The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Banking and Insurance

BILL:	SB 532
INTRODUCER:	Senator Brodeur
SUBJECT:	Securities
DATE:	January 12, 2024
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Knudson	BI	**Pre-meeting**
2.			AEG	
3.			FP	

I. Summary:

SB 532 substantially revises ch. 517, F.S., the "Securities and Investor Protection Act" (Act). The Office of Financial Regulation (OFR) is responsible for administering the provisions of this chapter. The bill is based on the recommendations contained in the report issued by the Chapter 517 Task Force of the Business Law Section of The Florida Bar in coordination with the OFR.[1] The impetus for the task force is to increase the ability of small and developing Florida businesses to raise capital, while at the same time assuring and improving investor protections and enforcement measures to guard against abuse.[2] Since ch. 517, F.S., has not been substantially updated in many years, the SB also incorporates many small business financing provisions consistent with recently adopted federal rules or legislation adopted in other states. The SB includes the following changes:

Investor Protections

- Revises eligibility and recovery provisions relating to the Securities Guaranty Fund (Fund), which was created to provide relief to victims of securities violations under ch. 517, F.S., who are entitled to monetary damages or restitution but cannot recover the full amount of such damages or restitution from the wrongdoer.
  - The bill removes a requirement that an investor who has received a final judgement that is unsatisfied must make searches and inquires to ascertain the assets of the judgment debtor, which may result in delays. Further, the bill removes a two year waiting period for payment.
    - The bill increases the amount an eligible person may recover from the Fund from $10,000 to $15,000, adds an exception allowing recovery of up to $25,000 if the

[1] 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 (Nov. 2023). The report is on file with the Florida Senate Committee on Banking and Insurance staff.

[2] *Id.*

person is a specified vulnerable or older adult, and increasing the aggregate limit on claims from $100,000 to $250,000.

- Eliminates a registration exemption for short-term notes of $25,000 or more, which have a maturity date of nine months or less. This type of offering is often the subject of abusive efforts by persons trying to evade registration requirements through the issuance of short-term notes to non-accredited investors. There is no comparable provision in the Uniform Securities Act and currently such notes cannot be sold under federal exemptions that preempt state registration.
- Excludes certain industrial revenue bonds and commercial development bonds issued by the United States or a state or local government from a registration exemption unless the bonds are guaranteed by a publicly traded entity. This exclusion is based on the increased risk to investors under such bonds, which depend upon revenue streams for their funding.
- Requires a person who has six or more clients, rather than 15 or more clients, to register with the OFR as an investment adviser.

Access to Capital Formation and Investment Options

- Revises the regulatory provisions relating to the intrastate crowdfunding exemption. These changes include increasing the maximum offering limit from $1 million to $5 million, which is consistent with the federal crowdfunding rules and reducing the technical and regulatory requirements for issuers.
- Creates the "Florida Invest Local Exemption," a micro-offering exemption that allows an issuer to offer up to $500,000 in securities to residents of Florida in reliance upon the exemption. An issuer may not accept more than $10,000 from any single purchaser, unless the purchaser is an accredited investor or other specified group, for which there are no sale limits. The issuer may engage in general advertising and general solicitation of the offering.
- Revises the limited offering exemption to require a disclosure regarding a purchaser's right of void the transaction within three days from the date of purchase, and to allow additional eligible purchasers that would be excluded for purposes of the 35 purchaser limit, consistent with the Securities and Exchange Commission rules.
- Creates an exemption for a nonissuer transaction with a federal covered adviser managing investments in excess of $100 million, which is consistent with the provisions of the Uniform Securities Act.

Modernization of Chapter 517, F.S.

- Adopts provisions consistent with federal rules that allow issuers to have greater access to potential investors through "demo-day" presentations and the pre-offering "testing the waters" solicitations and communications, which allows an issuer to determine whether there is any interest in a contemplated offering of exempt securities prior to incurring the expense of preparing and conducting an offering.
- Eliminates the requirement that issuers of simplified securities offerings that use the Small Company Offering Registration (SCOR) must submit annual financial reports for five years.
- Adopts provisions consistent with the integration of offering federal rule that provides offers and sales of securities 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 the Securities Act of 1933, or that an exemption from registration is available for the particular offering.
- Adopts an exemption for accredited investors, which is consistent with the North American Securities Administrators Association accredited investor exemption model. The provision exempts offers and sales from registration if the offers and sales are made only to persons in Florida who are, or the issuer reasonably believes are, accredited investors. This exemption is an important option for small businesses attempting to raise capital.
- Clarifies, consolidates, and reorganizes provisions within ch. 517, F.S., and adopts provisions consistent with the Uniform Securities Act.

State Enforcement Authority

- Authorizes the Attorney General to double the amount of fines from $10,000 to $20,000 in civil and administrative actions for securities violations targeting senior citizens, age 65 or older, and vulnerable adults.
- Increases the maximum civil and administrative penalties that can be assessed in an action by the Attorney General pursuant to s. 517.191, F.S., from $10,000 to $20,000.
- Establishes joint and several liability for any control person who is found to have violated any provision of the Act;
- Provides that a person who knowingly and recklessly provides substantial assistance to another person in violation of a provision of the Act is deemed to violate the provision to the same extent as the person to whom such assistance was provided;
- Allows OFR to issue and serve upon a person a cease and desist order if OFR has reason to believe the person violates any provision of the Act, as well as an emergency cease and desist order under certain circumstances; and
- Grants OFR the authority to impose and collect an administrative fine against any person found to have violated any provision of the Act, which must also be deposited into the Anti-Fraud Trust Fund.

The bill has no impact on local government and may have an insignificant, negative fiscal impact on state government.

II. Present Situation:

Federal Regulation of Securities

Securities Act of 1933

Following the stock market crash of 1929, the Securities Act of 1933[3] was enacted to regulate the offers and sales of securities. The Securities Act of 1933 requires that every offer and sale of securities be registered with the Securities and Exchange Commission (SEC), unless an exemption from registration is available. The Securities Act of 1933 requires issuers to disclose financial and other significant information regarding securities offered for public sale and prohibits deceit, misrepresentations, and other kinds of fraud in the sale of securities. The act

[3] Public Law 73-22, as amended through P.L. 117-268, enacted December 23, 2022.

requires issuers to disclose information deemed relevant to investors as part of the mandatory SEC registration of the securities that those companies offer for sale to the public.[4]

Registered securities offerings, often called public offerings, are available to all types of investors and have more rigorous disclosure requirements. Initial public offerings (IPOs) provide an initial pathway for companies to raise unlimited capital from the general public through a registered offering. After its IPO, the company will be a public company with ongoing public reporting requirements.[5]

By contrast, securities offerings that are exempt from SEC registration are referred to as private offerings and are mainly available to more sophisticated investors. The SEC exempts certain small offerings from registration requirements to foster capital formation by lowering the cost of offering securities to the public. Examples of exempt offerings[6] include:

- Rule 506(b) Private Placement Offerings allow companies to raise unlimited capital from investors with whom the company has a relationship and who meet certain wealth thresholds or have certain professional credentials.[7]
- Rule 506(c) of Regulation D. General Solicitation Offerings allow companies to raise unlimited capital by broadly soliciting investors who meet certain wealth thresholds or have certain professional credentials.[8]
- Rule 504 of Regulation D, Limited Offerings allow companies to raise up to $10 million in a 12-month period, in many cases from investors with whom the company has a relationship.[9]
- Regulation Crowdfunding offerings allow eligible companies to raise up to $5 million in investment capital in a 12-month period from investors via an online portal.[10]
- Intrastate offerings[11] allow companies to raise capital within a single state according to state law. Many states limit the offering to between $1 million and $5 million in a 12-month period.[12]
- Regulation A offerings allow eligible companies to raise up to $20 million in a 12-month period in a Tier I offering and up to $75 million through a similar, but less extensive registered offering.[13]

Securities and Exchange Act of 1934

The Securities and Exchange Act of 1934 created the SEC as an independent agency to enforce federal securities laws.[14] The SEC oversees federal securities laws[15] broadly aimed at protecting

[4] *Id.*
[5] SEC.gov | What does it mean to be a public company? (last visited Nov. 15, 2023).
[6] SEC.gov | The Laws That Govern the Securities Industry (last visited Sep. 5, 2023). Security offerings of municipal, state, and the federal government are exempt from registration.
[7] 17 C.F.R. s. 230.506(b).
[8] 17 C.F.R. s. 230.506(c).
[9] 17 C.F.R. s. 230.504.
[10] 17 C.F.R. s. 227.100. Florida's intrastate crowdfunding law, s. 517.0611, F.S., has not been updated since it was created to reflect to reflect the increase in the maximum offering from $1 million to $5 million pursuant to federal rules.
[11] Section (3)(a)(11) of the Securities Act of 1933, 17 C.F.R. s. 230.147 and 17 C.F.R. s. 230.147A
[12] SEC, Overview of Capital-Raising Exemptions, https://www.sec.gov/files/rules/final/2020/33-10884.pdf (last visited Sep. 19, 2023).
[13] 17 C.F.R. s. 230.251.
[14] Public Law 73-291, as amended through P.L. 117-328, enacted December 29, 2022.
[15] Section 15, Securities and Exchange Act of 1934.

investors; maintaining fair, orderly, and efficient markets; and facilitating capital formation.[16] The SEC has broad regulatory authority over significant parts of the securities industry, including stock exchanges, mutual funds, investment advisers, brokerage firms, as well as securities self-regulatory organizations (SROs), such as the Financial Industry Regulatory Authority, Inc. (FINRA).[17]

Federal Crowdfunding Regulations

The Jumpstart Our Business Startups Act (the "JOBS Act"),[18] establishes a regulatory structure for startups and small businesses to raise capital through exempt crowdfunded securities offerings using a funding portal.[19] Title III of the JOBS Act created a new registration exemption from federal securities law to permit the issuance, offer, and sale of up to $1 million of crowdfunding securities per year initially, subject to specified requirements for issuers and intermediaries, and is not limited to accredited investors. However, national or interstate equity crowdfunding under Title III was not permitted until the SEC implemented Title III by final rule, which was not completed until November 16, 2015.[20] In response to the delay, a number of states, including Florida, enacted intrastate crowdfunding exemptions, which combine some elements of Title III of JOBS with s. 3(a)(11) of the Securities Act of 1933.

The final rule, Regulation Crowdfunding,[21] implements the interstate crowdfunding provisions of the JOBS Act. The regulations permit individuals to invest in securities-based crowdfunding transactions subject to certain thresholds, limits the amount of money an issuer can raise under the crowdfunding exemption at $5 million, requires issuers to disclose certain information about their offers, and creates a regulatory framework for the intermediaries that facilitate the crowdfunding transactions. Transactions must be conducted through an intermediary that is registered as either a broker-dealer or a "funding portal."[22] The rules require intermediaries to:

- Provide investors with educational materials;
- Take measures to reduce the risk of fraud;
- Make available information about the issuer and the offering;
- Provide communication channels to permit discussions about offerings on the platform; and
- Facilitate the offer and sale of crowdfunded securities.[23]

In addition, Regulation Crowdfunding limits the amount a non-accredited, individual investor is allowed to invest in Regulation Crowdfunding offerings over the course of a 12-month period

[16] Securities and Exchange Commission, "What We Do," at SEC.gov | What We Do (last visited Nov. 15, 2023).
[17] National securities exchanges (e.g., the New York Stock Exchange) and clearing and settlement systems may register as SROs with the SEC or CFTC, making them subject to SEC or CFTC oversight. A list of self-regulatory organizations (SROs) registered with the SEC can be found at SEC.gov | Self-Regulatory Organization Rulemaking (last visited Nov. 15, 2023).
[18] Pub. L. 112-106, *126 Stat.* 306 (2012).
[19] Title III of the JOBS Act ("Title III") added new Securities Act Section 4(a)(6), which provides an exemption from the registration requirements of Securities Act Section 5. 15 U.S.C. 77e.
[20] 80 FR 71387.
[21] 17 CFR Part 200.
[22] 17 CFR Part 227.
[23] *Id.*

contingent upon the investor's net worth and annual income.[24] There are no investment limitation for accredited investors.[25]

Florida Regulation of Securities

The federal securities acts expressly allow for concurrent state regulation under blue sky laws,[26] which are designed to protect investors against fraudulent sales practices and activities. Most state laws typically require companies making offerings of securities to register their offerings before they can be sold in a particular state, unless a specific state exemption is available. The laws also license brokerage firms, their brokers, and investment adviser representatives.[27]

The Financial Services Commission is composed of the Governor, the Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture.[28] The commission members serve as agency head for purposes of rulemaking.[29] The Office of Financial Regulation (OFR) and the Office of Insurance Regulation are units under the commission, and each office is headed by a commissioner appointed by the commission.[30]

The scope of the OFR's jurisdiction includes the regulation and registration of the offer and sale of securities in, to, or from Florida by firms, branch offices, and individuals associated with these firms in accordance with the ch. 517, F.S.[31] The Division of Securities within the OFR is responsible for administering the Securities and Investor Protection Act (act). The act prohibits dealers, associated persons, and issuers from offering or selling securities in this state unless registered with the OFR or specifically exempted.[32] Additionally, all securities in Florida must be registered with the OFR unless they meet one of the exemptions in s. 517.051 or s. 517.061, F.S., or are federally covered (i.e., under the exclusive jurisdiction of the SEC). As of September 30, 2023, the Division had total registrants in the following categories:

- Dealers: 2,427
- Investment Advisers: 8,359
- Branches: 11,702; and

[24] See 17 C.F.R. s. 227.100(a)(2).
[25] Accredited investors may, under SEC rules, participate in investment opportunities that are generally not available to non-accredited investors, including certain investments in private companies and offerings by certain hedge funds, private equity funds, and venture capital funds. Further, the rules allow investors with reliable alternative indicators of financial sophistication to participate in such investment opportunities, while maintaining the safeguards necessary for investor protection. The definition of the term, "accredited investor," is found at 17 C.F.R. s. 230.501.
[26] The term "blue sky" derives from the characterization of baseless and broad speculative investment schemes, which such laws targeted. Cornell Law School, Blue Sky Laws https://www.law.cornell.edu/wex/blue_sky_law#:~:text=In%20the%20early%201900s%2C%20decades,schemes%20which%20such%20laws%20targeted. (last visited Sep. 18, 2023).
[27] U.S. Securities and Exchange Commission, Blue Sky Laws, http://www.sec.gov/answers/bluesky.htm (last visited Mar. 1, 2023).
[28] Section 20.121(3), F.S.
[29] Section 20.121(3)(a), F.S.
[30] Section 20.121(3)(a)2., F.S.
[31] Pursuant to s. 20.121(3), F.S. The jurisdiction of the OFR also includes state-chartered financial institutions and finance companies.
[32] Section 517.12, F.S.

- Associated Persons: 378,435[33]

Intrastate Crowdfunding

As noted earlier, in response to the delay in the adoption of federal rules implementing the JOBS Act, a number of states, including Florida, enacted intrastate crowdfunding exemption, which exempts issuers from federal registration if the issuer, purchaser, and securities offering are all contained within the same state, and meet other requirements. During the 2015 Session, the Florida Legislature enacted an intrastate crowdfunding exemption.[34] The issuer, intermediary, investor, and transaction must comply with the federal intrastate exemption requirements. The law[35] exempts an issuer and the securities offering of up to $1 million for a 12-month period, requires registration for the intermediary; and mirrors the federal investment limitations for investors at the time. The law requires issuer notice-filings and intermediary registrations with the OFR, initial and periodic disclosures to investors, an escrow agreement for investor funds, a right of rescission, and financial reporting to investors and to the OFR.

Chapter 517 Task Force of The Florida Bar Business Law Section

In 2022, the Executive Council of the Business Law Section of The Florida Bar created a Task Force to consider amendments to Chapter 517, F.S. In late 2023, the Task Force released its report in coordination with the OFR, which included recommendations and analysis of proposed changes.[36] The impetus for the reform 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 measures taken both federally and by many states regarding small business financing have not been incorporated into Florida's law.[37] Substantive, as well as technical and clarifying changes were recommended by the Task Force.

Uniform Law Commission

The Uniform Law Commission (ULC, also known as the National Conference of Commissioners on Uniform State Laws), established in 1892, provides states with non-partisan uniform model acts. In 2002, the Uniform Law Commission updated the Uniform Securities Act, which provides basic investor protection from securities fraud, complementing the federal Securities and Exchange Act, and only applies to securities not regulated by the SEC.[38]

[33] Office of Financial Regulation, Analysis of SB 532 (Oct. 1, 2023). On file with Senate Banking and Insurance Committee Staff.
[34] Ch. 2015, Laws of Fla.
[35] Section 517.0611, F.S.
[36] 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 (Nov. 2023). On file with Florida Senate Committee on Banking and Insurance Staff.
[37] *Id*.
[38] 2002-Uniform-Securities-Act.pdf (nasaa.org) last visited Dec. 23, 2023.

III. Effect of Proposed Changes:

Section 1. Amends s. 517.021, F.S., to create the following definitions:

- "Angel investor group" means a group of accredited investors who hold regular meetings and have defined processes and procedures for making investment decisions, individually or among the membership of the group, and who are not associated persons, affiliates, or agents of a dealer or investment adviser.
- "Business entity" means any corporation, partnership, limited partnership, limited liability company, proprietorship, firm, enterprise, franchise, association, self-employed individual, or trust, which may or may not be fictitiously named, doing business in this state.

The definition of "boiler room," is revised to reflect technological innovations in communications. The definition of the term, "boiler room" is amended to mean an enterprise in which two or more persons in a common scheme or enterprise solicit potential investors through telephone calls, e-mail, text messages, social media, chat rooms, or other electronic means.

The section also revises the definition of investment adviser for purposes of registration requirements. An investment advisor, is exempt from registration requirements if the person, during the preceding 12 months, has fewer than six clients instead of no more than 15 clients who are residents of this state. The term, "client," has the same meaning as provided in 17 C.F.R. s. 275.222-2. According to the Task Force report, Florida is one of three states (including California and North Carolina) that have a 15 or less client exemption. Five states (Georgia, New Jersey, New York, Pennsylvania and Tennessee) have a no more than six client 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.

An exemption from the investment advisor registration is also provided for specified governmental entities and others, which is consistent with an exemption provided in section 202(b) of the Investment Advisers Act of 1940. Registration requirements do not apply to the U.S. government, state governments and their political subdivisions, and their agencies or instrumentalities, including their officers, agents, or employees acting in their official capacities.

Exempt Securities

Section 2. Amends s. 517.051, F.S., which provides exemptions based on the nature of the securities. The exemption relating to United States, state and local government securities, is revised to exclude certain industrial revenue bonds and commercial development bonds. This change is made based on the increased risk to investors holding such bonds, which are reliant 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.

The exemption related to a security issued by a depository institution, current subsection (3), is revised to incorporate provisions found in s. 201(3)(B) of the Uniform Securities Act to provide greater clarity and specificity. The section limits the list of financial institutions to the following:

- An international bank of which the United States is a member;
- A bank organized under the laws of the United States;
- A member bank of the Federal Reserve System; or

- A depository institution when a substantial portion of the business 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 or the National Credit Union Share Insurance Fund.

The current registration exemption provided in s. 517.051(8), F.S., for notes of at least $25,000 that have a maturity period not exceeding nine months and are sold to non-accredited investors is eliminated. According to the Task Force, this exemption has been the subject of abusive efforts by persons attempting to evade registration requirements. There is no analogy to this exemption in the Uniform Securities Act.

Section 517.051, F.S., is amended to provide an exemption for all not-for-profit cooperatives. Currently, ss. 517.051(7) and 517.061, F.S., provide a registration exemption for agricultural and residential cooperatives, respectively. The residential cooperative exemption is currently a transaction exemption and is moved to new s. 517.051(8), F.S. Subsection (9) is created to provide a registration exemption for all other forms of not-for-profit cooperatives, which is consistent with the Uniform Securities Act. This provision exempts 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 chapter 1 of subtitle A 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:

- A bona fide member of the not-for-profit membership entity; or
- 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.

Technical, clarifying changes are made to the section.

Exempt Securities Transactions

Sections 3. Amends s. 517.061, F.S., to reorganize the section by grouping similar types of transactions together. Except as otherwise provided in subsection (11), the exemptions from the registration requirements of s. 517.07, F.S., are self-executing and do not require any filing with the OFR. However, such transactions are subject to the anti-fraud provisions of s. 517.301, F.S.

Section 517.061(1), F.S., relating to judicial approval of a securities transaction, is amended to expand the exemption to include sales effected through assignments for the benefit of creditors in (a). New paragraph (b) exempts a transaction involving a security issued in exchange, except in a case under Title 11 of the United States Code, for one or more bona fide outstanding securities, or property interests, or partly in such exchange and partly for cash, if the terms and conditions are approved by certain governmental entities after a hearing upon the fairness of such terms and conditions. The Task Force adopted the language of the federal analog, s. 3(a)(10) of the Securities Act of 1933.

The section expands the current exemption[39] related to a transaction involving the distribution of securities among an issuer's own security holders to include persons that at the date of the transaction are holders of options and all types of warrants. The provision is modeled after the Uniform Securities Act.

The section requires, under the current exemption related to the offer or sale of securities from one corporation to another pursuant to a vote,[40] that the issuer is parties to the reorganization, and eliminates the requirement that the security holders consent to the sale of such securities.

The section expands the current exemption relating to employer-sponsored stock option plans[41] to include any securities, plan interests, and guarantees issued under a compensatory benefit plan or compensation contract, and requires that the employee benefit plan be 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.

The limited offering exemption is amended to remove the provision prohibiting the payment of a commission or compensation for the sale of the securities in certain circumstances under the exemption relating to the offer or sale, by or on behalf of an issuer, of its own securities, where there are no more than 35 purchasers since the statute already precludes compensation to nondealers. The 3-day voidability provision has been revised to limit it to three days from the date of purchase. Newly created exemptions proposed in ss. 517.0611, F.S., and 517.0612, F.S., will allow general advertising and solicitation, subject to enforcement provisions for material misstatements or omissions. The section adds certain additional purchasers 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.

The limited offering exemption is the current statute's 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. It has no monetary limitation on the issuer or any investor but is limited to no more than 35 non-accredited investors. A principal problem with this exemption has been the prohibition against any general advertising or solicitation, which substantially impairs the ability of smaller, developing companies to attract investors.

The current exemption involving a stock dividend or equivalent equity distribution, is amended to prohibit the giving of value 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 in the event that each stockholder or other equity holder may elect to take the dividend or equivalent equity distribution in cash, property, or stock. The subsection is further amended to eliminate the requirement that the entity be actively engaged in the business authorized by its charter or other organizational articles or agreement. The subsection is modeled after the Uniform Securities Act.

[39] S. 517.061(6), F.S.
[40] S. 517.061(9), F.S.
[41] S. 517.061(15), F.S.

The section requires, under the current exemption related to the offer or sale of securities from one corporation to another pursuant to a vote,[42] that the issuer is parties to the reorganization, and eliminates the requirement that the security holders consent to the sale of such securities. The section is also expanded to include all types of reorganizations. The section is amended to require that the issuer, or the issuer's parent or subsidiary, and the other person, or the person's parent or subsidiary, are parties to the reorganization. The section is also amended to eliminate the provision requiring that the security holders to vote or consent to the sale of the securities. The provision is modeled after the Uniform Securities Act.

The section expands the current exemption relating to employer-sponsored stock option plans[43] to include any securities, plan interests, and guarantees issued under a compensatory benefit plan or compensation contract, and requires that the employee benefit plan be 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. This exemption was amended to be consistent with the Uniform Securities Act.

The section eliminates the requirement that the FSC define the term, "institutional investor" since the term, "qualified institutional buyer," is defined in s. 517.021, F.S., and the provision limiting the exemption to only those offers or sales of securities not for the direct or indirect promotion of any scheme or enterprise with the intent of violating or evading ch. 517, F.S. is eliminated since the provision is addressed in s. 517.0613, F.S.

The section codifies the North American Securities Administrators Association[44] (NASAA) model accredited investor exemption. Sales of securities may only be made to persons who are, or the issuer reasonably believes are, accredited investors. The exemption is not available to an issuer that:

- Has an undefined business operation;
- Lacks a business plan;
- Lacks a stated investment goal for the funds being raised; or
- Plans to engage in a merger or acquisition with an unspecified business entity.

The model provides that a general announcement of the proposed offering, made by any means, may include only specified information. The issuer must file with the OFR 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 FSC may adopt by rule procedures for filing documents by electronic means. Dissemination of the general announcement of the proposed offering to persons who are not accredited investors does not disqualify the issuer from claiming the exemption under this rule.

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[42] S. 517.061(9), F.S.
[43] S. 517.061(15), F.S.
[44] NASAA is a nonprofit association of securities regulators in the United States, Canada, and Mexico. About - NASAA (last visited December 23, 2023). In 1997, NASAA members voted to approve "Model Accredited Investor Exemption" (the AI Exemption). NASAA, MODEL ACCREDITED INVESTOR EXEMPTION (Apr. 27, 1997) 4-27-97.PDF (nasaa.org)(last visited Jan. 10, 2023). The AI exemption exempts the offer or sale of a security by an issuer from the security registration process in a transaction meeting certain requirements including that the sale of securities is limited to accredited investors and the issuer must not be subject to disqualification. The majority of states have adopted the AI exemption.

The section creates an exemption for exempt non-issuer transactions with a federal covered adviser managing investments in excess of $100 million acting in the exercise of discretionary authority in a signed record for the accounts of others. This exemption is modeled after the Uniform Securities Act.

The section is amended to allow the FSC to recognize by rule clearinghouses able to clear option transactions for purposes of this subsection. The subsection is also amended to require that the underlying security is purchased or sold on a recognized security exchange registered under the Securities Exchange Act of 1934 and to eliminate the possibility that the underlying security instead be quoted on the National Association of Securities Dealers Automated Quotation System. The subsection further eliminates the prohibition against such sales being directly or indirectly for the purpose of providing or furthering any scheme to violate or evade ch. 517, F.S.

Subsection (17) is amended to reword certain phrases for clarity, to replace the terms "act" with "this chapter" and "companies" with "issuer" for consistency. This subsection is also amended to delete reference to the Securities Act of 1933 in reference to "a federal covered security."

The section creates an exemption for buying and selling of securities of foreign companies through foreign brokers. Non-issuer transactions in an outstanding security by or through a dealer registered or exempt from registration are exempt if:

- The issuer is a reporting issuer in Canada or in a foreign jurisdiction designated by Commission rule and the issuer has been subject to continuous reporting requirements for not less than 180 days before the transaction; and
- The security is listed on The Toronto Stock Exchange, Inc. or on a foreign jurisdiction's securities exchange that has been designated by FSC rule, 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.

The OFR may revoke any designation of a securities exchange if the OFR finds that revocation is necessary or appropriate in the public interest and for the protection of investors.

The exemption for nonissuer transactions of securities outstanding at least 90 days is revised to change the conditions for eligibility. Current law requires all conditions for this exemption. The section is revised to retain 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.

Florida Limited Offering Exemption

Section 4. Amends s. 517.0611, F.S., the "Intrastate Crowdfunding Exemption." The section is substantially amended and renamed the "Florida Limited Offering Exemption" in subsection (1). Subsection (2) is amended to provide that the registration requirements of s. 517.07, F.S., do not apply to transactions conducted in accordance with this section; however, the such transactions are subject to the anti-fraud provisions of s. 517.301, F.S. Currently, the section specifies that an offer or sale of a security conducted in accordance with this section is an exempt transaction

under s. 517.061, F.S., and the exemption may not be used in conjunction with any other exemption under ss. 517.051 or 517.061, F.S.

Subsection (3) requires that the offer or sale of securities under this section 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), 17 CFR s. 230.147 or 17 CFR 230.147A, which is being added. In 2016, the SEC adopted Rule 147A, a new intrastate offering exemption, which is substantially identical to Rule 147 except that Rule 147A:

- Allows offers to be accessible to out-of-state residents, so long as sales are only made to in-state residents;
- Permits a company to be incorporated or organized out-of-state, so long as the company has its "principal place of business" in-state and satisfies at least one "doing business" requirement that demonstrates the in-state nature of the company's business; and
- Allows issuers to engage in general solicitation and general advertising of their offerings, using any form of mass media, including unrestricted, publicly-available Internet websites, so long as sales of securities so offered are made only to residents of the state or territory in which the issuer has its principal place of business.

Subsection (4) revises issuer requirements in the following manner:

- Be a for-profit business entity that maintains its principal place of business and derives its revenues primarily from operation in this state. Under current law, the entity is required to be formed under the laws of the state, be registered with the Secretary of State, maintain its principal place of business in the state, and derive its revenues primarily from operations in the state.
- An issuer must conduct transactions for an offering of $2.5 million or more through a dealer through a dealer or intermediary registered with the office. For an offering of less than $2.5 million, the issuer may, use such a dealer or intermediary. Under current law, an issuer must use a registered dealer or intermediary regardless of the amount of the offering.
- Not be subject to a disqualification established by the FSC or OFR or a disqualification described in s. 517.1611, F.S., or newly created s. 517.0616, F.S. Each director, officer, manager, managing member, or 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. Section 517.0616, F.S., references disqualifications under 17 C.F.R. s. 230.506(d).
- Deposit all funds received from investors in an account in a federally insured financial institution authorized to do business in this state. Further, an issuer must maintain all such funds in the account until the target offering amount is reached or the offering amount has not been reached within the period specified. Currently, an issuer must 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.
- Provides that any sale made pursuant to the exemption created under this section 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. The purchaser's notice to the issuer must be sent by e-mail to the issuer's e-mail address set forth in the disclosure statement that is provided to the purchaser or purchaser's

representative or by certified mail or overnight delivery service with proof of delivery to the mailing address set forth in the disclosure statement. Under current law, an investors may 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.

Subsection (5) requires an issuer to file a notice of the offering with the OFR together with a nonrefundable filing fee. The disclosures required to be included in the notice form are revised in the following manner:

- Eliminates the attestation requirement. Currently, the notice must contain 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.
- Must state the target offering amount as well as the date, not to exceed 365 days, by which the target amount must be reached in order to avoid termination of the offering.

An issuer must amend the notice form within 10 business days instead of 30 days after any material information becomes inaccurate.

The bill authorizes an issuer to engage in general advertising and general solicitation of the offer to prospective investors. Any oral or written statements in advertising or solicitation of the offer are subject to enforcement under ch. 517, F.S. Any general advertising or other general announcement must state that the offering is limited and open only to residents of this state.

Subsection (8) is amended to require an issuer to provide a disclosure statement to the dealer or intermediary, as applicable: to the OFR at the time that the notice is filed and to each prospective investor at least three days before the investor's commitment to purchase or payment of any consideration, a disclosure statement containing material information about the issuer and the offering. The bill provides the following changes:

- The statement must also include the email address of the issuer. Currently, the name, legal status, physical address, and website address of the issuer are required.
- The disclosure of the names of the managers, managing members, and general partners are added. Currently, the names of the directors, officers, and any person occupying a similar status or performing a similar function, and the name of each person holding more than 20 percent of the issuer's equity interests are required to be disclosed.
- The regular updates of the issuer regarding the progress in meeting the target offering amount is eliminated.
- The methodology for determining the price is eliminated and the requirement that prior to the sale, the investor must receive in writing the final price and all required disclosures and have an opportunity to rescind the commitment to purchase the securities.
- A description of the ownership and capital structure of the issuer is revised to eliminate the disclosure of the name and ownership level of each existing shareholder who owns more than 20 percent of any class of the securities of the issuer; 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; and 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.

- The bill adds a statement that the security being offered is not registered under federal or state securities laws and that the securities are subject to the limitations on resale contained in SEC Rule 147 or Rule 147A.
- The bill adds a disclosure regarding any issuer plans to offer additional securities in the future.
- The bill adds a disclosure about the risks to purchasers of the securities relating to the minority ownership in the issuer.
- A description of the financial condition of the issuer.
    - The bill provides that, for offering amounts of $500,000 or less, the inclusion of financial statements of the issuer are optional. Under current law, certified financial statements and the most recent tax return filed by the issuer are longer required. Further, for offerings that within the preceding 12-month period, have target offering amounts of $100,000 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.
    - The bill provides that for offering amounts of more than $500,000 but not more than $2.5 million, the description must include financial statements reviewed by a certified public accountant. Currently, for offerings that within the preceding 12-month period, have target offering amounts of $100,001 - $500,000, the description must include financial statements prepared in accordance with generally accepted accounting principles and reviewed by a certified public accountant 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.
    - The bill provides that for offerings of more than $2.5 million, the description must include audited financial statements. Under current law, for offerings that within the preceding 12-month period, have target offering amounts of more than $500,000, the description must include audited financial statements prepared in accordance with generally accepted accounting principles by a certified public accountant who is independent of the issuer, and other requirements as the FSC may establish by rule.

The bill provides that the following additional statement must appear on the front page of the disclosure statement:

> "Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved these securities or determined if this disclosure statement is truthful or complete. Any representation to the contrary is a criminal offense under chapter 517, Florida Statutes."

Under current law the following statement must appear in boldface, conspicuous type on the front page of the disclosure statement:

> "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."

The bill eliminates subsection (8), which requires the submission of a copy of the escrow agreement to the OFR since funds no longer are required to be deposited into escrow accounts.

Subsection (9) is amended to increase the cap for an offering from $1 to $5 million. Offers or sales to a person owning 20 percent or more of the equity of any class or classes of securities or to an officer, director, partner, manager, managing member, general partner or trustee, or a person occupying a similar status, do not count toward this limitation.

Subsection (10) is revised to provide that sales of securities to non-accredited investors in a 12-month period may not exceed $10,000. Currently, this calculation is based on the income and net worth of a non-accredited investor.

Subsection (11) is eliminated. Currently, subsection (11) requires the issuer to file with the OFR 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 specified requirements.

The subsection (12) authorizes the OFR to summarily suspend a notice filing if the payment for the filing is dishonored by the financial institution upon which the funds are drawn or if the issuer made a material false statement in the issuer's notice-filing. A material false statement made in the issuer's notice-filing results in a final order by the OFR revoking the notice-filing, issuing a fine and permanent bar 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. The subsection provides technical conforming changes.

The bill revises subsection (13), relating to the duties of an intermediary, if the issuer employs the services of an intermediary, the intermediary must take measures, as established by FSC rule, to reduce the risk of fraud with respect to the offering. Under current law, the intermediary must, with respect to transactions, verify that the issuer is in compliance with the requirements of this section and, if necessary, deny 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 bill revises the provision relating to the information an intermediary must obtain from investors to document residency or status as an accredited investor. The bill requires an intermediary to obtain from each prospective investor a zip code or residence address, a copy of a driver license, and any other proof of residency in order for the issuer or intermediary to reasonably believe that the potential investor is a resident of this state. The FSC may adopt rules authorizing additional forms of identification and prescribing the process for verifying any identification presented by the prospective investor. The intermediary must obtain information sufficient for the issuer or intermediary to reasonably believe that a particular prospective investor is an accredited investor.

The bill eliminates the requirement that an intermediary must obtain an affidavit from each investor regarding their income. Currently, an intermediary must obtain an affidavit from each investor stating that the investment being made by the investor is consistent with the income requirements. The bill provides conforming changes to eliminate requirements relating to escrow funds and escrow agreements.

The bill eliminates the following duties of an intermediary:

- Require each investor to certify in writing that the investor understands the risks of investing, the terms of the offering, and the limitations on resale.
- 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.
- Implement written policies and procedures that are reasonably designed to achieve compliance with federal and state securities laws; the anti-money laundering requirements applicable to registered brokers; and privacy requirements.
- Solicit purchases, sales, or offers to buy securities offered or displayed on its website.

The bill provides in subsection (14) that if the issuer does not employ a dealer or an intermediary for an offering created pursuant to this section, the issuer may not:

- Compensate employees, agents, or other persons for the solicitation of, or based on the sale of, securities offered or displayed on its website.
- Hold, manage, possess, or otherwise handle investor funds or securities.
- Compensate promoters, finders, or lead generators for providing personal identifying information of any potential investor.
- Engage in any other activities set forth by commission rule.

Florida Invest Local Exemption

Section 5. Creates s. 517.0612, F.S., the "Florida Invest Local Exemption," a micro-offering exemption. The section provides that the registration provisions of s. 517.07, F.S., do not apply to a securities transaction conducted in accordance with this section. However, such transactions are subject to the anti-fraud provisions of s. 517.301, F.S.

- Requires that offer or sale of securities under this section must meet the requirements of the federal exemption for intrastate offerings in s. 3(a)(11) of the Securities Act of 1933, Securities and Exchange Commission Rule 147, or Securities and Exchange Commission Rule 147A.
- Requires the issuer to be a for-profit business entity registered with the 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:
    - An investment company as defined in the Investment Company Act of 1940, as amended;
    - Subject to the reporting requirements of the Securities and Exchange Act of 1934, as amended;
    - 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
    - Subject to a disqualification pursuant to s. 517.0616, F.S.
- Provides that the sum of all cash and other consideration received for all sales of the security in reliance upon this exemption may 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.
- Provides that the issuer may not accept more than $10,000 from any single purchaser unless:
    - The issuer reasonably believes that the purchaser is an accredited investor;
    - The purchaser is an officer, director, partner, or trustee of an individual occupying a similar status or performing similar functions of the issuer; or the purchaser is an owner of 10 percent or more of the issuer's outstanding equity. 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 any business entity of which the purchaser and any person related to the purchaser collectively owns more than 50 percent of the equity interest must be treated collectively as a single purchaser.
- Authorizes an issuer to 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. Written or oral statements made in the advertising or solicitation of the offer are subject to the enforcement provisions of this chapter.
- Requires a purchaser to 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:
    - Issuer's name, form of entity and contact information.
    - The name and contact information of each director, officer or other manager of the issuer.
    - A description of the issuer's business.
    - A description of the security being offered and the total amount of the offering.
    - The intended use of proceeds from the sale of the securities.
    - The target amount of the offering.
    - 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.
    - 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 17 C.F.R. s. 230.147 or 17 C.F.R. s. 230.147A.
    - The names and addresses of all persons who will be involved in the offer and sale of securities on behalf of the issuer.
    - The depository institution into which investor funds will be deposited.
    - 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."
- Requires that all funds received from investors must be deposited into a depository institution authorized to do business in Florida. The issuer may not withdraw any amount of the offering proceeds unless and until the target amount has been received.

- Requires the issuer to file a notice of the offering with the OFR, in writing or in electronic form, in a format prescribed by FSC rule, no less than 5 business days before the offering commences, along with the disclosure document. The issuer must, within 3 business days, file an amended notice if there are any material changes to the information previously submitted.
- Provides that 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 may not:
    - Receive compensation based upon the solicitation of purchases, sales, or offers to purchase the securities, or
    - Take custody of investor funds or securities.
- Provides that 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 6. Creates s. 517.0613, F.S., relating to the failure to comply with a securities registration exemption. This provision is similar to SEC Rule 500 in Regulation D. The section clarifies that an issuer who fails to comply with any exemption from securities registration is not precluded from claiming the availability of any other applicable state or federal exemption.

Further, the section provides that ss. 517.061, 517.0611, and 517.0612, F.S., are not available to an 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 provision of s. 517.07, F.S., and registration under s. 517.07, F.S., is required in connection with such transaction.

Section 7. Creates s. 517.0614, F.S., relating to integration of offerings, which is consistent with 17 CFR s. 230.152, the SEC's integration rule, modified to create a 45-day safe harbor for offers that prohibit general solicitation. The integration doctrine seeks to prevent an issuer from circumventing registration by artificially dividing a single offering into multiple offerings such that federal securities exemptions would apply to the multiple offerings that would not be available for the combined offering.[45] Integration only applies to those offers and sales that involve issuers raising capital, as described in 17 CFR s. 230.152(b)(2).

SEC Rule 152 provides a framework for determining whether multiple securities transactions should be considered part of the same offering and contains four non-exclusive safe harbors from integration. If the safe harbors in Rule 152(b) do not apply, in determining whether two or more offerings are the be treated as one for the purpose of registration or qualifying for an exemption from registration, offers and sales will not be integrated if, the issuer can establish that each offering either complies with the registration requirements of the Securities Act, or that an exemption from registration is available for the particular offering.

[45] See, e.g., Revisions of Limited Offering Exemptions in Regulation D, Release No. 33-8828 (Aug. 3, 2007) [72 FR 45116 (Aug. 10, 2007)] ("Regulation D 2007 Proposing Release"), at Section II.C.1.

Communication and Solicitation of Potential Investors

Section 8. Creates s. 517.0615, F.S., relating to solicitation of interest, to authorize an issuer to solicit potential investors under limited circumstances consistent with federal rules. Subsection (1) adopts provisions consistent with the federal "Demo Day Presentations" rule.[46] The subsection provides that pre-offering communications made by an issuer in connection with a demo day presentation are not deemed to constitute general solicitation if the communications are made in connection with such an event or presentation being sponsored by a college, university, or other institution of higher education, a state or local government or instrumentality of a state or local government, a nonprofit organization, or an angel investor group, incubator, or accelerator; provided that advertising for the event does not reference any specific offering of securities by the issuer; and the sponsor of the meeting or seminar does not:

- Make investment recommendations or provide investment advice to attendees of the event.
- Engage in any investment negotiations between the issuer and investors attending the event.
- Charge attendees of the event any fees, other than reasonable administrative fees.
- Receive any compensation for making introductions between event attendees and issuers, or for investment negotiations between the parties.
- Receive any compensation with respect to the event that would require registration or notice filing under the securities laws. The sponsorship of or participation in the seminar or meeting does not by itself require registration or notice-filing under ch. 517, F.S.

Information regarding an offering of securities by the issuer which is communicated or distributed by or on behalf of the issuer in connection with a seminar or meeting 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 the proceeds of the offering, and the unsubscribed amount in an offering. If the event allows attendees to participate virtually, rather than in person, online participation in the seminar or meeting is limited to certain specified participants.

Subsection (2) adopts provisions consistent with SEC Rule 241,[47] which allows "testing the waters" by an issuer in advance of making any offering. An issuer or their representative may communicate orally or in writing to determine whether there is any interest in a contemplated offering of securities exempt from federal registration requirements. The rule provides an exemption only with respect to the generic solicitation of interest. This will allow issuers to gauge the feasibility and market interest in a securities offering prior to incurring the time and expense of a preparing and conducting an offering. The solicitation or acceptance of money or other consideration or commitment from any person is prohibited.

SEC Rule 241 further requires the testing-the-waters materials to provide specified disclosures notifying potential investors about the limitations of the generic solicitation. The issuer's communications must state the following:

- No money or other consideration is being solicited, and if sent in response, will not be accepted;

[46] 17 C.F.R. s. 230.148.
[47] 17 CFR s. 230.241.

- No offer to buy the securities can be accepted and no part of the purchase price can be received until the issuer determines the exemption under which the offering is intended to be conducted and, where applicable, the filing, disclosure, or qualification requirements of such exemption are met; and
- A person's indication of interest involves no obligation or commitment of any kind.

Any written communication may include a means for a person to indicate interest in a potential offering and an issuer may require such indication to include the person's name, address, telephone number, or email address in any response form included in the written communication.[48] A communication in accordance with the "testing the waters" provision is not subject to s. 501.059, F.S., regarding telephone solicitations.

Section 9. Creates s. 517.0616, F.S., relating to issuer disqualifications, to provide that a registration exemption under s. 517.061(9), (10), and (11), s. 517.0611, or 517.0612, F.S., is not available to an issuer that would be disqualified under 17 C.F.R. s. 230.506(d) at the time the issuer makes an offer for the sale of a security. "Bad actor" disqualifying events include, but are not limited to:

- Specified relevant criminal convictions, certain court injunctions and restraining orders, and final orders of certain state and federal regulators;
- Certain SEC (Securities and Exchange Commission) disciplinary orders;
- Certain SEC cease-and-desist orders; and
- Suspension or expulsion from membership in a self-regulatory organization (SRO), such as FINRA, or from association with an SRO member.

Section 10. Revises s. 517.081, F.S., relating to securities registration requirements. To provide greater clarity, the provisions relating to the rulemaking authority of the FSC are consolidated and revised within the section. The section eliminates the five-year annual financial reporting requirements for SCOR and the prohibition against a person using the SCOR registration method for the resale of securities, which will allow non-control persons to resell securities through a Florida-based registration process.

Under current law, the FSC must adopt a form for a simplified offering circular to register securities that are sold in offerings in which the aggregate offering price in any consecutive 12-month period does not exceed $5 million. The simplified offering circular is synonymous with a Small Company Offering Registration (SCOR) under the Securities Act of 1933.[49] To qualify for use of the simplified offering circular, the issuer must:

- File an annual financial report with OFR that contains a balance sheet as of the end of the issuer's fiscal year and a statement of income for such year (and if the issuer has more than 100 security holders at the end of a fiscal year, the financial statements must be audited); and
- File annual financial reports with OFR for each of the first 5 years following the effective date of the registration.

[48] SEC, Facilitating Capital Formation and Expanding Investment Opportunities by Improving Access to Capital in Private Markets, A Small Entity Compliance Guide (Mar. 10, 2021), https://www.sec.gov/corpfin/facilitating-capital-formation-secg (last visited Sep. 18, 2023).

[49] SCOR was designed for use by companies seeking to raise capital through a public offering of securities exempt from registration with the SEC under the Securities Act of 1933 pursuant to Rule 504 of Regulation D, Rule 147, or 147A.

Section 11. Amends s. 517.101, F.S., relating to consent to service, to expand the type of persons who are eligible to sign the written consent on behalf of a business entity to include directors, managers, managing members, general partners, trustees, or officers of the issuer. The bill also expands the persons who can authorize the signer to execute the written consent to include the issuer's general partners and managing members. Under current law, an issuer is required, upon any initial application for registration under the act or upon request of OFR, to file with such application the irrevocable written consent to service. The written consent must be authenticated by the seal of said issuer (if it has a seal), and by the acknowledged signature of a member of the co-partnership or company, or by the acknowledged signature of any officer of the incorporated or unincorporated association, and such consent to service must be duly authorized by resolution of the board of directors, trustees, or managers of the corporation or association (and such resolutions must be filed as a certified copy with the written consent to service).

Securities Guaranty Fund (Sections 12 and 13)

Section 12. Amends s. 517.131, F.S., relating to the Securities Guaranty Fund, to revise eligibility requirements and provide technical changes. In subsection (1), the definition of the term, "final judgment," is amended to also include an arbitration award confirmed by a court of competent jurisdiction. The subsection is also amended to eliminate the requirement that the wrongdoer be a dealer, investment adviser, or associated person registered under ch. 517, F.S.

Subsection (2) is amended to specify that the purpose of the Securities Guaranty Fund (Fund) is to provide monetary relief to victims of securities violations under this chapter who are entitled to monetary damages or restitution and cannot recover the full amount of such monetary damages or restitution from the wrongdoer.

Subsection (3) is amended to require that a person meet the following conditions to be eligible for payment from the Fund:

- The person holds an unsatisfied final judgment in which a wrongdoer was found to have violated s. 517.07, F.S., or s. 517.301, F.S.;
- The person has applied any amounts recovered from the judgment debtor or from any other source to the damages awarded by the court or arbitrator; and
- The person is a natural person who was a resident of this state, or is a business entity that was domiciled in this state, at the time of the violation giving rise to the claim; or is a receiver appointed pursuant to s. 517.191(2), F.S., by a court of competent jurisdiction for a wrongdoer order to pay restitution under s. 517.191(3), F.S. as a result of a violation of s. 517.07, F.S., or s. 517.301, F.S., which has requested payment from the Fund on behalf of an eligible for payment.

This section is amended to eliminate the current requirement that the act for which recovery is sought occurred on or after January 1, 1979, and to eliminate the ability of the OFR to waive certain requirements under this section. Further, the requirement that a person make 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 is eliminated. Under current law, for a person to be eligible to receive payment from the Fund, the following requirements must be met:

- The act for which recovery is sought occurred on or after January 1, 1979;
- The person has received final judgement from a court that a violation of ss. 517.07 or 517.301, F.S., occurred for which monetary damages are awarded;
- The person has made all reasonable searches and inquiries to ascertain whether the violator possesses assets that can be sold in satisfaction of the damages awarded, and in such search has discovered no or insufficient assets; and
- The person has applied any amounts recovered from the violator, or from any other source, to the damages awarded by the court.

Subsection (4) is created to prohibit a person from being eligible for payment from the Fund if the person has:

- Participated or assisted in a violation of ch. 517, F.S.;
- Attempted to commit or committed a violation of ch. 517, F.S.; or
- Profited from a violation of ch. 517, F.S.

An eligible person, or a receiver on behalf of an eligible person, seeking payment from the Fund must submit a written application within one year after the date of the final judgement, the date on which a restitution order has been ripe for execution, or the date of any appellate decision, and at a minimum, must contain certain specified information. The application must contain such information as the OFR may require, including, but not limited to:

- The full name, address, and contact information of the eligible person and, if applicable, the receiver.
- The person ordered to pay restitution.
- If the eligible person is a business entity, the eligible person's form and place of organization and a copy of the business entity's articles of incorporation, its articles of organization with amendments, trust agreement, or its partnership agreement.
- A copy of the final judgment.
- A copy of any restitution ordered pursuant to s. 517.191(3), F.S.
- An affidavit stating either one of the following:
    - 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, that the eligible person has not discovered any property or assets.
    - The eligible person has taken necessary action on the property and assets of the wrongdoers but the final judgment remains unsatisfied.
- An affidavit from the receiver stating the amount of restitution owed to the eligible person on whose behalf the claim is filed; the amount of any money, property, or assets paid to the eligible person 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.
- The eligible person's residence or domicile at the time of the violation of s. 517.07, F.S., or s. 517.301, F.S., which resulted in the eligible person's monetary damages.
- The amount of any unsatisfied portion of the eligible person's final judgment.
- Whether an appeal or motion to vacate an arbitration award has been filed.

If the OFR finds that a person is eligible and if the person has complied with the provisions of this section, the OFR must approves a person for payment from the Fund within 90 days after the OFR's receipt of a complete application. Each eligible person or receiver must be given written notice, personally or by mail, that the OFR intends to approve or deny, or has approved or denied, the application for payment from the Fund.

The current provision in s. 517.141(9), F.S., which requires an eligible person or receiver to assign all right, title, and interest in the final judgment or order of restitution, to the extent of such payment to the OFR upon receipt of the notice indicating the OFR's intent to approve an application for payment from the Fund and before any disbursement, is transferred to s. 517.131, F.S.

The subsection provides that the OFR will deem an application for payment from the 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 FSC rule. The time period to complete an application is tolled during the pendency of an appeal or motion to vacate an arbitration award.

Section 13. Amends s. 517.141, F.S., relating to payments from the Securities Guaranty Fund. The following terms are defined:

- "Claimant" means a person determined eligible for payment under s. 517.131 that is approved by the office for payment from the Fund.
- "Specified adult" has the same meaning as in s. 517.34(1), F.S.
- "Final judgement" has the same meaning as in s. 517.131(1), F.S.

The amount that an eligible person may recover from the Fund is increased from $10,000 to $15,000, or $25,000 if the victim is a specified adult. The aggregate limit on claims is increased from $100,000 to $250,000.

All payments made from the Fund must be made by the Chief Financial Officer upon authorization by the OFR. The OFR must submit authorization within 30 days after the approval of an eligible person for payment from the Fund.

The two-year payment waiting period prior to payment is eliminated. Technical conforming changes are made to the section to include final orders of restitution in addition to final judgments.

The section provides that if a claimant knowingly and willfully files or causes to be filed an application under s. 517.131, F.S., or documents in support of the application, any of which contain false, incomplete, or misleading information in any material aspect, the claimant forfeits all payments from the Fund and that such act violates s. 517.301(1)(c), F.S.

The Department of Financial Services (DFS), instead of OFR, is authorized to institute legal proceedings to enforce compliance with s. 517.131, F.S., and to recover moneys owed to the Fund, and to recover interest, costs, and attorney's fees in any action brought pursuant to this section in which the DFS prevails.

OFR Enforcement Authority

Section 14. Amends s. 517.191, F.S., relating to enforcement by the OFR. Section 517.221, F.S., and parts of s. 517.241, F.S., are transferred into this section.

The amount of a civil penalty against a natural person found to have violated any provision of this chapter, other than s. 517.301, F.S., is increased from $10,000 to $20,000. Further, the civil penalty must be the greater of the specified amount or the amount of any pecuniary loss to the investor or pecuniary gain to a business entity. Further, the section is amended to allow for a civil fine of twice the amount that would otherwise be imposed if a specified adult, i.e., a natural person 65 years of age or older, or a vulnerable adult, is a victim of a violation of this chapter. The OFR is authorized to recover any costs and attorney fees related to the OFR's investigation or enforcement of ch. 517, F.S., in an action for injunctive relief or the OFR's enforcement of any restraining order or injunction. Any costs and attorney fees collected must be deposited in the Anti-Fraud Trust Fund.

The OFR is authorized to hold any control person who controls any person found to have violated ch. 517, F.S., or of any rule adopted thereunder, 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 acted in good faith and did not directly or indirectly induce the act that constitutes the violation or cause of action. This provision is found in the federal securities statutes and is also found in the Uniform Securities Act and laws in other states. The provision provides 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.

Further, the OFR is authorized to hold a person who knowingly or recklessly provides substantial assistance to another person in violation of ch. 517, F.S., or of any rule adopted thereunder, liable to the same extent as the person to whom such assistance is provided.

Subsection (9) is created to incorporate and amend current s. 517.221(3), F.S. to increase the maximum administrative fine that can be imposed to match the newly amended maximum civil penalty discussed in subsection (4) above. Subsection (10) is created to incorporate current s. 517.221(4), F.S. without substantive change. Subsection (14) is created to incorporate the applicable portions of current s. 517.241(2), F.S., without substantive change.

Private Remedies Available in Case of Unlawful Sale

Section 15. Amends s. 517.211, F.S., relating to private remedies available in case of unlawful sale. Subsection (3) allows a purchaser to hold any control person who controls any person found to have violated ss. 517.07 or 517.12(1), (3), (4), (8), (10), (12), (15), or (17), F.S., jointly and severally liable with, and to the same extent as, such controlled person in any action brought in action for rescission unless the control person acted in good faith and did not directly or indirectly induce the act that constitutes the violation or cause of action.

Subsection (4) clarifies that interest accrues from the date the security is purchased. Subsection (8) is created to incorporate the applicable portions of current ss. 517.241(2), and 517.241(3) F.S., as new subsection (8) and (9), respectively, and without substantive change. Technical, conforming changes are also make to the section.

Section 16. Repeals s. 517.221, F.S., relating to cease and desist orders, and transfers and consolidates these provisions into s. 517.191, F.S. relating to enforcement authority of the OFR.

Section 17. Repeals s. 517.241, F.S., relating to remedies, and its applicable provisions are consolidated into ss. 517.191, F.S., and 517.211, F.S., respectively.

Anti-Fraud Provisions (Sections 18-20)

Sections 517.301, 517.311, and 517.312, F.S., contain the provisions creating liabilities under ch. 517, F.S., for material misrepresentation or omissions.

Section 18. Amends s. 517.301, F.S., relating to fraudulent transactions; falsification or concealment of facts. The section provides the following changes:
- Subsection (2)(a) is amended to include transactions exempted under ss. 517.0611 and 517.0612, F.S.
- Subsection (2)(b) is amended to clarify that an offer to sell securities can be published, given publicity, or circulated through the use of any means.
- Subsection (3) is created to incorporate current s. 517.311(1), F.S. The section is amended to include transactions exempted under ss. 517.0611 and 517.0612, F.S., and to replace the term "company" with "business entity" for consistency.
- Subsection (4) is created to incorporate current s. 517.311(2), F.S. The section is amended to include persons within the purview of ss. 517.0611, 517.0612, and 517.081, F.S. and to remove gender specific pronouns.
- Subsection (5) is created to incorporate current s. 517.311(3), F.S., without substantive change.
- Subsection (6) is created to incorporate current s. 517.311(4), F.S., without substantive change.
- Subsection (7) is created to incorporate current s. 517.312(1), F.S, without substantive change.

Section 19. Repeals s. 517.311, F.S., relating to false representations, deceptive words, and enforcement; and transfers provisions to s. 517.191, F.S., relating to enforcement by the OFR.

Sections 20. Repeals s. 517.312, F.S., relating to securities, investments, boiler rooms; prohibited practices; and remedies. Provisions are transferred to s. 517.301, F.S., relating to fraudulent transactions and falsification or concealment of facts.

Technical, Conforming Changes

Section 21. Amends s. 517.072, F.S., to revise cross references.

Section 22. Amends s. 517.12, F.S., to revise cross references.

Section 23. Amends s. 517.1201, F.S., to revise cross reference.

Section 24. Amends s. 517.1202, F.S., to revise cross reference.

Section 25. Amends s. 517.302, F.S., to revise cross reference.

Effective Date

Section 26. Provides this act takes effect October 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The implementation of the pre-offering "test the waters" provision may reduce the costs of conducting an exempt offering by providing businesses the flexibility to determine the optimal avenue for raising capital before spending thousands of dollars on legal and administrative fees.

C. Government Sector Impact:

Indeterminate. The bill requires issuers conducting an offering under the accredited investor exemption to file a notice of transaction, a consent to service of process, and a copy of the general announcement with the Office of Financial Regulation (OFR). Further, the bill requires issuers conducting an offering under Florida Invest Local Exemption to file a notice of the offering and a copy of the disclosure document with the

OFR. The OFR will need to review these documents, and the bill does not provide additional funding for staff to conduct such reviews.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 517.021, 517.051, 517.061, 517.0611, 517.0612, 517.081, 517.101, 517.131, 517.141, 517.191, 517.211, 517.301, 517.072, 517.12, 517.1201, 517.1202, and 517.302 of the Florida Statutes.
This bill creates sections 517.0613, 517.0614, 517.0615, 517.0616, of the Florida Statutes:
This bill repeals sections 517.221, 517.241, 517.311, 517.312, of the Florida Statutes:

IX. Additional Information:

A. Committee Substitute – Statement of Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.