BUSINESS LAW SECTION
OF THE FLORIDA BAR

EXECUTIVE COUNCIL ANNUAL LABOR DAY RETREAT AGENDA

September 1-4, 2023

I. Call to Order – Mark Stein, Chair (**Exhibit 1 – Final Slate**)

II. Commitment to Pro Bono Service

The Section reaffirms its goal to achieve 100% participation in pro bono service by Business Law Section members and attorneys in their firms.

The Section proudly acknowledges the following Executive Council members who have pledged at least $1000 to The Florida Bar Foundation Endowment Trust to become Fellows of The Florida Bar Foundation:

Douglas Bates
Leyza Blanco
Giacomo Bossa
Hon. Jay Brown
Michael Chesal
Robert Charbonneau
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Hon. Caryl Delano
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Kathleen McLeroy
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Hon. Mindy A. Mora
Jennifer Morando
Woodrow "Woody" Pollack
Adina Pollan
Carlos Sardi
Philip Schwartz
Detra Shaw-Wilder
Lynn Walter Sherman
Mark Stein
Michelle Suarez
Gary Teblum
Dineen Wasylik
Donald Workman

Recognition of Sponsors

The Section acknowledges the generous contribution of all its sponsors, including the following Legacy ($15,000), Diamond ($10,250), Sapphire ($7,750) and Emerald ($5,250):

LEGACY SPONSOR	DIAMOND SPONSORS	SAHPIRE SPONSORS	EMERALD SPONSORS
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III. Approval of Minutes from June 22, 2023 Executive Council Annual Meeting (Exhibit 2) – Peter Valori, Secretary

IV. Treasurer's Report (Exhibit 3 – Recent Financials and **Exhibit 4 Reimbursement Policy)** – Stephanie Lieb, Treasurer

V. Triple Motions

a. Chapter 517 Task Force **(Exhibit 5 – Draft Bill and White Paper)**

RESOLVED, that the Florida Bar Business Law Section (the "Section") supports proposed legislation updating and modernizing Chapter 517 of the Florida Statutes – The Florida Securities and Investor Protection Act (the "Proposed Legislation"), substantially in the form of the draft legislation, dated as of August 4, 2023, presented to the Executive Council of the Section, and subject to such further changes as are deemed appropriate and approved by the Chapter 517 Task Force and the Executive Council of the Section; and it is further

RESOLVED, that the Proposed Legislation: (1) Is within the Section's subject matter jurisdiction as described in the Section's bylaws; (2) Either is beyond the scope of the bar's permissible legislative or political activity, or is within the bar's permissible scope of legislative or political activity and the proposed Section position is consistent with an official bar position on that issue; and (3) Does not have the potential for deep philosophical or emotional division among a substantial segment of the bar's membership.

b. Chapter 607 Subcommittee **(Exhibit 6 – Draft Bill and White Paper)**

RESOLVED, that the Florida Bar Business Law Section (the "Section") supports proposed legislation addressing changes and updates to Chapter 607, Florida Statutes, the Florida Business Corporations Act, primarily including the addition of provisions addressing ratification of defective corporate actions and overissuances of securities, substantially in the form of the draft legislation, draft dated as of _____, 2023 presented to the Executive Council of the Section, and subject to such further changes as are deemed appropriate and approved by (i) the Chapter 607 Subcommittee, and (ii) the Executive Committee of the Section; and it is further

RESOLVED, that the Proposed Legislation: (1) is within the Section's subject matter jurisdiction as described in the Section's bylaws; (2) either is beyond the scope of the bar's permissible legislative or political activity, or is within the bar's permissible scope of legislative or political activity and the proposed Section position is consistent with an official bar position on that issue; and (3) does not have the potential for deep philosophical or emotional division among a substantial segment of the bar's membership.

VI. Reports of Substantive Law Committees

A. Bankruptcy/UCC – Kenneth Murena, Chair; Adina Pollan, Vice Chair; Matt Hale, Second Vice Chair; Honorable Mindy Mora, Judicial Chair; Prof. Jeffrey Davis, Academic Chair

B. Blockchain & Digital Assets Committee – Daniel Maland, Chair; Robert Kain, Vice Chair; Terry Sanks, Second Vice Chair; Honorable Lisa Munyon, Judicial Chair; Prof. Zachary Catanzaro, Academic Chair

C. Business Litigation – Brian Barakat, Chair; Joe Van de Bogart, Vice Chair; Utibe Ikpe, Second Vice Chair; Honorable Edward LaRose, Judicial Chair (State); Honorable Darrin Gayles, Judicial Chair (Federal)

D. Computer Law & Technology – Talia Boiangin, Chair; Michael Bittner, Vice Chair; Andrica Jasmaine Alexander, Second Vice Chair; Honorable Julie Sneed, Judicial Chair; Prof. Vincenc Feliu, Academic Chair

E. Corporations, Securities & Financial Services – Toni Tsvetanova, Chair; Vice Chair; Valeria Angelucci; Kelly Roberts, Second Vice-Chair; Prof. Stuart Cohn, Academic Chair

F. E-Discovery & Digital Evidence Committee- Avery Chapman, Chair; Jude Cooper, Vice Chair; Chad Roberts, Second Vice Chair; Honorable William Matthewman, Judicial Chair; Prof. Zachary Catanzaro, Academic Chair

G. Intellectual Property Law – Darren Spielman, Chair; Meredith Mendez, Vice Chair; Sean Combs, Second Vice Chair; Honorable Mary Scriven, Judicial Chair; Prof. Jake Linford, Academic Chair

VII. Reports of Standing Committees and Task Forces

A. Amicus Brief Guidelines Subcommittee – Dineen Wasylik, Chair; Honorable Edward LaRose, Judicial Chair

B. Antitrust and Trade Regulation Subcommittee – Ilana Drescher, Chair; Honorable Edward LaRose, Judicial Chair

C. Bankruptcy Judicial Liaison Committee – Marianne Dorris Chair; Honorable Roberta Colton, Judicial Chair

D. Budget Committee – Stephanie Lieb, Chair

E. Business Courts Task Force – Jon Polenberg and Honorable Gill Freeman, Co-Chairs; Amir Isaiah, Vice-Chair

F. Chapter 48 Task Force – Giacomo Bossa and Jim Murphy, Co-Chairs

G. Chapter 517 task Force – Will Blair, Chair; Roland Chase, Vice Chair; Prof. Stuart Cohn, Academic Chair

H. Chapter 607 Sub-Committee – Philip Schwartz and Gary Teblum, Co-Chairs, Andrew Schwartz, Vice Chair

I. CLE Committee- Luis Rivera, Chair; Katheleen DiSanto, Vice Chair; Dan Etlinger, Second Vice Chair; Honorable Caryl Delano, Judicial Chair

J. Communications Committee- Crystal Potts, Chair; April Stone, Vice Chair; Deedee Bitran, Second Vice Chair; Honorable Paul Hyman, Judicial Chair

K. Financial Literacy Task Force – John Hutton, Chair; Tara Trevorrow, Vice Chair; Honorable Jacob Brown, Judicial Chair

L. Health & Wellness Task Force – Kristina Feher, Chair,; Kayla Heckman, Vice Chair; Honorable Grace Robson, Judicial Chair

M. Inclusion, Mentoring & Fellowship Committee – Kelly Roberts, Chair; Katherine Van de Bogart Vice-Chair; Nicole McLemore, Second Vice Chair; Honorable Lori Vaughan, Judicial Chair (Federal); Honorable Virginia Norton, Judicial Chair (State)

N. Labor Day Retreat Committee- Robert Charbonneau, Chair; Jennifer Morando, Vice Chair; Andy Layden, Second Vice Chair

O. Legislation Committee – Robert Barron, Chair; Woody Pollack Vice Chair; Dineen Pashoukos Wasylik, Second Vice Chair

P. Long Range Planning Committee – Gregory Yadley, Chair; Honorable Mindy Mora, Judicial Chair

Q. Marketing, Promotions & Sponsorships Committee- Peter Maskow, Chair; Michele Moss, Vice Chair; Jim Matulis, Second Vice Chair

R. Membership Committee- Juan Mendoza, Chair; Christina Taylor, Vice Chair; Zach Evangelista, Second Vice Chair; Honorable Karen Specie, Judicial Chair

S. Opinion Standards Committee- David Peterson and Gary Teblum, Co-Chairs

T. Pro Bono Task Force & Pro Bono Committee- Jim Moon, Chair; Tara Trevorrow, Vice Chair; Raina Shipman, Second Vice Chair; Honorable Laurel Isicoff, Judicial Chair

U. Restrictive Covenant Task Force – Brian Barakat, Chair; Keith Bell, Vice Chair

V. Rules of Court –Russell Landy, Chair; Chris DeCort, Vice-Chair; Jodi Dubose, Second Vice-Chair; Honorable Darren Farfante, Judicial Chair (State); Honorable Melissa Damian, Judicial Chair (Federal)

W. Scholar and Fellows Retention Task Force – Zach Hyman, Chair; Chris Broussard, Vice-Chair; Honorable Catherine McEwen, Judicial Chair

X. Series LLC Task Force – Louis Conti, Chair

Y. State & Federal Courts Judicial Liaison Committee – Allison Leonard, Chair; Chris DeCort, Vice Chair; Honorable Lisa Walsh, Judicial Chair (State); Honorable Wendy Berger, Judicial Chair (Federal)

Z. UCC Article 12 – Robert Kain, Michael Dunn and Jaime Leggett (Co-Chairs); Zachary Catanzaro, Judicial Chair

AA. Uniform Commercial Real Estate Receivership Act (UCRERA) Task Force – Amanda Fernandez, Chair; Jodi Dubose, Vice Chair

BB. Uniform Voidable Transfers Act (UVTA) Task Force – John Hutton, Chair; David Slenn, Vice Chair

VIII. Reports of Section Liaisons

A. The Florida Bar Board of Governors – Jorge Piedra
B. The Florida Bar Continuing Legal Education – Luis Rivera
C. The Florida Bar Council of Sections – Manny Farach
D. The Florida Bar Diversity & Inclusion Committee – Lynn Sherman
E. The Florida Bar Real Property, Probate & Trust Law (RPPTL) Section – James Marx
F. The Florida Bar Young Lawyers (YLD) Division
G. The Florida Institute of CPAs (FICPA) – Donald Workman
H. The Out-of-State Division of The Florida Bar – Lawrence Kunin
I. The Working Group on Legal Opinions (WGLO) – Philip Schwartz

IX. New Business

X. Other Reports

A. Chair's Report – Mark Stein
B. Chair-Elect's Report – Manny Farach

XI. Good and Welfare

XII. Future Full Section Meetings

A. Mid-Year Meeting: January 17-18, 2024 – Gaylord Palms, Orlando (not meeting at the same time as Big Bar)
B. Retreat: April 3-7, 2024 – Edinburgh, Scotland
C. Annual Meeting (Florida Bar): June 19-22, 2024 – Hilton Orlando Bonnet Creek

XIII. Future Section Events

a. View from the Bench – November 2 (Tampa) and November 3 (Miami)
b. Federal Securities Institute – February 15-16, 2024 (Tampa)
c. IP Symposium – April 11-12, 2024 (Orlando – JW Marriott Bonnet Creek)

XIV. Adjournment

THE FLORIDA BAR BUSINESS LAW SECTION EXECUTIVE COUNCIL 2023 - 2024

BLS OFFICERS/EXECUTIVE COMMITTEE			
Position	Name	Email	Phone
*Chair	Mark Stein	mark@marksteinlaw.com	305-356-7550
*Chair-Elect	Manuel Farach	mfarach@mrachek-law.com	561-655-2250
*Treasurer	Stephanie Lieb	slieb@trenam.com	813-227-7469
*Secretary	Peter Valori	pvalori@dvllp.com	305-371-3960
*Immediate Past Chair	Doug Bates	dbates@clarkpartington.com	850-434-9200
*Chair, Long Range Planning	Gregory Yadley	gyadley@shumaker.com	813-227-2238

SUBSTANTIVE LAW COMMITTEES

BANKRUPTCY/UCC			
Position	Name	Email	Phone
*Chair	Kenneth Murena	kmurena@dvllp.com	305-371-3960
*Vice Chair	Adina Pollan	apollan@mcglinchey.com	904-475-2187
Second Vice Chair	Matt Hale	Mhale@srbp.com	813-229-0144
*Judicial Chair	Hon. Mindy Mora	mam_chambers@flsb.uscourts.gov	561-514-4130
Academic Chair	Prof. Jeffrey Davis	davis@law.ufl.edu	352-273-0956

BLOCKCHAIN & DIGITAL ASSETS			
Position	Name	Email	Phone
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Second Vice Chair	Terry Sanks	tsanks@firstiniplaw.com	(407) 644-8888
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Academic Chair	Zachary Catanzaro	zachary@zlclaw.com	561-247-3242

BUSINESS LITIGATION			
Position	Name	Email	Phone
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Second Vice Chair	Utibe I. Ikpe	uikpe@melandbudwick.com	305-375-6052
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*Judicial Chair (Federal)	Hon. Darrin Gayles	gayles@flsd.uscourts.gov	305-523-5170

COMPUTER AND TECHNOLOGY LAW			
Position	Name	Email	Phone
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Second Vice Chair	Andrica Jasmaine Alexander	andrica@digitaldirectivelaw.com	786-710-0690
*Judicial Chair	Hon. Julie Sneed	chambers_flmd_sneed@flmd.uscourts.gov	813-301-5260
Academic Chair	Prof. Vincenc Feliu	vfeliu@nova.edu	954-262-6210

CORPORATIONS, SECURITIES & FINANCIAL SERVICES			
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*Vice Chair	Valeria Angelucci	vangelucci@beckerlawyers.com	954-985-4173
Second Vice Chair	Kelly Roberts	kelly@kellyrobertslaw.com	941-402-3831
Academic Chair	Prof. Stuart Cohn	cohn@law.ufl.edu	352-273-0925 c-352-328-8519

INTELLECTUAL PROPERTY			
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Chair of IP Symposium	John Cunniff	jcunniff@hahnlaw.com	239.254.2915
*Judicial Chair	Hon. Mary Scriven	chambers_flmd_scriven@flmd.uscourts.gov	813-301-5710
Academic Chair	Prof. Jake Linford	jlinford@law.fsu.edu	850-644-3449

PERMANENT AND OTHER COMMITTEES

BANKRUPTCY JUDICIAL LIAISON			
Position	Name	Email	Phone
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*Judicial Chair	Hon. Roberta Colton	Robertcolton@flmb.uscourts.gov	813-301-5118

BUDGET COMMITTEE			
Position	Name	Email	Phone
Chair (Treasurer)	Stephanie Lieb	slieb@trenam.com	813-227-7469
Immediate Past Chair	Doug Bates	dbates@clarkpartington.com	850-434-9200
Long Range Planning			
At-large Member (Retreat)	Jennifer Morando	jennifer@heatwolelaw.com	407-490-2467
At-large Member (Sponsorship)	Peter Maskow	Peter.maskow@bluegreenvacations.com	561-443-8713
Secretary (*ex officio*)	Peter Valori	pvalori@dvllp.com	305-371-3960

CONTINUING LEGAL EDUCATION (CLE)			
Position	Name	Email	Phone

*Member of Executive Council pursuant to Section 4.2 of Amended and Restated Bylaws of the Business Law Section

*Chair	Luis Rivera	Luis.rivera@gray-robinson.com	239-254-8460
*Vice Chair	Kathleen DiSanto	kdisanto@bushross.com	813-204-6409
Second Vice Chair	Dan Etlinger	detlinger@jennislaw.com	(813) 229-2800
*Judicial Chair	Hon. Caryl Delano	cdelano@flmb.uscourts.gov	813-301-5190

ELECTRONIC DISCOVERY & DIGITAL EVIDENCE			
Position	Name	Email	Phone
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Second Vice Chair	Chad Roberts	chad.roberts@robertsdiscovery.com	(305) 240-5148
*Judicial Chair	Hon. William Matthewman	William_matthewman@flsd.uscourts.gov	561-803-3440
Academic Chair	Zachary Catanzaro	zachary@zlclaw.com	561-247-3242

INCLUSION/MENTORING/FELLOWSHIPS			
Position	Name	Email	Phone
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*Judicial Chair (State)	Hon. Virginia Norton	nortonvb@coj.net	904-255-1300

LABOR DAY RETREAT			
Position	Name	Email	Phone
*Chair	Robert Charbonneau	rpc@agentislaw.com	305-722-2002
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Second Vice Chair	Andy Layden	alayden@bakerlaw.com	407-469-4000
Immediate Past Chair	April Stone	astone@tmppllc.com	561-338-4101

COMMUNICATIONS			
Position	Name	Email	Phone
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*Judicial Chair	Hon. Paul Hyman	Paul_hyman@flsb.uscourts.gov	561-514-4124

LEGISLATION			
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Second Vice Chair	Dineen Wasylik	dineen@ip-appeals.com	813-778-5161
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At-large (Business Litigation)	Joseph Van de Bogart	joseph@vandebogartlaw.com	954-567-6032
At-large (Computer Law)	Michael B. Bittner	mike@bittnerlegalgroup.com	904-608-1289
At-large (Corporations)	Valeria Angelucci	vangelucci@beckerlawyers.com	954-985-4173
At-large (I.P.)	Meredith Mendez	mmendez@malloylaw.com	305-858-8000
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At-large	Amanda Finley	afinley@sequorlaw.com	305-372-8282
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At-large	Matt Hale	mhale@srbp.com	813-229-0144
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LONG RANGE PLANNING			
Position	Name	Email	Phone
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*Parliamentarian	Philip Schwartz	Philip.schwartz@akerman.com	954-468-2455

MARKETING, PROMOTIONS & SPONSORSHIPS			
Position	Name	Email	Phone
*Chair	Peter Maskow	Peter.maskow@bluegreenvacations.com	561-443-8713
*Vice Chair	Michele Moss	mgmoss@johnsonmosslaw.com	407-273-7027
Second Vice Chair	Jim Matulis	jim@matulis-law.com	(813) 282-8000

*Member of Executive Council pursuant to Section 4.2 of Amended and Restated Bylaws of the Business Law Section

MEMBERSHIP			
Position	Name	Email	Phone
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*Vice Chair	Christina Taylor	ctaylor@lathamluna.com	407-481-5800
Second Vice Chair	Zach Evangelista	zachariah@ser-associates.com	305-975-9597
FIU Liaison	Scott Norberg	norberg@fiu.edu	305-348-1118
FSU Liaison	Dean Debra Henley	dhenley@law.fsu.edu	850-644-7471
NSU Liaison	Prof. Marilyn Cane	marilyncane@yahoo.com	954-336-7179
UF Liaison	Prof. Danny Sokol	sokold@law.ufi.edu	352-273-0968
UM Liaison	Prof. Andrew Dawson	adawson@law.miami.edu	305-284-8446
*Judicial Chair	Hon. Karen Specie	Karen_specie@flnb.uscourts.gov	850-521-5030
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Chair's Task Force	Bart Valdes	bvaldes@dsklawgroup.com	813-251-5825

OPINION STANDARDS			
Position	Name	Email	Phone
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*Vice-Chair	Stefan Rubin	SRubin@shutts.com	(407) 835-6735

PRO BONO			
Position	Name	Email	Phone
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*Judicial Chair	Judge Laurel Isicoff	Laurel_m_isicoff@flsb.uscourts.gov	305-714-1750
RULES OF COURT			
Position	Name	Email	Phone
*Chair	Russell Landy	rlandy@dvllp.com	305-371-3960
*Vice-Chair	Chris DeCort	cdecort@jnd-law.com	813-699-4861 c-813-679-7425
Second Vice-Chair	Jodi Dubose	jdubose@srbp.com	850-637-1836
*State Judicial Chair	Hon. Darren Farfante	darren.farfante@fljud13.org	813-272-6913
Federal Judicial Chair	Hon. Melissa Damian	Melissa_Damian@flsd.uscourts.gov	305-523-5920

STATE & FEDERAL COURTS JUDICIAL LIAISON

*Member of Executive Council pursuant to Section 4.2 of Amended and Restated Bylaws of the Business Law Section

Position	Name	Email	Phone
*Chair	Allison Leonard	aleonard@dvllp.com	305-371-3960
*Vice-Chair	Chris DeCort	cdecort@jnd-law.com	813-699-4861 c-813-679-7425
*Judicial Chair (State)	Hon. Lisa Walsh	lwalsh@jud11.flcourts.org	305-349-7029
*Judicial Chair (Federal)	Hon. Wendy Berger	Wendy_berger@flmd.uscourts.org	407-835-4250

TASK FORCES AND SUBCOMMITTEES

AMICUS BRIEF GUIDELINES SUBCOMMITTEE			
Position	Name	Email	Phone
*Chair	Dineen Wasylik	dineen@ip-appeals.com	813-778-5161
*Judicial Chair	Hon. Edward LaRose	larosee@flcourts.org	813-272-3430

ANTITRUST & TRADE REGULATION SUBCOMMITTEE			
Position	Name	Email	Phone
*Chair	Ilana Drescher	idrescher@bilzin.com	305-350-2412
*Judicial Chair	Hon. Edward LaRose	larosee@flcourts.org	813-272-3430
BUSINESS COURTS TASK FORCE			
Position	Name	Email	Phone
*Co-Chair	Hon. Gill Freeman (retired)	gfreeman@jamsadr.com	305-371-5267
*Co-Chair	Jon Polenberg	jpolenberg@beckerlawyers.com	954-987-7550
*Vice-Chair	Amir Isaiah	isaiah@forthepeople.com	(305) 929-1920

CHAPTER 517 TASK FORCE			
Position	Name	Email	Phone
*Chair	Will Blair	wblair@shumaker.com	813-227-2356
*Vice-Chair	Roland S. Chase	Roland.Chase@hwhlaw.com	813.222.3125
*Academic Chair	Prof. Stuart Cohn	cohn@law.ufl.edu	352-273-0925

CHAPTER 607 SUBCOMMITTEE			
Position	Name	Email	Phone
*Co-Chair	Philip Schwartz	Philip.schwartz@akerman.com	954-468-2455
*Co-Chair	Gary Teblum	gteblum@trenam.com	813-227-7457
*Vice Chair	Andrew Schwartz	Andrew.schwartz@akerman.com	954-463-2700
FINANCIAL LITERACY TASK FORCE			
Position	Name	Email	Phone

*Member of Executive Council pursuant to Section 4.2 of Amended and Restated Bylaws of the Business Law Section

*Chair	John Hutton	huttonj@gtlaw.com	305.579.0788
*Vice Chair	Tara Trevorrow	Tara_trevorrow@flsb.uscourts.gov	561-514-4100
*Judicial Chair	Hon. Jacob Brown	Jacob_Brown@flmb.uscourts.gov	904-301-6560

HEALTH & WELLNESS TASK FORCE			
Position	Name	Email	Phone
*Chair	Kristina Feher	kfeher@feherlaw.com	727-359-0367
*Vice Chair	Kayla M. Heckman	Kayla_Heckman@flsb.uscourts.gov	305-714-1753
*Judicial Chair	Hon. Grace Robson	Grace_Robson@flmb.uscourts.gov	407-237-8140

CHAPTER 617 TASK FORCE			
Position	Name	Email	Phone
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*Co-Chair	Prof. Stuart Cohn	cohn@law.ufl.edu	352-273-0925

SCHOLAR & FELLOWS RETENTION TASK FORCE			
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*Judicial Chair	Hon.Catherine McEwen	cmcewen@flmb.uscourts.gov	813-301-5082

UNIFORM COMMERCIAL REAL ESTATE RECEIVERSHIP ACT (UCRERA) TASK FORCE			
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CHAPTER 48 TASK FORCE			
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*Co-Chair	Jim Murphy	jbmurphyjr@gmail.com	813-416-3706

RESTRICTIVE COVENANT TASK FORCE			
Position	Name	Email	Phone
*Chair	Brian Barakat	barakat@b2b.legal	305-444-3114
*Vice-Chair	Keith Bell	kbell@clarkpartington.com	850-434-9200

SERIES LLC TASK FORCE			
Position	Name	Email	Phone
*Chair	Lou Conti	louis.conti@hklaw.com	813-227-8500

UNIFORM VOIDABLE TRANSFERS ACT (UVTA) TASK FORCE			
Position	Name	Email	Phone

*Member of Executive Council pursuant to Section 4.2 of Amended and Restated Bylaws of the Business Law Section

*Chair	John Hutton	huttonj@gtlaw.com	305-579-0788
*Vice Chair	David Slenn	David.slenn@akerman.com	239-449-5600

UCC ARTICLE 12			
Position	Name	Email	Phone
*Co-Chair Tech	Robert Kain	rkain@conceptlaw.com	754-300-1500
*Co-Chair Bkcy/UCC	Michael Dunn	Michael.dunn@dunnlawpa.com	786-433-3866
*Co-Chair Bkcy/UCC	Jaime Leggett	jleggett@bastamron.com	305-379-7904
*Academic Chair	Zachary Catanzaro	zachary@zlclaw.com	561-247-3242
LIAISONS			
Position	Name	Email	Phone
*TFB BOG	Jorge Luis Piedra	jpiedra@kttlaw.com	305-372-1800
TFB CLE	Luis Rivera	Luis.rivera@gray-robinson.com	239-254-8460
Council of Sections	Manny Farach	mfarach@mrachek-law.com	561-655-2250
*RPPTL Section	James Marks	james@marxrosenthal.com	305-577-0276
*Out-of-State Division	Lawrence Kunin	lkunin@mmmlaw.com	404-233-7000
TFB YLD	Maria P. McCorkle	mccorklem@flcourts.org	386-947-1530
*FICPA	Donald Workman	dworkman@bakerlaw.com	202-861-1602
*TFB Diversity & Inclusion	Lynn Sherman	lsherman@trenam.com	727-820-3980
Working Group on Legal Opinions	Philip Schwartz	Philip.schwartz@akerman.com	954-468-2455

AT-LARGE MEMBERS OF EXECUTIVE COUNCIL			
Position	Name	Email	Phone
*At-large Member	Brett Leiberman	brett@elrolaw.com	855-615-2964
*At-large Member	Andy Layden	alayden@bakerlaw.com	407-469-4000
*At-large Member	Dana Robbins	drobbins@burr.com	813-221-2626
*At-large Member	Michelle Suarez	msuarez@floridaentrepreneurlaw.com	954-800-0484 c-954-882-4119
*At-large Member	Carlos Sardi	carlos@sardilaw.com	305-697-8690

*Member of Executive Council pursuant to Section 4.2 of Amended and Restated Bylaws of the Business Law Section

BUSINESS LAW SECTION
OF THE FLORIDA BAR

BUSINESS LAW SECTION ANNUAL MEETING MINUTES
Thursday, June 22, 2022, 3:00 p.m.

I. Call to Order – Kacy Donlon, Chair at 3:05 p.m.

Douglas Bates, Chair of The Business Law Section of The Florida Bar, duly called the Annual Meeting to order at approximately 3:05 p.m. The attendance is reflected in the spreadsheet attached to these Minutes as Exhibit A.

II. Report of Nominating Committee and Election of Officers for 2021-22

Gregory Yadley, Chair of the Long Range Planning Committee, presented the Slate of Nominated Officers for the 2023-2024 Year as follows:

Chair: Mark Stein
Chair-Elect Manual Farach
Treasurer: Stephanie Lieb
Secretary: Peter Valori

Upon the Slate being presented, John Olson moved for approval of the Slate, and the motion was seconded by seconded by Jodi Dubose. Upon vote taken, all voted in favor with no nays and no abstentions.

III. Other New Business

The Chair called for New Business from the floor, and no members asked to be heard.

IV. Adjournment

Upon there being no other business for the Annual Meeting, John Olson moved to adjourn the Annual Meeting, the motion was seconded by Jodi Dubose, and, upon vote taken, all voted in favor with no nays and no abstentions. Thereupon, the Annual Meeting was adjourned at 3:09 p.m.

BUSINESS LAW SECTION
OF THE FLORIDA BAR

MINUTES OF THE EXECUTIVE COUNCIL MEETING AT THE ANNUAL FLORIDA BAR CONVENTION

Thursday, June 22, 2023, 3:00 p.m. – 5:00 p.m.
Boca Raton, FL

I. Call to Order

Douglas Bates, Chair of The Business Law Section of The Florida Bar, duly called the June 22, 2023, Executive Council Meeting to Order at approximately 3:10 p.m. The attendance list for the meeting is attached as *Exhibit A.*

II. Commitment to Pro Bono Service

The Chair reaffirmed The Section's goal to achieve 100% participation in pro bono service by Business Law Section members and attorneys in their firms. Chair Bates also explained the pro bono awards that were given to Maxine Long and John McDonald to honor them for their service to the BLS and to pro bono.

III. Florida Bar Foundation Endowment Trust

Chair Bates explained The Section proudly acknowledges the Executive Council members who have pledged at least $1000 to The Florida Bar Foundation Endowment Trust to become Fellows of The Florida Bar Foundation. Chair Bates committed to confirming the list of these members for the next meeting.

IV. Recognition of Sponsors

Chair Bates recognized and acknowledged the generous contribution of all The Section's sponsors including the following Diamond ($10,000), Saphire ($7,500), and Emerald ($5,000) sponsors:

DIAMOND SPONSOR	SAPPHIRE SPONSORS	EMERALD SPONSORS
Michael Moecker & Associates	*Clark Partington* *Berger Singerman* *Buchanan Ingersoll & Rooney PC* *Eisner Amper* *Nelson Mullins* *Petrucelli, Piotrowski & Co.*	*Agentis* *Akerman* *Ankura* *Barakat & Bossa* *City National Private* *Dal Lago Law* *Edelboim Lieberman* *Revah PLLC*

		Johnson, Cassidy, Newlon & DeCort *Kaufman Rossin* *Meland Budwick* *Pack Law* *Registered Agent Solutions, Inc.* *Sequor Law* *Shuker & Dorris* *Shutts & Bowen* *Truist* *Underwood Murray, P.A.*

V. Approval of Minutes from January 27, 2023, Executive Council Meeting

Secretary Stephanie Lieb shared the minutes for the January 2023 meeting which were attached as *Exhibit B* to the agenda. A motion to approve the minutes was made by Luis Rivera and seconded by Mark Stein. There being no comments from the Executive Council members, upon vote taken, the motion was carried unanimously.

Thereafter, Sia Baker Barnes, member of the Florida Board of Governors from West Palm Beach, made a presentation to the Executive Council regarding her candidacy for President-Elect of the Florida Bar.

VI. Treasurer's Report

Treasurer Manuel Farach provided the report. He gave context to the financials attached to the agenda as *Exhibit C***.** A motion to approve the financial report was made by Woody Pollack and seconded by Daniel Davis. Following a discussion, upon vote taken, the report was unanimously approved.

VII. Recognition of Section Fellow

Valeria Angelucci, Chair of the Inclusion, Mentoring & Fellowship Committee recognized the Fellows present. Eight new Fellows were recognized, and thanks were given to leadership for supporting the initiatives of the Committee.

VIII. Reports of Substantive Law Committees

A. Bankruptcy/UCC

Chair Mariane Dorris gave the report for the Committee, sharing the following:

The Committee held six CLE programs this year, three in person and three online via ZOOM or Webinar. The programs were well-attended. The Committee also created three new study groups this year: (1) Secured Transaction Registry; (2) Commercial Loan Disclosure HB 1353; and (3) Article 12 Conforming Statutes. The Committee also had three pieces of legislation passed by the Legislature: (1) Assignment for the Benefit of Creditors SB 600, which was signed by the Governor on June 12, 2023; (2) Judgment Liens HB 27, which has not yet been signed by the Governor; and (3) Secured Transaction SB 978 (a/k/a the Kearny Fix), which was signed by the Governor on June 20, 2023. However, there was a piece of legislation, the Commercial Financing Transaction Brokers and Providers HB 1353, that was passed that the Committee wished it could have commented on, but simply did not have the time to put together a formal triple motion packet prior to its passing. As such, the Committee voted to seek authorization from the Executive Council to send a letter to the Governor with the HB 1353 bill packet expressing concerns about the impact and interpretation of the bill but withdrew its request for permission upon learning that the HB1353 bill packet had already been delivered to the Governor.

Thereafter, Chair Dorris explained the following positions of the Committee, and sought approval of the following triple motions:

Motor Vehicle:

Support the original version of SB528 providing for an increase in the exemption for a debtor's interest in a personal motor vehicle set forth in Fla. Stat. §222.25 that is applicable equally to all debtors, including support for the Bill (that has yet to be filed but expected presently) to include a periodic upward adjustment akin to the automatic adjustment built into Bankruptcy Code Section 104; and (2) oppose any legislation providing for a higher exemption amount solely applicable to debtors in bankruptcy.

This proposed legislation (1) is within the Business Law Section's subject matter jurisdiction as described in The Section's bylaws; (2) is within the bar's permissible legislative or political activity and the proposed Section position is not inconsistent with any official bar position on that issue; and (3) does not have the potential for deep philosophical or emotional division among a substantive segment of the bar's membership.

FDUTPA:

Support legislation that would add new language to §501.207(3), Fla. Stat., Remedies of Enforcing Authority, which provides the enforcing authority or any interested party in any action brought under subsection (1) of §501.207, to bring actions in the name of and on behalf of the defendant

enterprise, without regard to any wrongful acts that were committed by the enterprise, *its stockholders, officers, directors, or employees, and without regard to whether the enterprise had any innocent stockholders or directors at the time of such wrongful acts, which wrongful acts by any stockholders, directors, officers or employees shall not be ascribed to the enterprise or the receiver.*

This proposed legislation (1) is within the Business Law Section's subject matter jurisdiction as described in The Section's bylaws; (2) is within the bar's permissible legislative or political activity and the proposed Section position is not inconsistent with any official bar position on that issue; and (3) does not have the potential for deep philosophical or emotional division among a substantive segment of the bar's membership.

Chair Dorris made a final motion to submit a letter to the Governor regarding certain legislation, but after discussion she withdrew the motion before a vote was taken.

The Motor Vehicle triple motion was seconded by Luis Rivera. There was no discussion, and upon vote taken, the triple motion passed with judicial abstentions noted.

The FDUTPA triple motion was seconded by Luis Rivera. There was no discussion, and upon vote taken, the triple motion passed with judicial abstentions noted.

B. Blockchain & Digital Assets Committee

Second Vice Chair Daniel Maland reported that the Committee had a respectable in-person turnout during the Annual Meeting and about 5 persons attended on the private ZOOM channel. The primary topic at the meeting was the discussion on new UCC Art. 12 (proposed F.S. 669) and the CLE presented by the Art 12 Task Force (chaired by Robert Kain) to be presented on June 22 at the Annual Meeting. The last version of the Art 12 White Paper and the Fla Draft Legis, F.S. 669, was circulated and discussed.

Second Vice Chair Maland also reported that the Committee discussed AI and whether AI should be regulated or not. The major issue in connection with AI regulation is how to define what is or what is not AI. He further reported that the Committee discussed SEC Actions against crypto exchanges Coinbase and Binance and the Supreme Court decisions in Twitter and Google which some commentators thought would address Section 230 platform immunity. The Supreme Court did not substantively address Section 230 platform immunity in these opinions.

C. Business Litigation

Chair Chris DeCort gave the report. He stated that Jim Murphy had provided a status report on behalf of the Restrictive Covenants Task Force in Brian Barakat's absence. The Task Force timely submitted The Section's comment to the proposed FTC rule banning all non-compete agreements earlier in the year. It was one of roughly 27,000 comments submitted, and the expectation is that the FTC will not make an announcement until 2024. Chair DeCort explained that The Task Force will only meet before the Labor Day Retreat if the FTC's announcement comes earlier than expected.

Russell Landy provided a status report on behalf of the Direct vs. Derivative Study Group in Giacomo Bossa's absence. The Study Group was formed at the 2023 Winter Meeting to study the need for revisions to the language in Fla. Stat. §§ 607.0750 and 605.0801and make recommendations to the Ch. 607 Drafting Subcommittee accordingly. The Study Group will hold further meetings before the Labor Day Retreat in an effort to have those recommendations ready to present at the retreat. Additional Committee members signed up to participate.

Chair DeCort also reported that State Judicial Chair Judge Edward LaRose presented on our "Hot Top"—the recent *sua sponte* amendment by the Florida Supreme Court to Fla. R. Civ. P. 1.530 requiring motions for rehearing to preserve for appeal challenges based upon a trial court's "failure to make required findings of fact." Judge LaRose indicated that the rule change would likely lead to some interesting arguments over whether an appellate waives the ability to seek rehearing by failing to request that the trial court include detailed findings of fact in its original order. From a policy and practice perspective, Judge LaRose explained that it is much easier for the District Court Judges to review cases where detailed factual findings have been articulated and noted that the motive for the rule change was likely to lower the number of appeals by allowing trial courts to fix their own error on a motion for rehearing before a notice of appeal is filed.

In a discussion led by Chair DeCort and Dineen Wasylik (the latter being Chair of the Amicus Committee), the Committee members considered whether The Section should accept a request from a Section member-firm to weigh in through the filing of an amicus brief on a pending case involving the exercise of personal jurisdiction over a foreign company that invested in a Florida entity and was paid dividends from the entity over a period of six years. Following a robust discussion, and upon vote taken, the decision was made to decline the request.

Chair DeCourt also reported that Manny Farach had informed the committee about the Business Litigation Committee's Second Annual Legislative Update CLE to take place on Friday at the Labor Day Retreat.

D. Computer Law & Technology

Chair Daniel Davis gave the report on behalf of the Committee. He reported that the Committee had a very active legislative session and its members and Data Privacy Taskforce worked tirelessly on proposed whitepapers and finalized technical papers. The Committee's hard work showed results with the enactment of SB 262 Technology Transparency, which was signed by the Governor on June 6, 2023. The next legislative priority for the Committee is UCC Article 12 and its possible adoption in Florida.

Chair Davis shared that a robust discussion was held on various hot topics such as the use of ChatGPT in writing legal briefs, and regulation of artificial intelligence. The Committee is working on a CLE with the goal of presenting the CLE at the Labor Day Retreat. Furthermore, Chair Davis stated that the Committee also heard from the Co-Chair of a brand-new committee, the Florida Bar Standing Committee on Cybersecurity and Privacy Law.

E. Corporations, Securities & Financial Services

Chair Michelle Suarez gave the report. She explained that the Committee has been extremely active in substantive legislative projects. Each Subgroup and Task Force reported on progress made since the Winter meeting, namely, the Task Force for Ch. 517, the Series LLC Task Force, and the Ch. 607 Drafting Subcommittee. All reported that they will have legislative pieces ready to be voted on at the Labor Day retreat in hopes to have those legislative pieces introduced in time for the early 2024 Legislative session. The Ch. 617 Task Force, led by Toni Tsvetanova and Professor Stu Cohn, also reported that they have made tremendous progress, with 4 of the 9 subgroups tasked to look at the Model Not For Profit Corporations Act had already reported and been considered, and they believe they will likely have draft legislation ready for review, along with a white paper, for the 2025 legislative session.

F. E-Discovery & Digital Evidence Committee

Chair Avery Chapman gave the report and shared that the Committee held its annual 4-hour CLE on June 23, 2023 (CLE Course # 5859), with CLE credits of: 4.0 General, 4.0 Tech, 2.0 Ethics. The event had over 60 registrants and over 35 live attendees. The CLE provided 4 modules consisting of ESI case law review, tips and tricks, ESI practitioner presentation, a mock ESI hearing with judicial panel, and a judicial panel Q&A. Judges Matthewman and Strauss were on the judicial panel.

Chair Chapman further reported that (1) the Committee has two 2023-24 BLS fellows: Valerie David and Jacinda Beraud; (2) another CLE is planned for next year's Annual Convention; and (3) interim CJE seminars are also planned.

G. Intellectual Property Law

Vice Chair Darren Spielman gave the report. He reported that the Committee is beginning its planning for the IP Symposium tentatively scheduled for April 11-12, 2024, in the Orlando area. The Committee's Board Certification Study Materials Task Force is seeking additional members, beyond the current 8, to create a study guide and CLEs as a review course for the IP certification exam. This will also help fill the need for CLE that qualifies for Board Certification in Intellectual Property. There are currently 137 IP Board Certified Attorneys and 25 are due for recertification this year.

Vice Chair Spielman further reported that the Committee discussed its potential position on the USPTO's expansion of a South East regional satellite office. Bryan Wilson of the IP committee is putting together a potential position paper supporting the location to be in Florida. The Committee is also exploring whether it will take a formal position.

IX. Reports of Standing Committees and Task Forces

A. Amicus Brief Guidelines Subcommittee

Chair Dineen Wasylik gave the report. She reminded attendees that if they want an amicus brief that they must go through her Subcommittee and asked that attendees to be sure to look at the guidelines on the website if there are any questions about possible amicus participation. She also reported that the procedures are working well.

B. Antitrust and Trade Regulation Subcommittee

Larry Silverman gave the report. He discussed that Florida is the hub for antitrust opt-out litigation and discussed FTC issues concerning non-compete agreements.

C. Bankruptcy Judicial Liaison Committee

Judicial Chair Colton gave the report. A discussion was had concerning bankruptcy law practice issues and Judge Mora gave a report concerning the *Purdue Pharma* matter regarding third party releases.

D. Budget Committee

No additional report from Chair Manuel Farach.

E. Business Courts Task Force

No report.

F. Chapter 48 Task Force

Chair Jim Murphy gave the report. The Task Force is focusing CLE efforts as well as addressing potential glitch issues.

G. Chapter 517 Task Force

Prof. Cohn gave the report. He recapped what was referenced in the Corporations, Securities & Financial Services report regarding proposed amendments to Chapter 517.

H. Chapter 607 Subcommittee

Co-Chair Phil Schwartz gave the report. He reported the Subcommittee is working on a proposal to add additional sections to Chapter 607 to address the issue of ratifying corporate actions and over issuances of securities.

I. Chapter 617 Task Force

Chair Toni Tsvetanova gave the report. She reported that the Chapter 617 Task Force has continued to hold regular meetings (on an approximately every other week basis). The Task Force has currently reviewed 4 out of 9 legal memoranda prepared by subgroups that have reviewed different sections of Chapter 617 of the Florida Statutes against Chapter 607 of the Florida Statutes and the Model Nonprofit Corporation Act and proposed recommendations for revisions to Chapter 617 in such memoranda. The Task Force will continue with the review of the remaining 5 subgroup's memoranda, while the first 4 subgroups (whose memoranda were already reviewed) draft proposed revisions to Chapter 617 based on the Task Force-level discussions.

J. CLE Committee

Chair Utibe Ikpe gave the report. She reported that the CLE Committee is putting together a one-page checklist on how to put on a CLE. The Committee is also preparing a best practices handbook; and encourages each of the substantive committees to send a representative to the CLE Committee meetings to foster greater collaboration on CLEs between the

substantive committees. Lastly, the CLE Committee is requesting article submission for publication in the Florida Bar Journal.

K. Communications Committee

Chair Crystal Potts gave the report. The Communications Committee encourages the Committees to keep the Communications Committee informed of any upcoming programs and CLEs. It welcomes summaries or write-ups following the programs to distribute to the membership via the BLS newsletter, via social media, or via the BLS website blog.

The Committee requested that each committee, subcommittee, and task force select a liaison to the Communications Committee to help keep the Committee updated about what was going on with the respective committees, subcommittees and task forces.

Chair Potts further reported that the Committee is soliciting articles, encouraging participation, and asking the Fellows to get more involved in getting published through The Section.

L. Financial Literacy Task Force

Chair Carlos Sardi gave the report. He reported that the Financial Literacy Task Force discussed the implementation of the "Dorothy L. Hukill Financial Literacy Act," which was enacted into law back on March 22, 2022. Particularly, the Financial Literacy Task Force heard from the representative of the Florida Council on Economic Education, who shared the latest news and challenges with respect to the training of teachers and the standards teachers need to address for the 2023-24 school year.

Chair Sardi further reported that the Financial Literacy Task Force also discussed its continued efforts to have the month of April be declared in Florida as "Financial Literacy Month," which was passed by the Senate. Kudos to the legislative team. *See* JOURNAL OF THE SENATE, No. 6 Reg. Sess., Mar. 22, 2023 (SR 710), pp. 1-2.

Vice Chair Tara Trevorrow then gave an update on the rescheduling of the Financial Wellness Program for New Professionals CLE, which, unfortunately, was cancelled as a result of Hurricane Nicole last November 2022. The CLE was originally to be presented in conjunction with the Florida Institute of Certified Public Accountants ("FICPA") and was designed to be targeted to young professionals starting their careers in law or accounting. Standby on the new date, as the Financial Literacy Task Force may just roll out the program to our Section. There will be more to report by the Labor Day Retreat.

Chair Sardi further reported that the Financial Literacy Task Force discussed its Statewide Veterans Financial Literacy Program. The new initiative is being implemented during the upcoming month of November 2023 (National Veterans and Military Families Month) and is looking to The Section's members and members of the Executive Council for local support to make it happen. Programs are planned to be held in Miami/Ft Lauderdale, Orlando, Jacksonville, Pensacola, and the Tampa/St. Petersburg area. Templates and materials are already made and are available on The Section's webpage as a result of a pilot program last year in Miami.

The Financial Literacy Task Force also discussed having a special program/initiative during the month of April. The idea is to continue to bring awareness during Financial Literacy month.

Chair Sardi explained that the Financial Literacy Task Force also discussed the new "Afghan Judiciary Financial Literacy Training," being put together by Judge Walsh and Judge Isicoff. The program consists of taping a particularly tailored presentation on financial literacy concepts.

Thereafter, Chair Sardi made the following triple motion:

The Financial Literacy Task Force asks for a total of $20,000 to fund the following ongoing initiatives for the year (1) Veterans Financial Literacy Program; (2) Financial Wellness Program for New Professionals CLE; (3) the Afghan Judiciary Financial Literacy Training; and (4) Financial Literacy Month initiatives.

The motion was seconded by Jim Murphy. A discussion followed, including an explanation of the budgeting process by Manny Farach. Judge Brown gave input regarding his recollection of the historical treatment as to certain budgeting and spending matters and how that might impact on the propriety of the motion.

A friendly amendment made was by Mark Stein to change the request to seek approval of $5000 now, with an understanding that approval for another $5000 could be sought at the Labor Day meeting. The motion, as amended, was seconded by Judge Olson. Upon a vote taken, the motion, as amended, was unanimously approved.

M. Health & Wellness Task Force

Chair Dineen Wasylik gave the report. She indicated that the Committee had a very productive year. The Committee put together four CLE series on Mental Health First Aid, the last of which is scheduled for July 18. Dr. Kristin Jones has worked with the Committee to put together really fantastic programs with concrete strategies for managing emotions and stress and

identifying issues. She gave thanks for all assistance in putting together these CLEs and encouraged fellows to join the task force. In particular, on behalf of The Committee she thanked the judges – most recently Judge Scott Grossman, but also Judges Walsh and Isicoff for their past participation and Judge Gayles for his upcoming participation in the series (and of course Judge Brown for his hard work). Kristina Feher is taking over as chair of the task force.

N. Inclusion, Mentoring & Fellowship Committee

Chair Valeria Angelucci gave the report. She explained that the Committee had a very well attended meeting and welcomed and recognized the new class of fellows for 2023-2025:

1. Matthew Akiba
2. Jacinda D. Beraud
3. Elizabeth R Brusa
4. Joseph ("Joey") M. Coleman
5. Ian M. Corp
6. Valerie David
7. Kameron Fleming
8. Reinaldo R. Gomez de la Vega

Chair Angelucci reminded the Executive Council that 2023 also marks the 10th anniversary of the fellowship program. The Committee has worked on spreading the news about the 10th anniversary and the success of the program and is also planning some activities at the Labor Retreat to celebrate.

O. Labor Day Retreat Committee

Chair Robert Charbonneau gave the report. He indicated that the Retreat planning is very well underway, and the Committee devoted a good portion of the meeting to completing the Weekend meeting and event schedule, which Committee Chair planned to complete and submit to Calbrail Banner later today. Chair Charbonneau also reported the following: (1) retreat planning kicks into high gear immediately following the Annual Convention Meeting; (2) the Ritz Carlton is re-opening July 16th, which the Committee is eagerly looking forward to; (3) sponsorship has been quite strong for this event and the Sponsorship Committee is not done yet; (4) registration will open shortly; and (5) there will be no onsite registration available at the Retreat.

P. Legislation Committee

Chair Peter Valori reported the following: The UCC Article 12 Task Force reported that it is targeting Labor Day for a white paper/language for UCC Art. 12. The Computer Law Committee reported that it is awaiting the UCC Art. 12 whitepaper. The Business Litigation Committee and Intellectual Property Committee each reported that they had no legislation that they are currently advancing for the 2024 legislative session and had no comments on anything that may be forthcoming from any other committees. The Corporations Committee intends to pursue Series LLC legislation for the upcoming 2024 legislative session and is also working on a proposed Chapter 607 amendment for the upcoming 2024 legislative session, intending to have language ready by the end of July. The Corporations Committee will then evaluate whether it may seek to add the proposed Chapter 607 amendments to the Series LLC proposed amendments or to present them as a standalone bill. The Corporations Committee is also looking at Chapter 517, and plans to have language ready by the Labor Day Retreat. Proposed Chapter 617 amendments are currently a 2025 initiative for the Corporations Committee. The Bankruptcy/UCC Committee reported that it has two bills ready from last year, judgment liens glitch and warehouse liens. The Bankruptcy/UCC Committee is still considering UCRERA amendments and a FDUPTA amendment at this time. The UCRERA Task Force reported that there is a draft glitch white paper, but there is a further task force meeting required to address RPPTL draft. RPPTL is currently uncertain how to handle this bill but is awaiting prioritization from BLS as to when to advance UCRERA. The Chapter 48 Task Force reported that it is working on a Chapter 48 glitch bill but is targeting the 2025 legislative session for consideration of same.

Chair Valori then discussed the timing of the legislative session, noting that it starts early in January. The Section's lobbyists then reported on what BLS accomplished last year, including the ABC Legislation, the Kearney fix, and the OFR Commissioner Chapter 517 package. The Committee was still waiting for the judgment lien amendment statute to be signed by the Governor. The Committee also addressed procedural matters of the Committee, The Section, and the Bar.

During the Executive Council Meeting, Chair Valori recognized Representative Christopher Benjamin, who attended the Executive Council Meeting, and thanked him for his support for The Section and The Section's legislative efforts.

Q. Long Range Planning Committee

No report.

R. Marketing, Promotions & Sponsorships Committee

Chair Matt Hale gave the report. He reported that the sponsorship committee met and focused their discussion on the status of pending sponsorship outreach efforts leading up to the Labor Day Retreat 2023. To date, the Committee has secured approximately $200,000 in sponsorships for the 2023-2024 bar year.

S. Membership Committee

Vice Chair Juan Mendoza gave the report. He restated the goals of the Membership Committee as follows: (a) recruit new members; (b) retain current members of BLS of FL Bar; (c) promote diversity and inclusion; (d) promote participation in pro bono by current and new members; and (e) increase future attorney membership in Section through the Scholars Program.

He indicated the Membership Committee met to discuss its funding proposal and made the following proposal requesting the total sum of $16,000 to be used during fiscal year 2023-2024:

1. Scholars Program - $11,000

    a. Maximum of 20 students from Florida's 12 law schools to assist in their attendance at the Labor Day Retreat;
    b. Each Scholar will be entitled to a stipend totaling $550, consisting of the registration fee to the retreat at the Student rate of $450 AND up to $100 per student to cover additional costs;
    c. Each Scholar will be given a code to register for the Retreat and that will take care of that part of their stipend.
    d. Each Scholar may apply for reimbursement for out-of-pocket expenses to attend the Retreat for up to $100.

Vice Chair Mendoza reported this is very similar to the assistance provided to the Scholars last year.

2. Other Membership Initiatives - $5,000

    a. Will work with other committees to increase membership in The Section, whether via survey or through other programs designed to locate practicing business law attorneys who are not members of The Section (smaller cities);
    b. Host membership events on behalf of the BLS with local bar associations and law schools in Florida;
    c. Produce BLS branded materials (i.e., pens, highlighters,

hats, cups, etc.) to give away at educational meetings and events.

Vice Chair Mendoza, on behalf of the Membership Committee, thereafter moved that the Business Law Section approve the Membership Committee's request for funding in the amount of $16,000.00 for the fiscal year 2023-2024 to use for the Scholars Program and other membership initiatives.

The motion was seconded by Luis Rivera. Discussion was had thereafter. Upon vote taken, with 1 abstention and 1 opposed, the Motion carried.

T. Opinion Standards Committee

Co-Chair Gary Teblum reported that the Committee had a good meeting, but in the interest of time, indicated there was no further report of note.

U. Pro Bono Task Force & Pro Bono Committee

Second Vice Chair Tara Trevorrow gave the report. She shared that the first Pro Bono Awards were bestowed to John MacDonald and Maxine Long. These two individuals are role models for all of us in terms of what it means to serve the less fortunate members of our communities. In that vein, the Committee encouraged members of the Section to take on a pro bono case, and make the Pro Bono Pledge.

The Committee met and discussed various topics, including the formation of several subcommittees, including one designed to better communicate with pro bono providers around the state conducting pro bono clinics that may be of interest to non-litigators including the not-for-profit corporation clinics.

Second Vice Chair Trevorrow further reported it was Kathy McLeroy's last meeting as chair of the BLS Pro Bono Committee. The Committee commended her for the incredible job she did including the successful rolling out of the Pro Bono Award and the tremendous effort involved in the drafting of the criteria for the awarding of the same for future years to come.

Second Vice Chair Trevorrow then made the following motion:

Committee seeks for the Executive Council to approve the amount of $2,000 for donation to the Pro Bono Awards Recipients designated legal aid provider ($1,000 for JALA and $1,000 Legal Aid Service of Greater Miami) and an additional $2,000 for other pro bono initiatives for the year.

The Motion was seconded by Peter Valori. There was no discussion. Upon vote taken the Motion was approved unanimously.

V. Restrictive Covenant Task Force

Chair Brian Barakat gave the report. He shared that The Section's comment letter to the proposed FTC Rule was approved by the Florida Bar and submitted.

W. Rules of Court

Chair Russell Landy gave the report. The Rules of Court Committee held its first meeting as a committee and continued the work of the Civil Rules Task Force. The Committee discussed the CPRC's upcoming rule proposals in response to the Supreme Court's referral and The Section's responsive comment. The Committee proposed the following triple motion:

Proposed triple motion for the Committee to prepare and file a comment to the forthcoming Civil Procedure Rules Committee's proposed case management rule consistent with provisions approved and taken by The Section in the past regarding proportionality and the scope of discovery.

Resolved, that the comment: (1) is within the Business Law Section's subject matter jurisdiction as described in The Section's bylaws; (2) is within the bar's permissible legislative or political activity and the proposed Section position is not inconsistent with any official bar position on that issue; and (3) does not have the potential for deep philosophical or emotional division among a substantive segment of the bar's membership.

The Motion was made by Russell Landy. It was seconded by Peter Valori. Upon vote taken, the Motion passed, with judicial abstentions noted.

X. Scholar and Fellow Retention Task Force

Judicial Chair Judge McEwen reported that the Task Force will be sending a survey to scholars and fellows to obtain insight as to retention. She recommended to the Section that it explore issues concerning the budget for the scholars. The Task Force Plans to prepare a summary of its survey results.

Task Force Chair Stephen Sandiford reported as follows: The Scholars and Retention Task Force met on June 21, 2023, and we had a great turnout (around 20 people) and vibrant back and forth discussions. The Task Force has finalized the surveys to be sent to past and current Scholars and Fellows. The Task Force designed the surveys to be short, but at the same time they will elicit vital information that we hope will help us better understand the

rationale why some Scholars and Fellows drift away from the Business Law Section. The Task Force will use the survey answers to inform us on what should be included in the Best Practices Handbook for Retention of Scholars and Fellows that we have committed to produce. The Task Force plans to circulate the survey links to past and current Scholars and Fellows around June 30th, after it receives further comments from members of the Task Force.

The Task Force also agreed to recommend to the Executive Council that the BLS explore, to the extent possible, increasing the budget for Scholars to include up to an additional $500 cash stipend per Scholar to attend the Labor Day Retreat or some other appropriate meeting, taking into account resources that may be available from the Scholars' respective law schools.

Chair Saniford further reported that the Task Force believes that it is on track to meeting its deadline to produce the Handbook by next year's annual meeting.

Y. Series LLC Task Force

Chair Lou Conti reported that the Series LLC proposed amendment is moving forward as planned.

Z. State & Federal Courts Judicial Liaison Committee

Vice Chair Allison Leonard reported that the Committee is in the planning process as to the next Judicial Roundtable.

AA. Uniform Commercial Real Estate Receivership Act (UCRERA) Task Force

Chair Amanda Fernandez reported that the task force is still in the process of addressing comments from the RPTTL Section and determining next steps.

BB. Uniform Commercial Code Article 12 Task Force

Chair Robert Kain reported that the Task Force plans to move forward with proposed legislation for the 2024 Legislative Session.

CC. Uniform Voidable Transfers Act (UVTA) Task Force

No report.

X. Reports of Section Liaisons

A. The Florida Bar Board of Governors

Liaison Don Workman gave the report. He reported on recent rules changes and stated that the out-of-state newsletter is looking for content.

B. The Florida Bar Continuing Legal Education

Liaison Luis Rivera gave the report. He reported that this Committee is looking for greater engagement from The Section.

C. The Florida Bar Council of Sections

Liaison Manuel Farach gave the report. He indicated that many of the suggestions the Council of Sections made here already have been implemented by The Section. The Section's efforts are in line with the expectations of the Council of Sections.

D. The Florida Bar Diversity & Inclusion Committee

Liaison Lynn Sherman gave the report. She shared that The Section has done a great job with programming. She highlighted the Unity Program in particular. Liaison Sherman further explained that the Committee is continuing with various CLE's and social events

E. The Florida Bar Real Property, Probate & Trust Law (RPPTL) Section

No report.

F. The Florida Bar Young Lawyers (YOD) Division

No report.

G. The Florida Institute of CPA's (FICPA)

Liaison Don Workman reported that the FICPA/Bar Liaison Committee has been meeting regularly and reported further as follows. Attendance has been steady. It had a setback because the FICPA contact left the organization. Throughout the second half of last year, the groups were working on a program entitled Financial Accounting and Well Being for Young Professionals- accountants and lawyers. The work on this has been incredible but experienced a hurricane interruption and will be rescheduled. The Committee is looking forward to presenting this one-hour program. The Committee will also host, along with the FICPAs, a joint reception. Like the seminar, the reception will be free.

Liaison Workman is pleased with the progress of this worthwhile committee and for the improved relations with the FICPA organization.

H. The Out-of-State Division of The Florida Bar

Liaison Larry Kunin gave the report. He reported that there are 15,000 out-of-state members. The Committee has met regularly, and plans are being made for future meetings and to provide free CLE's on ethics, data security, and AI.

I. The Working Group on Legal Opinions (WGLO)

Liaison Philip Schwartz gave the report. He reported that the WGLO put on a program in the Spring covering various legal opinions topics and that program was well-attended.

XI. Renewal of Metz, Husband and Daughton Contract

Chair Bates asked the Executive Council to approve the Metz Husband agreement for another year under the same terms. Peter Valori made the motion, and it was seconded by Jodi Dubose. Upon vote taken, the motion passed unanimously.

XII. New Business

No new business to report.

XIII. Other Reports

A. Chair's Report

Chair Bates acknowledged the hard work that went into the past year. Chair Bates specifically acknowledged the exceptional work of Calbrail Banner and presented her with a gift. Chair Bates also acknowledged the Member of the Year: Chris DeCort. Chair Bates further gave thanks to Kacy Donlon for her guidance, Stephanie Lieb for her contributions, Manny Farach for his dedications and contributions to this Section, and Greg Yadley for his mentorship and leadership and contributions to The Section. Chair Bates also drew attention to the upcoming important dates concerning The Section.

B. Chair-Elect's Report

Chair-Elect Stein asked for and received a standing round of applause for Chair Doug Bates. He presented Chair Bates with a gift of a framed image of Horseshoe Bend, recognizing the Executive Council Retreat in Sedona, Arizona. Further, Chair-Elect Stein announced the 2024 Executive Council retreat will be in Scotland in April 2024.

XIV. Good and Welfare

XV. Future Full Section Meetings

A. Labor Day Retreat – September 1st – 4th – Ritz Carlton Naples, Florida
B. January 2024 – Winter Meeting (Florida Bar) – Orlando, Florida

XVI. Future Section Meetings

A. November 3, 2023 – View from the Bench – Tampa
B. November 4, 2023 – View from the Bench – Miami

XVII. Adjournment

A Motion to adjourn was made by Secretary Stephanie Lieb at 5:30pm. The meeting adjourned by acclamation.

THE FLORIDA BAR
Business Law Rollup
Budget/Financial Operations
Preliminary - As of June 30, 2023

Description	FYTD 6.30.23	Budget FY 22-23 TOTAL	Variance
Total Fee Revenue	285,050	282,000	(3,050)
Total Registration Revenues	435,035	500,000	64,965
Total Other Event Revenue	305,430	354,000	48,570
Total Other Operating Revenue	29,868	-	(29,868)
Total Non-Operating Revenue	38,837	35,390	(3,447)
Total Revenue	1,094,220	1,171,390	77,170
Total Staff & Office Expense	19,969	26,100	6,131
Total Contract Services	141,602	158,625	17,023
Total Travel	223,975	73,100	(150,875)
Total Other Expenses	738,198	553,130	(185,068)
Total Admin. & Internal	119,311	112,247	(7,064)
Total Expenses	1,243,055	923,202	(319,853)
Net Income	(148,835)	248,188	397,023
Beginning Fund Balance	370,747	370,747	
Ending Fund Balance	221,912	618,935	

THE FLORIDA BAR
Business Law Rollup
Budget/Financial Operations
Preliminary - As of June 30, 2023

Description	Bud	FYTD 6.30.23	Budget FY 22-23 TOTAL	Variance
917-9170-00917-00000-3001 Annual Fees	Gen	282,240	280,000	(2,240)
917-9170-00917-00000-3002 Affiliate Fees	Gen	2,810	2,000	(810)
Total Fee Revenue		285,050	282,000	(3,050)
Registration Revenues				
917-9170-21700-00000-3331 Registration-Ticket	Gen	30,995	-	(30,995)
917-9172-21714-00000-3301 Registration-Live	LDR	117,420	120,000	2,580
917-9172-21708-00000-3331 Registration-Ticket	OOSR	177,600	150,000	(27,600)
917-9172-21705-00000-3301 Registration-Live	IPS	32,650	52,000	19,350
917-9172-21703-00000-3301 Registration-Live	FSI	25,775	32,000	6,225
917-9171-21702-00000-3301 Registration-Live	VFTB	50,595	36,000	(14,595)
917-9171-21702-00000-3331 Registration-Ticket	VFTB	-	110,000	110,000
Total Registration Revenues		435,035	500,000	64,965
Other Event Revenue				
917-9170-21700-00000-3351 Sponsorship Rev	Gen	140,700	51,000	(89,700)
917-9170-21700-00000-3391 Section Profit Split	Gen	56,070	150,000	93,930
917-9170-21700-00000-3392 Section Differential	Gen	6,160	4,000	(2,160)
917-9172-21714-00000-3351 Sponsorship Rev	LDR	58,250	130,000	71,750
917-9172-21705-00000-3351 Sponsorships	IPS	9,750	7,000	(2,750)
917-9172-21703-00000-3351 Sponsorships	FSI	34,500	12,000	(22,500)
917-9172-21702-00000-3351 Sponsorship Rev	VFTB	-	-	-
Total Other Event Revenue		305,430	354,000	48,570
917-9170-21700-00000-3699 Other Operating Rev	Gen	29,868	-	(29,868)
Total Other Operating Revenue		29,868	-	(29,868)
Non-Operating Revenue				
917-9170-21700-00000-3899 Investment Alloc	Gen	38,837	35,390	(3,447)
Total Non-Operating Revenue		38,837	35,390	(3,447)
Total Revenue		1,094,220	1,171,390	77,170
Total Staff & Office Expense				
917-9170-21700-00000-4133 Internet Service	Gen	-	500	500
917-9170-21700-00000-4134 Web Services	Gen	15,347	18,000	2,653
917-9170-21700-00000-4135 Social Media	Gen	4,500	6,000	1,500
917-9170-21700-00000-4301 Photocopying	Gen	-	700	700
917-9172-21714-00000-4301 Photocopying	LDR	-	500	500
917-9170-21700-00000-4311 Office Supplies	Gen	122	200	78

917-9172-21714-00000-4311 Office Supplies	LDR	-	200	200
Total Staff & Office Expense		19,969	26,100	6,131
Contract Services				
917-9170-00917-00000-5051 Credit Card Fees	Gen	6,580	5,000	(1,580)
917-9172-21714-00000-5051 Credit Card Fees	LDR	3,285	-	(3,285)
917-9172-21705-00000-5051 Credit Card Fees	IPS	1,005	-	(1,005)
917-9172-21708-00000-5051 Credit Card Fees	OOSR	4,670	3,000	(1,670)
917-9172-21703-00000-5051 Credit Card Fees	FSI	787	600	(187)
917-9171-21702-00000-5051 Credit Card Fees	VFTB	1,484	25	(1,459)
917-9170-21700-00000-5101 Consultants	Gen	123,791	150,000	26,209
Total Contract Services		141,602	158,625	17,023
Travel				
917-9170-21700-00000-5501 Employee Travel	Gen	3,759	400	(3,359)
917-9172-21714-00000-5501 Employee Travel	LDR	2,147	1,500	(647)
917-9172-21708-00000-5501 Employee Travel	OOSR	4,700	9,000	4,300
917-9172-21705-00000-5501 Employee Travel	IPS	495	1,600	1,105
917-9172-21703-00000-5501 Employee Travel	FSI	1,345	1,500	155
917-9171-21702-00000-5501 Employee Travel	VFTB	3,171	1,000	(2,171)
917-9170-21700-00000-5561 Judges Travel	Gen	35,023	9,000	(26,023)
917-9172-21714-00000-5561 Judges Travel	LDR	739	15,000	14,261
917-9172-21708-00000-5561 Judges Travel	OOSR	40,358	12,000	(28,358)
917-9170-21700-00000-5571 Speaker Travel	Gen	3,937	8,000	4,063
917-9172-21705-00000-5571 Speaker Travel	IPS	6,868	3,000	(3,868)
917-9172-21703-00000-5571 Speaker Travel	FSI	1,754	3,500	1,746
917-9171-21702-00000-5571 Speaker Travel	VFTB	1,938	1,500	(438)
917-9170-21700-00000-5599 Other Travel	Gen	17,946	1,100	(16,846)
917-9172-21714-00000-5599 Other Travel	LDR	-	-	-
917-9172-21708-00000-5599 Other Travel	OOSR	99,795	5,000	(94,795)
Total Travel		223,975	73,100	(150,875)
Other Expenses				
917-9170-21700-00000-6001 Post 1st Class/Bulk	Gen	1,186	630	(556)
917-9172-21714-00000-6001 Post 1st Class/Bulk	LDR	-	-	-
917-9172-21708-00000-6001 Post 1st Class/Bulk	OOSR	-	-	-
917-9172-21714-00000-6231 Promot Item/Giveaway	LDR	-	5,000	5,000
917-9172-21708-00000-6231 Promot Item/Giveaway	OOSR	-	-	-
917-9170-21700-00000-6301 Mtgs TFB Ann Meeting	Gen	21,198	40,000	18,802
917-9170-21700-00000-6311 Mtgs General Meeting	Gen	37,826	20,000	(17,826)
917-9170-21700-00000-6319 Mtgs Other Functions	Gen	38,462	6,500	(31,962)
917-9172-21714-00000-6319 Mtgs Other Functions	LDR	1,579	-	(1,579)
917-9172-21708-00000-6319 Mtgs Other Functions	OOSR	90,196	30,000	(60,196)
917-9172-21705-00000-6319 Meetings Expense	IPS	30,083	23,500	(6,583)
917-9172-21703-00000-6319 Mtgs Other Functions	FSI	61,965	36,500	(25,465)
917-9171-21702-00000-6319 Mtgs Other Functions	VFTB	3,380	3,500	120
917-9172-21714-00000-6321 Mtgs Meals	LDR	207,389	190,000	(17,389)

917-9172-21708-00000-6321 Mtgs Meals	OOSR	-	-	-
917-9171-21702-00000-6325 Mtgs Hospitality	VFTB	1,843	-	(1,843)
917-9172-21714-00000-6325 Mtgs Hospitality	LDR	51,468	50,000	(1,468)
917-9172-21708-00000-6325 Mtgs Hospitality	OOSR	-	-	-
917-9172-21703-00000-6325 Mtgs Hospitality	FSI	2,554	-	(2,554)
917-9172-21714-00000-6341 Mtgs Equip Rental	LDR	91,938	20,000	(71,938)
917-9172-21708-00000-6341 Mtgs Equip Rental	OOSR	-	-	-
917-9172-21714-00000-6361 Mtgs Entertainment	LDR	26,002	20,000	(6,002)
917-9172-21708-00000-6361 Mtgs Entertainment	OOSR	-	-	-
917-9170-21700-00000-6399 Mtgs Other	Gen	-	15,000	15,000
917-9170-21700-00000-6401 Speaker Expense	Gen	-	5,000	5,000
917-9170-21700-00000-6451 Committee Expense	Gen	302	5,000	4,698
917-9170-21700-00000-6531 Brd/Off Special Proj	Gen	1,832	5,500	3,668
917-9170-21700-00000-7001 Grant/Award/Donation	Gen	31,828	15,000	(16,828)
917-9170-21700-00000-7011 Scholarship/Fellowsh	Gen	15,728	60,000	44,272
917-9170-21700-00000-7999 Other Operating Exp	Gen	272	1,000	728
917-9172-21714-00000-7999 Other Operating Exp	LDR	21,166	1,000	(20,166)
917-9172-21708-00000-7999 Other Operating Exp	OOSR	-	-	-
Total Other Expenses		738,198	553,130	(185,068)
Admin & Internal Expense				
917-9170-00917-00000-8021 Section Admin	Gen	104,444	103,247	(1,197)
917-9170-21700-00000-8101 Printing In-House	Gen	143	2,500	2,357
917-9172-21714-00000-8101 Printing In-House	LDR	8,784	-	(8,784)
917-9172-21703-00000-8101 Printing In-House	FSI	90	-	
917-9171-21702-00000-8011 Administration CLE	VFTB	-	6,000	6,000
917-9171-21702-00000-8141 - Journal/News Service	VFTB	850	-	(850)
917-9172-21703-00000-8141 - Journal & News	FSI	850	-	(850)
917-9172-21705-00000-8141 - Journal/News Service	IPS	850	-	(850)
917-9172-21703-00000-8171 - Course Approval Fee	FSI	150	-	(150)
917-9172-21705-00000-8171 - Course Approval Fee	IPS	150	-	(150)
917-9170-21700-00000-8901 Sponsorship of Int. Grp	Gen	2,500	-	(2,500)
917-9170-21700-00000-9692 To/From Council	Gen	500	500	-
Total Admin. & Internal		119,311	112,247	(6,974)
Total Expenses		1,243,055	923,202	(319,763)
Net Income		(148,835)	248,188	396,933
Beginning Fund Balance		370,747	370,747	
Ending Fund Balance		221,912	618,935	

THE FLORIDA BAR
Business Law General
Budget/Financial Operations
Preliminary - As of June 30, 2023

Description	FYTD 6.30.2023	Budget FY 22-23 TOTAL	Variance
917-9170-00917-00000-3001 Annual Fees	282,240	280,000	(2,240)
917-9170-00917-00000-3002 Affiliate Fees	2,810	2,000	(810)
Total Fee Revenue	285,050	282,000	(3,050)
917-9170-21700-00000-3331 Registration-Ticket	30,995	-	(30,995)
Total Registration Revenue	30,995	-	(30,995)
917-9170-21700-00000-3351 Sponsorship Rev	140,700	51,000	(89,700)
917-9170-21700-00000-3391 Section Profit Split	56,070	150,000	93,930
917-9170-21700-00000-3392 Section Differential	6,160	4,000	(2,160)
Other Event Revenue	202,930	205,000	2,070
917-9170-21700-00000-3699 Other Operating Rev	29,868	-	29,868
Other Operating Revenue	29,868	-	29,868
917-9170-21700-00000-3899 Investment Alloc	38,837	35,390	(3,447)
Non-Operating Income	38,837	35,390	(3,447)
Total Revenue	**587,680**	**522,390**	**(5,554)**
917-9170-21700-00000-4133 Internet Service	-	500	500
917-9170-21700-00000-4134 Web Services	15,347	18,000	2,653
917-9170-21700-00000-4135 Social Media	4,500	6,000	1,500
917-9170-21700-00000-4301 Photocopying	-	700	700
917-9170-21700-00000-4311 Office Supplies	122	200	78
Total Staff & Office Expense	19,969	25,400	5,431
917-9170-00917-00000-5051 Credit Card Fees	6,580	5,000	(1,580)
917-9170-21700-00000-5101 Consultants	101,291	150,000	48,709
Total Contract Services	107,871	155,000	47,129
917-9170-21700-00000-5501 Employee Travel	3,759	400	(3,359)
917-9170-21700-00000-5561 Judges Travel	35,023	9,000	(26,023)
917-9170-21700-00000-5571 Speaker Travel	3,937	8,000	4,063
917-9170-21700-00000-5599 Other Travel	17,946	1,100	(16,846)
Total Travel	60,665	18,500	(42,165)
917-9170-21700-00000-6001 Post 1st Class/Bulk	1,186	630	(556)
917-9170-21700-00000-6301 Mtgs TFB Ann Meeting	21,198	40,000	18,802
917-9170-21700-00000-6311 Mtgs General Meeting	37,826	20,000	(17,826)

917-9170-21700-00000-6319 Mtgs Other Functions	38,462	6,500	(31,962)
917-9170-21700-00000-6399 Mtgs Other	-	15,000	15,000
917-9170-21700-00000-6401 Speaker Expense	-	5,000	5,000
917-9170-21700-00000-6451 Committee Expense	302	5,000	4,698
917-9170-21700-00000-6531 Brd/Off Special Proj	1,832	5,500	3,668
917-9170-21700-00000-7001 Grant/Award/Donation	31,828	15,000	(16,828)
917-9170-21700-00000-7011 Scholarship/Fellowsh	15,728	60,000	44,272
917-9170-21700-00000-7999 Other Operating Exp	272	1,000	728
Total Other Expense	148,634	173,630	24,996
917-9170-00917-00000-8021 Section Admin	104,444	103,247	(1,197)
917-9170-21700-00000-8101 Printing In-House	143	2,500	2,357
917-9170-21700-00000-8901 Sponsorship of Int. Grp	2,500	-	(2,500)
Total Admin & Internal Expense	107,087	105,747	(1,340)
917-9170-21700-00000-9692 To/From Council	500	500	-
Total InterFund Transfers Out	500	500	-
Total Expense	**444,726**	**478,777**	**34,051**
Net Income	**142,954**	**43,613**	**99,341**

THE FLORIDA BAR
Business Law Labor Day Retreat
Budget/Financial Operations
Preliminary - As of June 30, 2023

Description	FYTD 6.30.2023	Budget FY 22-23 TOTAL	Variance
917-9172-21714-00000-3301 Registration-Live	117,420	120,000	2,580
Total Registration Revenue	117,420	120,000	2,580
917-9172-21714-00000-3351 Sponsorship Rev	58,250	130,000	71,750
Other Event Revenue	58,250	130,000	71,750
Total Revenue	**175,670**	**250,000**	**74,330**
917-9172-21714-00000-4301 Photocopying	-	500	500
917-9172-21714-00000-4311 Office Supplies	-	200	200
Total Staff & Office Expense	-	700	700
917-9172-21714-00000-5051 Credit Card Fees	3,285	-	(3,285)
Total Contract Services	3,285	-	(3,285)
917-9172-21714-00000-5501 Employee Travel	2,147	1,500	(647)
917-9172-21714-00000-5561 Judges Travel	739	15,000	14,261
917-9172-21714-00000-5599 Other Travel	-	-	-
Total Travel	2,886	16,500	13,614
917-9172-21714-00000-6001 Post 1st Class/Bulk		-	-
917-9172-21714-00000-6231 Promot Item/Giveaway	-	5,000	5,000
917-9172-21714-00000-6319 Mtgs Other Functions	1,579	-	(1,579)
917-9172-21714-00000-6321 Mtgs Meals	207,389	190,000	(17,389)
917-9172-21714-00000-6325 Mtgs Hospitality	51,468	50,000	(1,468)
917-9172-21714-00000-6341 Mtgs Equip Rental	91,938	20,000	(71,938)
917-9172-21714-00000-6361 Mtgs Entertainment	26,002	20,000	(6,002)
917-9172-21714-00000-7999 Other Operating Exp	21,166	1,000	(20,166)
Total Other Expense	399,543	286,000	(113,543)
917-9172-21714-00000-8101 Printing In-House	8,784	-	(8,784)
Total Admin & Internal Expense	8,784	-	(8,784)
Total Expense	**414,498**	**303,200**	**(111,298)**
Net Income	**(238,828)**	**(53,200)**	**(185,628)**

THE FLORIDA BAR
Business Out of State Retreat
Budget/Financial Operations
Preliminary - As of June 30, 2023

Description	FYTD 6.30.2023	Budget FY 22-23 TOTAL	Variance
917-9172-21708-00000-3331 Registration-Ticket	177,600	150,000	(27,600)
Total Registration Revenue	177,600	150,000	(27,600)
Total Revenue	**177,600**	**150,000**	**(27,600)**
917-9172-21708-00000-4301 Photocopying	-	-	-
917-9172-21708-00000-4311 Office Supplies	-	-	-
Total Staff & Office Expense	-	-	-
917-9172-21708-00000-5051 Credit Card Fees	4,670	3,000	(1,670)
Total Contract Services	4,670	3,000	(1,670)
917-9172-21708-00000-5501 Employee Travel	4,700	9,000	4,300
917-9172-21708-00000-5561 Judges Travel	40,358	12,000	(28,358)
917-9172-21708-00000-5599 Other Travel	99,795	5,000	(94,795)
Total Travel	144,853	26,000	(118,853)
917-9172-21708-00000-6001 Post 1st Class/Bulk	-	-	-
917-9172-21708-00000-6231 Promot Item/Giveaway	-	-	-
917-9172-21708-00000-6319 Mtgs Other Functions	90,196	30,000	(60,196)
917-9172-21708-00000-6321 Mtgs Meals	-	-	-
917-9172-21708-00000-6325 Mtgs Hospitality	-	-	-
917-9172-21708-00000-6341 Mtgs Equip Rental	-	-	-
917-9172-21708-00000-6361 Mtgs Entertainment	-	-	-
917-9172-21708-00000-7999 Other Operating Exp	-	-	-
Total Other Expense	90,196	30,000	(60,196)
917-9172-21708-00000-8101 Printing In-House	-	-	-
Total Admin & Internal Expense	-	-	-
Total Expense	**239,719**	**59,000**	**(180,719)**
Net Income	**(62,119)**	**91,000**	**153,119**

THE FLORIDA BAR
Business Law IP Symposium
Budget/Financial Operations
Preliminary - As of June 30, 2023

Description	FYTD 4.30.23	Budget FY 22-23 TOTAL	Variance
917-9172-21705-00000-3301 Registration-Live	32,650	52,000	19,350
Total Registration Revenue	32,650	52,000	19,350
917-9172-21705-00000-3351 Sponsorships	9,750	7,000	(2,750)
Other Event Revenue	9,750	7,000	(2,750)
Total Revenue	**42,400**	**59,000**	**16,600**
917-9172-21705-00000-5051 Credit Card Fees	1,005	-	(1,005)
Total Contract Services	1,005	-	(1,005)
917-9172-21705-00000-5501 Employee Travel	495.48	1,600	1,105
917-9172-21705-00000-5571 Speaker Travel	6,868.00	3,000	(3,868)
Total Travel	7,363.48	4,600	(2,763)
917-9172-21705-00000-6319 Meetings Expense	30,083.00	23,500	(6,583)
Total Other Expense	30,083.00	23,500	(6,583)
917-9172-21705-00000-8141 - Journal/News Service	850	-	(850)
917-9172-21705-00000-8171 - Course Approval Fee	150	-	(150)
Total Admin. & Internal Expenses	1,000	-	(1,000)
Total Expense	**39,451**	**28,100**	**(11,351)**
Net Income	**2,949**	**30,900**	**27,951**

Includes a refund from a prior event (12th).

THE FLORIDA BAR

Business Law Section Federal Securities Institute

Budget/Financial Operations

Preliminary - As of June 30, 2023

Description	FYTD 6.30.23	Budget FY 22-23 TOTAL	Variance
917-9172-21703-00000-3301 Registration-Live	25,775	32,000	6,225
Total Regisration Revenue	**25,775**	**32,000**	**6,225**
917-9172-21703-00000-3351 Sponsorships	34,500	12,000	(22,500)
Other Event Revenue	**34,500**	**12,000**	**(22,500)**
Total Revenue	**60,275**	**44,000**	**(16,275)**
917-9172-21703-00000-5051 Credit Card Fees	787	600	(187)
Total Contract Services	787	600	(187)
917-9172-21703-00000-5501 Employee Travel	1,345	1,500	155
917-9172-21703-00000-5571 Speaker Travel	1,754	3,500	1,746
Total Travel	3,099	5,000	1,901
917-9172-21703-00000-6319 Mtgs Other Functions	61,965	36,500	(25,465)
917-9172-21703-00000-6325 Mtgs Hospitality	2,554	-	(2,554)
Total Other Expense	64,519	36,500	(28,019)
917-9172-21703-00000-8101 - Printing In-House	90	0	-90
917-9172-21703-00000-8141 - Journal & News	850	0	-850
917-9172-21703-00000-8171 - Course Approval Fee	150	-	(150)
Total Admin. & Internal Expenses	1,090	0	-1090
Total Expense	**69,495**	**42,100**	**(27,395)**
Net Income	**(9,220)**	**1,900**	**11,120**

THE FLORIDA BAR

Business Law Section View From The Bench

Budget/Financial Operations

Preliminary - As of June 30, 2023

Description	FYTD 4.30.23	Budget FY 22-23 TOTAL	Variance
917-9171-21702-00000-3301 Registration-Live	50,595	36,000	(14,595)
917-9171-21702-00000-3331 Registration-Ticket	-	110,000	110,000
Total Registration Revenue	50,595	146,000	95,405
917-9172-21702-00000-3351 Sponsorship Rev	-	-	-
Other Event Revenue	-	-	-
Total Revenue	**50,595**	**146,000**	**95,405**
917-9171-21702-00000-5051 Credit Card Fees	1,484	25	(1,459)
Total Contract Services	1,484	25	(1,459)
917-9171-21702-00000-5501 Employee Travel	3,171	1,000	(2,171)
917-9171-21702-00000-5571 Speaker Travel	1,938	1,500	(438)
Total Travel	5,109	2,500	(2,609)
917-9171-21702-00000-6319 Mtgs Other Functions	3,380	3,500	120
917-9171-21702-00000-6325 Mtgs Hospitality	1,843		(1,843)
Total Other Expense	5,223	3,500	(1,723)
917-9171-21702-00000-8011 Administration CLE	-	6,000	6,000
917-9171-21702-00000-8141 Journal/News Service	850	-	(850)
Total Admin & Internal Expense	850	6,000	5,150
Total Expense	**12,666**	**12,025**	**(641)**
Net Income	**37,929**	**133,975**	**96,046**

The Business Law Section of The Florida Bar ("BLS") Reimbursement Policy
****Effective [insert date]****

The purpose of this BLS Reimbursement Policy (the "Policy") is to clarify the process for seeking reimbursement, outline the parameters of eligible reimbursement, and streamline the flow of the process. The creation of this Policy is not meant to discourage the seeking of reimbursement in any fashion. The oversight and implementation of the Policy is the responsibly of the Executive Committee and as such the Executive Committee has the discretion to make exceptions in the best interest of the BLS.

I. Process and Timing

A. Submit reimbursement requests using the Section/Division Reimbursement form attached as *Exhibit A*. Provide receipts for all items requested for reimbursement. Note that receipts must be itemized.

B. Send all requests to the applicable Meeting or Program Chair (if no applicable chair then to the applicable Committee Chair directly) for approval within fourteen (14) days of the conclusion of the event.

C. The Meeting or Program Chair shall review the reimbursement request for eligibility and, if approved, send to the BLS Section Administrator for approval, and further review if necessary, within 14 days of the conclusion of the event.

D. If the reimbursement request is in order, the he BLS Section Administrator shall send each approved reimbursement requests to the Treasurer for final approval. Once approved by the Treasurer, the BLS Section Administrator will process the reimbursement request(s) for payment.

II. Parameters for Items Eligible for Reimbursement.

All reimbursement requests submitted to the BLS under this Policy are subject to the following parameters and restrictions. These parameters apply to Sections III, IV and V of this Policy below.

A. Airfare. The BLS will reimburse the cost of an economy or coach ticket for eligible airfare with a 21-day advance purchase. A copy of the ticket/receipt must be submitted showing the cost and class of ticket.

B. Mileage/Tolls. The BLS will reimburse for travel via personal vehicle at the maximum rate per mile allowed by the IRS, currently $0.655/per mile. Proof of mileage is required (map print out). Tolls will be reimbursed if receipts are provided.

C. Taxi/Car Rental/Ride Share. The BLS will reimburse for the cost of taxi/car/rental/ride share at the most affordable option. The cost of ground transportation will be reimbursed. Receipts are required, as well as a copy of the rental car agreement.

D. Parking. The BLS will reimburse for basic parking at the meeting site and/or at the airport. Valet parking is not reimbursable unless it is the only parking option. A receipt is required.

E. Lodging. The BLS will reimburse for a base-level, standard room with either two double/queen beds or a king bed, at the hotel where the event is held or a nearby equivalent (room, tax, and any required resort fee only). A copy of the hotel receipt is required.

F. Meals. The BLS will reimburse for meals consistent with the Florida Bar per diem, currently $60/day. All meals require a detailed receipt.

G. Ticket Cost/Registration. The BLS will reimburse the cost of event registration for the main registrant only. Guest registration costs are not eligible for reimbursement.

H. Items Not Eligible for Reimbursement. Alcohol is not eligible for reimbursement. Tips are not eligible for reimbursement.

III. BLS CLE Programs

Program Chairs, non-BLS member speakers, Academics, and Judges serving as speakers for BLS-sponsored Continuing Legal Education programs are eligible for reimbursement in conformance with The Florida Bar's Speaker Travel Reimbursement Form, attached as *Exhibit B.* All reimbursement requests must be made to the applicable CLE Program Chair as stated in Section I. Non-speaker program steering committee members are not eligible for reimbursement for these CLE programs. The following is a sample list of current CLE programs that the BLS conducts:

A. IP Symposium. Section III policy applies without exception.

B. Federal Securities Institute. Section III policy applies without exception.

C. View from the Bench. Steering Committee members, and law clerks of each panelist receive complimentary attendance to the seminar.

D. Legislative Update/Judicial Roundtable. Section III policy applies without exception.

E. One-Hour Virtual CLEs. These CLE programs are not eligible for reimbursement.

F. Annual and Mid-Year Meetings. For purposes of the Bankruptcy Judicial Liaison Meetings, each of the Chief Bankruptcy Judges for each district and Clerk of Court for each district are eligible for reimbursement as a speaker. Further their Judicial Liaison Dinner ticket is likewise eligible for reimbursement/complimentary attendance.

IV. Judicial and Academic Reimbursement

A. Annual and Mid-Year Meetings. Any Academic or Judge who serves as a Judicial/Academic Chair or otherwise serves as a member of the Executive Council for the BLS is eligible for reimbursement/complimentary attendance for the following:

i. Judicial Liaison Dinner ticket;
ii. BLS Luncheon ticket;
iii. Airfare;
iv. Cost of hotel for up to two (2) nights;
v. Meals not provided in the cost of the registration ticket;
vi. Mileage/Tolls/Parking or Taxi/Car Rental/Ride Share.

B. Labor Day Retreat. Any Academic or Judge who serves as a Judicial/Academic Chair or otherwise serves as a member of the Executive Council for the BLS is eligible for reimbursement for the following:

i. Cost of registration ticket (not guest ticket);
ii. Airfare;
iii. Cost of hotel for up to three (3) nights;
iv. Meals not provided in the cost of the registration ticket;
v. Mileage/Tolls/Parking or Taxi/Car Rental/Ride Share.

C. Executive Council Retreat. Any Academic or Judge who serves as a Judicial/Academic Chair or otherwise serves as a member of the Executive Council for the BLS is eligible for reimbursement for the following:

i. Main Trip registration ticket (not guest ticket);
ii. Airfare;
iii. Hotel up to the length of the Main Trip;
iv. Meals not provided in the cost of the Main Trip registration ticket;
v. Mileage/Tolls/Parking or Taxi/Car Rental/Ride Share.

D. CLE Programs. For Judges or Academics speaking at CLE programs, Section III reimbursement shall govern.

V. IMF Fellows & Scholars

A. The IMF Committee Chair is responsible for tracking all expenses of Fellows. The Membership Committee Chair is responsible for tracking all expenses of Scholars.

B. Fellows have an annual stipend of $2,500/year of eligible participation. If a Fellow does not use any portion of his/her Bar year annual stipend, such amount does not carry over into the following year.

C. Scholars have an annual stipend of up to $550/year of eligible participation. Such stipend consists of the registration fee of $450 and reimbursement of up to $100 for expenses (i.e. lodging, meals, travel). If a Scholar does not use any portion of

his/her Bar year annual stipend, such amount does not carry over into the following year.

D. The applicable Committee Chair shall gather all reimbursement requests from Fellows and Scholars after a meeting and provide approved requests to the BLS Administrator as set forth in Section I.

The Florida Bar
Section/Division Reimbursement

Name: _____ Atty. No.: _____

Firm: _____

Address: _____

City/State/Zip: _____

In accordance with the policies outlined on the reverse of this form and the policies of the Section/Division, please reimburse the following:

Office Expenses

Telephone Charges (attach itemization if more than $50)	$	
Photocopies _____ copies at _____ per copy (not to exceed 10¢ per copy)	$	0.00
Postage	$	
Printing	$	
Other (please explain) _____	$	
Total Office Expense	$	0.00

Travel Expenses

Date of Travel: _____

Purpose of Travel: _____

Airfare (receipt of photocopy of ticket required)	$	
Personal Car: _____ miles at **.655** per mile	$	0.00
Taxi	$	
*Car Rental: _____ company (# of days _____)	$	
(Both the rental car agreement and the rental car receipt are required.)		
Meals (maximum: $60 per day)	$	
Lodging (hotel receipt required, **not** credit card slip, room and tax only)	$	
Other (please explain) _____	$	
Total Travel Expense	$	0.00
TOTAL	$	0.00

Payment Method:

☐ Credit Card

☐ ACH/Direct Deposit
(one time account setup)

☐ Check payable to ☐ me ☐ firm.

Professional Development Department
The Florida Bar
651 East Jefferson Street
Tallahassee, Florida 32399-2300

Officer's Approval:

Signature: _____

Date: _____

The Florida Bar Section Reimbursement Policies

Outlined below is an excerpt from Florida Bar Standing Board Policy 5.61, Section Disbursement Policies.

(e) Section Reimbursement Policy. Sections may separately budget a fixed amount to be paid annually to section officers for reimbursement for all expenses incurred as opposed to reimbursing expenses on an item-by-item basis. Except for the expense allowance herein provided for section officers, all reimbursement of expenses must be in accordance with the following or be on a more restrictive basis as determined by individual sections:

(1) Telephone Charges. All conference call charges must identify the parties called and the amount and purpose of the call. Telephone calls of up to $50 per month may be reimbursed without itemization. If charges exceed that amount, all charges must be identified as to at least one of the following:

a. party called,
b. telephone number called, or
c. purpose of the call.

(2) Copy Costs. Office copy costs are not to exceed 10¢ per copy and must be itemized by number of copies and purpose. Miscellaneous, general, etc. is an appropriate description for a small number of copies.

(3) Postage. Any large mailings must be itemized as to what was mailed to whom and at what cost. Mailings should be done by section staff at the Bar headquarters when possible.

(4) Printing. All printing shall be done at The Florida Bar headquarters unless, for the benefit of the section and the Bar, circumstances warrant otherwise.

(5) Travel Expenses. Travel expense reimbursement is essentially the same as for Bar employees.

a. Air fare in all instances shall be "coach".
b. Mileage is reimbursed at the maximum rate permissible by IRS without reporting such reimbursement to the Internal Revenue Service or some lower figure set by the section.
c. When taxis or limousines are not practical, a rental car may be used. The rental car shall be a subcompact or compact, or any other vehicle at a rate no greater than the rates for a subcompact or compact.
d. The method of travel should be the most economical, considering both time and travel costs.
e. Meals shall be reimbursed at the same rate as is then applicable for expense by staff members of The Florida Bar. If there is a group meal function which is paid for by the section, no individual meal reimbursement shall be permitted.
f. Copies of receipts for lodging, out-of-town travel expenses (airline tickets, etc.) and all other charges of $25 or more (other than mileage and authorized meal allowances) must be attached.
g. When paying expenses (meals, etc.) for other individuals, the names of the other parties must be indicated and the relation to Bar activity disclosed.
h. The travel expenses of the spouse, companion or associate of a Florida Bar CLE speaker may be reimbursed in the same amounts and for the same items of expenditures as otherwise allowed for the speaker; however, reimbursement shall not be allowed unless provided for in the section's annual budget as an "excess speaker expense" under SBP 5.60(k).

(6) Time Limits For Reimbursement Requests. Expenses to be considered for reimbursement must be submitted at least quarterly within 30 days of the end of the quarter for any quarter the cumulative unreported expenses exceed $100. Expense reports due for periods ending on June 30 must be filed by July 15. A section may elect to hold actual payment of such expense statements until July 15 after the end of the fiscal year.

(f) **Conflicting Policies.** Any existing policy of The Florida Bar that is in conflict with this policy shall not be controlling and should be amended. These policies are minimal umbrella policies for sections to operate within. Sections shall establish policies specific to the individual section within the umbrella policies.

NOTE: As stated above, these are minimal umbrella policies. Each section/division may or may not provide for member reimbursement of expenses. If you have questions, please contact your section administrator.

THE FLORIDA BAR

SPEAKER TRAVEL REIMBURSEMENT

SUBMIT WITHIN TWO WEEKS OF TRAVEL

Name: _____ Course #: _____

Florida Bar #: _____ Travel Dates: _____

Course Title: _____ City: _____

TRANSPORTATION:

* Air: _____ airlines (coach, 21-day advance purchase) $_____

Personal Car: _____ miles at .**655¢** per mile $ 0

* Car Rental: _____ company (# of days _____) $_____

Detailed rental car receipts are required.

FOOD EXPENSES: Actual expenses, not to exceed **$60** per travel day

Any AMOUNT $25.00 AND OVER requires a receipt.

Record actual amount per meal:	**DAY 1**	**DAY 2**	**DAY 3**	
Breakfast (example $14 / day)	$ _____	$ _____	$ _____	
Lunch (example $16 / day)	$ _____	$ _____	$ _____	
Dinner (example $30 / day)	$ _____	$ _____	$ _____	
				$ 0

OTHER EXPENSES: ***Any AMOUNT $25.00 AND OVER requires a receipt.***

** Hotel (Room and tax only, at lowest rate available) $_____

Taxi $_____

Tolls $_____

Parking $_____

Itemize: _____ for a total of $_____

_____ for a total of $_____

_____ for a total of $_____

TOTAL AMOUNT DUE SPEAKER: **$** 0

Payment Method:

☐ ACH/Direct Deposit (one time account setup)
Call 1-850-561-5832

☐ Check Paid to ☐ me ☐ firm

*Receipts Required
**Actual Hotel Bill, Not Charge Slip

Mailing Information

_____
(Name)

_____
(Address)

_____
(City/State/Zip)

Professional Development Department
ATTN:
The Florida Bar
651 East Jefferson Street Tallahassee, Florida
32399-2300

FOR OFFICE USE ONLY

Account #: _____

Approval: _____

Date: _____

CLE EXPENSE REIMBURSEMENT POLICIES

Requests for reimbursement must be submitted within 2 weeks of your presentation.

We appreciate your agreeing to volunteer on behalf of The Florida Bar. We understand this requires a substantial expenditure of time on your part for which there is no payment. We can, however, reimburse you for your actual expenses directly related to the course presentations, one steering committee meeting and one speakers' workshop if held.

The following are CLE Committee policies governing the reimbursement of travel expenses. If you have any questions as to whether an expense is reimbursable, please contact your staff liaison, in advance, to avoid any misunderstandings.

A. Transportation

Air Fare - We will reimburse up to the cost of a 21-day advance purchase. Please make your reservations early to obtain the lowest rate. Submit the original airline ticket (or copy of ticket) with your reimbursement request. First class air fare will not be reimbursed.

Mileage - Automobile mileage will be reimbursed at the maximum rate per mile allowed by the IRS.

Ground Transportation - The cost of ground transportation (taxicabs, airport shuttles) will be reimbursed. Please share transportation with other faculty members when possible.

Rental Cars – A *Receipt is Required (*and a copy of the rental car agreement*).*
The one day cost of a rental car, if necessary or if more economical than cab fare, will be reimbursed. If special circumstances warrant a rental car, prior approval of the staff liaison is needed. In addition, parking fees, tolls, etc., will also be reimbursed. Include originals or copies of your invoices and receipts with reimbursement request. The full rental car cost may not be reimbursed without the required rental car agreement and the rental car receipt *(or copy)*.

B. Meals

Meals will be reimbursed on an actual expenditure basis for up to $60 per day (24-hours) per speaker. If more than one speaker is included on a meal charge, please list all the names and provide a receipt. A receipt is required for any expense exceeding $25.

C. Lodging - *Receipt Required (or copy)*

Lodging will be reimbursed for no more than the lowest rate (single/regular) room plus applicable taxes at the host hotel, and will be paid for no more than one night. If special circumstances warrant additional nights, prior approval of the staff liaison is needed. Lodging expenses will not be reimbursed for lecturers speaking in the general vicinity of their home. Please include a copy of the hotel bill with your reimbursement request.

D. Family Members

We cannot reimburse expenses of your spouse, children or other family members should you choose to have them accompany you to the course.

E. Long Distance Telephone Charges

Long distance telephone charges directly attributable to the course are reimbursable.

F. Printed Materials

We endeavor to have complete electronic course material two weeks in advance of each seminar presentation. Therefore, we discourage the practice of "handouts" at the seminar locations. If you cannot avoid this, you will be responsible for your printing expenses.

Any speaker expenses exceeding the amounts set forth above may be reimbursed from the co-sponsoring section's/division's funds, upon approval of that section or division.

The Florida Bar

651 East Jefferson Street
Tallahassee, FL 32399-2300

Joshua E. Doyle
Executive Director

850/561-5600
www.FLORIDABAR.org

The Florida Bar Electronic Payment Initiative

Dear Valued Vendor:

The Florida Bar (TFB) is in the process of switching current vendors and customers from paper checks to electronic payment options. As part of this transition, we ask that your organization accept future invoice payments by one of the following options: credit card or ACH/Direct Deposit, rather than by check.

There are two electronic payment options:

1) Single-Use Virtual Mastercard
2) ACH (Direct Deposit)

This change will simplify your processes, provide you with faster invoice payment, and improved cash flow. The major difference between the electronic payment types and standard check/corporate credit card reimbursement is that the Single-Use Virtual Mastercard and ACH options will result in faster payment reimbursement. There are no fees associated with electronic payments.

Electronic Option 1- Single-Use Virtual Mastercard

1. Determine if you are able to accept credit card transactions and anemail address/contact to receive payment information.
2. Send an email containing the requested information above to accounting@floridabar.org. A reply will be sent confirmingreceipt.
3. For each payment, you will receive a unique single-use account number, the payment amount, and remittance advice related to your payment. You will use this information to process the payment following your normal credit card process.

THE FLORIDA BAR

Electronic Option 2- ACH (Direct Deposit)

1. Determine that you have an email address/contact to receive remittance information.
2. Gather the following information from a canceled check, voided check or bank letter: Bank name, address, phone number and Routing (transit/ABA) number, type of account and account number.
3. Either call 1-850-561-5832 or email a request for a call back to accounting@floridabar.org.
4. For each payment, you will receive remittance advice via email.

Additional items to consider before choosing a payment option:

▪ Choose Electronic Option 2, if you do not have the ability to receive payments via credit card

▪ Choose Electronic Option 2, if there is a reason (dollar value, multiple locations processing payments, etc.) why any payment cannot be processed via credit card.

▪ Only one payment option may be selected.

Questions? If you have any questions about the new payment options, please contact us at accounting@floridabar.org. Our accounting team will be glad to assist you.

RESOLVED, that the Florida Bar Business Law Section (the "Section") supports proposed legislation updating and modernizing Chapter 517 of the Florida Statutes – The Florida Securities and Investor Protection Act (the "Proposed Legislation"), substantially in the form of the draft legislation, dated as of August 4, 2023, presented to the Executive Council of the Section, and subject to such further changes as are deemed appropriate and approved by the Chapter 517 Task Force and the Executive Council of the Section; and it is further

RESOLVED, that the Proposed Legislation: (1) Is within the Section's subject matter jurisdiction as described in the Section's bylaws; (2) Either is beyond the scope of the bar's permissible legislative or political activity, or is within the bar's permissible scope of legislative or political activity and the proposed Section position is consistent with an official bar position on that issue; and (3) Does not have the potential for deep philosophical or emotional division among a substantial segment of the bar's membership.

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

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.

SECURITIES EXEMPTIONS UNDER S. 517.501

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 all 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 bona fide 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.

517.061(13) NONISSUER TRANSACTIONS BY SECURED PARTIES [CURRENT S. 517.061(2)]

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.

517.0615 Demo Day Presentations and Testing the Waters

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 licenseregistration 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 licenseregistration year, and transfer of such assessment fees shall not be resumed unless the fundSecurities 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 recoveryfor 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 (~~23).~~), 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 fees.; 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.~~

517.191 Enforcement by the Office; enforcement by Attorney General

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 <u>Enforcement by the Office</u> ~~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.

<u>Chapter 517 Task Force</u>:
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)

Section 1. Section 517.021, Florida Statutes, is renumbered and amended to read:

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

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

(2) "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.

(3) ~~(2)~~ "Affiliate" means a person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with an applicant or registrant.

(4) "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~~ not an associated person of, affiliated with, ~~n~~or an agent of a dealer or investment adviser.

(5) ~~(3)~~ "Associated person" means:

(a)1. With respect to a dealer, a natural person who is employed, appointed, or authorized by a dealer and who represents the dealer in effecting or attempting to effect purchases or sales of securities.

2. The term does not include the following:

a. A dealer.

b. A partner, an officer, or a director of a dealer or a person having a similar status or performing similar functions as a dealer, unless such person is specified in subparagraph 1.

c. A dealer’s employee whose function is only clerical or ministerial.

d. A person whose transactions in this state are limited to those transactions described in s. 15(i)(3) of the Securities Exchange Act of 1934, as amended.

(b)1. With respect to an investment adviser, a natural person, including, but not limited to, a partner, an officer, a director, or a branch manager, or a person occupying a similar status or performing similar functions, who:

a. Is employed by or associated with, or is subject to the supervision and control of, an investment adviser registered or required to be registered under this chapter; and

b. Does any of the following:

(I) Makes any recommendation or otherwise gives investment advice regarding securities.

(II) Manages accounts or portfolios of clients.

(III) Determines which recommendations or advice regarding securities should be given.

(IV) Receives compensation to solicit, offer, or negotiate for the sale of investment advisory services.

(V) Supervises employees who perform a function under this sub-subparagraph.

2. The term does not include the following:

a. An investment adviser.

b. An employee whose function is only clerical or ministerial.

(c) With respect to a federal covered adviser, a natural person who is an investment adviser representative and who has a place of business in this state, as such terms are defined in Rule 203A-3 of the Securities and Exchange Commission adopted under the Investment Advisers Act of 1940, as amended.

(6) ~~(4)~~ "Boiler room" means an enterprise in which two or more persons ~~engage in telephone communications with members of the public using two or more telephones at one location, or at more than one location in a common scheme or enterprise~~ in a common scheme or enterprise solicit potential investors through telephone calls, electronic mail, text messages, social media, chat rooms, or other electronic means.

(7) ~~(5)~~ "Branch office" means any location in this state of a dealer or investment adviser at which one or more associated persons regularly conduct the business of rendering investment advice or effecting any transactions in, or inducing or attempting to induce the purchase or sale of, any security or any location that is held out as such. The commission may adopt by rule exceptions to this definition for dealers in order to maintain consistency with the definition of a branch office used by self-regulatory organizations authorized by the Securities and Exchange Commission, including, but not limited to, the Financial Industry Regulatory Authority. The commission may adopt by rule exceptions to this definition for investment advisers.

(8) 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.

(9) ~~(6)~~ "Commission" means the Financial Services Commission.

(10) ~~(7)~~ "Control," including the terms "controlling," "controlled by," and "under common control with," means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a person,

whether through the ownership of voting securities, by contract, or otherwise.

(11) 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.

(12) ~~(8)~~ (a) "Dealer" includes, unless otherwise specified, a person, other than an associated person of a dealer, that engages, for all or part of the person's time, directly or indirectly, as agent or principal in the business of offering, buying, selling, or otherwise dealing or trading in securities issued by another person.

(b) The term does not include the following:

(a) A licensed practicing attorney who renders or performs any such services in connection with the regular practice of the attorney's profession.

(b) A bank authorized to do business in this state, except nonbank subsidiaries of a bank.

(c) A trust company having trust powers that it is authorized to exercise in this state, which renders or performs services in a fiduciary capacity incidental to the exercise of its trust powers.

(d) A wholesaler selling exclusively to dealers.

(e) A person buying and selling for the person's own account exclusively through a registered dealer or stock exchange.

(f) An issuer.

(g) A natural person representing an issuer in the purchase, sale, or distribution of the issuer's own securities if such person:

Commented [1]: Does this conflict with the definitions above for "control," "controlling," and "controlled by."? Do we need the definitions above for "control," "controlling," and "controlled by"? Do we need to go through the chapter and replace terms "control," "controlling," and "controlled by."

Commented [2R2]: We could limit the definition to apply to issuers only.

Commented [3R2]: If we do that, we will need to revise the language in 517.191 and 517.211

Commented [4]: I'm still concerned that this may cause confusion as it relates to Forms ADV/BD

1. Is an officer, a director, a limited liability company manager or managing member, or a bona fide employee of the issuer;

2. Has not participated in the distribution or sale of securities for any issuer for which such person was, within the preceding 12 months, an officer, a director, a limited liability company manager or managing member, or a bona fide employee;

3. Primarily performs, or is intended to perform at the end of the distribution, substantial duties for, or on behalf of, the issuer other than in connection with transactions in securities; and

4. Does not receive a commission, compensation, or other consideration for the completed sale of the issuer's securities apart from the compensation received for regular duties to the issuer.

(13) ~~(9)~~ "Federal covered adviser" means a person that is registered or required to be registered under s. 203 of the Investment Advisers Act of 1940, as amended. The term does not include any person that is excluded from the definition of investment adviser under subparagraphs (14)(b)1.-8.

(14) ~~(10)~~ "Federal covered security" means a security that is a covered security under s. 18(b) of the Securities Act of 1933, as amended, or rules and regulations adopted thereunder.

(15) ~~(11)~~ "Guarantor" means a person that agrees in writing, or that holds itself out to the public as agreeing, to pay the indebtedness of another when due, including, without limitation, payments of principal and interest on a bond, debenture, note, or other evidence of indebtedness, without resort by the holder to any other obligor, whether or not such writing expressly states that the person signing is signing as a guarantor. The obligation of a guarantor hereunder shall be a continuing, absolute, and unconditional guaranty of payment, without regard

to the validity, regularity, or enforceability of the underlying indebtedness.

(16) ~~(12)~~ "Guaranty" means an agreement in writing in which one party either agrees, or holds itself out to the public as agreeing, to pay the indebtedness of another when due, including, without limitation, payments of principal and interest on a bond, debenture, note, or other evidence of indebtedness, without resort by the holder to any other obligor, whether or not such writing expressly states that the person signing is signing as a guarantor. An agreement that is not specifically denominated as a guaranty shall nevertheless constitute a guaranty if the holder of the underlying indebtedness or the holder's representative or trustee has the right to sue to enforce the guarantor's obligations under the guaranty. Words of guaranty or equivalent words that otherwise do not specify guaranty of payment create a presumption that payment, rather than collection, is guaranteed by the guarantor. Any guaranty in writing is enforceable notwithstanding any statute of frauds.

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

(18) ~~(13)~~ "Intermediary" means a natural person residing in this state or a corporation, trust, partnership, limited liability company, association, or other legal entity registered with the Secretary of State to do business in this state, which facilitates through its website the offer or sale of securities of an issuer with a principal place of business in this state.

(19) ~~(14)~~ (a) "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 an 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 ~~does not hold itself out to the general public as an investment adviser and has no more than 15 clients within 12 consecutive months in this state~~ 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 person whose transactions in this state are limited to those transactions described in s. 222(d) of the Investment Advisers Act of 1940, as amended. Those clients listed in subparagraph 6. may not be included when determining the number of clients of an investment adviser for purposes of s. 222(d) of the Investment Advisers Act of 1940, as amended.~~

~~9.~~ 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.

(20) ~~(15)~~ "Issuer" means a person that proposes to issue, has issued, or shall hereafter issue any security. A person that acts as a promoter for and on behalf of a corporation, trust, partnership, limited liability company, association, or other legal entity of any kind to be formed shall be deemed an issuer.

(21) ~~(16)~~ "Offer to sell," "offer for sale," or "offer" means an attempt or offer to dispose of, or solicitation of an

offer to buy, a security or interest in a security, or an investment or interest in an investment, for value.

(22) ~~(17)~~ "Office" means the Office of Financial Regulation of the commission.

(23) ~~(18)~~ "Predecessor" means a person whose major portion of assets has been acquired directly or indirectly by an issuer.

(24) ~~(19)~~ "Principal" means an executive officer of a corporation, partner of a partnership, sole proprietor of a sole proprietorship, trustee of a trust, or any other person with similar supervisory functions with respect to any organization, whether incorporated or unincorporated.

(25) ~~(20)~~ "Promoter" includes the following:

(a) A person that, acting alone or in conjunction with one or more other persons, directly or indirectly takes the initiative in founding and organizing the business or enterprise of an issuer.

(b) A person that, in connection with the founding or organizing of the business or enterprise of an issuer, directly or indirectly receives in consideration of services or property, or both services and property, 10 percent or more of any class of securities of the issuer or 10 percent or more of the proceeds from the sale of any class of securities. However, a person that receives such securities or proceeds either solely as underwriting commissions or solely in connection with property shall not be deemed a promoter if such person does not otherwise take part in founding and organizing the enterprise.

(26) ~~(21)~~ "Qualified institutional buyer" means a qualified institutional buyer, as defined in Securities and Exchange Commission Rule 144A, 17 C.F.R. s. 230.144A(a), under the Securities Act of 1933, as amended, or any foreign buyer that satisfies the minimum financial requirements set forth in such rule.

(27) ~~(22)~~ "Sale" or "sell" means a contract of sale or disposition of an investment, security, or interest in a security, for value. With respect to a security or interest in a security, the term does not include preliminary negotiations or agreements between an issuer or any person on whose behalf an offering is to be made and any underwriter or among underwriters who are or are to be in privity of contract with an issuer. Any security given or delivered with, or as a bonus on account of, any purchase of securities or any other thing shall be conclusively presumed to constitute a part of the subject of such purchase and to have been offered and sold for value. Every sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer of a security which gives the holder a present or future right or privilege to convert into another security or another issuer, is considered to include an offer of the other security.

(28) ~~(23)~~ "Security" includes any of the following:

(a) A note.

(b) A stock.

(c) A treasury stock.

(d) A bond.

(e) A debenture.

(f) An evidence of indebtedness.

(g) A certificate of deposit.

(h) A certificate of deposit for a security.

(i) A certificate of interest or participation.

(j) A whiskey warehouse receipt or other commodity warehouse receipt.

(k) A certificate of interest in a profit-sharing agreement or the right to participate therein.

(l) A certificate of interest in an oil, gas, petroleum, mineral, or mining title or lease or the right to participate therein.

(m) A collateral trust certificate.

(n) A reorganization certificate.

(o) A preorganization subscription.

(p) A transferable share.

(q) An investment contract.

(r) A beneficial interest in title to property, profits, or earnings.

(s) An interest in or under a profit-sharing or participation agreement or scheme.

(t) An option contract that entitles the holder to purchase or sell a given amount of the underlying security at a fixed price within a specified period of time.

(u) Any other instrument commonly known as a security, including an interim or temporary bond, debenture, note, or certificate.

(v) A receipt for a security, or for subscription to a security, or a right to subscribe to or purchase any security.

(w) A viatical settlement investment.

(29) ~~(24)~~ "Underwriter" means a person that has purchased from an issuer or an affiliate of an issuer with a view to, or offers or sells for an issuer or an affiliate of an issuer in connection with, the distribution of any security, or participates or has a direct or indirect participation in any such undertaking, or participates or has a participation in the direct or indirect underwriting of any such undertaking; except that a person is presumed not to be an underwriter with respect to any security which it has owned beneficially for at least 1 year; and, further, a dealer is not considered an underwriter with respect to any securities which do not represent part of an

unsold allotment to or subscription by the dealer as a participant in the distribution of such securities by the issuer or an affiliate of the issuer; and, further, in the case of securities acquired on the conversion of another security without payment of additional consideration, the length of time such securities have been beneficially owned by a person includes the period during which the convertible security was beneficially owned and the period during which the security acquired on conversion has been beneficially owned.

(30) ~~(25)~~ "Viatical settlement investment" means an agreement for the purchase, sale, assignment, transfer, devise, or bequest of all or any portion of a legal or equitable interest in a viaticated policy as defined in chapter 626.

Section 2. Section 517.051, Florida Statutes, is amended and renumbered to read:

517.051 Exempt securities.—The exemptions provided herein from the registration requirements of s. 517.07 are self-executing and do not require any filing with the office prior to claiming such exemption. Any person who claims entitlement to any of these exemptions bears the burden of proving such entitlement in any proceeding brought under this chapter. The registration provisions of s. 517.07 do not apply to any of the following securities:

(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) ~~provided that n~~No person shall directly or indirectly offer or sell securities, other than general obligation bonds, under this subsection 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) ~~(a)~~ With respect to an obligation issued by the issuer or successor of the issuer; or

(ii) ~~(b)~~ 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~~b) shall not apply to any obligations or securities that are industrial or commercial development bonds as defined in Rule 131 of the Securities Act of 1933, 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, as amended.

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

~~(3) A security issued or guaranteed by:~~

~~(a) A national bank, a federally chartered savings and loan association, or a federally chartered savings bank, or the initial subscription for equity securities in such national bank, federally chartered savings and loan association, or federally chartered savings bank;~~

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

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

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

(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.

(4) A security issued or guaranteed, as to principal, interest, or dividend, by a ~~corporation~~ business entity owning or operating a railroad, other common carrier, or any other public service utility; provided that such ~~corporation~~ 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.

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

(a) A bank,

(b) A trust company,

(c) A savings institution,

(d) A building or savings and loan association,

(e) An international development bank, or

(f) A credit union;

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

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

(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, 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.

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

~~requirements and of a type eligible for discounting by Federal Reserve banks.~~

~~(9)~~ A security issued by a ~~corporation~~ 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 ~~corporation~~ 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.

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

Section 3. Section 517.061, Florida Statutes, is amended and renumbered to read:

517.061 Exempt transactions.— Except as otherwise provided in ~~s. 517.0611 for a transaction listed in~~ subsection (11) ~~(21)~~, t~~T~~he exemption for each transaction listed below is self-executing and does not require any filing with the office before claiming the exemption. Any person who claims entitlement to any of the exemptions bears the burden of proving such entitlement in any proceeding brought under this chapter. The registration provisions of s. 517.07 do not apply to any of the following transactions; however, such transactions are subject to the provisions of s~~s~~. 517.301~~, 517.311, and 517.312~~:

(1)(a) ~~At~~ 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~~ assignee as defined in s. 727.103(2) with respect to an ~~Assignment~~ 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, a 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.

(2) ~~(10)~~ The issuance of notes or bonds in connection with the acquisition of real property or renewals thereof, if such notes or bonds are issued to the sellers of, and are secured by all or part of, the real property so acquired.

(3) ~~(4) The distribution by a corporation, trust, or partnership, actively engaged in the business authorized by its charter or other organizational articles or agreement, of securities to its stockholders or other equity security holders, partners, or beneficiaries as a stock dividend or other distribution out of earnings or surplus.~~ 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.

(4) ~~(6) Any transaction involving the distribution of the securities of an issuer exclusively among its own security holders, including any person who at the time of the transaction is a holder of any convertible security, any nontransferable warrant, or any transferable warrant which is exercisable within not more than 90 days of issuance, when no commission or other remuneration is paid or given directly or indirectly in connection with the sale or distribution of such additional securities.~~ 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.

(5) The issuance of securities to such equity security holders or other creditors of a ~~corporation, trust, or partnership~~ business entity in the process of a reorganization of such ~~corporation or partnership~~ 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.

(6) ~~(9) The offer or sale of securities from one corporation to another corporation, or to security holders thereof, pursuant to a vote or consent of such security holders as may be provided by the articles of incorporation and the applicable corporate statutes in connection with mergers, share exchanges, consolidations, or sale of corporate assets.~~ 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.

(7) ~~(22)~~ The offer or sale of securities, solely in connection with the transfer of ownership of an eligible privately held company, through a merger and acquisition broker in accordance with s. 517.12(21).

(8) ~~(15)~~ The offer or sale of securities under a bona fide ~~employer-sponsored stock option, stock purchase, pension, profit-sharing, savings, or other benefit plan when offered only to employees of the sponsoring organization or to employees of its controlled subsidiaries~~ 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; trustees, if the issuer is a business trust; officers; consultants; and advisors;

(b) family members who acquire such securities from those persons through gifts or domestic relations orders;

(c) former employees, directors, general partners, 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.

(9) ~~(7)~~ 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 ~~as defined by rule of the commission in accordance with Securities and Exchange Commission Rule 144A (17 C.F.R. s. 230.144(A)(a))~~, whether any of such entities is acting in its individual or fiduciary capacity~~; provided that such offer or sale of securities is not for the direct or indirect promotion of any scheme or enterprise with the intent of violating or evading any provision of this chapter~~.

(10) ~~(11)~~ (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 subparagraph (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 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 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. ~~No person defined as a "dealer" in this chapter is paid a commission or compensation for the sale of the issuer's securities unless such person is registered as a dealer under this chapter.~~

~~5. When sales are made to five or more persons in this state, any sale in this state made pursuant to this subsection~~

~~is voidable by the purchaser in such sale either within 3 days after the first tender of consideration is made by such purchaser to the issuer, an agent of the issuer, or an escrow agent or within 3 days after the availability of that privilege is communicated to such purchaser, whichever occurs later.~~

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

1. A~~ny~~ relative or spouse, or relative of such spouse, of a purchaser who has the same principal residence as such purchaser.

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

3. A~~ny corporation or other organization of~~ 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 purchaser who makes a bona fide investment of $100,000 or more, provided such purchaser or the purchaser's representative receives, or has access to, the information required to be disclosed by subparagraph (a)3.~~

~~5.~~ An~~y~~ accredited investor~~, as defined by rule of the commission in accordance with Securities and Exchange Commission Regulation 230.501 (17 C.F.R. s. 230.501)~~.

5. 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.

6. 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.

~~(c)1. For purposes of determining which offers and sales of securities constitute part of the same offering under this subsection and are therefore deemed to be integrated with one another:~~

~~a. Offers or sales of securities occurring more than 6 months before an offer or sale of securities made pursuant to this subsection shall not be considered part of the same offering, provided there are no offers or sales by or for the issuer of the same or a similar class of securities during such 6-month period.~~

~~b. Offers or sales of securities occurring at any time after 6 months from an offer or sale made pursuant to this subsection shall not be considered part of the same offering, provided there are no offers or sales by or for the issuer of the same or a similar class of securities during such 6-month period.~~

~~2. Offers or sales which do not satisfy the conditions of any of the provisions of subparagraph 1. may or may not be part of the same offering, depending on the particular facts and circumstances in each case. The commission may adopt a rule or rules indicating what factors should be considered in determining whether offers and sales not qualifying for the provisions of subparagraph 1. are part of the same offering for purposes of this subsection.~~

~~(d) Offers or sales of securities made pursuant to, and in compliance with, any other subsection of this section or any subsection of s. 517.051 shall not be considered part of an offering pursuant to this subsection, regardless of when such offers and sales are made.~~

(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 ~~sections~~ 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~~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 Securities and Exchange Commission and are being offered and sold pursuant to an exemption from registration.

(g) 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.

(h) 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.

(i) 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.

(j) The issuer shall file with the office 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.

(12) ~~(3)~~ The isolated sale or offer for sale of securities when made by or on behalf of a bona fide owner of such securities ~~vendor~~ not the issuer or underwriter of the securities, who, ~~being the bona fide owner of such securities,~~ disposes of such securities for the owner's ~~her or his own property for her or his~~ 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 ~~vendor of~~ 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) ~~(11)~~ (a)1., 2., and 3. and paragraph (10) ~~(11)~~ (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.

~~For purposes of this subsection, any person, including, without limitation, a promoter or affiliate of an issuer, shall not be deemed an underwriter, an issuer, or a person acting for the direct or indirect benefit of the issuer or an underwriter with respect to any securities of the issuer which she or he has owned beneficially for at least 1 year.~~

(13) ~~(2)~~ 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.

(14) ~~(13)~~ (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.

(15) ~~(16)~~ The sale by or through a registered dealer of any securities option if at the time of the sale of the option the conditions of paragraphs (a) or (b) 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) 1. Such options transactions are cleared by the Options Clearing Corporation or any other clearinghouse recognized by the office; and

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

3. ~~(d)~~ The underlying security may be purchased or sold on a recognized securities exchange ~~or is quoted on the National Association of Securities Dealers Automated Quotation System; and~~

~~(c) Such sale is not directly or indirectly for the purpose of providing or furthering any scheme to violate or evade any provisions of this chapter~~ registered under the Securities Exchange Act of 1934, as amended.

(16)~~(17)~~ (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;

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 ~~act~~ chapter, ~~which appear in any list of securities dealt in on any stock exchange registered~~

~~pursuant to the Securities Exchange Act of 1934, as amended, and~~ 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 ~~such exchange~~, 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 ~~companies any stock of which is so~~ 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 ~~controlling persons~~ 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 ~~shall not be~~ 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.

(17) ~~(20)~~ Any nonissuer transaction by a ~~registered associated person of 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~~y~~ 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 ~~broker-~~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 order of the office~~ or a document filed with and is publicly viewable through the Securities and Exchange Commission's ~~that is publicly available through the commission's~~ 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~~; and~~.

(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 ~~or designated for trading on the National Association of Securities Dealers Automated Quotation System, unless:~~ .

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.~~1.~~ The issuer of the security is a unit investment trust registered under the Investment Company Act of 1940, as amended.

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

5.~~3.~~ 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.

(18) The offer or sale of any security effected by or through a person in compliance with s. 517.12(16).

(19)~~:~~ A nonissuer transaction in an outstanding security by or through a dealer registered or exempt from registration under this chapter, if the issuer is a reporting issuer in a foreign jurisdiction designated by this ~~paragraph~~ subsection or

by commission 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~~ subsection or by commission 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~~subsection, 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~~ ss. 120.569 and 120.57~~act~~, the ~~administrator~~office~~,~~ ~~by rule adopted or order issued under this chapter,~~ may revoke the designation of a securities exchange under this ~~paragraph~~subsect~~o~~ion, if the ~~administrator~~ ~~O~~office finds that revocation is necessary or appropriate in the public interest and for the protection of investors.

(20)~~(19)~~ 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 ~~the exempted~~ 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 ~~in the other subsections of this section~~.

~~(8) The sale of securities from one corporation to another corporation provided that:~~

~~(a) The sale price of the securities is $50,000 or more; and~~

~~(b) The buyer and seller corporations each have assets of $500,000 or more.~~

~~(12) The sale of securities by a bank or trust company organized or incorporated under the laws of the United States or this state at a profit to such bank or trust company of not more than 2 percent of the total sale price of such securities; provided that there is no solicitation of this business by such bank or trust company where such bank or trust company acts as agent in the purchase or sale of such securities.~~

~~(14) The offer or sale of shares of a corporation which represent ownership, or entitle the holders of the shares to possession and occupancy, of specific apartment units in property owned by such corporation and organized and operated on a cooperative basis, solely for residential purposes.~~

~~(21) The offer or sale of a security by an issuer conducted in accordance with s. 517.0611.~~

Section 4. Section 517.0611, Florida Statutes, is amended to read:

517.0611 Florida ~~Intrastate~~ intrastate crowdfunding exemption.—

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

(2) The registration provisions of s. 517.07 do not apply to securities transactions under this exemption, however such transactions are subject to the provisions of s. 517.301.

~~Notwithstanding any other provision on 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. The exemption provided in this section may not be used in conjunction with any other exemption under s. 517.051 or s. 517.061.~~

(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), as amended, ~~and United States~~ 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, as amended, ~~or Securities and Exchange Commission Rule 147A, 17 C.F.R. s. 230.147A, as amended~~ ~~adopted pursuant to the Securities Act of 1933~~.

(4) An issuer must:

(a) Be a for-profit business entity ~~formed under the laws of the state, be registered with the Secretary of State,~~ that maintains its principal place of business ~~in the state~~ and derives its revenues primarily from operations in 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~~(2019)~~. 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, 15 U.S.C. s. 78m or s. 78, as amended.

(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), as amended. ~~, adopted pursuant to the Securities Act of 1933.~~ 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~~ Cause all funds received from investors to be deposited in an account in a federally insured financial institution authorized to do business in ~~the~~ this 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~~ 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) ~~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.~~

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, ~~and control persons~~ 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, ~~his or her~~ status as a partner, trustee, sole proprietor or a similar role, and ~~his or her~~ ownership percentage.

(e) Identify the federally insured financial institution, ~~authorized to do business in this state,~~ 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) ~~(h)~~ If applicable, include the intermediary's email and website address where the issuer's securities will be offered.

(g) ~~(i) Include~~ 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 ~~30~~ 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.

~~(7)~~ (8) The issuer must provide ~~to investors and the dealer or intermediary, along with a copy to the office at the time that the notice is filed, and make available to potential investors through the dealer or intermediary,~~ a ~~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 ~~containing~~ must contain material information about the issuer and the offering, including:

(a) The name, legal status, physical address, email address, 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 current 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 holders 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.~~

~~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.~~

~~5. 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.~~

(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.

~~(h)~~ (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 ~~$100,000~~ $500,000 or less, ~~the description must include the most recent income tax return filed by the issuer, if any, and a financial statement that must be certified by the principal executive officer of the issuer as true and complete in all material respects.~~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 ~~$100,000~~ $500,000, but not more than ~~$500,000~~ $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~~ 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 ~~target~~ offering amounts of more than ~~$500,000~~ $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.

~~(i)~~ (l) 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~~ disclosure statement

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 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.

~~(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 subsection~~ 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.~~

~~(12)(a)~~ (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)~~ 517.191(9), and issue permanent bars under s. ~~517.221(4)~~ 517.191(10) 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.

~~(13)~~ (12) If issuer employs the services of an intermediary, ~~An~~ 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.~~ the offering and transactions thereunder.

(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 but is not necessarily limited to:

1. A description of the ~~escrow agreement that the issuer has executed~~ financial institution into which investor funds will be deposited and the conditions for ~~release of such funds to the issuer in accordance with the agreement and subsection (4)~~ 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 a zip code or residence address from each potential investor who seeks to view information regarding specific investment opportunities, in order to confirm that the potential investor is a resident of the state.~~

~~(d) Obtain and verify a valid Florida driver license number or Florida identification card number from each investor before purchase of a security to confirm that the 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 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).~~

~~(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.~~

(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.

~~(h)~~ (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.

~~(i) Require each investor to certify in writing, including as part of such certification his or her signature and his or her initials next to each paragraph of the certification, as follows:~~

~~I understand and acknowledge that:~~

~~I am investing in a high-risk, speculative business venture. I may lose all of my investment, and I can afford the loss of my investment.~~

~~This offering has not been reviewed or approved by any state or federal securities commission or other regulatory authority and no regulatory authority has confirmed the accuracy or determined the adequacy of any disclosure made to me relating to this offering.~~

~~The securities I am acquiring in this offering are illiquid and are subject to possible dilution. There is no ready market for the sale of the securities. It may be difficult or impossible for me to sell or otherwise dispose of the securities, and I may be required to hold the securities indefinitely.~~

~~I may be subject to tax on my share of the taxable income and losses of the issuer, whether or not I have sold or otherwise disposed of my investment or received any dividends or other distributions from the issuer.~~

~~By entering into this transaction with the issuer, I am affirmatively representing myself as being a Florida resident at the time this contract is formed, and if this representation is subsequently shown to be false, the contract is void.~~

~~If I resell any of the securities I am acquiring in this offering to a person that is not a Florida resident within 9 months after the closing of the offering, my contract with the issuer for the purchase of these securities is void.~~

~~(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.~~

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

~~(l)~~ (g) Prohibit its directors and officers, managing members, general partners, employees, and agents 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.~~

~~(14)~~ (13) An intermediary not registered as a dealer under s. 517.12(5) 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.

(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) 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.~~

(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 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.

Section 5. Section 517.0612, Florida Statutes, is created to read:

517.0612: Florida ~~Invest~~ invest ~~Local~~ local ~~Exemption~~exemption.~~—~~

(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~~ all 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)~~1. An investment company as defined in the Investment Company Act of 1940, as amended;

~~(ii)~~2. Subject to the reporting requirements of the Securities and Exchange Act of 1934, as amended;

~~(iii)~~3. 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, or

~~(iv)~~4. Be subject to a disqualification pursuant to s. 517.~~062~~0616.

(b) The transaction shall meet the requirements of the federal exemption for intrastate offerings in either Section 3(a)(11) of the Securities Act of 1933, Securities and Exchange Commission Rule 147, or Securities and Exchange Commission Rule 147A, 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: (1) the issuer reasonably believes that the purchaser is an accredited investor; (2) the purchaser is an officer, director, partner, or trustee or 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)~~1. Issuer's name, form of entity and contact information.

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

~~(iii)~~3. A description of the issuer's business.

~~(iv)~~4. A description of the security being offered.

~~(v)~~5. The total amount of the offering.

~~(vi~~6.~~)~~ The intended use of proceeds from the sale of the securities.

~~(vii)~~7. The target amount of the offering.

~~(viii)~~8. 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.

~~(ix)~~9. 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 Rules 147 or 147A.

~~(x)~~10. The names and addresses of all persons who will be involved in the offer and sale of securities on behalf of the issuer

11.~~(xi)~~ ~~the~~ The bank or other depository institution into which investor funds will be deposited.

12.~~(xii)~~ 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~~ disclosure document 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). 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 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 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.

Section 6. Section 517.0613, Florida Statutes, is created to read:

517.0613 Failure to comply with a securities registration exemption.--

(a) Failure to comply with any exemption from securities 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.

Section 7. Section 517.0614, Florida Statutes, is created to read:

517.0614 Integration of offerings.--

(~~a~~1) 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~~a) 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)~~1. Did not solicit such purchaser through the use of general solicitation; or

2.~~(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)~~a. ~~no~~ 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)~~b. ~~the~~ 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; and

(~~2~~b) 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~~2) No integration analysis under ~~paragraph (a)~~subsection (1) of this section is required, if any of the following non-exclusive safe harbors apply:

(~~1~~a) 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~~b) 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.

Section 8. Section 517.0615, Florida Statutes, is created to read:

517.0615 Demo day presentations and testing the waters safe harbors.--

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

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

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

~~(ii)~~2. Engage in any investment negotiations between the issuer and investors attending the event;

~~(iii)~~3. Charge attendees of the event any fees, other than reasonable administrative fees;

~~(iv)~~4. Receive any compensation for making introductions between event attendees and issuers or for investment negotiations between such parties; and

~~(v)~~5. 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.*), as amended, or an investment adviser under the Investment Advisers Act of 1940 (15 U.S.C. 80b-1 *et seq.*), as amended. The sponsorship or participation in such a seminar or meeting does not by itself require registration under this chapter.

(~~3~~c) 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

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

~~(i)~~1. Individuals who are members of, or otherwise associated with the sponsor organization;

~~(ii)~~2. Individuals that the sponsor reasonably believes are accredited investors; or

3.~~(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~~2) 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~~a) The communications must:

~~(i)~~1. State that no money or other consideration is being solicited, and if sent in response, will not be accepted;

~~(ii)~~2. State that no offer to buy the securities can be accepted and no part of the purchase price can be received, and

~~(iii)~~3. State that a person's indication of interest involves no obligation or commitment of any kind.

(~~2~~b) 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~~c) Communications in accordance with this section will not be subject to ~~Fl. Stat. s. 501 ff.~~s. 501.059 regarding telephone solicitations.

Section 9. Section 517.0616, Florida Statutes, is created to read:

517.0616 Disqualification.—

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.

Section 10. Section 517.081, Florida Statutes, is amended to read:

517.081 Registration procedure.—

(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.~~, and the commission may prescribe forms on which it may require such applications to be submitted.~~ Applications shall be duly signed by the applicant, sworn to by

any person having knowledge of the facts, and filed with the office. ~~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.~~ 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) ~~1.~~ A specimen copy of the securities certificate, if applicable, and a copy of any circular, prospectus, advertisement, or other description of such securities.

~~2. 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:~~

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

~~b. An issuer that 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.~~

~~c. 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.~~

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

~~e. Any 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.~~

~~f. Any issuer that has failed to provide the office the reports required for a previous offering registered pursuant to this subparagraph.~~

~~As a condition precedent to qualifying for use of the simplified offering circular, an issuer shall agree to provide the office with an annual financial report containing a balance sheet as of the end of the issuer's fiscal year and a statement of income for such year, prepared in accordance with United States generally accepted accounting principles and accompanied by an independent accountant's report. If the issuer has more than 100 security holders at the end of a fiscal year, the financial statements must be audited. Annual financial reports must be filed with the office within 90 days after the close of the issuer's fiscal year for each of the first 5 years following the effective date of the registration.~~

(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 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 of a security in the register of securities if, ~~If~~ upon examination of any application the office ~~shall find that the sale of the security referred to therein would not be fraudulent and would not work or tend to work a fraud upon the purchaser, that the terms of the sale of such securities would be fair, just, and equitable, and that the enterprise or business of the issuer is not based upon unsound business principles, it shall record the registration of such security in the register of securities; and thereupon such security so registered may be sold by any registered dealer, subject, however, to the further order of the office. In order to determine if an offering is fair, just, and equitable, the commission may by rule establish requirements and standards for the filing, content, and circulation of any preliminary, final, or amended prospectus and other sales literature and may by rule establish [merit qualification][disclosure] 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 office in its judgment may deem necessary to such determination.~~ finds that:

1. ~~the~~ The application is complete;

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

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

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

5. ~~the~~ 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.

Section 11. Section 517.101, Florida Statutes, is amended to read:

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 ~~member, of the copartnership or company, or by the acknowledged signature of~~

~~any officer of the incorporated or unincorporated association, if it be an incorporated or unincorporated association, duly authorized by resolution of the board of directors, trustees, or managers of the corporation or association, and shall in such case be accompanied by a duly certified copy of the resolution of the board of directors, trustees, or managers of the corporation or association~~, ~~authorizing the officers to execute the same~~ 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.

Section 12. Section 517.131, Florida Statutes, is amended to read:

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)~~ (9) and ~~(11)~~ (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~~(10)~~ (9) and ~~(11)~~ (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 at any time exceeds $1.5 million, transfer of assessment fees to ~~this~~ the Securities Guaranty F~~f~~und shall be discontinued at the end of that ~~license~~ registration year, and transfer of such assessment fees shall not be resumed unless the Securities Guaranty F~~f~~und is reduced below $1 million by disbursement made in accordance with s. 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:~~ For purposes of this section and s. 517.141, "final judgment" shall include an arbitration award confirmed by a court of competent jurisdiction.

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

2. ~~has~~ 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~~ 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.

~~(a) Such person has received final judgment in a court of competent jurisdiction in any action wherein the cause of action was based on a violation of those sections referred to in subsection (2).~~

~~(b) Such 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 judgment, and by her or his search the person has discovered no property or assets; or she or he has discovered property and assets and has taken all necessary action and proceedings for the application thereof to the judgment, but the amount thereby realized was insufficient to satisfy the 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.~~

~~(c) 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 from the Securities Guaranty Fund pursuant to the provisions of s. 517.141 shall give written notice by certified mail to the office as soon as practicable after such action has been filed. The failure to give such notice shall not bar a payment from the Securities Guaranty Fund if all of the conditions specified in subsection (3) are satisfied.~~ Notwithstanding subsection ~~(2)~~(3), a person is not eligible for payment from the Securities Guaranty Fund if such person:

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

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

(c) ~~profited~~ Profited from a violation of this chapter.

(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.~~ 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 that final judgment or of the date that restitution order has been ripe for execution—, or any appellate decision thereon and shall contain such info ~~or~~ as the 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 available property and assets executed on all of the wrongdoer and the final judgment remains unsatisfied—;

(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~~ office's receipt of a complete application, shall be given written notice, personally or by mail, that the office intends to approve or deny the application for payment from the Securities Guaranty Fund, 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~~ 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.

Section 13. Section 517.141, Florida Statutes, is amended to read:

517.141 Payment from the fund.

(1) ~~Any person who meets all of the conditions prescribed in s. 517.131 may apply to~~ For purposes of this section, a "claimant" is an eligible person under s. 517.131 who is approved by the office for payment ~~to be made to such person~~ from the Securities Guaranty Fund. ~~in the amount equal to the unsatisfied portion of such person's judgment or $10,000, whichever is less, but only to the extent and amount reflected in the judgment as being actual or compensatory damages, excluding postjudgment interest, costs, and attorney's fees.~~

(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 post judgement 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.

~~(2)~~ (3) Regardless of the number of claims or claimants involved, payments for claims shall be limited in the aggregate to ~~$100,000~~ $250,000 against any one ~~dealer, investment adviser,~~

~~or associated~~ person. If the total claim~~s~~ filed by a receiver on behalf of claimants exceeds the aggregate limit of ~~$100,000~~ $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 claim~~s~~ filed.

~~(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) 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 of the total disbursement.~~

~~(c) Those persons who have filed notice with the office of a pending claim pursuant to s. 517.131(4) but who are not yet eligible 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.~~

(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.

~~(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 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 ~~dealer, investment adviser, or associated~~ 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 ~~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~~ person~~s~~ 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 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, ~~specified in s. 517131(3)(a),~~ 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~~ Department of Financial Services 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 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—).

~~(7)~~ (10) The ~~office~~ Department of Financial Services 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~~ Department of Financial Services 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)(c) 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.~~

Section 14. Section 517.191, Florida Statutes, is amended to read:

517.191 Enforcement by the ~~Office~~ 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~~ 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~~ 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~~ 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~~,~~ or s. 517.301~~,~~ ~~s. 517.311, or s. 517.312~~, 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~~,~~ or s. 517.301~~, s. 517.311, or s. 517.312~~, 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.

Section 15. Section 517.211, Florida Statutes, is amended to read:

517.211 Private ~~R~~remedies available in cases of unlawful sale.--

(1) Every sale made in violation of either s. 517.07 or s. 517.12(1), ~~(4), (5), (9), (11), (13), (16), or (18)~~ (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(13)~~ 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.

~~(3)~~ (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.

~~(4)~~ (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)~~ (6) 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.

~~(6)~~ (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.

Section 16. Section 517.241, Florida Statutes, is repealed.

Section 17. Section 517.301, Florida Statutes, is amended to read:

517.301 Fraudulent transactions; falsification or concealment of facts.--

(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 ~~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 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) ~~(2)~~ For purposes of ~~ss. 517.311~~ ~~and~~ ~~517.312~~ ~~and~~ this section, the term "investment" means a~~ny~~ 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 ~~telephone~~ solicitation by telephone, electronic mail, text messages, social media, chat rooms, or other electronic means~~,~~ where ~~said property is offered and sold in accordance with the following conditions:~~ there

~~1. There~~ are no specific representations or guarantees made by the offeror or seller as to the economic benefit to be derived from the purchase.~~;~~

~~2. The tangible property is delivered to the purchaser within 30 days after sale, except that such 30-day period may be extended by the office if market conditions so warrant; and~~

~~3. The seller has offered the purchaser a full refund policy in writing, exercisable by the purchaser within 10 days of the date of delivery of such tangible personal property, except that the amount of such refund may not exceed the bid price in effect at the time the property is returned to the seller. If the applicable sellers' market is closed at the time the property is returned to the seller for a refund, the amount of such refund shall be based on the bid price for such property at the next opening of such market.~~

Section 18. Section 517.311, Florida Statutes, is repealed.

Section 19. Section 517.312, Florida Statutes, is repealed.

The following triple motion was made by _____, seconded _____:

RESOLVED, that the Florida Bar Business Law Section (the "Section") supports proposed legislation addressing changes and updates to Chapter 607, Florida Statutes, the Florida Business Corporations Act, primarily including the addition of provisions addressing ratification of defective corporate actions and overissuances of securities, substantially in the form of the draft legislation, draft dated as of _____, 2023 presented to the Executive Council of the Section, and subject to such further changes as are deemed appropriate and approved by (i) the Chapter 607 Subcommittee, and (ii) the Executive Committee of the Section; and it is further

RESOLVED, that the Proposed Legislation: (1) is within the Section's subject matter jurisdiction as described in the Section's bylaws; (2) either is beyond the scope of the bar's permissible legislative or political activity, or is within the bar's permissible scope of legislative or political activity and the proposed Section position is consistent with an official bar position on that issue; and (3) does not have the potential for deep philosophical or emotional division among a substantial segment of the bar's membership.

Chapter 607 White Paper

Summary of
Ratification of Defective Corporate Actions Proposed Legislation

Background

In 2013, the Delaware General Assembly amended the Delaware General Corporation Law (the "DGCL") to include new sections 204 and 205 which provided mechanisms for a practical way for a corporation to resolve defective corporate acts (including overissuances of shares) and other uncertainties facing corporations "without disproportionately disruptive consequences." In 2016, the Corporate Laws Committee of the American Bar Association approved the addition of sections to the Model Business Corporation Act ("MBCA") addressing ratification of defective corporate actions, in substantial part based on the DGCL provisions.

Provisions addressing ratification of defective corporate actions, other than the ability to utilize articles of correction, provide corporations with two alternative statutory paths to validate or ratify corporate actions, including overissuances of shares, that, due to a defect in authorization, may have been void and incapable of ratification. The first path involves remedial action taken by the corporation itself, through actions by its board of directors and, if required, its shareholders. The second path involves a court proceeding that can be initiated by the corporation or certain other interested constituencies. The provisions addressing ratification of corporate defective actions have not to this point been enacted in Florida. In an effort to conform with a growing number of states that have followed the DGCL and MBCA and enacted laws regarding ratification of defective corporate actions, the Chapter 607 Drafting Subcommittee is proposing that sections addressing these issues be added to Chapter 607, the Florida Business Corporation Act ("FBCA"). The proposed legislation is largely based on the MBCA, but also folds in certain aspects of the DGCL Sections 204 and 205.

Proposed Sections 607.0145-607.0152 provide a statutory ratification procedure for corporate actions that may not have been properly authorized and shares that may have been improperly issued. The statutory ratification procedure is designed to supplement common law ratification. Corporate actions ratified under these proposed provisions would remain subject to equitable review.

Examples of defective corporate actions subject to ratification under these proposed provisions include the failure of the incorporator to validly appoint an initial board of directors, corporate action taken in the absence of board resolutions authorizing the action, the failure to obtain the requisite shareholder approval of a corporate action, an issuance of shares in the absence of evidence that consideration payable to the corporation for shares was received, the failure to comply with appraisal requirements, an overissuance of shares that were not authorized prior to their issuance, and the issuance of shares without complying with preemptive rights. The ratification procedure is intended to be available only where there is objective evidence that a corporate action was defectively implemented. For example, these proposed provisions would permit ratification of shares previously issued but subsequently determined to have been issued

improperly. It would not permit the corporation to issue shares retroactively as of an earlier date, however, where there is no objective evidence that those shares had previously been issued. Objective evidence may include resolutions, issuance of share certificates, subscription or share purchase agreements, entries in a share ledger or other correspondence indicating that shares were issued or intended to have been issued.

I. General Provisions

(MBCA §§1.45 and 1.46, Proposed FBCA §§607.0145 and 607.0146)

These proposals substantially follow the MBCA. Many of the definitions in proposed §607.0145 were made intentionally broad so as to permit ratification of any corporate action that, except for the failure of the corporation to properly authorize the corporation, would have been within its power.

Proposed Sections 607.0145(3) and (5) – Definitions of "Defective Corporate Action" and "Overissue." The term "defective corporate action" includes an "overissue" of shares and other defects in share issuances that could cause shares to be treated as void. For purposes of determining which shares are overissued, only those shares issued in excess of the number of shares permitted to be issued under s. 607.0601 of the FBCA would be deemed overissued shares. If it cannot be determined from the records of the corporation which shares were issued before others, all shares included in an issuance that is or results in an overissue would be overissued shares.

Proposed Section 607.0145(8) – Definition of "Validation effective time." This proposed subsection departs from the MBCA in order to make it clear that if articles of validation (as set forth in subsequent sections) are required to be filed to complete the ratification of particular defective acts, the "validation effective time" will not occur until such filing is actually made in accordance with s. 607.0151.

Proposed Section 607.0146(1). This proposed subsection does not distinguish between "void" (per se invalid) or "voidable" (invalid upon challenge) actions. Instead, any defective corporate action that is ratified or validated under the proposed additions will not be considered to be void or voidable. In addition, this subsection expressly makes clear that effectiveness of the ratification of a defective corporate action in accordance with the requirements of s. 607.0147 requires compliance not only with that provision, but also requires the filing of articles of validation if such filing is required under s. 607.0151.

Proposed Section 607.0146(2). This proposed subsection makes it clear that the corporation's ratification of a voidable corporate action under existing common law precedent will continue to be valid, and that the provisions of this subsection are not the only way for a corporation to ratify a voidable corporate action. However, proposed Sections 607.0145-607.0152 are designed such that any ratification of defective corporate actions that are completed in accordance with such proposed sections would bring more certainty to the ratification process.

Proposed Section 607.1046(3). This proposed subsection provides that an overissue of shares over and above the number authorized in the corporation's articles of incorporation can be remedied by the adoption of an amendment to the articles of incorporation or other corporate action that authorizes or creates the putative shares that resulted in the overissuance. If the corporation does so, the shares are deemed to have been valid from the date of issuance. This provision enables a corporation to cure an overissue occurring when shares have been duly authorized but are issued before articles of amendment are filed. It also permits a corporation to remedy an overissue even if it cannot specifically identify the putative shares.

II. Procedures for Remedying Defective Corporate Acts

(MBCA §§1.47-1.50, Proposed FBCA §§607.0147-607.0150)

These sections set forth the steps that (if the increased certainty provided in this proposed legislation is desired) must be used by a Florida corporation in order to remedy defective corporate actions.

Proposed Section 607.0147 (Ratification of Defective Corporate Actions). This proposed new section, based on Section 1.47 of the MBCA, sets forth the basic procedures by which a corporation can ratify void or voidable corporate actions.

Subsection 1. This proposed subsection, which is identical to Section 1.47(a) of the MBCA, sets forth the requirements for a board of directors to take any actions with regard to defective acts (other than the election of the board of directors itself, the procedures for which are set forth in subsection (2) below.) The information required by proposed subsection 607.0147(1)(a) regarding the listing of putative shares may be satisfied by attaching a table, including a capitalization table, listing the putative shares.

Subsection 2. This proposed subsection is also identical to the matching subsection of the MBCA, Section 1.47(b). The subsection eliminates the confusion with regard to defective appointment of a board of directors; that is, if the board of directors itself was not properly ratified, how can it take action to ratify itself? The subsection therefore allows for the board of directors, even if improperly appointed, to ratify its own defective appointment.

Subsection 3. This proposed subsection discusses instances where shareholder approval is required for ratification (for example, a defective issuance of shares requiring the amendment to the articles of incorporation to authorize additional shares or an additional class of shares, as opposed to a draw down by the board of directors under a properly authorized class of "blank check" preferred) and states that, after the board of directors takes action under subsection (1), it must refer the matter to shareholders in accordance with proposed section 607.0148 below.

Subsection 4. This subsection clarifies that the board of directors may abandon ratification even after approval without further action.

Proposed Section 607.0148 (Action on Ratification). This proposed new section is based on Section 1.48 of the MBCA and sets forth specific procedural requirements for the ratification of defective corporate actions.

Consistent with both Section 1.48 of the MBCA and Section 204 of the DCGL, notice is required to be provided to the holders of all shares, whether voting or non-voting. Further, consistent with both Section 1.48 of the MBCA and Section 204 of the DGCL, notice of the meeting or notice of the written consent, as the case may be, must be provided to both current shareholders of the corporation and shareholders who held shares as of the date of the occurrence of the defective corporate action. However, notice is not required to be given to persons who are no longer shareholders of the corporation at the time that the corporation is seeking ratification of the defective corporate actions but did not own their shares at the time of the defective corporate action (i.e., those who first acquired shares after the time of the defective corporate action, but disposed of all their shares by the time the corporation is seeking ratification of the defective corporate actions).

Subsection 1. This proposed subsection, based on Section 1.48(a) of the MBCA, states that that the quorum and voting requirements for an action taken by the board of directors under Section 607.0148(1) are subject to the same quorum and voting requirements for the same action set forth in the FBCA or the corporation's constituent documents taken in other circumstances. For example, if taking an action would require a supermajority to approve, it would also take a supermajority to ratify.

Subsection 2. This proposed subsection requires notice to be given to shareholders whether the defective corporate action is to be ratified at a meeting or by written consent.

Paragraph (a) of this proposed subsection, based on Section 1.48(b) of the MBCA, states that if ratification by shareholders is required and where approval is to be completed at an annual or special meeting of shareholders, the corporation must notify each owner of valid and putative shares, whether or not those shares are entitled to vote. The record date for any such meeting is deemed to be the date on which the defective action occurred. Notwithstanding, if the identity of holders of valid or putative shares cannot be determined from the records of the corporation, notice is not required. The proposed subsection also sets forth the notice requirements for any notices sent to shareholders under subsection (2) and states the materials and information that must accompany the notice.

Paragraph (b) of this proposed subsection, which is not in the MBCA, makes it express that if the defective corporate action is to be ratified by written consent, the corporation must notify each person who is a holder of valid and putative shares, regardless of whether entitled to vote, as of the record date for the action by written consent, and each person who is a holder of valid and putative shares, regardless of whether entitled to vote, as of the date of the occurrence of the defective corporate action. This is implied by the applicable provisions of the MBCA and the DGCL.

In both cases (i.e., meeting or written consent), the information required to be provided is the same.

Subsections 3 and 4. These proposed subsections are a mirror of subsection 1 relating to shareholders and are based on Sections 1.48(c) and (d) of the MBCA. Proposed subsection 3 states that the rule requiring that the same voting and quorum requirements remain in place, except where the action relates to the ratification of directors. Actions relating to directors are set forth in proposed subsection (4), which requires that each director receive more votes in favor of ratification than against be cast by shareholders at a meeting where a quorum is present and clarifies that, in the case of action taken by written consent of shareholders, the consents given favoring ratification by a voting group must represent a majority of the shares of such voting group.

Subsection 5. This proposed subsection is based on Section 1.48(e) of the MBCA and clarifies that putative shares existing on the record date are only entitled to notice of matters relating to ratification and that such shares are not entitled to vote, are not counted for quorum purposes, and are not counted in any written consent.

Subsection 6. This proposed subsection is based on Section 1.48(f) of the MBCA and clarifies that to ratify putative shares, whether by vote or by written consent, an amendment to the articles of incorporation must be approved.

Proposed Section 607.0149 (Notice Requirements). This proposed section and its subsections are based on section 1.49 of the MBCA and details notice requirements to shareholders and holders of putative shares when shareholder action to approve the ratification of the defective corporate action is not required. This proposed provision, like the corollary MBCA provision, contemplates "prompt" notice to shareholders following the ratification of a corporate action by the board of directors, which is intended to mean as soon as reasonably practicable under the applicable facts and circumstances.

Unlike s. 607.0704(7) of the FBCA, this section does not state that the failure to provide the notice does not invalidate the action taken. This is intended to make clear that to take advantage of the statutory ratification provisions in this proposed statute, the required notice must be given to shareholders and putative holders. It should be recognized that where the notice is required, the validation effective time will not occur until the notice is given, or if also required, the articles of validation are filed, if later.

Subsection 1. Where shareholder action on ratification is not required, a corporation must provide prompt notice to each shareholder (including to each putative shareholder) regarding the date of action and the date of the ratification.

Subsection 2. If notice is given under proposed subsection 1, this proposed subsection sets forth the content of the required notice. This includes (i) a copy of the action taken by the board of directors (ii) the information required by proposed subsections 607.0147(1)(a) through (1(d) or proposed subsections 607.0147(2)(a) through (2)(c), as applicable and (iii) a statement that a claim asserting that ratification of the

defective corporate action (including any putative shares issued thereby) should not be effective must be brought within 120 days from the applicable validation effective time.

Subsection 3. Clarifies that if notice is given under proposed subsection (2), no additional notice is required for shareholder approval. This is because the information contemplated by the notice is already required to be provided in the notice of any shareholder meeting or in connection with the solicitation of written consents of shareholders.

Subsection 4. Clarifies that any notice under this proposed section may be given in any manner required under existing section 607.0141 of the FBCA, and, in the case of a public company, notice may be given by means required by the United States Securities and Exchange Commission.

Proposed Section 607.0150 (Effect of Ratification). This proposed section and its subsections are based on section 1.50 of the MBCA and set forth specifics on how ratification, upon proper notice, affects the corporation and the timing of any ratification. Ratification is effective as of the validation effective time and is not dependent on the expiration of the 120-day time period in which an action challenging the ratification must be brought.

Subsection 1. Where a defective corporate action is properly ratified, it is deemed no longer void or voidable and is deemed for all intents and purposes to be a validly approved corporate action, effective as of the date of the original defective act.

Subsection 2. Similarly, issuances of putative shares, or fractions of a putative share, as the case may be, are deemed to be issuances of identical valid shares, or fractions of shares, on the date on which the putative share or fraction of a putative share was purportedly issued (as if it were issued back when it was originally purportedly issued).

Subsection 3. Any actions taken subsequent to the initial defective corporate action, but before the ratification thereof, are also deemed to be valid, as of the date the original action was taken. In other words, the ratification of a defective corporate action has the additional effect of ratifying corporate actions that are defective because of the original defective corporate action. For example, an overissue which results in subsequent director elections being invalid calls into question all actions by the invalidly elected board members. The ratification of the overissue, however, would cure any such additional defects.

III. Filings

(MBCA §1.51, Proposed FBCA §607.0151)

This proposed section sets forth requirements for filings both where filings were not made and where they were made incorrectly, and is intended to provide a clear public record of the actions relating to the ratification. This proposed section and its subsections are based on Section 1.51 of the MBCA. Proposed section 607.0151 requires that in the event any filing is or would have been required under the FBCA to effect the defective corporate action, such filing (if

no filing was previously made) or such corrected filing (if correction to a previous filing is required) be attached as an exhibit to the articles of validation.

Consistent with recent changes to Section 204 of the DCGL, this proposal eliminates the required filing of articles of validation if changes to the previous filing made with the Florida Department of State are not required in order for the prior filing to be accurate following the ratification. The MBCA does not eliminate that requirement.

Subsection 1. Where a filing would have been required for the ratified defective corporate action, regardless of whether or not such filing was properly made, a corporation must file articles of validation with the Florida Department of State, which serves to amend, or serves as a substitute for, any filings related to the defective corporate action.

Subsections 2 and 3. Like their MBCA counterparts, these subsections set forth requirements for the content of articles of validation filings with the Florida Department of State.

IV. Judicial Proceedings.

(MBCA §1.52, Proposed FBCA §607.0152)

This section confers jurisdiction on the designated court to hear and determine claims regarding the validity of any corporate action. Subsections 1-4 are based on subsections (a)-(d) of Section 1.52 of the MBCA.

Subsection 1. A corporation or successor thereto, a director of a corporation, or any shareholder of the corporation may apply to a court to determine the validity of any corporate action (or ratified defective corporate action).

Subsection 2. When an application is made under subsection 1, the court may make any findings or orders it deems proper under the circumstances.

Subsection 3. Clarifies that service of process for any such proceeding is the same as that of any proceeding as set forth in Chapter 48, Florida Statutes.

Subsection 4. Any action taken must be brought within 120 days of the "validation effective time", as defined in proposed section 607.0145(8).

Proposed subsections 5 and 6 are not a part of the MBCA. However, they are derived from the DCGL and are being suggested by the Chapter 607 Drafting Subcommittee in order to give additional guidance to the courts.

Subsection 5. In an effort to assist the court, this proposed subsection sets forth a non-exclusive list of various factors that may be considered by the court with respect to cases brought under this proposed section.

Subsection 6. In order to assist the court, this proposed subsection sets forth certain actions that the court may decide to take, including declaring any acts to be effective or ineffective as well as the date of validity. Proposed subsection (6)(j) allows for the awarding of attorney's fees and other reasonable expenses against a corporation where the court finds such award to be just and equitable under the circumstances.

RATIFICATION OF DEFECTIVE CORPORATE ACTIONS

§ 607.0145. Definitions.

As used in ss. 607.0145-607.0152:

(1) "Corporate action" means any action taken by or on behalf of the corporation, including any action taken by the incorporator, the board of directors, a committee of the board of directors, an officer or agent of the corporation or the shareholders.

(2) "Date of the defective corporate action" means the date, or the approximate date, if the exact date is unknown, the defective corporate action was purported to have been taken.

(3) "Defective corporate action" means:

(a) Any corporate action purportedly taken that is, and at the time such corporate action was purportedly taken would have been, within the power of the corporation, but is void or voidable due to a failure of authorization, or

(b) An overissue.

(4) "Failure of authorization" means the failure to authorize, approve or otherwise effect a corporate action in compliance with the provisions of this chapter, the articles of incorporation or bylaws, a corporate resolution or any plan or agreement to which the corporation is a party, if and to the extent such failure would render such corporate action void or voidable.

(5) "Overissue" means the purported issuance of:

(a) Shares of a class or series in excess of the number of shares of the class or series the corporation has the power to issue under s. 607.0601 at the time of such issuance; or

(b) Shares of any class or series that is not then authorized for issuance by the articles of incorporation.

(6) "Putative shares" means the shares of any class or series, including shares issued upon exercise of rights, options, warrants or other securities convertible into shares of the corporation, or interests with respect to such shares, that were created or issued

as a result of a defective corporate action, that (i) but for any failure of authorization would constitute valid shares, or (ii) cannot be determined by the board of directors to be valid shares.

(7) "Valid shares" means the shares of any class or series that have been duly authorized and validly issued in accordance with this Act, including as a result of ratification or validation under ss. 607.0145-607.0152.

(8) "Validation effective time" with respect to any defective corporate action ratified under ss. 607.0145-607.0152 means the later of:

(a) The date on which the ratification of the defective corporate action is approved by the shareholders, or if approval of shareholders is not required, the time at which the notice required by s. 607.0149 becomes effective in accordance with s. 607.0141;

(b) If no articles of validation are required to be filed in accordance with s. 607.0151, the date on which the notice required by s. 607.0149 becomes effective in accordance with s. 607.0141; and

(c) If articles of validation are required to be filed in accordance with s. 607.0151, the date on which the articles of validation filed in accordance with s. 607.0151 become effective.

The validation effective time will not be affected by the filing or pendency of a judicial proceeding under s. 607.0152 or otherwise, unless otherwise ordered by the court.

§ 607.0146 Defective Corporate Actions.

(1) A defective corporate action will not be void or voidable if:

(a) Ratified in accordance with the requirements of s. 607.0147, including the filing, if required, of articles of validation under s. 607.0151, or

(b) Validated in accordance with s. 607.0152.

(2) Ratification under s. 607.0147 or validation under s. 607.0152 shall not be deemed to be the exclusive means of ratifying or validating any defective corporate action, and the absence or failure of ratification in accordance with ss. 607.0145-607.0152 will not, in and of itself, affect the validity or effectiveness of any corporate action properly ratified under common law or otherwise, nor will it create a presumption that any such corporate action is or was a defective corporate action or void or voidable.

(3) In the case of an overissue, putative shares will be valid shares effective as of the date originally issued or purportedly issued upon:

(a) The effectiveness under ss. 607.0145-607.0152 and under ss. 607.1001 – 607.1009 of an amendment to the articles of incorporation authorizing, designating or creating such shares; or

(b) The effectiveness of any other corporate action under ss. 607.0145-607.0152 ratifying the authorization, designation or creation of such shares.

§ 607.0147 Ratification of Defective Corporate Actions.

(1) To ratify a defective corporate action under this section, other than the ratification of an election of the initial board of directors under subsection (2), the board of directors must take action ratifying the action in accordance with s. 607.0148, stating:

(a) The defective corporate action to be ratified and, if the defective corporate action involved the issuance of putative shares, the number and type of putative shares purportedly issued;

(b) The date of the defective corporate action;

(c) The nature of the failure of authorization with respect to the defective corporate action to be ratified; and

(d) That the board of directors approves the ratification of the defective corporate action.

(2) In the event that a defective corporate action to be ratified relates to the election of the initial board of directors of the corporation under s. 607.0205(1)(b), a majority of the persons who, at the time of the ratification, are exercising the powers of directors may take an action stating:

(a) The name of the person or persons who first took action in the name of the corporation as the initial board of directors of the corporation;

(b) The earlier of the date on which such persons first took such action or were purported to have been elected as the initial board of directors; and

(c) That the ratification of the election of such person or persons as the initial board of directors is approved.

(3) If any provision of this chapter, the articles of incorporation or bylaws, any corporate resolution or any plan or agreement to which the corporation is a party in effect at the time action under subsection (1) is taken requires shareholder approval or would have required shareholder approval at the date of the occurrence of the defective corporate action, the ratification of the defective corporate action approved in the

action taken by the directors under subsection (1) must be submitted to the shareholders for approval in accordance with s. 607.0148.

(4) Unless otherwise provided in the action taken by the board of directors under subsection (1), after the action by the board of directors has been taken and, if required, approved by the shareholders, the board of directors may abandon the ratification at any time before the validation effective time without further action of the shareholders.

§ 607.0148 Action on Ratification.

(1) The quorum and voting requirements applicable to a ratifying action by the board of directors under s. 607.0147(1) will be the quorum and voting requirements applicable to the corporate action proposed to be ratified at the time such ratifying action is taken.

(2) (a) If the ratification of the defective corporate action requires approval by the shareholders under s. 607.0147(3), and if the approval is to be given at a meeting, the corporation must notify each holder of valid and putative shares, regardless of whether entitled to vote, as of the record date for notice of the meeting, and as of the date of the occurrence of the defective corporate action, provided that notice will not be required to be given to holders of valid or putative shares whose identities or addresses for notice cannot be determined from the records of the corporation. The notice must state that the purpose, or one of the purposes, of the meeting, is to consider ratification of a defective corporate action.

(b) If the ratification of the defective corporate action requires approval by the shareholders under s. 607.0147(3), and if the approval is to be ratified by one or more written consents of the shareholders, the corporation must notify each holder of valid and putative shares, regardless of whether entitled to vote, as of the record date for the action by written consent, and as of the date of the occurrence of the defective corporate action, provided that notice will not be required to be given to holders of valid or putative shares whose identities or addresses for notice cannot be determined from the records of the corporation. The notice must state that the purpose, or one of the purposes, of the written consent was to consider ratification of a defective corporate action.

(c) The notice must be accompanied by:

1. Either a copy of the action taken by the board of directors in accordance with s. 607.0147(1) or the information required by ss. 607.0147(1)(a) through (1)(d), and

2. A statement that any claim asserting that the ratification of such defective corporate action, and any

putative shares issued as a result of such defective corporate action, should not be effective, or should only be effective on certain conditions, must be brought, if at all, within 120 days from the applicable validation effective time.

(3) Except as provided in subsection (4) with respect to the voting requirements to ratify the election of a director, any quorum and the voting requirements applicable to the approval by the shareholders required by s. 607.0147(3) will be the quorum and voting requirements applicable, at the time of such shareholder approval, to the corporate action proposed to be ratified.

(4) The approval by shareholders at a meeting to ratify the election of a director requires that the votes cast within the voting group favoring such ratification exceed the votes cast opposing such ratification of the election at a meeting at which a quorum is present. The approval by shareholders by written consent to ratify the election of a director requires that the consents given within the voting group favoring such ratification represent a majority of the shares of the voting group.

(5) Putative shares on the record date for determining the shareholders entitled to vote on any matter submitted to shareholders under s. 607.0147(3), and without giving effect to any ratification of putative shares that becomes effective as a result of such vote, will neither be entitled to vote nor counted for quorum purposes in any vote to approve the ratification of any defective corporate action. Putative shares on the record date for the action by written consent, and without giving effect to any ratification of putative shares that becomes effective as a result of such written consent, will not be entitled to be counted in any written consent to approve the ratification of any defective corporate action.

(6) If the approval under this section of putative shares would result in an overissue, in addition to the approval required by s. 607.0147, approval of an amendment to the articles of incorporation under ss. 607.1001 – 607.1009 to increase the number of shares of an authorized class or series or to authorize the creation of a class or series of shares so there would be no overissue will also be required.

§607.0149 Notice Requirements.

(1) Unless shareholder approval is required under s. 607.0147(3), prompt notice of an action taken by the board of directors under s. 607.0147 must be given to each holder of valid shares and each holder of putative shares, regardless of whether entitled to vote, that is a holder of valid shares or a holder of putative shares as of:

(a) The date of the action by the board of directors taken under s. 607.0147; and

(b) The date of the occurrence of the defective corporate action being ratified;

provided that notice will not be required to be given to those holders of valid shares or those holders of putative shares whose identities or addresses for notice cannot be determined from the records of the corporation.

(2) The notice must contain:

(a) Either:

1. A copy of the action taken by the board of directors in accordance with s 607.0147(1); or

2. The information required by ss. 607.0147(1)(a) through (1)(d) or ss. 607.0147(2)(a) through (2)(c), as applicable; and

(b) A statement that, in order to be considered, any claim asserting that the ratification of the defective corporate action, and any putative shares issued as a result of such defective corporate action, should not be effective, or should be effective only on certain conditions, must be brought, if at all, within 120 days from the applicable validation effective time.

(3) No notice under this section is required with respect to any action required to be submitted to shareholders for approval under s. 607.0147(3) if notice is given in accordance with s. 607.0148(2).

(4) A notice required by this section may be given in any manner permitted by s. 607.0141 and, for any corporation subject to the reporting requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, may be given by means of a filing or furnishing of such notice with the United States Securities and Exchange Commission.

§ 607.0150 Effect of Ratification.

From and after the validation effective time, and without regard to the 120-day period during which a claim may be brought under s. 607.0152:

(1) Each defective corporate action ratified in accordance with s. 607.0147 will not be void or voidable as a result of the failure of authorization set forth and identified in the action taken under s. 607.0147(1) or (2) and will be deemed a valid corporate action effective as of the date of the defective corporate action;

(2) The issuance of each putative share or fraction of a putative share purportedly issued pursuant to a defective corporate action identified in the action taken under s. 607.0147 will not be void or voidable, and each such putative share or fraction of a putative share will be deemed to be an identical share or fraction of a valid share as of the time it was purportedly issued; and

(3) Any corporate action taken subsequent to the defective corporate action ratified in accordance with ss. 607.0145 – 607.0152 in reliance on such defective corporate action having been validly effected, and any subsequent defective corporate action resulting directly or indirectly from such original defective corporate action, will be valid as of the respective time such corporate action was taken.

§ 607.0151 Filings.

(1) If the defective corporate action ratified under ss. 607.0145 – 607.0152 would have required under any other section of this chapter a filing in accordance with this chapter, and either:

(a) any previous filing requires any change to the filing to give effect to the defective corporate action in accordance with this section (including a change to the date and time of the effectiveness of such filing); or

(b) a filing was not previously filed in respect of the defective corporate action,

then, in lieu of a filing otherwise required by this chapter, the corporation must file articles of validation in accordance with this section, and such articles of validation will serve to amend or be a substitute for any other filing with respect to such defective corporate action required by this chapter.

(2) The articles of validation must set forth:

(a) The defective corporate action that is the subject of the articles of validation, including, in the case of any defective corporate action involving the issuance of putative shares, the number and type of putative shares issued and the date or dates upon which such putative shares were purported to have been issued;

(b) The date of the defective corporate action;

(c) The nature of the failure of authorization in respect of the defective corporate action;

(d) A statement that the defective corporate action was ratified in accordance with s. 607.0147, including the date on which the board of directors ratified such defective corporate action and the date, if any, on which the shareholders approved the ratification of such defective corporate action; and

(e) The information required by subsection (3).

(3) The articles of validation must also contain the following information:

(a) If a filing was previously made in respect of the defective corporate action and such filing requires any change to give effect to the ratification of such defective corporate action in accordance with s. 607.0147, the articles of validation must set forth:

1. The name, title and filing date of the filing previously made and any articles of correction to that filing;

2. A statement that a filing containing all of the information required to be included under the applicable section or sections of this chapter to give effect to such defective corporate action is attached as an exhibit to the articles of validation; and

3. The date and time that such filing is deemed to have become effective; or

(b) If a filing was not previously made in respect of the defective corporate action and the defective corporate action ratified under s. 607.0147 would have required a filing under any other section of this chapter, the articles of validation must set forth:

1. A statement that a filing containing all of the information required to be included under the applicable section or sections of this chapter to give effect to such defective corporate action is attached as an exhibit to the articles of validation; and

2. The date and time that such filing is deemed to have become effective.

§ 607.0152 Judicial proceedings regarding validity of corporate actions.

(1) Subject to subsection (4) of this section, upon application by the corporation, any successor entity to the corporation, a director of the corporation, any shareholder, beneficial shareholder or unrestricted voting trust beneficial owner of the corporation, including any such shareholder, beneficial shareholder or unrestricted voting trust beneficial owner as of the date of the defective corporate action ratified under s. 607.0147, or any other person claiming to be substantially and adversely affected by a ratification under s. 607.0147, the circuit court in the applicable county may:

(a) Determine the validity and effectiveness of any corporate action or defective corporate action ratified pursuant to s. 607.0147;

(b) Determine the validity and effectiveness of any ratification of any defective corporate action under s. 607.0147;

(c) Determine the validity and effectiveness of any defective corporate action not ratified or not ratified effectively under s. 607.0147;

(d) Determine the validity of any putative shares; and

(e) Modify or waive any of the procedures specified in s 607.0147 or s. 607.0148 to ratify a defective corporate action.

(2) In connection with an action under this section, the court may make such findings or orders, and take into account any factors or considerations, regarding such matters as it deems proper under the circumstances. Factors that may be taken into account by the court in connection with an action under this section include those set forth in subsection (5) and a non-exclusive list of findings or orders that the court may take under this section is included in subsection (6).

(3) Service of process of the application under subsection (1) on the corporation may be made in any manner provided by chapter 48 for service on the corporation, and no other party need be joined

in order for the court to adjudicate the matter. In an action filed by the corporation, the court may require notice of the action be provided to other persons specified by the court and permit such other persons to intervene in the action.

(4) Notwithstanding any other provision of this section or otherwise under applicable law, any action asserting that the ratification of any defective corporate action, and any putative shares issued as a result of such defective corporate action, should not be effective, or should be effective only on certain conditions, must be brought, if at all, within 120 days of the validation effective time.

(5) In connection with the resolution of matters pursuant to subsection (2), the court may consider the following:

(a) Whether the defective corporate action was originally approved or effectuated with the belief that the approval or effectuation was in compliance with the provisions of this title, the articles of incorporation or the bylaws of the corporation;

(b) Whether the corporation and board of directors has treated the defective corporate action as a valid act or transaction and whether any person has acted in reliance on the public record that such defective corporate action was valid;

(c) Whether any person will be or was harmed by the ratification or validation of the defective corporate action, excluding any harm that would have resulted if the defective corporate action had been valid when approved or effectuated;

(d) Whether any person will be harmed by the failure to ratify or validate the defective corporate action; and

(e) Whether the defective corporate action was a conflict of interest transaction; and

(f) Any other factors or considerations the court deems just and equitable.

(6) In connection with an action under this section, the court may:

(a) Declare that a ratification in accordance with and pursuant to s. 607.0146 is not effective or shall only be effective at a time or upon conditions established by the court;

(b) Validate and declare effective any defective corporate action or putative stock and impose conditions upon such validation by the court;

(c) Require measures to remedy or avoid harm to any person substantially and adversely affected by a ratification pursuant to s. 607.0146 or from any order of the court pursuant to this section, excluding any harm that would have resulted if the defective corporate action had been valid when approved or effectuated;

(d) Order the department to accept an instrument for filing with an effective time specified by the court, which effective time may be prior or subsequent to the time of such order, provided that the filing date of such instrument shall be determined in accordance with s. 607.0123;

(e) Approve a stock ledger for the corporation that includes any shares ratified or validated in accordance with this section or s. 607.0146;

(f) Declare that the putative shares are valid shares or require a corporation to issue and deliver valid shares in place of any putative shares;

(g) Order that a meeting of holders of valid shares or putative shares be held and exercise such powers that it deems appropriate with respect to such a meeting;

(h) Declare that a defective corporate action validated by the court shall be effective as of the time of the defective corporate action or at such other time as the court shall determine;

(i) Declare that putative shares validated by the court shall be deemed to be an identical valid share or fraction of a valid share as of the time originally issued or purportedly issued or at such other time as the court shall determine;

(j) Require the payment by the corporation of reasonable expenses (including attorney's fees and costs) that the court finds just and equitable under the circumstances; and

(k) Make such other orders regarding such matters as it deems proper under the circumstances.

Subject: BLS Financial Literacy Task Force Funding Request

Jacob Brown <Jacob_Brown@flmb.uscourts.gov>
to Mark Stein, Farach, Manuel, slieb_trenam.com, pvalori@dvllp.com, Yadley, Gregory, Bates, Do

Greetings BLS executive committee members,

As a follow up from the June annual meeting and discussions with the Financial Literacy Task Force's funding requests that were app annual meeting. Approved thus far for spending this fiscal year wa reconfirming $5,000 from last fiscal year that was not used (as exp $5,000 to cover additional upcoming programs. An additional $10 Force chair John Hutton at the upcoming EC meeting next Monda requests are as follows:

1. **Veteran financial literacy/wellness programs in November** asking for $2500 for each of four programs, $10,000 total, to programs in Jacksonville, Miami, Tallahassee, and Tampa. F cover meals and give aways for attending veteran and military Isicoff and the Task Force put on a great South Florida progr is seeking to replicate that type program in South Florida and veteran/military populations. See https://flabizlaw.org/new launch-veteran-financial-literacy-project-on-october-30-2021- Isicoff, Judge McEwen, Chief Judge Specie and I are current volunteers (both within and outside of BLS) on the 2023 ever