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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/15/2009	.	
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The Committee on Judiciary (Richter) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Paragraphs (a) and (b) of subsection (1) of
section 16.56, Florida Statutes, are amended to read:

16.56 Office of Statewide Prosecution.—

(1) There is created in the Department of Legal Affairs an
Office of Statewide Prosecution. The office shall be a separate
“budget entity” as that term is defined in chapter 216. The
office may:

(a) Investigate and prosecute the offenses of:



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- 13 1. Bribery, burglary, criminal usury, extortion, gambling,
14 kidnapping, larceny, murder, prostitution, perjury, robbery,
15 carjacking, and home-invasion robbery;
- 16 2. Any crime involving narcotic or other dangerous drugs;
- 17 3. Any violation of the provisions of the Florida RICO
18 (Racketeer Influenced and Corrupt Organization) Act, including
19 any offense listed in the definition of racketeering activity in
20 s. 895.02(1)(a), providing such listed offense is investigated
21 in connection with a violation of s. 895.03 and is charged in a
22 separate count of an information or indictment containing a
23 count charging a violation of s. 895.03, the prosecution of
24 which listed offense may continue independently if the
25 prosecution of the violation of s. 895.03 is terminated for any
26 reason;
- 27 4. Any violation of the provisions of the Florida Anti-
28 Fencing Act;
- 29 5. Any violation of the provisions of the Florida Antitrust
30 Act of 1980, as amended;
- 31 6. Any crime involving, or resulting in, fraud or deceit
32 upon any person;
- 33 7. Any violation of s. 847.0135, relating to computer
34 pornography and child exploitation prevention, or any offense
35 related to a violation of s. 847.0135 or any violation of
36 chapter 827 where the crime is facilitated by or connected to
37 the use of the Internet or any device capable of electronic data
38 storage or transmission;
- 39 8. Any violation of the provisions of chapter 815;
- 40 9. Any criminal violation of part I of chapter 499;
- 41 10. Any violation of the provisions of the Florida Motor



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42 Fuel Tax Relief Act of 2004;

43 11. Any criminal violation of s. 409.920 or s. 409.9201; ~~or~~

44 12. Any crime involving voter registration, voting, or
45 candidate or issue petition activities;

46 13. Any criminal violation of the Florida Money Laundering
47 Act; or

48 14. Any criminal violation of the Florida Securities and
49 Investor Protection Act;

50
51 or any attempt, solicitation, or conspiracy to commit any of the
52 crimes specifically enumerated above. The office shall have such
53 power only when any such offense is occurring, or has occurred,
54 in two or more judicial circuits as part of a related
55 transaction, or when any such offense is connected with an
56 organized criminal conspiracy affecting two or more judicial
57 circuits. Informations and indictments charging such offenses
58 shall contain general allegations stating the judicial circuits
59 and counties in which crimes are alleged to have occurred or the
60 judicial circuits and counties in which crimes affecting such
61 circuits or counties are alleged to have been connected with an
62 organized criminal conspiracy.

63 (b) Investigate and prosecute any crime enumerated in
64 subparagraphs (a)1.-14. ~~(a)1.-12.~~ facilitated by or connected to
65 the use of the Internet. Any such crime is a crime occurring in
66 every judicial circuit within the state.

67 Section 2. Subsection (4), paragraph (a) of subsection
68 (13), and subsection (23) of section 517.021, Florida Statutes,
69 are amended to read:

70 517.021 Definitions.—When used in this chapter, unless the



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71 context otherwise indicates, the following terms have the
72 following respective meanings:

73 (4) "Branch office" means any location in this state of a
74 dealer or investment adviser at which one or more associated
75 persons regularly conduct the business of rendering investment
76 advice or effecting any transactions in, or inducing or
77 attempting to induce the purchase or sale of, any security or
78 any location that is held out as such. The commission may adopt
79 by rule exceptions to this definition for dealers in order to
80 maintain consistency with the definition of a branch office used
81 by self-regulatory organizations authorized by the Securities
82 and Exchange Commission, including, but not limited to, the
83 Financial Industry Regulatory Authority ~~National Association of~~
84 ~~Securities Dealers or the New York Stock Exchange~~. The
85 commission may adopt by rule exceptions to this definition for
86 investment advisers.

87 (13) (a) "Investment adviser" includes any person who
88 receives for compensation, directly or indirectly, and engages
89 for all or part of her or his time, directly or indirectly, or
90 through publications or writings, in the business of advising
91 others as to the value of securities or as to the advisability
92 of investments in, purchasing of, or selling of securities,
93 except a dealer whose performance of these services is solely
94 incidental to the conduct of her or his business as a dealer and
95 who receives no special compensation for such services.

96 (23) "Viatical settlement investment" means an agreement
97 for the purchase, sale, assignment, transfer, devise, or bequest
98 of all or any portion of a legal or equitable interest in a
99 viaticated policy as defined in chapter 626. ~~The term does not~~



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100 ~~include:~~

101 ~~(a) The transfer or assignment of an interest in a~~
102 ~~previously viaticated policy from a natural person who transfers~~
103 ~~or assigns no more than one such interest in 1 calendar year.~~

104 ~~(b) The provision of stop-loss coverage to a viatical~~
105 ~~settlement provider, financing entity, or related provider~~
106 ~~trust, as those terms are defined in s. 626.9911, by an~~
107 ~~authorized or eligible insurer.~~

108 ~~(c) The transfer or assignment of a viaticated policy from~~
109 ~~a licensed viatical settlement provider to another licensed~~
110 ~~viatical settlement provider, a related provider trust, a~~
111 ~~financing entity, or a special purpose entity, as those terms~~
112 ~~are defined in s. 626.9911, or to a contingency insurer provided~~
113 ~~that such transfer or assignment is not the direct or indirect~~
114 ~~promotion of any scheme or enterprise with the intent of~~
115 ~~violating or evading any provision of this chapter.~~

116 ~~(d) The transfer or assignment of a viaticated policy to a~~
117 ~~bank, trust company, savings institution, insurance company,~~
118 ~~dealer, investment company as defined in the Investment Company~~
119 ~~Act of 1940, pension or profit-sharing trust, or qualified~~
120 ~~institutional buyer as defined in United States Securities and~~
121 ~~Exchange Commission Rule 144A, 17 C.F.R. s. 230.144A(a), or to~~
122 ~~an accredited investor as defined by Rule 501 of Regulation D of~~
123 ~~the Securities Act Rules, provided such transfer or assignment~~
124 ~~is not for the direct or indirect promotion of any scheme or~~
125 ~~enterprise with the intent of violating or evading any provision~~
126 ~~of this chapter.~~

127 ~~(e) The transfer or assignment of a viaticated policy by a~~
128 ~~conservator of a viatical settlement provider appointed by a~~



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129 ~~court of competent jurisdiction who transfers or assigns~~
130 ~~ownership of viaticated policies pursuant to that court's order.~~

131 Section 3. Section 517.072, Florida Statutes, is amended to
132 read:

133 517.072 Viatical settlement investments.—

134 (1) The exemptions provided for by ss. 517.051(6), (8), and
135 (10) do not apply to a viatical settlement investment.

136 (2) The offering of a viatical settlement investment is not
137 an exempt transaction under s. 517.061(2), (3), (8), (11), and
138 (18), regardless of whether the offering otherwise complies with
139 the conditions of that section, unless such offering is to a
140 qualified institutional buyer.

141 (3) The registration provisions of ss. 517.07 and 517.12 do
142 not apply to any of the following transactions in viatical
143 settlement investments; however, such transactions in viatical
144 settlement investments are subject to the provisions of ss.
145 517.301, 517.311, and 517.312:

146 (a) The transfer or assignment of an interest in a
147 previously viaticated policy from a natural person who transfers
148 or assigns no more than one such interest in a single calendar
149 year.

150 (b) The provision of stop-loss coverage to a viatical
151 settlement provider, financing entity, or related provider
152 trust, as those terms are defined in s. 626.9911, by an
153 authorized or eligible insurer.

154 (c) The transfer or assignment of a viaticated policy from
155 a licensed viatical settlement provider to another licensed
156 viatical settlement provider, a related provider trust, a
157 financing entity, or a special purpose entity, as those terms



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158 are defined in s. 626.9911, or to a contingency insurer,
159 provided such transfer or assignment is not the direct or
160 indirect promotion of any scheme or enterprise with the intent
161 of violating or evading any provision of this chapter.

162 (d) The transfer or assignment of a viaticated policy to a
163 bank, trust company, savings institution, insurance company,
164 dealer, investment company as defined in the Investment Company
165 Act of 1940, pension or profit-sharing trust, or qualified
166 institutional buyer as defined in United States Securities and
167 Exchange Commission Rule 144A, 17 C.F.R. s. 230.144A(a), or to
168 an accredited investor as defined by Rule 501 of Regulation D of
169 the Securities Act Rules, provided such transfer or assignment
170 is not for the direct or indirect promotion of any scheme or
171 enterprise with the intent of violating or evading any provision
172 of this chapter.

173 (e) The transfer or assignment of a viaticated policy by a
174 conservator of a viatical settlement provider appointed by a
175 court of competent jurisdiction who transfers or assigns
176 ownership of viaticated policies pursuant to that court's order.

177 Section 4. Subsections (7), (8), and (11) and paragraph (b)
178 of subsection (15) of section 517.12, Florida Statutes, are
179 amended to read:

180 517.12 Registration of dealers, associated persons,
181 investment advisers, and branch offices.—

182 (7) The application shall also contain such information as
183 the commission or office may require about the applicant; any
184 ~~partner, officer~~ member, principal, or director of the applicant
185 or any person having a similar status or performing similar
186 functions; any person directly or indirectly controlling the



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187 applicant; or any employee of a dealer or of an investment
188 adviser rendering investment advisory services. Each applicant,
189 and any direct owners, principals, or indirect owners as
190 required to be reported on Forms BD or ADV, as referenced in
191 subsection 15, shall file a complete set of fingerprints. A
192 fingerprint card submitted to the office must be taken by an
193 authorized law enforcement agency or in a manner approved by
194 commission rule. The office shall submit the fingerprints to the
195 Department of Law Enforcement for state processing, and the
196 Department of Law Enforcement shall forward the fingerprints to
197 the Federal Bureau of Investigation for federal processing. The
198 cost of the fingerprint processing may be borne by the office,
199 the employer, or the person subject to the background check. The
200 Department of Law Enforcement shall submit an invoice to the
201 office for the fingerprints received each month. The office
202 shall screen the background results to determine if the
203 applicant meets licensure requirements. The commission may
204 waive, by rule, the requirement that applicants, including any
205 direct owners, principals, or indirect owners as required to be
206 reported on Forms BD or ADV, as referenced in subsection 15,
207 ~~must~~ file a set of fingerprints or the requirement that such
208 fingerprints ~~must~~ be processed by the Department of Law
209 Enforcement or the Federal Bureau of Investigation. The
210 commission or office may require information about any such
211 applicant or person concerning such matters as:

212 (a) His or her full name, and any other names by which he
213 or she may have been known, and his or her age, social security
214 number, photograph, qualifications, and educational and business
215 history.



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216 (b) Any injunction or administrative order by a state or
217 federal agency, national securities exchange, or national
218 securities association involving a security or any aspect of the
219 securities business and any injunction or administrative order
220 by a state or federal agency regulating banking, insurance,
221 finance, or small loan companies, real estate, mortgage brokers,
222 or other related or similar industries, which injunctions or
223 administrative orders relate to such person.

224 (c) His or her conviction of, or plea of nolo contendere
225 to, a criminal offense or his or her commission of any acts
226 which would be grounds for refusal of an application under s.
227 517.161.

228 (d) The names and addresses of other persons of whom the
229 office may inquire as to his or her character, reputation, and
230 financial responsibility.

231 (8) The commission or office may require the applicant or
232 one or more principals or general partners, or natural persons
233 exercising similar functions, or any associated person applicant
234 to successfully pass oral or written examinations. Because any
235 principal, manager, supervisor, or person exercising similar
236 functions shall be responsible for the acts of the associated
237 persons affiliated with a dealer ~~or investment adviser~~, the
238 examination standards may be higher for a dealer, office
239 manager, principal, or person exercising similar functions than
240 for a nonsupervisory associated person. The commission may waive
241 the examination process when it determines that such
242 examinations are not in the public interest. The office shall
243 waive the examination requirements for any person who has passed
244 any tests as prescribed in s. 15(b)(7) of the Securities



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245 Exchange Act of 1934 that relates to the position to be filled
246 by the applicant.

247 (11) If the office finds that the applicant is of good
248 repute and character and has complied with the provisions of
249 this chapter and the rules made pursuant hereto, it shall
250 register the applicant. The registration of each dealer,
251 investment adviser, branch office, and associated person expires
252 on December 31 of the year the registration became effective
253 unless the registrant has renewed his or her registration on or
254 before that date. The commission may establish by rule
255 procedures for renewing the registration of a branch office
256 through the Central Registration Depository. Registration may be
257 renewed by furnishing such information as the commission may
258 require, together with payment of the fee required in subsection
259 (10) for dealers, investment advisers, associated persons, or
260 branch offices and the payment of any amount lawfully due and
261 owing to the office pursuant to any order of the office or
262 pursuant to any agreement with the office. Any dealer,
263 investment adviser, ~~or~~ associated person, or branch office
264 registrant who has not renewed a registration by the time the
265 current registration expires may request reinstatement of such
266 registration by filing with the office, on or before January 31
267 of the year following the year of expiration, such information
268 as may be required by the commission, together with payment of
269 the fee required in subsection (10) for dealers, investment
270 advisers, ~~or~~ associated persons, or branch office and a late fee
271 equal to the amount of such fee. Any reinstatement of
272 registration granted by the office during the month of January
273 shall be deemed effective retroactive to January 1 of that year.



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274 (15)

275 (b) In lieu of filing with the office the applications
276 specified in subsection (6), the fees required by subsection
277 (10), the renewals required by subsection (11), and the
278 termination notices required by subsection (12), the commission
279 may by rule establish procedures for the deposit of such fees
280 and documents with the Central Registration Depository or the
281 Investment Adviser Registration Depository of the Financial
282 Industry Regulatory Authority ~~National Association of Securities~~
283 ~~Dealers, Inc.~~, as developed under contract with the North
284 American Securities Administrators Association, Inc.

285 Section 5. Subsection (3) is added to section 517.121,
286 Florida Statutes, to read:

287 517.121 Books and records requirements; examinations.—

288 (3) Registration under s. 517.12 may be summarily suspended
289 by the office pursuant to s. 120.60(6) if the registrant fails
290 to promptly provide to the office, after a written request, any
291 of the records required by this section and the rules adopted
292 under this section. The suspension may be rescinded if the
293 registrant submits the requested records to the office. For
294 purposes of s. 120.60(6), failure to provide substantially all
295 such records constitutes immediate and serious danger to the
296 public health, safety, and welfare.

297 Section 6. Subsection (2) of section 517.1215, Florida
298 Statutes, is amended to read:

299 517.1215 Requirements, rules of conduct, and prohibited
300 business practices for investment advisors and their associated
301 persons.—

302 (2) The commission shall by rule establish rules of conduct



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303 and prohibited business practices for investment advisers and
304 their associated persons. In adopting the rules, the commission
305 shall consider general industry standards as expressed in the
306 rules and regulations of the various federal and self-regulatory
307 agencies and regulatory associations, including, but not limited
308 to, the United States Securities and Exchange Commission, the
309 Financial Industry Regulatory Authority ~~National Association of~~
310 ~~Securities Dealers~~, and the North American Securities
311 Administrators Association.

312 Section 7. Section 517.1217, Florida Statutes, is amended
313 to read:

314 517.1217 Rules of conduct and prohibited business practices
315 for dealers and their associated persons.—The commission by rule
316 may establish rules of conduct and prohibited business practices
317 for dealers and their associated persons. In adopting the rules,
318 the commission shall consider general industry standards as
319 expressed in the rules and regulations of the various federal
320 and self-regulatory agencies and regulatory associations,
321 including, but not limited to, the United States Securities and
322 Exchange Commission, the Financial Industry Regulatory Authority
323 ~~National Association of Securities Dealers~~, and the North
324 American Securities Administrators Association.

325 Section 8. Subsection (1) of section 517.141, Florida
326 Statutes, is amended to read:

327 517.141 Payment from the fund.—

328 (1) Any person who meets all of the conditions prescribed
329 in s. 517.131 may apply to the office for payment to be made to
330 such person from the Securities Guaranty Fund in the amount
331 equal to the unsatisfied portion of such person's judgment or



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332 \$10,000, whichever is less, but only to the extent and amount
333 reflected in the judgment as being actual or compensatory
334 damages, excluding postjudgment interest, costs, and attorney's
335 fees.

336 Section 9. Subsections (1) and (6) of section 517.161,
337 Florida Statutes, are amended to read:

338 517.161 Revocation, denial, or suspension of registration
339 of dealer, investment adviser, associated person, or branch
340 office.—

341 (1) Registration under s. 517.12 may be denied or any
342 registration granted may be revoked, restricted, or suspended by
343 the office if the office determines that such applicant or
344 registrant or any member, principal, or director of the
345 applicant or registrant, any person having a similar status or
346 performing similar functions, or any person directly or
347 indirectly controlling the applicant or registrant:

348 (a) Has violated any provision of this chapter or any rule
349 or order made under this chapter;

350 (b) Has made a material false statement in the application
351 for registration;

352 (c) Has been guilty of a fraudulent act in connection with
353 rendering investment advice or in connection with any sale of
354 securities, has been or is engaged or is about to engage in
355 making fictitious or pretended sales or purchases of any such
356 securities or in any practice involving the rendering of
357 investment advice or the sale of securities which is fraudulent
358 or in violation of the law;

359 (d) Has made a misrepresentation or false statement to, or
360 concealed any essential or material fact from, any person in the



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361 rendering of investment advice or the sale of a security to such
362 person;

363 (e) Has failed to account to persons interested for all
364 money and property received;

365 (f) Has not delivered, after a reasonable time, to persons
366 entitled thereto securities held or agreed to be delivered by
367 the dealer, broker, or investment adviser, as and when paid for,
368 and due to be delivered;

369 (g) Is rendering investment advice or selling or offering
370 for sale securities through any associated person not registered
371 in compliance with the provisions of this chapter;

372 (h) Has demonstrated unworthiness to transact the business
373 of dealer, investment adviser, or associated person;

374 (i) Has exercised management or policy control over or
375 owned 10 percent or more of the securities of any dealer or
376 investment adviser that has been declared bankrupt, or had a
377 trustee appointed under the Securities Investor Protection Act;
378 or is, in the case of a dealer or investment adviser, insolvent;

379 (j) Has been convicted of, or has entered a plea of guilty
380 or nolo contendere to, regardless of whether adjudication was
381 withheld, a crime against the laws of this state or any other
382 state or of the United States or of any other country or
383 government which relates to registration as a dealer, investment
384 adviser, issuer of securities, associated person, or branch
385 office; which relates to the application for such registration;
386 or which involves moral turpitude or fraudulent or dishonest
387 dealing;

388 (k) Has had a final judgment entered against her or him in
389 a civil action upon grounds of fraud, embezzlement,



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390 misrepresentation, or deceit;
391 (1) Is of bad business repute;
392 (m) Has been the subject of any decision, finding,
393 injunction, suspension, prohibition, revocation, denial,
394 judgment, or administrative order by any court of competent
395 jurisdiction, administrative law judge, or by any state or
396 federal agency, national securities, commodities, or option
397 exchange, or national securities, commodities, or option
398 association, involving a violation of any federal or state
399 securities or commodities law or any rule or regulation
400 promulgated thereunder, or any rule or regulation of any
401 national securities, commodities, or options exchange or
402 national securities, commodities, or options association, or has
403 been the subject of any injunction or adverse administrative
404 order by a state or federal agency regulating banking,
405 insurance, finance or small loan companies, real estate,
406 mortgage brokers or lenders, money transmitters, or other
407 related or similar industries. For purposes of this subsection,
408 the office may not deny registration to any applicant who has
409 been continuously registered with the office for 5 years after
410 ~~from~~ the date of entry of such decision, finding, injunction,
411 suspension, prohibition, revocation, denial, judgment, or
412 administrative order provided such decision, finding,
413 injunction, suspension, prohibition, revocation, denial,
414 judgment, or administrative order has been timely reported to
415 the office pursuant to the commission's rules; or
416 (n) Made payment to the office for a registration or notice
417 filing with a check or electronic transmission of funds that is
418 dishonored by the applicant's, registrant's, or notice filer's



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419 financial institution.

420 (6) Registration under s. 517.12 may be denied or any
421 registration granted may be suspended or restricted if an
422 applicant or registrant is charged, in a pending enforcement
423 action or pending criminal prosecution, with any conduct that
424 would authorize denial or revocation under subsection (1).
425 Registration under s. 517.12 may be suspended or restricted if a
426 registrant is arrested for any conduct that would authorize
427 revocation under subsection (1).

428 (a) Any denial of registration ordered under this
429 subsection shall be without prejudice to the applicant's ability
430 to reapply for registration.

431 (b) Any order of suspension or restriction under this
432 subsection shall:

433 1. Take effect only after a hearing, unless no hearing is
434 requested by the registrant or unless the suspension or
435 restriction is made in accordance with s. 120.60(6).

436 2. Contain a finding that evidence of a prima facie case
437 supports the charge made in the enforcement action or criminal
438 prosecution.

439 3. Operate for no longer than 10 days beyond receipt of
440 notice by the office of termination with respect to the
441 registrant of the enforcement action or criminal prosecution.

442 (c) For purposes of this subsection:

443 1. The term "enforcement action" means any judicial
444 proceeding or any administrative proceeding where such judicial
445 or administrative proceeding is brought by an agency of the
446 United States or of any state to enforce or restrain violation
447 of any state or federal law, or any disciplinary proceeding



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448 maintained by the Financial Industry Regulatory Authority
449 ~~National Association of Securities Dealers~~, the National Futures
450 Association, ~~the New York Stock Exchange~~, or any other similar
451 self-regulatory organization.

452 2. An enforcement action is pending at any time after
453 notice to the applicant or registrant of such action and is
454 terminated at any time after entry of final judgment or decree
455 in the case of judicial proceedings, final agency action in the
456 case of administrative proceedings, and final disposition by a
457 self-regulatory organization in the case of disciplinary
458 proceedings.

459 3. A criminal prosecution is pending at any time after
460 criminal charges are filed and is terminated at any time after
461 conviction, acquittal, or dismissal.

462 Section 10. Section 517.1611, Florida Statutes, is created
463 to read:

464 517.1611 Guidelines.—

465 (1) The commission shall adopt by rule disciplinary
466 guidelines applicable to each ground for disciplinary action
467 that may be imposed by the office.

468 (a) The disciplinary guidelines shall specify a range of
469 penalties based upon the severity and repetition of specific
470 offenses. The disciplinary guidelines shall distinguish minor
471 violations from violations that endanger the public health,
472 safety, or welfare; provide reasonable notice to the public of
473 penalties that may be imposed for proscribed conduct; and ensure
474 that penalties are imposed in a consistent manner by the office.

475 (b) The commission shall identify mitigating and
476 aggravating circumstances by rule that allow the office to



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477 impose a penalty other than that specified in the guidelines.

478 (2) The commission shall adopt by rule disqualifying
479 periods pursuant to which an applicant will be disqualified from
480 eligibility for registration based upon criminal convictions,
481 pleas of nolo contendere, or pleas of guilt, regardless of
482 whether adjudication was withheld, by the applicant; any
483 partner, member, officer, or director of the applicant or any
484 person having a similar status or performing similar functions;
485 or any person directly or indirectly controlling the applicant.

486 (a) The disqualifying periods shall be 15 years for a
487 felony and 5 years for a misdemeanor.

488 (b) The disqualifying periods shall be related to crimes
489 involving registration as a dealer, investment adviser, issuer
490 of securities, associated person, or branch office or the
491 application for such registration or involving moral turpitude
492 or fraudulent or dishonest dealing.

493 (c) The rules may also address mitigating factors, an
494 additional waiting period based upon dates of imprisonment or
495 community supervision, an additional waiting period based upon
496 commitment of multiple crimes, and other factors reasonably
497 related to the consideration of an applicant's criminal history.

498 (d) An applicant is not eligible for registration until the
499 expiration of the disqualifying period set by rule. Section
500 112.011 does not apply to the registration provisions under this
501 chapter. Nothing in this section changes or amends the grounds
502 for denial under s. 517.161.

503 Section 11. Subsection (3) of section 517.191, Florida
504 Statutes, is amended, and subsections (4), (5), (6), and (7) are
505 added to that section, to read:



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506 517.191 Injunction to restrain violations; civil penalties;
507 enforcement by Attorney General.—

508 (3) In addition to, or in lieu of, any other remedies
509 provided by this chapter, the office may apply to the court
510 hearing this matter for an order directing the defendant ~~of~~
511 ~~restitution whereby the defendants in such action shall be~~
512 ~~ordered~~ to make restitution of those sums shown by the office to
513 have been obtained ~~by them~~ in violation of any of the provisions
514 of this chapter. The office has standing to request such
515 restitution on behalf of victims in cases brought by the office
516 under this chapter, regardless of the appointment of an
517 administrator or receiver under subsection (2) or an injunction
518 under subsection (1). Further, such restitution shall, at the
519 option of the court, be payable to the administrator or receiver
520 appointed pursuant to this section or directly to the persons
521 whose assets were obtained in violation of this chapter.

522 (4) In addition to any other remedies provided by this
523 chapter, the office may apply to the court hearing the matter
524 for, and the court shall have jurisdiction to impose, a civil
525 penalty against any person found to have violated any provision
526 of this chapter, any rule or order adopted by the commission or
527 office, or any written agreement entered into with the office in
528 an amount not to exceed \$10,000 for a natural person or \$25,000
529 for any other person, or the gross amount of any pecuniary gain
530 to such defendant for each such violation other than a violation
531 of s. 517.301 plus \$50,000 for a natural person or \$250,000 for
532 any other person, or the gross amount of any pecuniary gain to
533 such defendant for each violation of s. 517.301. All civil
534 penalties collected pursuant to this subsection shall be



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535 deposited into the Anti-Fraud Trust Fund.

536 (5) In addition to all other means provided by law for
537 enforcing any of the provisions of this chapter, when the
538 Attorney General, upon complaint or otherwise, has reason to
539 believe that a person has engaged or is engaged in any act or
540 practice constituting a violation of s. 517.275, s. 517.301, s.
541 517.311, or s. 517.312, or any rule or order issued under such
542 sections, the Attorney General may investigate and bring an
543 action to enforce these provisions as provided in ss. 517.201,
544 517.2015, and 517.171 after receiving written approval from the
545 office. Such an action may be brought against such person and
546 any other person in any way participating in such act or
547 practice or engaging in such act or practice or doing any act in
548 furtherance of such act or practice, to obtain injunctive
549 relief, restitution, civil penalties, and any remedies described
550 in this section. The Attorney General may recover any costs and
551 attorney fees related to the Attorney General's investigation or
552 enforcement of this section. Notwithstanding any other provision
553 of law, moneys recovered by the Attorney General for costs,
554 attorney fees, and civil penalties for a violation of s.
555 517.275, s. 517.301, s. 517.311, or s. 517.312, or any rule or
556 order issued pursuant to those sections, shall be deposited in
557 the Legal Affairs Revolving Trust Fund, which may be used to
558 investigate and enforce this section.

559 (6) This section does not limit the authority of the office
560 to bring an administrative action against any person who is the
561 subject of a civil action brought pursuant to this section or
562 limit the authority of the office to engage in investigations or
563 enforcement actions with the Attorney General. A person may not



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564 be subject to both a civil penalty under s. 517.191(4) and an
565 administrative fine under s. 517.221(3) as the result of the
566 same facts.

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

574 Section 12. Subsection (3) of section 517.221, Florida
575 Statutes, is amended, and subsection (4) is added to that
576 section, to read:

577 517.221 Cease and desist orders.-

578 (3) The office may impose and collect an administrative
579 fine against any person found to have violated any provision of
580 this chapter, any rule or order promulgated by the commission or
581 office, or any written agreement entered into with the office in
582 an amount not to exceed \$10,000 ~~\$5,000~~ for each such violation.
583 All fines collected hereunder shall be deposited as received in
584 the Anti-Fraud Trust Fund.

585 (4) The office may bar, permanently or for a specified
586 period, any person found to have violated any provision of this
587 chapter, any rule or order adopted by the commission or office,
588 or any written agreement entered into with the office from
589 submitting an application or notification for a license or
590 registration with the office.

591 Section 13. Section 517.275, Florida Statutes, is amended
592 to read:



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593 517.275 Commodities; prohibited practices.—It is unlawful
594 and a violation of this chapter for any person to engage in any
595 act or practice in or from this state, which act or practice
596 constitutes a violation of any provision of the Commodity
597 Exchange Act, 7 U.S.C. ss. 1 et seq., as amended, or the rules
598 and regulations of the Commodity Futures Trading Commission
599 adopted under that act as amended ~~upon the effective date of~~
600 ~~this act.~~

601 Section 14. Section 896.108, Florida Statutes, is created
602 to read:

603 896.108 Rewards for private entities combating
604 international money laundering.—

605 (1) The Department of Law Enforcement, when conducting any
606 investigation of a violation of this chapter, may enter into
607 agreements and pay a reward to any individual or entity who
608 provides original information that leads to a recovery of a
609 criminal fine, civil penalty, or forfeiture based in whole or in
610 part upon a violation of federal law or the laws of this state.

611 (2) The executive director of the Department of Law
612 Enforcement shall determine the amount of a reward under this
613 section. The executive director, with written approval of the
614 Office of the Attorney General, may exceed the limits of rewards
615 provided in s. 896.107 if the criminal fine, civil penalty, or
616 forfeiture amount received by the state warrants an upward
617 departure from such limits. Notwithstanding any other provision
618 of law, rewards paid under this section may be paid only from
619 seized assets awarded by the court. Funds seized by the
620 Department of Law Enforcement pursuant to this chapter shall be
621 placed in the Department's Forfeiture and Investigative Support



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622 Trust Fund established in s. 943.362, or for funds secured
623 through the federal forfeiture actions in the Federal Law
624 Enforcement Trust Fund established in s. 943.365, excluding any
625 rewards paid as provided herein.

626 (3) An officer or employee of the Federal government, a
627 state or local government, or a foreign government who in the
628 performance of official duties provides information described in
629 subsection (1) is not eligible for a reward under this section.

630 (4) Payment of a reward does not affect the admissibility
631 of testimony in any court proceeding.

632 Section 15. Subsection (9) of section 905.34, Florida
633 Statutes, is amended, and subsections (11) and (12) are added to
634 that section, to read:

635 905.34 Powers and duties; law applicable.—The jurisdiction
636 of a statewide grand jury impaneled under this chapter shall
637 extend throughout the state. The subject matter jurisdiction of
638 the statewide grand jury shall be limited to the offenses of:

639 (9) Any criminal violation of part I of chapter 499; ~~or~~

640 (11) Any criminal violation of the Florida Money Laundering
641 Act; or

642 (12) Any criminal violation of the Florida Securities and
643 Investor Protection Act;

644
645 or any attempt, solicitation, or conspiracy to commit any
646 violation of the crimes specifically enumerated above, when any
647 such offense is occurring, or has occurred, in two or more
648 judicial circuits as part of a related transaction or when any
649 such offense is connected with an organized criminal conspiracy
650 affecting two or more judicial circuits. The statewide grand



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651 jury may return indictments and presentments irrespective of the
652 county or judicial circuit where the offense is committed or
653 triable. If an indictment is returned, it shall be certified and
654 transferred for trial to the county where the offense was
655 committed. The powers and duties of, and law applicable to,
656 county grand juries shall apply to a statewide grand jury except
657 when such powers, duties, and law are inconsistent with the
658 provisions of ss. 905.31-905.40.

659 Section 16. This act shall take effect July 1, 2009.

660

661 ===== T I T L E A M E N D M E N T =====

662 And the title is amended as follows:

663 Delete everything before the enacting clause
664 and insert:

665 A bill to be entitled
666 An act relating to investor protection; amending s.
667 16.56, F.S.; expanding the jurisdiction of the Office
668 of Statewide Prosecution to investigate and prosecute
669 certain additional offenses; requiring that certain
670 charging documents contain certain information;
671 amending s. 517.021, F.S.; clarifying the definition
672 of the terms "branch office" and "investment adviser";
673 expanding the definition of "viatical settlement
674 investment" by deleting provisions listing items
675 exempt from the scope of the term; amending s.
676 517.072, F.S.; exempting certain transactions
677 involving viatical settlement investments from certain
678 registration requirements; specifying applicability of
679 certain provisions of state law; amending s. 517.12,



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680 F.S.; revising requirements for registration of
681 dealers, associated persons, investment advisers, and
682 branch offices; authorizing the Financial Services
683 Commission to waive certain requirements by rule;
684 changing an agency reference; amending s. 517.121,
685 F.S.; authorizing the Office of Financial Regulation
686 to suspend registration if a registrant fails to
687 provide certain records; authorizing the office to
688 rescind suspensions under certain circumstances;
689 providing that certain actions constitute an immediate
690 and serious danger to the public safety, health, and
691 welfare; amending ss. 517.1215 and 517.1217, F.S.;
692 changing an agency reference; amending s. 517.141,
693 F.S.; excluding postjudgment interest from payments
694 made from the Securities Guaranty Fund; amending s.
695 517.161, F.S.; expanding the class of persons related
696 to or associated with an applicant or registrant for
697 which certain violations may result in adverse actions
698 taken against registrations; authorizing the office to
699 suspend a registration under certain circumstances;
700 creating s. 517.1611, F.S.; requiring that the
701 Financial Services Commission adopt certain
702 disciplinary guidelines by rule; providing
703 requirements for such guidelines; requiring that the
704 commission adopt rules identifying certain mitigating
705 and aggravating circumstances and rules for
706 disqualifying registrants for certain periods for
707 certain criminal actions; providing criteria for such
708 rules; amending s. 517.191, F.S.; authorizing the



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709 office to apply to the court for orders directing
710 restitution in addition to or in lieu of other
711 remedies available pursuant to state law; providing
712 the office with standing in certain matters;
713 authorizing the office to apply to the court to impose
714 civil penalties for certain violations; limiting the
715 amount of such penalties; requiring that moneys
716 collected from the imposition of such penalties be
717 deposited into the Anti-Fraud Trust Fund; authorizing
718 the Attorney General, with approval of the office, to
719 investigate and enforce certain provisions of state
720 law; authorizing the Attorney General to bring certain
721 actions for injunctive relief; authorizing the
722 Attorney General to recover certain investigation and
723 enforcement costs and attorney's fees; requiring that
724 certain recovered moneys be deposited into the Legal
725 Affairs Revolving Trust Fund; preserving the authority
726 of the office to bring an administrative action in
727 certain circumstances; prohibiting a person from being
728 subject to both an administrative fine and a civil
729 penalty; amending s. 517.221, F.S.; increasing the
730 amount of certain administrative fines; authorizing
731 the office to bar certain persons from submitting
732 applications or notifications for a license or
733 registration under certain circumstances; amending s.
734 517.275, F.S.; clarifying a reference to applicable
735 federal law; amending s. 896.108, F.S.; authorizing
736 the Department of Law Enforcement to enter into
737 agreements and pay a reward to any individual or



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738 entity who provides certain original information;
739 requiring that the executive director of the
740 department determine the amount of a reward;
741 authorizing the executive director to exceed statutory
742 limitations for rewards under certain circumstances;
743 requiring that rewards be paid only from seized
744 assets; providing for the holding of seized and
745 forfeited funds; providing that certain persons are
746 not eligible for a reward; providing that payment of a
747 reward does not affect the admissibility of testimony
748 in any court proceeding; amending s. 905.34, F.S.;
749 expanding subject matter jurisdiction of the statewide
750 grand jury to include certain additional offenses;
751 providing an effective date.