required to, use a dealer or intermediary.

(c) Not be, either before or as a result of the offering, an investment company as defined in s. 3 of the Investment Company Act of 1940, as amended, 15 U.S.C. s. 80a-3, or subject to the reporting requirements of s. 13 or s. 15(d) of the Securities Exchange Act of 1934, as amended, 15 U.S.C. s. 78m or s. 78*o*(d).

(d) Not be ~~a company~~an organization with an undefined business operation, a company that lacks a business plan, a company that lacks a stated investment goal for the funds being raised, or a company that plans to engage in a merger or acquisition with an unspecified business entity.

(e) Not be subject to a disqualification established by the commission or office or a disqualification described in s. 517.1611 or ~~United States~~ Securities and Exchange Commission Rule 506(d), 17 C.F.R. 230.506(d), ~~adopted pursuant to the Securities Act of 1933~~as amended. Each director, officer, manager, managing member, general partner or person occupying a similar status or performing a similar function, or person holding more than 20 percent of the ~~shares~~ equity interest of the issuer, is subject to this requirement.

~~(f) Execute an escrow agreement with a federally insured financial institution authorized to do business in the state for the deposit of investor funds, and ensure that all offering proceeds are provided to the issuer only when the aggregate capital raised from all investors is equal to or greater than the target offering amount.~~

(f) Cause all funds received from investors to be deposited in an account in a federally insured financial institution authorized to do business in this state and maintain all such funds in the account until such time as either the target offering amount has been reached, the offering has been terminated, or the offering has expired. If the target amount has not been reached within the period specified by the issuer in the disclosure document provided to investors or the offering is terminated or expires, the issuer must within ten business days refund the funds to all investors.

~~(g) Allow investors to cancel a commitment to invest within 3 business days before the offering deadline, as stated in the disclosure statement, and issue refunds to all investors if the target offering amount is not reached by the offering deadline.~~

(g) Use all funds in accordance with the use of proceeds represented to prospective investors.

~~(~~(5) The issuer must file a notice of the offering with the office, in writing or in electronic form, in a format prescribed by commission rule, together with a nonrefundable filing fee of $200. The filing fee shall be deposited into the Regulatory Trust Fund of the office. The commission may adopt rules establishing procedures for the deposit of fees and the filing of documents by electronic means if the procedures provide the office with the information and data required by this section. A notice is effective upon receipt, by the office, of the completed form, filing fee, and an irrevocable written consent to service of civil process, similar to that provided for in s. 517.101. The notice may be terminated by filing with the office a notice of termination. The notice and offering expire 12 months after filing the notice with the office and are not eligible for renewal. The notice must:

(a) Be filed with the office at least 10 days before the issuer commences an offering of securities or the offering is displayed on a website of an intermediary in reliance upon the exemption provided by this section.

(b) Indicate that the issuer is conducting an offering in reliance upon the exemption provided by this section.

(c) Contain the name and contact information, including an email address, of the issuer.

(d) Identify any predecessors, owners, officers, directors, general partners, managing members, and control persons or any person occupying a similar status or performing a similar function of the issuer, including that person's title, ~~his or her~~ status as a partner, trustee, sole proprietor or in a similar role, and ~~his or her~~ ownership percentage.

(e) Identify the federally insured financial institution ~~authorized to do business in the state,~~ ~~in~~ into which investor funds will be deposited~~, in accordance with the escrow agreement~~.

~~(f) Require an attestation under oath that the issuer, its predecessors, affiliated issuers, directors, officers, and control persons, or any other person occupying a similar status or performing a similar function, are not currently and have not been within the past 10 years the subject of regulatory or criminal actions involving fraud or deceit.~~

~~(g) Include documentation verifying that the issuer is organized under the laws of the state and authorized to do business in the state.~~

(f) If applicable, **include** the intermediary's email and website address where the issuer's securities will be offered.

(g) State the target offering amount and the date, not to exceed 360 days from the start of the offering, by which the target amount must be reached in order for the offering not to be terminated.

(6) The issuer must amend the notice form within 10 business days after any information contained in the notice becomes inaccurate for any reason. The commission may require, by rule, an issuer who has filed a notice under this section to file amendments with the office.

(7) The issuer may engage in general advertising and general solicitation of the offer to prospective investors. Any oral or written statements made in advertising or solicitation of the offer are subject to the enforcement provisions of this chapter in the event of any material misstatement or non-disclosure of material information. Any general advertising or other general announcement must state that the offering is limited and open only to residents of the state of

Florida. Written or oral statements made in the advertising or solicitation of the offer are subject to the enforcement provisions of sections 517.301, 517.311 and 517.312 of this chapter.

(8) The issuer must provide ~~to investors and~~ a disclosure statement to (i) the dealer or intermediary, ~~along with a copy to~~ if applicable, (ii) the office at the time that the notice is filed, and ~~make available to potential investors through the dealer or intermediary, a~~ (iii) to each prospective investor at least 3 days prior to the investor's commitment to purchase or payment of any consideration. The disclosure statement ~~containing~~ must contain material information about the issuer and the offering, including:

(a) The name, legal status, physical address, email and website address of the issuer.

(b) The names of the directors, officers, managers, managing members, general partners and any person occupying a similar status or performing a similar function, and the name and ownership level of each person holding more than 20 percent of ~~the shares of the issuer~~issuer's equity interests.

(c) A description of the business of the issuer and the anticipated business plan of the issuer.

(d) A description of the stated purpose and intended use of the proceeds of the offering.

(e) The target offering amount~~,~~ and the deadline to reach the target offering amount~~, and regular updates regarding the progress of the issuer in meeting the target offering amount~~.

(f) The price to the public of the securities ~~or the method for determining the price. However, before the sale, each investor must receive in writing the final price and all required disclosures and have an opportunity to rescind the commitment to purchase the securities~~.

(g) A description of the ownership and capital structure of the issuer, including:

~~-~~1. The terms of the securities being offered and each class of security of the issuer, including how those terms may be modified, and a summary of the differences between such securities, including how the rights of the securities being offered may be materially limited, diluted, or qualified by rights of any other class of security of the issuer.

~~-~~2.A description of how the exercise of the rights held by the principal ~~shareholders~~ equity holder of the issuer could negatively impact the purchasers of the securities being offered.

~~3. The name and ownership level of each existing shareholder who owns more than 20 percent of any class of the securities of the issuer.~~

(h) A description of the limitations imposed upon a purchaser's resale of the securities.

(i) Any issuer plans, formal or informal, to offer additional securities in the future.

~~4. How the securities being offered are being valued, and examples of methods of how such securities may be valued by the issuer in the future, including during subsequent corporate actions.~~

(j) The risks to purchasers of the securities relating to minority ownership in the issuer~~, the risks associated with corporate action, including additional issuances of shares, a sale of the issuer or of assets of the issuer, or transactions with related parties~~.

(k) A description of the financial condition of the issuer.

1. For offerings that, in combination with all other offerings of the issuer within the preceding 12-month period, have target offering amounts of $500,000 or less, financial statements of the issuer may but are not required to be included.

2. For offerings that, in combination with all other offerings of the issuer within the preceding 12-month period, have target offering amounts of more than $500,000, but not more than $2,500,000, the description must include financial statements prepared in accordance with generally accepted accounting principles and reviewed by a certified public accountant, as defined in s. 473.302, who is independent of the issuer, using professional standards and

procedures for such review or standards and procedures established by the office, by rule, for such purpose.

3. For offerings that, in combination with all other offerings of the issuer within the preceding 12-month period, have target offering amounts of more than $2,500,000, the description must include audited financial statements prepared in accordance with generally accepted accounting principles by a certified public accountant, as defined in s. 473.302, who is independent of the issuer, and other requirements as the commission may establish by rule.

(k) The following statements in boldface, conspicuous type on the front page of the disclosure statement:

(1) **Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.**

(2) These securities are offered under, and will be sold in reliance upon, an exemption from the registration requirements of federal and Florida securities laws. Consequently, neither the Federal Government nor the State of Florida has reviewed the accuracy or completeness of any offering materials. In making an investment decision, investors must rely on their own examination of the issuer and the terms of the offering, including the merits and risks involved. These securities are subject to restrictions on transferability and resale and may not be transferred or resold except as specifically authorized by applicable federal and state securities laws. Investing in these securities involves a speculative risk, and investors should be able to bear the loss of their entire investment.

~~(8) The issuer shall provide to the office a copy of the escrow agreement with a financial institution authorized to conduct business in this state. All investor funds must be deposited in~~

~~the escrow account. The escrow agreement must require that all offering proceeds be released to the issuer only when the aggregate capital raised from all investors is equal to or greater than the minimum target offering amount specified in the disclosure statement as necessary to implement the business plan, and that all investors will receive a full return of their investment commitment if that target offering amount is not raised by the date stated in the disclosure statement.~~

(9) The sum of all cash and other consideration received for sales of a security under this section may not exceed $~~1~~ 5 million, less the aggregate amount received for all sales of securities by the issuer within the 12 months preceding the first offer or sale made in reliance upon this exemption. Offers or sales to a person owning 20 percent or more of the outstanding ~~shares~~ equity interests of any class or classes of securities or to an officer, director, manager, managing member, general partner, or trustee, or a person occupying a similar status, do not count toward this limitation.

(10) Unless the investor is an accredited investor ~~as defined by Rule 501 of Regulation D, adopted pursuant to the Securities Act of 1933~~, the aggregate amount sold by an issuer to an investor in transactions exempt from registration requirements under this ~~sub~~section in a 12-month period may not exceed~~:~~ $10,000.

~~(a) The greater of $2,000 or 5 percent of the annual income or net worth of such investor, if the annual income or the net worth of the investor is less than $100,000.~~

~~(b) Ten percent of the annual income or net worth of such investor, not to exceed a maximum aggregate amount sold of $100,000, if either the annual income or net worth of the investor is equal to or exceeds $100,000.~~

~~(11) The issuer shall file with the office and provide to investors free of charge an annual report of the results of operations and financial statements of the issuer within 45 days after the~~

~~end of its fiscal year, until no securities under this offering are outstanding. The annual reports must meet the following requirements:~~

~~(a) Include an analysis by management of the issuer of the business operations and the financial condition of the issuer, and disclose the compensation received by each director, executive officer, and person having an ownership interest of 20 percent or more of the issuer, including cash compensation earned since the previous report and on an annual basis, and any bonuses, stock options, other rights to receive securities of the issuer, or any affiliate of the issuer, or other compensation received.~~

~~(b) Disclose any material change to information contained in the disclosure statements which was not disclosed in a previous report.~~

(11) A notice-filing under this section shall be summarily suspended by the office:

(a) if the payment for the filing is dishonored by the financial institution upon which the funds are drawn. For purposes of s. 120.60(6), failure to pay the required notice filing fee constitutes an immediate and serious danger to the public health, safety, and welfare. The office shall enter a final order revoking a notice-filing in which the payment for the filing is dishonored by the financial institution upon which the funds are drawn~~.~~; or

(b) ~~A notice-filing under this section shall be summarily suspended by the office~~ if the issuer made a material false statement in the issuer's notice-filing. The summary suspension shall remain in effect until a final order is entered by the office. For purposes of s. 120.60(6), a material false statement made in the issuer's notice-filing constitutes an immediate and serious danger to the public health, safety, and welfare. If an issuer made a material false statement in the issuer's notice-filing, the office shall enter a final order revoking the notice-filing, issue a fine as prescribed by s. 517.221(3), and issue permanent bars under s. 517.221(4) to the issuer and all owners, officers, directors, general partners and control persons, or any person occupying a similar status or performing a similar function of the issuer, including title; status as a partner, trustee, sole proprietor, or similar role; and ownership percentage.

~~(12)(a) A notice-filing under this section shall be summarily suspended by the office if the payment for the filing is dishonored by the financial institution upon which the funds are drawn. For purposes of s. 120.60(6), failure to pay the required notice filing fee constitutes an immediate and serious danger to the public health, safety, and welfare. The office shall enter a final order revoking a notice-filing in which the payment for the filing is dishonored by the financial institution upon which the funds are drawn.~~

~~(b) A notice-filing under this section shall be summarily suspended by the office if the issuer made a material false statement in the issuer's notice-filing. The summary suspension shall remain in effect until a final order is entered by the office. For purposes of s. 120.60(6), a material false statement made in the issuer's notice-filing constitutes an immediate and serious danger to the public health, safety, and welfare. If an issuer made a material false statement in the issuer's notice-filing, the office shall enter a final order revoking the notice-filing, issue a fine as prescribed by s. 517.221(3), and issue permanent bars under s. 517.221(4) to the issuer and all owners, officers, directors, and control persons, or any person occupying a similar status or performing a similar function of the issuer, including title; status as a partner, trustee, sole proprietor, or similar role; and ownership percentage.~~

(12) If issuer employs the services of an intermediary, the intermediary must:

(a) Take measures, **as established by commission rule**, to reduce the risk of fraud with respect to transactions. including verifying that the issuer is in compliance with the requirements of this section and, if necessary, denying an issuer access to its platform if the intermediary believes it is unable to adequately assess the risk of fraud of the issuer or its potential offering. [colored portion deleted}

(b) Provide basic information on its website regarding the high risk of investment in and limitation on the resale of exempt securities and the potential for loss of an entire investment. The basic information must include:

~~1. A description of the escrow agreement that the issuer has executed and the conditions for release of such funds to the issuer in accordance with the agreement and subsection (4).~~

1. A description of the financial institution into which investor funds will be deposited and the conditions for the use of such funds by the issuer.

2. A description of whether financial information provided by the issuer has been audited by an independent certified public accountant, as defined in s. 473.302.

(c) Obtain from each prospective investor a zip code or residence address, a copy of a driver's license, and, if requested by the issuer or intermediary, any other indicia of residency in order for the issuer or intermediary to reasonably believe that the potential investor is a resident of the state. The commission may adopt rules authorizing additional forms of identification and prescribing the process for verifying any identification presented by the prospective investor.

~~(e) Obtain an affidavit from each investor stating that the investment being made by the investor is consistent with the income requirements of subsection (10).~~

(d) Obtain information sufficient for the issuer to reasonably believe that a particular prospective investor is an accredited investor.

~~(f) Direct the release of investor funds in escrow in accordance with subsection (4).~~

~~(g) Direct investors to transmit funds directly to the financial institution designated in the escrow agreement to hold the funds for the benefit of the investor.~~

(e) Provide a monthly update for each offering, after the first full month after the date of the offering. The update must be accessible on the intermediary's website and must display the date and amount of each sale of securities, and each cancellation of commitment to invest, in the previous calendar month.

~~(j) Require each investor to answer questions demonstrating an understanding of the level of risk generally applicable to investments in startups, emerging businesses, and small issuers, and an understanding of the risk of illiquidity.~~

(f) Take reasonable steps to protect personal information collected from investors, as required by s. 501.171.

(g) Prohibit its directors and officers~~-~~, managers, managing members, general partners, employees and agents [control person?] from having any financial interest in the issuer using its services.

~~(m) Implement written policies and procedures that are reasonably designed to achieve compliance with federal and state securities laws; comply with the anti-money laundering requirements of 31 C.F.R. chapter X applicable to registered brokers; and comply with the privacy requirements of 17 C.F.R. part 248 relating to brokers.~~

(13) An intermediary not registered as a dealer under s. 517.12(6) may not:

(a) Offer investment advice or recommendations. A refusal by an intermediary to post an offering that it deems not credible or that represents a potential for fraud may not be construed as an offer of investment advice or recommendation.

(b) Solicit purchases, sales, or offers to buy securities offered or displayed on its website.

(c) Compensate employees, agents, or other persons for the solicitation of, or based on the sale of, securities offered or displayed on its website.

(d) Hold, manage, possess, or otherwise handle investor funds or securities.

(e) Compensate promoters, finders, or lead generators for providing the intermediary with the personal identifying information of any ~~potential~~ prospective investor.

(f) Engage in any other activities set forth by commission rule.

~~(15) All funds received from investors must be directed to the financial institution designated in the escrow agreement to hold the funds and must be used in accordance with representations made to investors by the intermediary. If an investor cancels a commitment to invest, the intermediary must direct the financial institution designated to hold the funds to promptly refund the funds of the investor.~~

(14) If a dealer or intermediary is not employed by the issuer for an offering under this exemption, the issuer shall undertake each of the obligations set forth in subsections (12)(c), (d), (e), and (f).

(15) Any sale made pursuant to this exemption is voidable by the purchaser within 3 days after the first tender of consideration is made by such purchaser to the issuer by sending an email to the issuer's email address set forth in the disclosure document provided to purchasers or purchaser's representatives or by hand delivery, courier service or other method by which written proof of delivery to the issuer of the purchaser's election to rescind the purchase is evidenced.

517.0612 THE FLORIDA INVEST LOCAL EXEMPTION [NEW EXEMPTION]

The Task Force proposes a "micro-offering" exemption. The exemption is limited in the maximum amount that can be raised but is considered an important fund-raising tool for small and start-up businesses that are not able to meet the more substantial requirements of crowdfunding or other exemptions. However, the exemption includes substantial investor protection provisions, including a disclosure document, target amount requirement, depositing of funds until the target has been reached, and a 3-day voidability right. The initial model for the exemption is the Georgia "Invest Georgia" exemption, which has been successful in generating small business financing. However, the Georgia maximum of $5 million was considered too high and does not contain certain investor protection provisions that we have proposed. The following additional points are noted:

1. *The proposed amount of $500,000 is 1/10th of the proposed crowdfunding maximum. In today's economy, $500,000 is not a large sum for start-ups and young companies, especially since the exemption aggregates sales within the past 12 months. The proposal does not include any automatic adjustment based on cost-of-living or other economic factors. The Task Force concluded that, given the new nature of this exemption, any subsequent adjustment to the monetary limit should be made by statutory amendment or through rule-making authority if available.*
2. *No nonaccredited investor can invest more than $10,000. This is the same limit that applies to the crowdfunding exemption.*

3. *The general advertising and solicitation provision subjects those disclosures to the anti-fraud statutory provisions.*
4. *There is a fixed time frame of 180 days in which to raise the target amount.*
5. *A minimum target amount must be established, but because of the wide variety of potential offerings, and the mandated disclosure of the use of proceeds, there is no required minimum amount or percentage.*
6. *The concept of "single purchaser" is defined to protect against abuse of the maximum individual investment.*
7. *A disclosure document with specifically enumerated disclosure items is required.*
8. *The disclosure document must be filed with the commission at the time of the notice.*
9. *The disclosure document must state that it has not been reviewed or approved by any federal or state agency.*
10. *No filing fee is required.*

Because of the length and complexity of this exemption, it was determined to set it in a separate section following the crowdfunding exemption.

517.0612: (1) This section may be cited as the "Florida Invest Local Exemption."

(2) The offer or sale of a security by the issuer is exempt from registration under s. 517.07 if conducted in accordance with each of the following requirements:

(a) The issuer shall be a for-profit business entity registered with the Florida Department of State with its principal place of business in this state. The issuer cannot be, either before or as a result of the offering:

(i) An investment company as defined in the Investment Company Act of 1940, as amended;

(ii) Subject to the reporting requirements of the Securities and Exchange Act of 1934, as amended;

(iii) An organization with an undefined business operation, a company that lacks a business plan, a company that lacks a stated investment goal for the funds being raised, or a company that plans to engage in a merger or acquisition with an unspecified business entity, or

(iv) Subject to a disqualification pursuant to s. 517.0616.

(b) The transaction shall meet the requirements of the federal exemption for intrastate offerings in any of Section 3(a)(11) of the Securities Act of 1933, Rule 147 thereunder, or Rule 147A thereunder, as such provisions may be amended.

(c) The sum of all cash and other consideration received for all sales of the security in reliance upon this exemption shall not exceed $500,000, less the aggregate amount received for all sales of securities by the issuer within the 12 months before the first offer or sale made in reliance on this exemption.

(d) The issuer shall not accept more than $10,000 from any single purchaser unless the issuer (1) reasonably believes that the purchaser is an accredited investor, (2) the purchaser is an officer, director, partner, or trustee of an individual occupying a similar status or performing similar functions of the issuer, or (3) the purchaser is an owner of 10% or more of the issuer’s outstanding equity. For purposes of this section, (i) any relative, spouse, child or family relative who has the same primary residence of the purchaser shall collectively be treated as a single purchaser or (ii) any business entity of which the purchaser and any person related to the purchaser under subsection (i) collectively owns more than 50% of the equity interest shall collectively be treated as a single purchaser.

(e) The issuer may engage in general advertising and general solicitation of the offering. Any general advertising or other general announcement must state that the offer is limited and open only to residents of the state of Florida. Written or oral statements made in the advertising or solicitation of the offer are subject to the enforcement provisions of this chapter.

(f) A purchaser shall receive, at least 3 business days prior to any binding commitment to purchase or consideration paid, a disclosure document which sets forth material information of the issuer, including but not limited to the following:

(i) Issuer's name, form of entity and contact information.

(ii) The name and contact information of each director, officer or other manager of the issuer.

(iii) A description of the issuer's business.

(iv) A description of the security being offered.

(v) The total amount of the offering.

(vi) The intended use of proceeds from the sale of the securities.

(vii) The target amount of the offering.

(viii) A statement that if the target amount is not obtained in cash or the value of other tangible consideration received within a date that is no more than 180 days after the commencement of the offering, the offering will be terminated, and any funds or other consideration received from purchasers shall be promptly returned.

(x) A statement that the security being offered is not registered under federal or state securities laws and that the securities are subject to the limitation on resale contained in SEC Rule 147 or 147A.

(xi) The names and addresses of all persons who will be involved in the offer and sale of securities on behalf of the issuer.

(xii) The bank or other depository institution into which investor funds will be deposited.

(xiii) A statement in boldface type that “Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.”

(g) All funds received from investors shall be deposited into a bank or depository institution authorized to do business in this state. The issuer cannot withdraw any amount of the offering proceeds unless and until the target amount has been received.

(h) The issuer must file a notice of the offering with the office, in writing or in electronic form, in a format prescribed by commission rule, no less than 5 business days before the offering commences, along with the disclosure document described in subsection (f). The issuer must, within 3 business days, file an amended notice if there are any material changes to the information previously submitted.

(3) An individual, entity, or entity employee who acts as an agent for the issuer in the offer or sale of securities under this exemption and is not registered as a dealer or intermediary under this chapter shall not:

(a) receive compensation based upon the solicitation of purchases, sales, or offers to purchase the securities, or

(b) take custody of investor funds or securities.

(4) Any sale, made pursuant to this exemption, is voidable by the purchaser, within 3 days after the first tender of consideration is made by such purchaser to the issuer, by notifying the issuer that the purchaser expressly voids the purchase by sending an email to the issuer's email address set forth in the disclosure document provided to purchasers or purchaser's representatives or by certified mail or overnight delivery service with proof of delivery to the mailing address set forth in such disclosure document.

517.0613 Failure to Comply

We propose to add this provision, which is analogous to a similar statement in SEC Rule 500 in Regulation D, to make it clear that an issuer who attempts but fails to comply with a particular exemption is not precluded from asserting that another exemption is nevertheless available. The "scheme to evade" provision has been added in subsection (b) to cover the unusual situation in *which an issuer technically complies with the statute but is using the statute in an abusive manner not consistent with its purpose.*

517.0613: (a) Failure to comply with any exemption from registration does not preclude the issuer from claiming the availability of any other applicable state or federal exemption.

(b) Sections 517.061, 517.0611 and 517.0612 are not available to any issuer for any transaction or chain of transactions that, although in technical compliance with the applicable provisions, is part of a plan or scheme to evade the registration provisions of section 517.07. In such cases, registration under section 517.07 is required.

517.0614 Integration Provision

Because of the addition of several new registration exemptions, it is necessary to create an integration provision with respect to such offers and sales. The proposed provision follows SEC Rule 152, which is the SEC's integration provision, modified to create a 45-day safe harbor for offers that prohibit general solicitation. Integration only applies to those offers and sales that involve issuers raising capital, as set forth in subsection (b)(2).

517.0614: (a) If the safe harbors in paragraph (b) of this section do not apply, in determining whether two or more offerings are to be treated as one for the purpose of registration or qualifying for an exemption from registration under this chapter, offers and sales will not be integrated if, based on the particular facts and circumstances, the issuer can establish that each offering either complies with the registration requirements of this chapter, or that an exemption from registration is available for the particular offering, provided that, any transaction or series of transactions that, although in technical compliance with this chapter, is part of a plan or scheme to evade the registration requirements of this chapter will not have the effect of avoiding integration. In making this determination:

(1) For an exempt offering prohibiting general solicitation, the issuer must have a reasonable belief, based on the facts and circumstances, with respect to each purchaser in the exempt offering prohibiting general solicitation, that the issuer or any person acting on the issuer's behalf either:

(i) Did not solicit such purchaser through the use of general solicitation; or

(ii) Established a substantive relationship with such purchaser prior to the commencement of the exempt offering prohibiting general solicitation; provided that, a purchaser previously solicited through the use of general solicitation shall not be deemed to have been solicited through the use of general solicitation in the current offering if during the 45 calendar days following such previous general solicitation:

(a) no offer or sale of the same or similar class of securities shall have been made by or on behalf of the issuer, including to such purchaser, and

(b) the issuer or any person acting on the issuer's behalf shall not have solicited such purchaser through the use of general solicitation for any other security.

(2) For two or more concurrent exempt offerings permitting general solicitation, in addition to satisfying the requirements of the particular exemption relied on, general solicitation offering materials for one offering that includes information about the material terms of a concurrent offering under another exemption may constitute an offer of securities in such other offering, and

therefore the offer must comply with all the requirements for, and restrictions on, offers under the exemption being relied on for such other offering, including any legend requirements and communications restrictions.

(b) No integration analysis under paragraph (a) of this section is required, if any of the following non-exclusive safe harbors apply:

(1) Any offering commenced more than 30 calendar days before the commencement of any other offering, or more than 30 calendar days after the termination or completion of any other offering, will not be integrated with such other offering, provided that for an exempt offering for which general solicitation is not permitted that follows by 30 calendar days or more an offering that allows general solicitation, the provisions of (a)(1) shall apply.

(2) Offers and sales made in compliance with any of the provisions of s. 517.051 or 517.061, except 517.061(9),(10) and (11) and 517.0611 and 517.0612, will not be subject to integration with other offerings~~.~~

<u>517.0615 Demo Day Presentations and Testing the Waters</u>

The Task Force proposes two new provisions that allow issuers to engage in solicitation of potential investors under specific limited conditions. Subsection (a) adopts SEC Rule 148 that provides for issuer presentation at a specified form of "demo-day" meeting sponsored by one of the specified organizations. Subsection (b), which generally follows a provision analogous to federal Regulation A, allows an issuer to "test the waters" in advance of making any offering in order to determine whether the time, energy and expense of a possible offering would be worthwhile. Both of these proposals allow a potential issuer to evaluate the viability of the *offering and therefore possibly avoid unnecessary time and expense. All communications under these proposals are subject to the antifraud provisions of Ch. 517.*

517.0615 **(a)** A communication will not be deemed to constitute general solicitation or general advertising if made in connection with a seminar or meeting in which more than one issuer participates that is sponsored by a college, university, or other institution of higher education, State or local government or instrumentality thereof, a nonprofit Chamber of Commerce or other nonprofit organization, or angel investor group, incubator, or accelerator, provided that:

(1) No advertising for the seminar or meeting references a specific offering of securities by the issuer;

(2) The sponsor of the seminar or meeting does not:

(i) Make investment recommendations or provide investment advice to attendees of the event;

(ii) Engage in any investment negotiations between the issuer and investors attending the event;

(iii) Charge attendees of the event any fees, other than reasonable administrative fees;

(iv) Receive any compensation for making introductions between event attendees and issuers or for investment negotiations between such parties; and

(v) Receive any compensation with respect to the event that would require registration of the sponsor as a broker or a dealer under this chapter or under Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) or an investment adviser under the Investment Advisers Act of 1940 (15 U.S.C. 80b-1 *et seq.*). The sponsorship or participation in such a seminar or meeting does not by itself require registration under this chapter.

(3) The type of information regarding an offering of securities by the issuer that is communicated or distributed by or on behalf of the issuer in connection with the event is limited to a notification that the issuer is in the process of offering or planning to offer securities, the type and amount of securities being offered, the intended use of proceeds of the offering, and the unsubscribed amount in an offering; and

(4) If the event allows attendees to participate virtually, rather than in person, online participation in the event is limited to:

(i) Individuals who are members of, or otherwise associated with the sponsor organization;

(ii) Individuals that the sponsor reasonably believes are accredited investors; or

(iii) Individuals who have been invited to the event by the sponsor based on industry or investment-related experience reasonably selected by the sponsor in good faith and disclosed in the public communications about the event.

(b) Before any offers or sales are made in connection with any offering, a communication by an issuer or any person authorized to act on behalf of an issuer will not be deemed to constitute general solicitation or general advertising if the communication is solely for the purpose of determining whether there is any interest in a contemplated securities offering. Written or oral statements made in the course of such communication are subject to the enforcement provisions of this chapter. No solicitation or acceptance of money or other consideration, nor of any commitment, binding or otherwise, from any person is permitted.

(1) The communications must:

(i) State that no money or other consideration is being solicited, and if sent in response, will not be accepted;

(ii) State that no offer to buy the securities can be accepted and no part of the purchase price can be received, and

(iii) State that a person's indication of interest involves no obligation or commitment of any kind.

(2) Any written communication under this rule may include a means by which a person may indicate to the issuer that such person is interested in a potential offering. This issuer may require the name, address, telephone number, and/or email address in any response form included pursuant to this paragraph (c).

(3) Communications in accordance with this section will not be subject to Fl. Stat. s. 501 ff. regarding telephone solicitations.

517.0616 Disqualification

This proposed "worthy issuer" provision is analogous to federal exemption provisions.

517.0616: No registration exemption under s. 517.061(9), (10) and (11), s. 517.0611 or 517.0612 is available to an issuer that would be disqualified under Securities and Exchange Commission Rule 506(d), 17 C.F.R. 230.506(d), as amended, at the time the issuer makes an offer for the sale of a security.

517.081 Registration Procedures and Requirements

The Task Force reviewed the registration requirements applicable to securities offerings. In the two-tier securities regulatory system, federal law preempts state securities offering registration requirements for certain categories of federal securities offerings. The Task Force examined whether chapter 517's registration requirements are consistent with federal law. In addition, we examined Florida's registration provisions for purposes of modernization, clarity, and efficiency. The subgroup compared our registration provisions to the Uniform Securities Act and to a number of state blue sky laws.

We also examined several fundamental regulatory questions, i.e. (a) whether Florida should change its registration review standard from merit to disclosure review, or some combination thereof, (b) whether Florida should join other states in a coordinated multi-state merit review process for filed registration statements, and (c) whether Florida should impose a notice filing requirement upon certain offerings that are exempt from registration under federal law and preempt state law registration. We concluded that each of these issues requires more data from other states as to standards and outcomes, as well as issues of administrative burdens and *potential costs. We anticipate further study of these issues to determine whether future legislative proposals would be appropriate.*

With regard to registration procedures, we recommend a consolidation of the subsections in s. 517.081 that refer to rulemaking authority, placing them in one subsection. Section 517.081 currently has three locations where rulemaking authority is provided. Our proposal consolidates these authorities in subsection (5), where they will enable easier reading of the statute. In doing so, we propose amending current subsection (7) by separating the commission's rulemaking authority from the authority of the office to grant a registration application.

The current rulemaking provision allows for the adoption of simplified offering circulars. The simplified offering circular is synonymous with a SCOR offering. The Office of Financial Regulation's SCOR form has been based on the Regulation A Form 1-A registration form. Regulation A does not require audited financial statements for Tier I offerings, which is the tier applicable to SCOR offerings. Currently s. 517.081(3)(g)2.f. requires the issuer to prepare an annual report as a predicate to being able to use the simplified offering circular, to submit annual reports to the office for a five-year period after registration and to include audited financial statements if the issuer has more than 100 shareholders. Such requirements are inconsistent with securities registration under chapter 517, which does not require an annual report or audited financial statements and does not contemplate renewal of such registration. Accordingly, we have proposed elimination of the 5-year annual report and audited financials requirement. Other financial reporting requirements are retained.

We have also proposed elimination of the prohibition against a person using the simplified registration form for the resale of securities. This will allow non-control persons to resell *securities through a Florida-based registration process, provided such sales are also in accordance with Rule 144 under the Securities Act of 1933, as amended. Control persons are not eligible to resell securities using the simplified registration process as there is no Florida securities exemption available to control person resales.*

517.081 Registration Procedures

(1) All securities required by this chapter to be registered before being sold in this state and not entitled to registration by notification shall be registered in the manner provided by this section.

(2) The office shall receive and act upon applications to have securities registered. Applications shall be duly signed by the applicant, sworn to by any person having knowledge of the facts, and filed with the office. An application may be made either by the issuer of the securities for which registration is applied or by any registered dealer desiring to sell the same within the state.

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

(a) The names and addresses of:

1. All the directors, trustees, and officers, if the issuer is a corporation, association, or trust.

2. All the managers or managing members, if the issuer is a limited liability company.

3. All the partners, if the issuer is a partnership.

4. The issuer, if the issuer is a sole proprietorship or natural person.

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) All of the statements, exhibits, and documents of every kind required under this section, except properly certified public documents, shall be verified by the oath of the applicant or of the issuer in such manner and form as may be required by the commission.

(5) (a) The commission may prescribe forms on which it may require applications for the registration of securities to be submitted to the office.

(b) The commission may by rule establish requirements and standards for the filing, content, and circulation of a preliminary, final, or amended prospectus and other sales literature and may by rule establish criteria relating to the issuance of equity securities, debt securities, insurance company securities, real estate investment trusts, and other traditional and nontraditional investments including, but not limited to, oil and gas investments. The criteria may include such elements as the promoter's equity investment ratio, the financial condition of the issuer, the voting rights of shareholders, the grant of options or warrants to underwriters and others, loans and other affiliated transaction, the use or refund of proceeds of the offering, and such other relevant criteria as the commission in its judgment may deem necessary.

(c) The commission may by rule fix the maximum discounts, commissions, expenses, remuneration, and other compensation to be paid in cash or otherwise, not to exceed 20 percent, directly or indirectly, for or in connection with the sale or offering for sale of such securities in this state.

(d) The commission shall adopt a form for a simplified offering circular to register, under this section, securities that are sold in offerings in which the aggregate offering price in any consecutive 12-month period does not exceed the amount provided in s. 3(b) of the Securities

Act of 1933, as amended. The following issuers shall not be eligible to submit a simplified offering circular adopted pursuant to this subparagraph:

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

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

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

4. An issuer the office determines is ineligible because the form does not provide full and fair disclosure of material information for the type of offering to be registered by the issuer.

(e) The commission may establish, by rule, procedures for depositing fees and filing documents by electronic means provided such procedures provide the office with the information and data required by this section.

(6) An issuer filing an application under this section shall, at the time of filing, pay the office a nonreturnable fee of $1,000 per application for each offering that equals or exceeds the amount

provided in s. 3(b) of the Securities Act of 1933, as amended, or $200 per application for each offering that does not exceed the amount provided in s. 3(b) of the Securities Act of 1933, as amended.

(7)(a) The Office shall record the registration a security in the register of securities if, upon examination of any application the office finds that:

1. the application is complete;

2. the fee in subsection (6) has been paid;

3. the sale of the security would not be fraudulent and would not work or tend to work a fraud upon the purchaser;

4. the terms of the sale of such securities would be fair, just, and equitable; and

5. the enterprise or business of the issuer is not based upon unsound business principles.

(b)Upon registration, such security may be sold by the issuer or any registered dealer, subject, however, to the further order of the office.

(8) The office shall deem an application to register securities filed with the office abandoned if the issuer or any person acting on behalf of the issuer has failed to timely complete an application specified by commission rule.

517.101 Consent to service

Section 517.101 is revised solely to modernize language and improve its readability.

517.101 Consent to service.—

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

(2) Any such action shall be brought either in the county of the plaintiff's residence or in the county in which the office has its official headquarters. The written consent shall be authenticated by the seal of said issuer, if it has a seal, and by the acknowledged signature of a director, manager, general partner, trustee, or officer of the issuer, and shall be accompanied by a duly certified copy of the resolution of the board of directors, managers or trustees of the issuer, or of the general partner, authorizing the signor to execute the consent. In case any process or pleadings mentioned in this chapter are served upon the office, it shall be by duplicate copies, one of which shall be filed in the office and another immediately forwarded by the office by registered mail to the principal office of the issuer against which said process or pleadings are directed.

517.12: Discussion Regarding Investment Adviser Registration Requirement and Possible Registration Requirement for Finders

With regard to Section 517.12, the Task Force examined two principal issues:

> *(1) Should the investment adviser definition in 517.021(14) be changed to (a) reduce the threshold number of clients an adviser may have before registration under 517.12 is*

required, and (b) exempt government entities and their employees from the definition, and

(2) Should the dealer definition in 517.021 be amended to include a new license tier of a dealer commonly known as a "finder"?

The "finder" question is both controversial and tied into an ongoing study of this issue by the Securities and Exchange Commission. It was determined that further study of the possibility of registering "finders" is necessary. Consequently, no recommendation is being made regarding the possible registration of finders.

Thus, our proposal addresses only the investment adviser issue.

The definition of an "investment adviser" is contained in s. 517.021(14)(a). Florida currently requires investment adviser registration for advisers who do not hold themselves out to the general public as investment advisers and who have no more than 15 clients in Florida in the past 12 months. Certain exclusions from the definition are contained in s. 517.021(14)(b). We compared the definition and the exceptions to comparable text in the Uniform Securities Act and the Investment Advisers Act of 1940, as amended, and to the investment adviser definitions from other states. We also gathered data from all states on the threshold number of clients an adviser may have before triggering a requirement to register as an adviser.

Section 222(d) of the Investment Advisers Act of 1940, as amended, sets the de minimis federal registration exemption for investment advisers who do not have a place of business in a state and who have not had six or more clients who are residents of that state in the past 12 months. Florida is one of three states (including California and North Carolina) that have a "15 or less" *exemption. Five states (Georgia, New Jersey, New York, Pennsylvania and Tennessee) have a "no more than 6" exemption, and all other states require registration if an adviser has a place of business in their state regardless of how many clients the adviser has.*

We are proposing to adopt the "no more than 6" client threshold and maintain the requirement that the clients be counted only if they are "in this state." Reducing the threshold number of clients from 15 to 6 will increase the number of advisers that are required to register, which we believe is appropriate for investor protection purposes. By pairing the threshold with the federal de minimis standard, we believe that a longstanding compliance dilemma for out of state advisers, in particular, will be resolved.

A definition of "client" is also created for clarification purposes, borrowed directly from SEC Rule s. 275.222-2. An exception to the definition of "client," modeled after California Corporations Code s. 25202 and North Carolina General Statutes s. 78C-16, is included to avoid counting certain institutional clients as clients when counting the number of clients before investment adviser registration is required. Current subparagraph 517.021(14)(b)(8) is proposed to be stricken as its substantive content is encompassed by the rewrite to subparagraph 7.

In addition, the proposal includes an exception from registration for government entities and their employees. This concept is derived from section 202(b) of the Investment Advisers Act of 1940, as amended, and should be enacted to exclude these same entities and persons from regulation by the state.

[Add Section 517.12, as proposed to be amended?]

Enforcement and Remedy Provisions

S. 517.131 and 141: The Securities Guaranty Fund

There has been an historic lack of claimants seeking recovery from the fund due to its narrow eligibility provisions and lengthy required waiting period before recovery could be attained. Approximately one or two individuals make claims from the fund each year. The consensus was to reorganize Sections 131 and 141 to clearly set forth requirements for eligibility to recover under the Securities Guaranty Find as well as the process for making claims, approving claims, and payment of claims. Additionally, the eligibility requirements are proposed to be modified to specify that a person must have been a Florida resident or domiciled in Florida at the time of violation and to broaden the categories of recovery to not only unpaid judgments, but also court confirmed arbitration awards and restitution awards under section 517.191(3) where such award of monetary damages or restitution resulted from a violation of section 517.301 or 517.07 and where such award of monetary damages or restitution is unsatisfied by any person, regardless of whether they were registered under chapter 517 at the time of the violation (currently limited to registered persons). Persons who participate, assist, attempt to commit or commit, or profit from a violation of chapter 517 are ineligible for payment from the fund.

Based on discussions about the process for filing claims for payment from the fund, the consensus was that a person seeking payment from the fund would file an application with the Office and the Office would determine whether the person was eligible and the amount of any payment to be made. Provisions were added to give the Office authority to adopt an application form by rule and to require that the Office make its determination of whether a person is eligible and whether payment should be made within 90 days of receiving a complete application. The

Office must submit authorization to disburse payment from the fund within 30 days of the approval of an eligible person for payment from the fund. The amount of recovery an eligible person may receive is proposed to be increased from the lesser of $10,000 or the amount of the unpaid judgment to the lesser of $15,000 ($25,000 for specified elderly or incapacitated adults) or the amount of the unpaid judgment, arbitration award, or order of restitution.

The two year waiting period currently in section 517.141(3) has also been amended. The current statute requires that an applicant file a claim with the office and then wait a minimum of two years before a payment determination can be made. This makes the current process too lengthy. This eliminates the mandatory waiting period and instead requires that an eligible person file an application with the Office for payment from the fund within one year from the date of the final judgment, arbitration award, or restitution order, including any appeal.

Finally, a provision has been added that requires a claimant who knowingly and willfully files or causes to be filed an application under section 517.131 or documents supporting the application, any of which contain false, incomplete, or misleading information, to forfeit all payments from the fund and deem such act a violation of section 517.301.

517.131 Securities Guaranty Fund (clean version)

(1)(a) The Chief Financial Officer shall establish a Securities Guaranty Fund to provide monetary relief to victims of securities violations under this chapter who are entitled to monetary damages or restitution and are unable to recover the full amount of such monetary damages or restitution from the wrongdoer. An amount not exceeding 20 percent of all revenues received as assessment fees pursuant to s. 517.12(9) and (10) for dealers and investment advisers or s. 517.1201 for federal covered advisers and an amount not exceeding 10 percent of all revenues received as assessment fees pursuant to s. 517.12(9) and (10) for associated persons shall be part of the regular registration fee and shall be transferred to or deposited in the Securities Guaranty Fund.

(b) If the Securities Guaranty Fund's available balance at any time exceeds $1.5 million, transfer of assessment fees to this Securities Guaranty Fund shall be discontinued at the end of that registration year, and transfer of such assessment fees shall not be resumed unless the Securities Guaranty Fund is reduced below $1 million by disbursement made in accordance with s. 517.141.

(2) For purposes of this section and s. 517.141, "final judgment" shall include an arbitration award confirmed by a court of competent jurisdiction.

(3) A person is eligible for payment from the Securities Guaranty Fund if such person:

(a) 1. Holds an unsatisfied final judgment in which a wrongdoer was found to have violated ss. 517.07 or 517.301;

2. Has applied any amounts recovered from the judgment debtor, or from any other source, to the damages awarded by the court or arbitrator; and

3. Is a natural person who was a resident of Florida or is a business entity that was domiciled in Florida at the time of the violation of any section referred to in subparagraph (a)1.; or

(b) Is a receiver, appointed pursuant to s. 517.191(2) by a court of competent jurisdiction for a wrongdoer ordered to pay restitution pursuant to s. 517.191(3) as a result of a violation of ss. 517.07 or 517.301, that has requested payment from the Securities Guaranty Fund on behalf of a person eligible for payment under paragraph (3)(a) of this section.

(4) Notwithstanding subsection (3), a person is not eligible for payment from the Securities Guaranty Fund if such person:

(a) Participated or assisted in a violation of this chapter; or

(b) Attempted to commit or committed a violation of this chapter; or

(c) Profited from a violation of this chapter.

(5) An eligible person or a receiver, on behalf of an eligible person or persons, seeking payment from the Securities Guaranty Fund must file with the office a written application, on a form which the commission may by rule prescribe. The commission may establish, by rule procedures for filing documents by electronic means provided such procedures provide the office with the information and data required by this section. The application shall be filed with the office within one year of the date of the final judgment or restitution order, or any appellate decision thereon and shall contain such information as the commission or office may require concerning such matters as:

(a) The eligible person's full name, address, and contact information;

(b) The receiver's full name, address, and contact information, if any;

(c) The person ordered to pay restitution;

(d) The eligible person's form and place of organization, if the eligible person is a business entity; and a copy of its articles of incorporation, its articles of organization with amendments, trust agreement, or its partnership agreement.

(e) Any final judgment and a copy thereof;

(f) Any restitution ordered pursuant to s. 517.191(3), and a copy thereof;

(g) An affidavit stating that the eligible person has made all reasonable searches and inquiries to ascertain whether the judgment debtor possesses real or personal property or other assets subject to being sold or applied in satisfaction of the final judgment, and by the eligible person's search the eligible person has discovered no property or assets; or the eligible person has discovered property and assets and has taken all necessary action and proceedings for the application thereof to the final judgment but the amount thereby realized was insufficient to satisfy the final judgment;

(h) An affidavit from the receiver stating the amount of restitution owed to the eligible person(s) on whose behalf the claim is filed, the amount, if any, of any money, property, or assets paid to the eligible person(s) on whose behalf the claim is filed by the person over whom the receiver is appointed, and the amount of any unsatisfied portion of any eligible person's order of restitution.

(i) The eligible person's residence or domicile at the time of the violation of ss. 517.07 or 517.301 which resulted in eligible person's monetary damages or order of restitution;

(j) The amount of any unsatisfied portion of the eligible person's final judgment;

(k) Whether an appeal or motion to vacate an arbitration award has been filed.

(6) If the office finds that a person is eligible for payment from the Securities Guaranty Fund and has complied with the provisions of this section and rules promulgated thereunder, it shall approve such person for payment from the Securities Guaranty Fund. Each eligible person or receiver within 90 days of the Office's receipt of a complete application shall be given written notice, personally or by mail, that the office intends to approve or deny, or has approved or denied, the application for payment from the Securities Guaranty Fund.

(7) Upon receipt by the eligible person or receiver of notice of the Office's decision that the eligible person's or receiver's application for payment from the Securities Guaranty Fund is approved and prior to any disbursement, the eligible person shall assign all right, title, and interest in the final judgment or order of restitution to the extent of such payment, to the office on a form prescribed by commission rule.

(8) The office shall deem an application for payment from the Securities Guaranty Fund abandoned if the eligible person or receiver, or any person acting on behalf of the eligible person or receiver, fails to timely complete the application as prescribed by commission rule. The time period to complete an application shall be tolled during the pendency of an appeal or motion to vacate an arbitration award.

517.141 Payment from the fund (clean version**)**

(1) For purposes of this section, a "claimant" is an eligible person under s. 517.131 who is approved by the office for payment from the Securities Guaranty Fund.

(2) A claimant is entitled to disbursement in the amount equal to the lesser of the unsatisfied portion of the claimant's final judgment or order of restitution but only to the extent the final judgment reflects actual or compensatory damages, excluding postjudgment interest, costs, and attorney's fees; or either

(a) $15,000; or

(b) $25,000 if the claimant is a specified adult as defined in s. 517.34(1)(b), or the specified adult is a beneficial owner or beneficiary of a claimant.

(3) Regardless of the number of claims or claimants involved, payments for claims shall be limited in the aggregate to $250,000 against any one person. If the total claim filed by a receiver

on behalf of claimants exceeds the aggregate limit of $250,000, the office shall prorate the payment to each claimant based upon the ratio that each claimant's individual claim bears to the total claim filed.

(4) If, at any time, the money in the Securities Guaranty Fund is insufficient to satisfy any valid claim or portion of a valid claim approved by the office, the office shall satisfy such unpaid claim or portion of such valid claim as soon as a sufficient amount of money has been deposited in or transferred to the Securities Guaranty Fund. When there is more than one unsatisfied claim outstanding, such claims shall be paid in the order in which the claims were approved by final order of the office, which order is not subject to an appeal or other pending proceeding.

(5) All payments and disbursements made from the Securities Guaranty Fund shall be made by the Chief Financial Officer upon authorization by the office, or designee. The office shall submit such authorization within 30 days of the approval of an eligible person for payment from the Securities Guaranty Fund.

(6) Individual claims filed by persons owning the same joint account, or claims arising from any other type of account on which more than one name appears, shall be treated as the claims of one eligible claimant with respect to payment from the Securities Guaranty Fund. If a claimant who has obtained a final judgment or order of restitution which qualifies for disbursement under s. 517.131 has maintained more than one account with the person who is the subject of the claims, for purposes of disbursement of the Securities Guaranty Fund, all such accounts, whether joint or individual, shall be considered as one account and shall entitle such claimant to only one distribution from the fund. To the extent that a claimant obtains more than one final judgment or order of restitution against a person arising out of the same transactions, occurrences, or conduct or out of such person's handling of the claimant's account, such final judgments or orders of

restitution shall be consolidated for purposes of this section and shall entitle the claimant to only one disbursement from the fund.

(7) If the final judgment or final order of restitution that gave rise to the claim is overturned in any appeal or in any collateral proceeding, the claimant shall reimburse the Securities Guaranty Fund all amounts paid from the Securities Guaranty Fund to the claimant on the claim. If the claimant satisfies the final judgment or order of restitution, the claimant shall reimburse the Securities Guaranty Fund all amounts paid from the Securities Guaranty Fund to the claimant on the claim. Such reimbursement shall be paid to the office within 60 days after the final resolution of the appellate or collateral proceedings or the satisfaction of the final judgment or order of restitution, with the 60-day period commencing on the date the final order or decision is entered in such proceedings.

(8) If a claimant receives payments in excess of that which is permitted under this chapter, the claimant shall reimburse the Securities Guaranty Fund such excess within 60 days after the claimant receives such excess payment or after the payment is determined to be in excess of that permitted by law, whichever is later.

(9) A claimant who knowingly and willfully files or causes to be filed an application under s. 517.131 or documents supporting the application any of which contain false, incomplete, or misleading information in any material aspect shall forfeit all payments from the Securities Guaranty Fund and such act shall be a violation of s. 517.301(c).

(10) The office may institute legal proceedings to enforce compliance with this section and with s. 517.131 to recover moneys owed to the Securities Guaranty Fund, and shall be entitled to

recover interest, costs, and attorney's fees in any action brought pursuant to this section in which the office prevails.

Red-lined versions of Proposed Sections 527.131 and 517.141

517.131~~—~~ — Securities Guaranty Fund.—

(1)(a~~)~~) The Chief Financial Officer shall establish a Securities Guaranty Fund~~.~~ to provide monetary relief to victims of securities violations under this chapter who are entitled to monetary damages or restitution and are unable to recover the full amount of such monetary damages or restitution from the wrongdoer. An amount not exceeding 20 percent of all revenues received as assessment fees pursuant to s. ~~517.12(10) and (11~~ 517.12(9) and (10) for dealers and investment advisers or s. ~~517.1201~~ 517.1201 for federal covered advisers and an amount not exceeding 10 percent of all revenues received as assessment fees pursuant to s. ~~517.12(10) and (11~~ 517.12(9) and (10) for associated persons shall be part of the regular ~~license~~registration fee and shall be transferred to or deposited in the Securities Guaranty Fund.

(b~~)~~) If the ~~fund~~ Securities Guaranty Fund's available balance at any time exceeds $1.5 million, transfer of assessment fees to this ~~fund~~ Securities Guaranty Fund shall be discontinued at the end of that ~~license~~registration year, and transfer of such assessment fees shall not be resumed unless the ~~fund~~Securities Guaranty Fund is reduced below $1 million by disbursement made in accordance with s. ~~517.141.~~ 517.141.

~~(2) The Securities Guaranty Fund shall be disbursed as provided in s. 517.141 to a person who is adjudged by a court of competent jurisdiction to have suffered monetary damages as a result of any of the following acts committed by a dealer, investment adviser, or associated person who was licensed under this chapter at the time the act was committed:~~

~~(a)~~ (2) For purposes of this section and s. 517.141, "final judgment" shall include an arbitration award confirmed by a court of competent jurisdiction.

~~(3)~~ A ~~violation of s. 517.07.~~

~~(b) A violation of s.~~

~~517.301.~~

~~(3)~~ ~~Any~~ person is eligible ~~to seek recovery~~for payment from the Securities Guaranty Fund if such person:

(a)) ~~Such person has received final judgment in a~~ 1. Holds an unsatisfied final judgment in which a wrongdoer was found to have violated ss. 517.07 or 517.30;

2. Has applied any amounts recovered from the judgment debtor, or from any other source, to the damages awarded by the court or arbitrator; and

3. Is a natural person who was a resident of Florida or is a business entity that was domiciled in Florida at the time of the violation of any section referred to in subparagraph (a)1.; or

(b) Is a receiver, appointed pursuant to s. 517.191(2) by a court of competent jurisdiction for a wrongdoer ordered to pay restitution pursuant to s. 517.191(3) as a result of a violation of ss. 517.07 or 517.301, that has requested payment from the Securities Guaranty Fund on behalf of a person eligible for payment under paragraph (3)(a) of this section. ~~in any action wherein the cause of action was based on a violation of those sections referred to in~~

~~(4)~~ Notwithstanding subsection (~~2~~3~~).~~), a person is not eligible for payment from the Securities Guaranty Fund if such person:

~~(b)~~ ~~Such~~(a) Participated or assisted in a violation of this chapter;

or (b) Attempted to commit or committed a violation of this

chapter; or (c) Profited from a violation of this chapter.

~~(5)~~ An eligible person or a receiver, on behalf of an eligible person or persons, seeking payment from the Securities Guaranty Fund must file with the office a written application, on a form which the commission may by rule prescribe. The commission may establish, by rule procedures for filing documents by electronic means provided such procedures provide the office with the information and data required by this section. The application shall be filed with the office within one year of the date of the final judgment or restitution order, or any appellate decision thereon and shall contain such information as the commission or office may require concerning such matters as:

(a) The eligible person's full name, address, and contact

information; (b) The receiver's full name, address, and contact

information, if any; (c) The person ordered to pay restitution;

(d) The eligible person's form and place of organization, if the eligible person is a business entity; and a copy of its articles of incorporation, its articles of organization with amendments, trust agreement, or its partnership agreement.

(e) Any final judgment and a copy thereof;

(f) Any restitution ordered pursuant to s. 517.191(3), and a copy thereof;

(g) An affidavit stating that the eligible person has made all reasonable searches and inquiries to ascertain whether the judgment debtor possesses real or personal property or other assets subject to being sold or applied in satisfaction of the final judgment, and by ~~her or his~~the eligible person's search the eligible person has discovered no property or assets; or ~~she or he~~the eligible person has discovered property and assets and has taken all necessary action and proceedings for the application thereof to the final judgment, but the amount thereby realized was insufficient to satisfy the final judgment~~. To verify compliance with such condition, the office may require such person to have a writ of execution be issued upon such judgment, may require a showing that no personal or real property of the judgment debtor liable to be levied upon in complete satisfaction of the judgment can be found, or may require an affidavit from the claimant setting forth the reasonable searches and inquiries undertaken and the result of those searches and inquiries.~~;

~~(c) Such person has applied any amounts recovered from the judgment debtor, or from any other source, to the damages awarded by the court.~~

~~(d) The act for which recovery is sought occurred on or after January 1, 1979.~~

~~(e) The office waives compliance with the requirements of paragraph (a) or paragraph (b). The office may waive such compliance if the dealer, investment adviser, or associated person which is the subject of the claim filed with the office is the subject of any proceeding in which a receiver has been appointed by a court of competent jurisdiction. If the office waives such compliance, the office may, upon petition by the debtor or the court-appointed trustee, examiner, or receiver, distribute funds from the Securities Guaranty Fund up to the amount allowed under s. 517.141. Any waiver granted pursuant to this section shall be considered a judgment for purposes of complying with the requirements of this section and of s. 517.141.~~

~~(4) Any person who files an action that may result in the disbursement of funds~~(h) An affidavit from the receiver stating the amount of restitution owed to the eligible person(s) on whose behalf the claim is filed, the amount, if any, of any money, property, or assets paid to the eligible person(s) on whose behalf the claim is filed by the person over whom the receiver is appointed, and the amount of any unsatisfied portion of any eligible person's order of restitution.

(i) The eligible person's residence or domicile at the time of the violation of ss. 517.07 or 517.301 which resulted in eligible person's monetary damages or order of restitution;

(j) The amount of any unsatisfied portion of the eligible person's final judgment; (k) Whether an appeal or motion to vacate an arbitration award has been filed.

(6) If the office finds that a person is eligible for payment from the Securities Guaranty Fund and has complied with the provisions of this section and rules promulgated thereunder, it shall approve such person for payment from the Securities Guaranty Fund ~~pursuant to the provisions of s. 517.141 shall give~~. Each eligible person or receiver within 90 days of the Office's receipt of a complete application shall be given written notice, personally or by ~~certified~~ mail ~~to~~, that the office

~~as soon as practicable after such action~~intends to approve or deny, or has ~~been filed. The failure to give such~~approved or denied, the application for payment from the Securities Guaranty Fund.

(7) Upon receipt by the eligible person or receiver of notice ~~shall not bar a~~ of the Office's decision that the eligible person's or receiver's application for payment from the Securities Guaranty Fund ~~if all of the conditions specified in subsection (3) are satisfied~~is approved and prior to any disbursement, the eligible person shall assign all right, title, and interest in the final judgment or order of restitution to the extent of such payment, to the office on a form prescribed by commission rule.

~~(5) The commission may adopt rules pursuant to ss. 120.536(1) and 120.54 specifying the procedures for complying with subsections (2), (3), and (4), including rules for the form of submission and guidelines for the sufficiency and content of submissions of notices and claims.~~

(8) The office shall deem an application for payment from the Securities Guaranty Fund abandoned if the eligible person or receiver, or any person acting on behalf of the eligible person or receiver, fails to timely complete the application as prescribed by commission rule. The time period to complete an application shall be tolled during the pendency of an appeal or motion to vacate an arbitration award.

517.141 Payment from the fund.—

(1) For purposes of this section, a "claimant" is an eligible person under s. 517.~~**141 Payment from the fund.—**~~

~~(1) Any person who meets all of the conditions prescribed in s. 517.131 may apply to~~ 131 who is approved by the office for payment ~~to be made to such person~~ from the Securities Guaranty

Fund.

~~(2)~~ A claimant is entitled to disbursement in the amount equal to the lesser of the unsatisfied portion of ~~such person's~~the claimant's final judgment or ~~$10,000, whichever is less,~~order of restitution but only to the extent ~~and amount reflected in the~~the final judgment ~~as being~~reflects actual or compensatory damages, excluding postjudgment interest, costs, and attorney's fe~~e~~s~~.~~; or either

~~(2)~~ (a) $15,000; or

(b) $25,000 if the claimant is a specified adult as defined in s. 517.34(1)(b), or the specified adult is a beneficial owner or beneficiary of a claimant.

~~(3)~~ Regardless of the number of claims or claimants involved, payments for claims shall be limited in the aggregate to $~~100~~250,000 against any one ~~dealer, investment adviser, or associated~~ person. If the total ~~claims exceed~~claim filed by a receiver on behalf of claimants exceeds the aggregate limit of $~~100~~250,000, the office shall prorate the payment to each claimant based upon the ratio that ~~the person's~~each claimant's individual claim bears to the total ~~claims~~claim filed.

~~(4)~~ If, at any time, the money in the Securities Guaranty Fund is insufficient to satisfy any valid claim or portion of a valid claim approved by the office, the office shall satisfy such unpaid claim or portion of such valid claim as soon as a sufficient amount of money has been deposited in or transferred to the Securities Guaranty Fund. When there is more than one unsatisfied claim outstanding, such claims shall be paid in the order in which the claims were approved by final order of the office, which order is not subject to an appeal or other pending proceeding.

~~(3) No payment shall be made on any claim against any one dealer, investment adviser, or associated person before the expiration of 2 years from the date any claimant is found by the office to be eligible for recovery pursuant to this section. If during this 2-year period more than one claim is filed against the same dealer, investment adviser, or associated person, or if the office receives notice pursuant to s. 517.131(4) that an action against the same dealer, investment adviser, or associated person is pending, all such claims and notices of pending claims received during this period against the same dealer, investment adviser, or associated person may be handled by the office as provided in this section. Two years after the first claimant against that same dealer, investment adviser, or associated person applies for payment pursuant to this section:~~

~~(a)~~ (5) All payments and disbursements made from the Securities Guaranty Fund shall be made by the Chief Financial Officer upon authorization by the office, or designee. The office shall ~~determine those persons eligible for payment or for potential payment in the~~

~~event of a pending action. All such persons may be entitled to receive their pro rata shares of the fund as provided in this section.~~

~~(b) Those persons who meet all the conditions prescribed in s. 517.131 and who have applied for payment pursuant to this section will be entitled to receive their pro rata shares~~submit such authorization within 30 days of the ~~total disbursement.~~

~~(c) Those persons who have filed notice with the office~~approval of ~~a pending claim pursuant to s. 517.131(4) but who are not yet eligible~~ an eligible person for payment from the ~~fund will be entitled to receive their pro rata shares of the total disbursement once they have complied with subsection (1). However, in the event that the amounts they are eligible to receive pursuant to subsection (1) are less than their pro rata shares as determined under this section, any excess shall be distributed pro rata to those persons entitled to disbursement under this subsection whose pro rata shares of the total disbursement were less than the amounts of their claims~~Securities Guaranty Fund.

~~(4)~~ 6) Individual claims filed by persons owning the same joint account, or claims ~~stemming~~arising from any other type of account ~~maintained by a particular licensee~~ on which more than one name appears, shall be treated as the claims of one eligible claimant with respect to payment from the ~~fund.~~Securities Guaranty Fund. If a claimant who has obtained a final judgment or order of restitution which qualifies for disbursement under s. ~~517.131~~ 517.131 has maintained more than one account with the ~~dealer, investment adviser, or associated~~ person who is the subject of the claims, for purposes of disbursement of the ~~fund~~Securities Guaranty Fund, all such accounts, whether joint or individual, shall be considered as one account and shall entitle such claimant to only one distribution from the fund ~~not to exceed the lesser of $10,000 or the unsatisfied portion of such claimant's judgment as provided in subsection (1).~~. To the extent that a claimant obtains more than one final judgment or order of restitution against a ~~dealer, investment adviser, or one or more associated persons~~person arising out of the same transactions, occurrences, or conduct or out of ~~the dealer's, investment adviser's, or associated~~such person's handling of the claimant's account, such final judgments or orders of restitution shall be consolidated for purposes of this section and shall entitle the claimant to only one disbursement from the fund ~~not to exceed the lesser of $10,000 or the unsatisfied portion of such claimant's judgment as provided in subsection~~ (1)..

~~(5)~~ 7) If the final judgment or final order of restitution that gave rise to the claim is overturned in any appeal or in any collateral proceeding, the claimant shall reimburse the ~~fund~~Securities Guaranty Fund all amounts paid from the ~~fund~~Securities Guaranty Fund to the claimant on the claim. If the claimant satisfies the final judgment ~~specified in s. 517.131(3)(a),~~or order of restitution, the claimant shall reimburse the ~~fund~~Securities Guaranty Fund all amounts paid from the ~~fund~~Securities Guaranty Fund to the claimant on the claim. Such reimbursement shall be paid to the office within 60 days after the final resolution of the appellate or collateral proceedings or the satisfaction of the final judgment or order of restitution, with the 60-day period commencing on the date the final order or decision is entered in such proceedings.

~~(6)~~ 8) If a claimant receives payments in excess of that which is permitted under this chapter, the claimant shall reimburse the ~~fund~~Securities Guaranty Fund such excess within 60 days after the claimant receives such excess payment or after the payment is determined to be in excess of that permitted by law, whichever is later.

~~(7)~~ 9) A claimant who knowingly and willfully files or causes to be filed an application under s. 517.131 or documents supporting the application any of which contain false, incomplete, or misleading information in any material aspect shall forfeit all payments from the Securities Guaranty Fund and such act shall be a violation of s. 517.301(c).

(10) The office may institute legal proceedings to enforce compliance with this section and with s. ~~517.131 to~~ 517.131 to recover moneys owed to the ~~fund~~Securities Guaranty Fund, and shall be entitled to recover interest, costs, and attorney's fees in any action brought pursuant to this section in which the office prevails.

~~(8) If at any time the money in the Securities Guaranty Fund is insufficient to satisfy any valid claim or portion of a valid claim approved by the office, the office shall satisfy such unpaid claim or portion of such valid claim as soon as a sufficient amount of money has been deposited in or transferred to the fund. When there is more than one unsatisfied claim outstanding, such claims shall be paid in the order in which the claims were approved by final order of the office, which order is not subject to an appeal or other pending proceeding.~~

~~(9) Upon receipt by the claimant of the payment from the Securities Guaranty Fund, the claimant shall assign any additional right, title, and interest in the judgment, to the extent of such payment, to the office. If the provisions of s. 517.131(3)(e) apply, the claimant must assign to the office any right, title, and interest in the debt to the extent of any payment by the office from the Securities Guaranty Fund.~~

~~(10) All payments and disbursements made from the Securities Guaranty Fund shall be made by the Chief Financial Officer upon authorization signed by the director of the office, or such agent as she or he may designate.~~

~~(11) The commission may adopt rules pursuant to ss. 120.536(1) and 120.54 specifying procedures for complying with this section, including rules for the form of submission and guidelines for the sufficiency and content of submissions of notices and claims.~~

<u>517.191 Enforcement by the Office; enforcement by Attorney General</u>

The maximum civil and administrative penalties under this section are proposed to be increased as further deterrence to violations of this chapter. The maximum penalty is proposed to be increased from $10,000 for a natural person to $20,000 for a violation other than s. 517.301.

Penalty provisions were examined in other states. Seventeen states currently have caps of $10,000 per violation. Thirteen states have larger caps. Some states had increased penalties when seniors and other certain adults were victims of a violation. In light of the high percentage of Florida's senior population, and their vulnerability to financial exploitation, we propose adding a provision for increasing the penalty up to double the amount when the violation is against "specified adults," as that term is defined in s. 517.34(1)(b), i.e. "a natural person 65 years of age or older, or a vulnerable adult as defined in Fl. Stat. s. 415.102."

A provision is proposed to be added to ss. 4 which allows the Office to recover any costs and attorney fees related to the Office's investigation or enforcement of this section. Moneys recovered by the Office for costs and attorney fees are to be deposited into the Anti-Fraud Trust Fund.

Consistent with federal securities law and the Uniform Securities Act, we propose to add a provision as s. (5) which holds control persons jointly and severally liable with, and to the same extent as, any person they control that is found to have violated any provision of chapter 517, Florida Statutes, or the rules promulgated thereunder. A control person is not liable if such control person can establish, by a preponderance of the evidence, that he or she acted in good faith and did not directly or indirectly induce the act that constitutes the violation.

Also consistent with federal law, a provision was added as s. (6) deeming a person who knowingly or recklessly provides substantial assistance to another person in violation of a provision of chapter 517 or the rules promulgated thereunder violates the provision or the rule to the same extent as the person to whom such assistance is provided. Aiding and abetting liability already exists as a civil remedy in s. 517.211. We believed it appropriate to add a provision allowing for state action as well.

Subsections (7)-(10) regarding cease-and-desist orders, fines and other actions by the Office have been incorporated without change from s. 517.241, as well as subsections (14)-(15). References to ss. 517.311 and 312 in proposed subsection (11) were deleted because of the proposed consolidation of those sections in to s. 517.301, as discussed below.

517.191 Enforcement by the Office ~~Injunction to restrain violations; civil penalties~~; enforcement by Attorney General.—

(1) When it appears to the office, either upon complaint or otherwise, that a person has engaged or is about to engage in any act or practice constituting a violation of this chapter or a rule or order hereunder, the office may investigate; and whenever it shall believe from evidence satisfactory to it that any such person has engaged, is engaged, or is about to engage in any act or practice constituting a violation of this chapter or a rule or order hereunder, the office may, in addition to any other remedies, bring action in the name and on behalf of the state against such person and any other person concerned in or in any way participating in or about to participate in such practices or engaging therein or doing any act or acts in furtherance thereof or in violation of this chapter to enjoin such person or persons from continuing such fraudulent practices or engaging therein or doing any act or acts in furtherance thereof or in violation of this chapter. In any such court proceedings, the office may apply for, and on due showing be entitled to have issued, the

court's subpoena requiring forthwith the appearance of any defendant and her or his employees, associated persons, or agents and the production of documents, books, and records that may appear necessary for the hearing of such petition, to testify or give evidence concerning the acts or conduct or things complained of in such application for injunction. In such action, the equity courts shall have jurisdiction of the subject matter, and a judgment may be entered awarding such injunction as may be proper.

(2) In addition to all other means provided by law for the enforcement of any temporary restraining order, temporary injunction, or permanent injunction issued in any such court proceedings, the court shall have the power and jurisdiction, upon application of the office, to impound and to appoint a receiver or administrator for the property, assets, and business of the defendant, including, but not limited to, the books, records, documents, and papers appertaining thereto. Such receiver or administrator, when appointed and qualified, shall have all powers and duties as to custody, collection, administration, winding up, and liquidation of said property and business as shall from time to time be conferred upon her or him by the court. In any such action, the court may issue orders and decrees staying all pending suits and enjoining any further suits affecting the receiver's or administrator's custody or possession of the said property, assets, and business or, in its discretion, may with the consent of the presiding judge of the circuit require that all such suits be assigned to the circuit court judge appointing the said receiver or administrator.

(3) In addition to, or in lieu of, any other remedies provided by this chapter, the office may apply to the court hearing this matter for an order directing the defendant to make restitution of those sums shown by the office to have been obtained in violation of any of the provisions of this chapter. The office has standing to request such restitution on behalf of victims in cases brought by the office under this chapter, regardless of the appointment of an administrator or receiver under

subsection (2) or an injunction under subsection (1). Further, such restitution shall, at the option of the court, be payable to the administrator or receiver appointed pursuant to this section or directly to the persons whose assets were obtained in violation of this chapter.

(4) In addition to any other remedies provided by this chapter, the office may apply to the court hearing the matter for, and the court shall have jurisdiction to impose, a civil penalty against any person found to have violated any provision of this chapter, any rule or order adopted by the commission or office, or any written agreement entered into with the office in an amount not to exceed:

(a) the greater of $20,000 ~~$10,000~~ for a natural person or $25,000 for a business entity ~~any other person~~, or the gross amount of any pecuniary loss to investors or pecuniary gain to a natural person or business entity ~~such defendant~~ for each such violation, other than a violation of s. 517.301, plus;

(b) the greater of $50,000 for a natural person or $250,000 for a business entity ~~any other person~~, or the gross amount of any pecuniary loss to investors or pecuniary gain to a natural person or business entity ~~such defendant~~ for each violation of s. 517.301; or

(c) if a specified adult as such term is defined in s. 517.34(1)(b) is the victim of a violation of this chapter, then up to twice the amount of the civil penalty that would otherwise be imposed under this subsection.

All civil penalties collected pursuant to this subsection shall be deposited into the Anti-Fraud Trust Fund. The office may recover any costs and attorney fees related to the office's investigation or enforcement of this section. Notwithstanding any other law, moneys recovered by the office for costs and attorney fees collected pursuant to this subsection must be deposited into the Anti-Fraud Trust Fund.

(5) For purposes of any action brought by the office under this section, a control person of a controlled person found to have violated any provision of this chapter or any rule adopted under any provision of this chapter is jointly and severally liable with, and to the same extent as, such controlled person in any action brought by the office under this section unless the control person can establish by a preponderance of the evidence that he or she acted in good faith and did not directly or indirectly induce the act that constitutes the violation or cause of action.

(6) For purposes of any action brought by the office under this section, a person who knowingly or recklessly provides substantial assistance to another person in violation of a provision of this chapter or of any rule adopted under any provision of this chapter is deemed to violate the provision or the rule to the same extent as the person to whom such assistance is provided.

(7) The office may issue and serve upon a person a cease and desist order whenever the office has reason to believe that such person is violating, has violated, or is about to violate any provision of this chapter, any rule or order promulgated by the commission or office, or any written agreement entered into with the office.

(8) Whenever the office finds that conduct described in subsection (6) presents an immediate danger to the public requiring an immediate final order, it may issue an emergency cease and desist order reciting with particularity the facts underlying such findings. The emergency cease and desist order is effective immediately upon service of a copy of the order on the respondent named therein and remains effective for 90 days. If the office begins nonemergency cease and desist proceedings under subsection (6), the emergency cease and desist order remains effective until conclusion of the proceedings under ss. 120.569 and 120.57.

(9) The office may impose and collect an administrative fine against any person found to have violated any provision of this chapter, any rule or order promulgated by the commission or office, or any written agreement entered into with the office in an amount not to exceed the penalties set forth in subsection (4). All fines collected hereunder shall be deposited as received in the Anti-Fraud Trust Fund.

(10) The office may bar, permanently or for a specific time period, any person found to have violated any provision of this chapter, any rule or order adopted by the commission or office, or any written agreement entered into with the office from submitting an application or notification for a license or registration with the office.

(11) ~~(5)~~ In addition to all other means provided by law for enforcing any of the provisions of this chapter, when the Attorney General, upon complaint or otherwise, has reason to believe that a person has engaged or is engaged in any act or practice constituting a violation of s. 517.275, s. 517.301, or any rule or order issued under such sections, the Attorney General may investigate and bring an action to enforce these provisions as provided in ss. 517.171, 517.201, and 517.2015 after receiving written approval from the office. Such an action may be brought against such person and any other person in any way participating in such act or practice or engaging in such act or practice or doing any act in furtherance of such act or practice, to obtain injunctive relief, restitution, civil penalties, and any remedies provided for in this section. The Attorney General may recover any costs and attorney fees related to the Attorney General's investigation or enforcement of this section. Notwithstanding any other provision of law, moneys recovered by the Attorney General for costs, attorney fees, and civil penalties for a violation of s. 517.275, s. 517.301, or any rule or order issued pursuant to such sections, shall be deposited in the Legal Affairs Revolving Trust Fund. The Legal Affairs Revolving Trust Fund may be used to investigate and enforce this section.

(12) ~~(6)~~ This section does not limit the authority of the office to bring an administrative action against any person that is the subject of a civil action brought pursuant to this section or limit the authority of the office to engage in investigations or enforcement actions with the Attorney General. However, a person may not be subject to both a civil penalty under subsection (4) and an administrative fine under subsection (8) ~~s. 517.221(3)~~ as the result of the same facts.

(13) ~~(7)~~ Notwithstanding s. 95.11(4)(e), an enforcement action brought under this section based on a violation of any provision of this chapter or any rule or order issued under this chapter shall be brought within 6 years after the facts giving rise to the cause of action were discovered or should have been discovered with the exercise of due diligence, but not more than 8 years after the date such violation occurred.

(14) Nothing in this chapter limits any statutory right of the state to punish any person for a violation of a law.

(15) When not in conflict with the Constitution or laws of the United States, the courts of this state have the same jurisdiction over civil suits instituted in connection with the sale or offer of sale of securities under any laws of the United States as the courts of this state may have under similar cases instituted under the laws of the state.

517.211 Private remedies available in cases of unlawful sale

For clarity purposes the Task Force determined that it was preferable to have one section containing all the private remedies available under chapter 517. As a result, we propose moving s. 517.241 subsection (3) and part of subsection (2) to section 517.211 as new subsections (8) and (9) and remove redundant language. We propose adding language to clarify that interest should be calculated from the date of purchase.

There was lengthy discussion and debate about the impact of the attorney fee provision in subsection (7) on a plaintiff's decision to bring a claim in cases of an unlawful sale. Currently, in an action involving an unlawful sale of securities, attorney fees are to be awarded to the "prevailing party" unless the court finds the award of such fees would be unjust. The attorney fees provision that allows recovery for either side is inconsistent with the Uniform Securities Act and 46 other states that allow only the "prevailing party purchaser" to recover attorney's fees. The group considered amending the provision consistent with the Uniform Securities Act, but concern was raised as to the litigation impact and fairness of a one-sided provision. We decided not to amend the provision but recommend to the Business Law Section that this issue be further considered.

Consistent with federal law and the Uniform Securities Act, a provision was added as s. (3) that holds control persons jointly and severally liable with, and to the same extent as, any person they control that is found to have violated any provision of subsection (1). A control person is not liable if such control person can establish, by a preponderance of the evidence, that he or she acted in good faith and did not directly or indirectly induce the act that constitutes the violation.

517.211: (1) Every sale made in violation of either s. 517.07 or s. 517.12(1), (3), (4), (8), (10), (12), (15), or (17) may be rescinded at the election of the purchaser, except a sale made in violation of the provisions of s. 517.1202(3) relating to a renewal of a branch office notification shall not be subject to this section, and a sale made in violation of the provisions of s. 517.12(12) relating to filing a change of address amendment shall not be subject to this section. Each person making the sale and every director, officer, partner, or agent of or for the seller, if the director, officer, partner, or agent has personally participated or aided in making the sale, is jointly and severally liable to the purchaser in an action for rescission, if the purchaser still owns the security, or for damages, if the purchaser has sold the security. No purchaser otherwise entitled will have the benefit of this subsection who has refused or failed, within 30 days of receipt, to accept an offer made in writing by the seller, if the purchaser has not sold the security, to take back the security in question and to refund the full amount paid by the purchaser or, if the purchaser has sold the security, to pay the purchaser an amount equal to the difference between the amount paid for the security and the amount received by the purchaser on the sale of the security, together, in either case, with interest on the full amount paid for the security by the purchaser at the legal rate, pursuant to s. 55.03, for the period from the date of payment by the purchaser to the date of repayment, less the amount of any income received by the purchaser on the security.

(2) Any person purchasing or selling a security in violation of s. 517.301, and every director, officer, partner, or agent of or for the purchaser or seller, if the director, officer, partner, or agent has personally participated or aided in making the sale or purchase, is jointly and severally liable to the person selling the security to or purchasing the security from such person in an action for rescission, if the plaintiff still owns the security, or for damages, if the plaintiff has sold the security.

(3) For purposes of any action brought under this section, a control person of a controlled person found to have violated any provision specified in subsection (1) is jointly and severally liable with, and to the same extent as, such controlled person in any action brought under this section unless the control person can establish by a preponderance of the evidence that he or she acted in good faith and did not directly or indirectly induce the act that constitutes the violation or cause of action.

(4) In an action for rescission:

(a) A purchaser may recover the consideration paid for the security or investment, plus interest thereon at the legal rate from the date of purchase, less the amount of any income received by the purchaser on the security or investment upon tender of the security or investment.

(b) A seller may recover the security upon tender of the consideration paid for the security, plus interest at the legal rate from the date of purchase, less the amount of any income received by the defendant on the security.

(5) In an action for damages brought by a purchaser of a security or investment, the plaintiff shall recover an amount equal to the difference between:

(a) The consideration paid for the security or investment, plus interest thereon at the legal rate from the date of purchase; and

(b) The value of the security or investment at the time it was disposed of by the plaintiff, plus the amount of any income received on the security or investment by the plaintiff.

(5) In an action for damages brought by a seller of a security, the plaintiff shall recover an amount equal to the difference between:

(a) The value of the security at the time of the complaint, plus the amount of any income received by the defendant on the security; and

(b) The consideration received for the security, plus interest at the legal rate from the date of sale.

(7) In any action brought under this section, including an appeal, the court shall award reasonable attorneys' fees to the prevailing party unless the court finds that the award of such fees would be unjust.

(8) Nothing in this chapter limits any statutory or common-law right of a person to bring an action in a court for an act involved in the sale of securities or investments.

(9) The same civil remedies provided by laws of the United States for the purchasers or sellers of securities, under any such laws, in interstate commerce extend also to purchasers or sellers of securities under this chapter.

517.241 Remedies

This entire section has been deleted. Subsection (1) was deleted because it was restating information from chapter 120, Florida Statutes and was not necessary. Subsection (2) was retained but split and moved to sections 517.191 and 517.211 as discussed above. Subsection (3) was retained and moved to section 517. Subsection (4) was retained and moved to section 517.191.

Anti-Fraud Provisions, Sections 517.301, 311 and 312

Sections 517.301, 311 and 312 contain the principal provisions creating liabilities under the statute for material misrepresentations or omissions. Section 517.301 has the same terminology as SEC Rule 10b-5 and is the broadest, most comprehensive disclosure-oriented basis of liability. Section 517.311 deals with a specific type of misrepresentation, principally that the security or the person selling the security has been sponsored or approved by a government agency. Section 517.312 is a narrow provision dealing solely with boiler rooms. The Task Force proposal consolidates the three different sections into Section 517.301, providing for a single provision that sets forth the disclosure-oriented liabilities in addition to the boiler room provision. This provides, we believe, a more comprehensive provision and allows for the elimination of duplicate language.

The proposed new section 517.301 on a consolidated basis does not eliminate any of the liability provisions currently existing in the three sections. Current Section 517.301 provisions are in proposed 517.301(1) and (7). Current 517.311 provisions are in proposed 517.301(2)-(5). The boiler room provision in current 517.312 is now in 517.301(6).

Current 517.301 applies to the offer and sale of "investments' as well as securities. We discussed the possible differences between those terms. In most cases the terms will overlap. However, there may be circumstances where the asset being sold does not meet the strict definition of a security. We debated whether to leave the concept of "investment" in the statute, as the statute is principally directed at the sale of securities. Based on advice from the Office of Financial Regulation, we decided to retain the "investment" concept in the statute. We retained the exemption from the "investment" application for the sale of business opportunities as defined in Fl. Stat. 559.801 and an exemption for offers where there are no specific representations regarding an economic benefit to be derived from the purchase. Like the definition of "security," the meaning of the term "investment" as distinct from a security will need to be determined by courts on a case-by-case basis.

517.301 Fraudulent transactions; falsification or concealment of facts (red-lined)

(1) It is unlawful and a violation of the provisions of this chapter for a person:

(a) In connection with the rendering of any investment advice or in connection with the offer, sale, or purchase of any investment or security, including any security exempted under the provisions of s. 517.051 and including any security sold in a transaction exempted under the provisions of s. 517.061, s. 517.0611, or s. 57.0612, directly or indirectly:

1. To employ any device, scheme, or artifice to defraud;

2. To obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or

3. To engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon a person.

(b) By use of any means, to publish, give publicity to, or circulate any notice, circular, advertisement, newspaper, article, letter, investment service, communication, or broadcast which, though not purporting to offer a security for sale, describes such security for a consideration received or to be received directly or indirectly from an issuer, underwriter, or dealer, or from an agent or employee of an issuer, underwriter, or dealer, without fully disclosing the receipt, whether past or prospective, of such consideration and the amount of the consideration.

(c) In any matter within the jurisdiction of the office, to knowingly and willfully falsify, conceal, or cover up, by any trick, scheme, or device, a material fact, make any false, fictitious, or fraudulent statement or representation, or make or use any false writing or document, knowing the same to contain any false, fictitious, or fraudulent statement or entry.

(2) It is unlawful for a person in issuing or selling a security within the state, including a security exempted under the provisions of s. 517.051 and including a transaction exempted under the provisions of s. 517.061, s. 517.0611, or s. 517.0612, to misrepresent that such security, or company has been guaranteed, sponsored, recommended, or approved by the state or an agency or officer of the state or by theUnited States or an agency or officer of the United States.

(3) It is unlawful for a person registered or required to be registered, or subject to the notice requirements, under any section of this chapter, including such persons and issuers within the

purview of ss. 517.051, 517.061, 517.0611, or 517.0612, to misrepresent that such person has been sponsored, recommended, or approved, or that her or his abilities or qualifications have in any respect been passed upon, by the state or an agency or officer of the state or by the United States or an agency or officer of the United States.

(4) It is unlawful and a violation of this chapter for a person in connection with the offer or sale of an investment to obtain money or property by means of:

(a) A misrepresentation that the investment offered or sold is guaranteed, sponsored, recommended, or approved by the state or an agency or officer of the state or by the United States or an agency or officer of the United States; or

(b) A misrepresentation that such person is sponsored, recommended, or approved, or that such person's abilities or qualifications have in any respect been passed upon, by the state or an agency or officer of the state or by the United States or an agency or officer of the United States.

(5)(a) No provision of subsection (2) or subsection (3) shall be construed to prohibit a statement that a person or security is registered or has made a notice filing under this chapter if such statement is required by the provisions of this chapter or rules promulgated thereunder, if such statement is true in fact, and if the effect of such statement is not misrepresented.

(b) A statement that a person is registered made in connection with the offer or sale of a security under the provisions of this chapter shall include the following disclaimer: "Registration does not imply that such person has been sponsored, recommended, or approved by the state or an agency or officer of the state or by the United States or an agency or officer of the United States."

1. If the statement of registration is made in writing, the disclaimer shall immediately follow such statement and shall be in the same size and style of print as the statement of registration.

2. If the statement of registration is made orally, the disclaimer shall be made or broadcast with the same force and effect as the statement of registration.

(6) It is unlawful and a violation of this chapter for a person to directly or indirectly manage, supervise, control, or own, either alone or in association with others, a boiler room in this state which sells or offers for sale a security or investment in violation of subsections (1), (2), (3), (4) or (5).

(7) For purposes of this section, the term "investment" means a commitment of money or property principally induced by a representation that an economic benefit may be derived from such commitment, except that the term does not include a commitment of money or property for:
(a) The purchase of a business opportunity as defined in s. 559.80(1)(a), business enterprise, or real property through a person licensed under chapter 475 or registered under former chapter 498; or
(b) The purchase of tangible personal property through a person not engaged in solicitation by telephone, electronic mail, text messages, social media, chat rooms, or other electronic means where there
are no specific representations or guarantees made by the offeror or seller as to the economic benefit to be derived from the purchase.

517.301 Fraudulent transactions; falsification or concealment of facts (clean)

(1) It is unlawful and a violation of the provisions of this chapter for a person:

(a) In connection with the rendering of investment advice or in connection with the offer, sale, or purchase of an investment or security, including a security exempted under the provisions of s. 517.051 and including a security sold in a transaction exempted under the provisions of s. 517.061, s. 517.0611, or s. 517.0612, directly or indirectly:

1. To employ any device, scheme, or artifice to defraud;

2. To obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or

3. To engage in any transaction practice, or course of business which operates or would operate as a fraud or deceit upon a person.

(b) By the use of any means, to publish, give publicity to, or circulate a notice, circular, advertisement, newspaper, article, letter, investment service, communication, or broadcast which, though not purporting to offer a security for sale, describes such security for a consideration received or to be received directly or indirectly from an issuer, underwriter, or dealer, or from an agent or employee of an issuer, underwriter, or dealer, without fully disclosing the receipt, whether past or prospective, of such consideration and the amount thereof.

(c) In a matter within the jurisdiction of the office, to knowingly and willfully falsify, conceal, or cover up, by a trick, scheme, or device, a material fact, make a false, fictitious, or fraudulent statement or representation, or make or use a false writing or document, knowing the same to contain a false, fictitious, or fraudulent statement or entry.

(2) It is unlawful for a person in issuing or selling a security within the state, including a security exempted under th provisions of s. 517.051 and including a transaction exempted under the provisions of s. 517.061, s. 517.0611, or s. 517.0612, to misrepresent that such security, or company has been guaranteed, sponsored, recommended, or approved by the state or an agency or officer of the state or by the

United States or an agency or officer of the United States.

(3) It is unlawful for a person registered or required to be registered, or subject to the notice requirements, under any section of this chapter, including such persons and issuers within the purview of ss. 517.051, 517.061, 517.0611, or 517.0612, to misrepresent that such person has been sponsored, recommended, or approved, or that her or his abilities or qualifications have in any respect been passed upon, by the state or an agency or officer of the state or by the United States or an agency or officer of the United States.

(4) It is unlawful and a violation of this chapter for a person in connection with the offer or sale of an investment to obtain money or property by means of:

(a) A misrepresentation that the investment offered or sold is guaranteed, sponsored, recommended, or approved by the state or an agency or officer of the state or by the United States or an agency or officer of the United States; or

(b) A misrepresentation that such person is sponsored, recommended, or approved, or that such person's abilities or qualifications have in any respect been passed upon, by the state or an agency or officer of the state or by the United States or an agency or officer of the United States.

(5)(a) No provision of subsection (2) or subsection (3) shall be construed to prohibit a statement that a person or security is registered or has made a notice filing under this chapter if such statement is required by the provisions of this chapter or rules promulgated thereunder, if such statement is true in fact, and if the effect of such statement is not misrepresented.

(b) A statement that a person is registered made in connection with the offer or sale of a security under the provisions of this chapter shall include the following disclaimer: "Registration does not imply that such person has been sponsored, recommended, or approved by the state or an agency or officer of the state or by the United States or an agency or officer of the United States."

1. If the statement of registration is made in writing, the disclaimer shall immediately follow such statement and shall be in the same size and style of print as the statement of registration.

2. If the statement of registration is made orally, the disclaimer shall be made or broadcast with the same force and effect as the statement of registration.

(6) It is unlawful and a violation of this chapter for a person to directly or indirectly manage, supervise, control, or own, either alone or in association with others, a boiler room in this state which sells or offers for sale a security or investment in violation of subsections (1), (2), (3), (4) or (5).

(7) For purposes of this section, the term "investment" means a commitment of money or property principally induced by a representation that an economic benefit may be derived from such commitment, except that the term does not include a commitment of money or property for:

(a) The purchase of a business opportunity (as defined in s. 559.801(1)(a)), business enterprise, or real property through a person licensed under chapter 475 or registered under former chapter 498; or

(b) The purchase of tangible personal property through a person not engaged in solicitation by telephone, electronic mail, text messages, social media, chat rooms, or other electronic means where there are no specific representations or guarantees made by the offeror or seller as to the economic benefit to be derived from the purchase.

517.302 Criminal penalties; alternative fine; Anti criminal prosecution. Fraud Trust Fund; time limitation for criminal prosecution

The consensus was to retain the provision as written. Discussion centered on whether to increase the penalties for criminal violations. Currently, pursuant to section 517.302, a violation of chapter 517 is a third degree felony; and a violation of certain provisions involving fraud, boiler rooms, and false representations where a person obtains money or property of an aggregate value exceeding $50,000 from five or more persons is a first degree felony. The offense severity ranking chart contained in section 921.0022 is used with the Criminal Punishment Code worksheet to compute a sentence score for each felony offender. The offense severity ranking chart has 10 offense levels, ranked from least severe, which are level 1 offenses, to most severe, which are level 10 offenses, and each felony offense is assigned to a level according to the severity of the offense. Unless specifically identified in the severity ranking chart, violations of chapter 517 are a level 1 offense. Failure to file a prospectus meeting requirements, a violation of section 517.07(2, is identified as a level 2 offense; failure to register securities, or to register as a dealer, issuer, or associated person is identified as a level 4 offense; knowing securities fraud while obtaining money or property of less than $100,000 is identified a s a level 7 offense;

and knowing securities fraud while obtaining money or property of $100,000 or more is identified as a level 8 offense.

It was ultimately decided that any changes involved too many potentially interested parties and factors, so the decision was to make no changes to this section.

Discussion also focused on whether there should be a scienter requirement or whether the majority of violations of chapter 517 should remain strict liability offenses. The USA and many states require a "willful" violation. However, it was ultimately decided to keep the provisions unchanged.

517.311: Deleted --- provisions moved to 517.301.

517.312: Deleted --- provisions moved to 517.301.

Chapter 517 Task Force:
Chair: Will Blair
Academic Chair: Stuart Cohn
Vice Chair: Roland Chase
Subgroup Chairs:
Registration Exemptions (Stuart Cohn)
Registration of Securities (Dan Newman, Roland Chase)
Dealers and Investment Advisers (Robert Brighton)
Administrative and Judicial Review (Michelle Suarez)
Anti-Fraud (Will Blair)