

Request for Amendment OFR BILL HB 381

1. Accredited-Only Florida Limited Offering; Financial Statements

Add a new subsection to s. 517.0611, F.S. (The Florida Limited Offering Exemption):

517.0611() Accredited-only offerings; financial statement requirements.

a) Notwithstanding any other provision of this section or any rule adopted thereunder, an issuer may elect to conduct an offering under this section in which offers and sales are made solely to persons who are, or whom the issuer reasonably believes to be, accredited investors, as that term is defined in Rule 501 of Regulation D under the Securities Act of 1933, as amended.

(b) For an offering conducted pursuant to paragraph (a), in an aggregate offering amount not to exceed \$5 million in any 12-month period, the issuer is not required to furnish reviewed or audited financial statements as a condition of relying on the exemption provided by this section, provided that:

The issuer takes reasonable steps to verify that each purchaser is an accredited investor and maintains records of such verification; and

The issuer provides to each purchaser, prior to sale, the disclosure required by rule of the commission, which may include unaudited financial information prepared in accordance with generally accepted accounting principles.

(c) For offerings under this section that include any purchaser who is not an accredited investor, the financial statement requirements of commission rule shall apply, including, as applicable, the furnishing of reviewed financial statements for offerings in excess of \$500,000 up to \$2.5 million and audited financial statements for offerings in excess of \$2.5 million up to \$5 million.

(d) The commission may adopt rules to implement this subsection, including rules specifying acceptable methods of accredited-investor verification and minimum disclosure standards for offerings conducted pursuant to paragraph (a).

2. Hybrid Structure – Accredited and Non-Accredited Investors

You could optionally clarify the hybrid concept in the same section:

517.0611() Hybrid offerings.

(a) An issuer relying on this section may accept investments from both accredited and non-accredited investors for aggregate offering amounts up to \$500,000, subject to the limitations and disclosure requirements prescribed by commission rule.

b) For aggregate offering amounts greater than \$500,000, an issuer that elects to accept investments only from accredited investors, and complies with subsection (__) regarding verification, may rely on the financial statement relief provided in that subsection.

3. Portal Equity Compensation in Issuers

Add a new subsection to the dealer/portal section (for illustration, s. 517.12 or a new section on intrastate funding portals), consistent with the existing OFR authority over exempt offerings and intermediaries.

517.12(__) Equity compensation to intrastate funding portals.

(a) A person registered with the office as an intrastate funding portal and operating in connection with offerings made pursuant to s. 517.0611 or s. 517.0612 may receive securities of an issuer as compensation for services rendered in such offerings, provided that:

The terms of such compensation are fully and fairly disclosed in writing to prospective purchasers prior to sale; and

Any class of securities issued to the portal is described in the issuer's disclosure document, including a description of rights, preferences, and potential dilution.

(b) The commission may, by rule, prescribe limitations and conflict-of-interest safeguards applicable to equity compensation received by portals, including:

Conditions under which a portal's equity interest may or may not be on terms more favorable than those offered to investors in the same class; and

Requirements reasonably designed to ensure that the portal's compensation structure does not operate as a fraud or deceit upon purchasers or result in unfair dilution of minority shareholders.

(c) Nothing in this subsection shall be construed to relieve a portal or any associated person from any obligation imposed by this chapter, by rules adopted under this chapter, or by federal securities law.

4. Portal Capital-Raising for Its Own Business

To address portal self-financing while preserving OFR's conflict concerns, you could propose a narrow, conditioned allowance:

517.0611(__) Offerings by intrastate funding portals.

(a) An intrastate funding portal registered with the office may, subject to commission rule, rely on this section to offer and sell its own securities, or the securities of an affiliated entity formed solely to own or develop technology or compliance systems used by the portal, provided that:

The aggregate amount sold in reliance on this subsection does not exceed \$250,000 in any 12-month period, unless a greater amount is permitted by commission rule;

The portal provides prominent written disclosure that it is the issuer, or an affiliate of the issuer, in the offering; andmThe portal complies with any additional conflict-of-interest, supervisory, and procedural requirements established by rule of the commission.

(b) The commission may prohibit or condition offerings made pursuant to this subsection if it determines that such offerings are inconsistent with the public interest or the protection of investors. The portal officers and or directors or owners should be allowed to host and or sell securities in entity which it owns minority or controlling interest in the non portal business entity. The current statue prohibits the portal from such activity penalizing the officers directors and or owners for providing a service that befits other Florida companies.