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The 2016 Florida Statutes

Title XXXIII
REGULATION OF TRADE, COMMERCE, INVESTMENTS, AND SOLICITATIONS

Chapter 517
SECURITIES TRANSACTIONS

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CHAPTER 517
SECURITIES TRANSACTIONS

517.011 Short title.—This chapter may be cited as the "Florida Securities and Investor Protection Act."

History.—s. 1, ch. 78-435; s. 5, ch. 80-254; s. 391, ch. 81-259; ss. 2, 3, ch. 81-318; s. 1, ch. 84-159; s. 1, ch. 85-165; ss. 14, 15, ch. 90-362; s. 4, ch. 91-429.

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

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

(2) "Associated person" means:

(a) With respect to a dealer or investment adviser, any of the following:

1. Any partner, officer, director, or branch manager of a dealer or investment adviser or any person occupying a similar status or performing similar functions;

2. Any natural person directly or indirectly controlling or controlled by such dealer or investment adviser, other than an employee whose function is only clerical or ministerial; or

3. Any natural person, other than a dealer, employed, appointed, or authorized by a dealer, investment adviser, or issuer to sell securities in any manner or act as an investment adviser as defined in this section.

The partners of a partnership and the executive officers of a corporation or other association registered as a dealer, and any person whose transactions in this state are limited to those transactions described in s. 15(h)(2) of the Securities Exchange Act of 1934, are not "associated persons" within the meaning of this definition.

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

(3) "Boiler room" means an enterprise in which two or more persons engage in telephone communications with members of the public using two or more telephones at one location, or at more than one location in a common scheme or enterprise.

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

(5) "Control," including the terms "controlling," "controlled by," and "under common control with," means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

(6)(a) "Dealer" includes any of the following:

1. Any person, other than an associated person registered under this chapter, who engages, either for all or part of her or his time, directly or indirectly, as broker or principal in the business of offering, buying, selling, or otherwise dealing or trading in securities issued by another person.

2. Any issuer who through persons directly compensated or controlled by the issuer engages, either for all or part of her or his time, directly or indirectly, in the business of offering or selling securities which are issued or are proposed to be issued by the issuer.

(b) The term "dealer" does not include the following:

1. Any licensed practicing attorney who renders or performs any of such services in connection with the regular practice of her or his profession;

2. Any bank authorized to do business in this state, except nonbank subsidiaries of a bank;

3. Any trust company having trust powers which it is authorized to exercise in this state, which renders or performs services in a fiduciary capacity incidental to the exercise of its trust powers;

4. Any wholesaler selling exclusively to dealers;

5. Any person buying and selling for her or his own account exclusively through a registered dealer or stock exchange; or

6. Pursuant to s. 517.061(11), any person associated with an issuer of securities if such person is a bona fide employee of the issuer who has not participated in the distribution or sale of any securities within the preceding 12 months and who primarily performs, or is intended to perform at the end of the distribution, substantial duties for, or on behalf of, the issuer other than in connection with transactions in securities.

(7) "Commission" means the Financial Services Commission.

(8) "Office" means the Office of Financial Regulation of the commission.

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

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

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

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

(13) "Intermediary" means a natural person residing in the state or a corporation, trust, partnership,

association, or other legal entity registered with the Secretary of State to do business in the state, which facilitates the offer or sale of securities under s. 517.0611.

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

(b) The term "investment adviser" does not include the following:

1. Any licensed practicing attorney whose performance of such services is solely incidental to the practice of her or his profession;

2. Any licensed certified public accountant whose performance of such services is solely incidental to the practice of her or his profession;

3. Any bank authorized to do business in this state;

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

5. Any trust company having trust powers which it is authorized to exercise in the state, which trust company renders or performs services in a fiduciary capacity incidental to the exercise of its trust powers;

6. Any person who renders investment advice exclusively to insurance or investment companies;

7. Any person who does not hold herself or himself out to the general public as an investment adviser and has no more than 15 clients within 12 consecutive months in this state;

8. Any person whose transactions in this state are limited to those transactions described in s. 222(d) of the Investment Advisers Act of 1940. Those clients listed in subparagraph 6. may not be included when determining the number of clients of an investment adviser for purposes of s. 222(d) of the Investment Advisers Act of 1940; or

9. A federal covered adviser.

(15) "Issuer" means any person who proposes to issue, has issued, or shall hereafter issue any security. Any person who acts as a promoter for and on behalf of a corporation, trust, or unincorporated association or partnership of any kind to be formed shall be deemed an issuer.

(16) "Offer to sell," "offer for sale," or "offer" means any attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security, or an investment or interest in an investment, for value.

(17) "Predecessor" means a person the major portion of whose assets have been acquired directly or indirectly by an issuer.

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

(19) "Promoter" includes the following:

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

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

(20) "Qualified institutional buyer" means any qualified institutional buyer, as defined in United States Securities and Exchange Commission Rule 144A, 17 C.F.R. s. 230.144A(a), under the Securities Act of 1933, as

amended, or any foreign buyer that satisfies the minimum financial requirements set forth in such rule.

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

(22) "Security" includes any of the following:

(a) A note.

(b) A stock.

(c) A treasury stock.

(d) A bond.

(e) A debenture.

(f) An evidence of indebtedness.

(g) A certificate of deposit.

(h) A certificate of deposit for a security.

(i) A certificate of interest or participation.

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

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

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

(m) A collateral trust certificate.

(n) A reorganization certificate.

(o) A preorganization subscription.

(p) Any transferable share.

(q) An investment contract.

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

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

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

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

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

(w) A viatical settlement investment.

(23) "Underwriter" means a person who has purchased from an issuer or an affiliate of an issuer with a view to, or offers or sells for an issuer or an affiliate of an issuer in connection with, the distribution of any security, or participates or has a direct or indirect participation in any such undertaking, or participates or has a participation in the direct or indirect underwriting of any such undertaking; except that a person shall be presumed not to be an underwriter with respect to any security which she or he has owned beneficially for at least 1 year; and, further, a dealer shall not be considered an underwriter with respect to any securities which do not represent part of an unsold allotment to or subscription by the dealer as a participant in the distribution

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

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

History.—s. 1, ch. 78-435; s. 147, ch. 79-164; ss. 1, 15, ch. 79-381; s. 5, ch. 80-254; ss. 1, 6, ch. 81-115; ss. 2, 3, ch. 81-318; s. 1, ch. 83-184; s. 3, ch. 83-265; s. 2, ch. 84-159; s. 2, ch. 85-165; s. 3, ch. 86-85; s. 3, ch. 87-237; s. 2, ch. 87-316; ss. 1, 14, 15, ch. 90-362; s. 4, ch. 91-429; s. 5, ch. 97-35; s. 682, ch. 97-103; ss. 1, 2, ch. 97-224; s. 1, ch. 98-221; s. 32, ch. 99-7; s. 50, ch. 2000-154; s. 583, ch. 2003-261; s. 93, ch. 2004-5; s. 1, ch. 2005-237; s. 32, ch. 2006-213; s. 2, ch. 2009-242; s. 1, ch. 2015-171.

517.03 Rulemaking; immunity for acts in conformity with rules.—

(1) The office shall administer and provide for the enforcement of all the provisions of this chapter. The commission may adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this chapter conferring powers or duties upon the office, including, without limitation, adopting rules and forms governing reports. The commission shall also have the nonexclusive power to define by rule any term, whether or not used in this chapter, insofar as the definition is not inconsistent with the provisions of this chapter.

(2) No provision of this chapter imposing liability shall apply to an act done, or omitted to be done, in conformity with a rule of the commission in existence at the time of the act or omission, even though such rule may thereafter be amended or repealed or determined by judicial or other authority to be invalid for any reason.

History.—s. 2, ch. 14899, 1931; CGL 1936 Supp. 6002(3); s. 1, ch. 59-423; s. 2, ch. 65-454; ss. 12, 35, ch. 69-106; s. 196, ch. 71-377; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 2, 15, ch. 79-381; ss. 4, 5, ch. 80-254; ss. 2, 3, ch. 81-318; ss. 14, 15, ch. 90-362; s. 4, ch. 91-429; s. 179, ch. 98-200; s. 584, ch. 2003-261.

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

(1) A security issued or guaranteed by the United States or any territory or insular possession of the United States, by the District of Columbia, or by any state of the United States or by any political subdivision or agency or other instrumentality thereof; provided that no person shall directly or indirectly offer or sell securities, other than general obligation bonds, under this subsection if the issuer or guarantor is in default or has been in default any time after December 31, 1975, as to principal or interest:

(a) With respect to an obligation issued by the issuer or successor of the issuer; or

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

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

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

(3) A security issued or guaranteed by:

(a) A national bank, a federally chartered savings and loan association, or a federally chartered savings

bank, or the initial subscription for equity securities in such national bank, federally chartered savings and loan association, or federally chartered savings bank;

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

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

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

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

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

(a) A bank,

(b) A trust company,

(c) A savings institution,

(d) A building or savings and loan association,

(e) An international development bank, or

(f) A credit union;

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

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

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

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

(9) A security issued by a corporation organized and operated exclusively for religious, educational, benevolent, fraternal, charitable, or reformatory purposes and not for pecuniary profit, no part of the net earnings of which corporation inures to the benefit of any private stockholder or individual, or any security of a

fund that is excluded from the definition of an investment company under s. 3(c)(10)(B) of the Investment Company Act of 1940; provided that no person shall directly or indirectly offer or sell securities under this subsection except by an offering circular containing full and fair disclosure, as prescribed by the rules of the commission, of all material information, including, but not limited to, a description of the securities offered and terms of the offering, a description of the nature of the issuer's business, a statement of the purpose of the offering and the intended application by the issuer of the proceeds thereof, and financial statements of the issuer prepared in conformance with United States generally accepted accounting principles. Section 6(c) of the Philanthropy Protection Act of 1995, Pub. L. No. 104-62, shall not preempt any provision of this chapter.

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

History.—s. 1, ch. 78-435; ss. 3, 15, ch. 79-381; s. 5, ch. 80-254; ss. 2, 6, ch. 81-115; ss. 2, 3, ch. 81-318; s. 3, ch. 83-265; s. 2, ch. 84-159; s. 3, ch. 85-165; s. 2, ch. 86-82; s. 4, ch. 86-85; s. 41, ch. 86-160; s. 4, ch. 87-237; s. 3, ch. 87-316; s. 1, ch. 88-187; ss. 2, 14, 15, ch. 90-362; s. 4, ch. 91-429; s. 1, ch. 92-45; s. 1, ch. 96-338; s. 3, ch. 97-224; s. 2, ch. 98-221; s. 585, ch. 2003-261; s. 33, ch. 2006-213.

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

(1) At any judicial, executor's, administrator's, guardian's, or conservator's sale, or at any sale by a receiver or trustee in insolvency or bankruptcy, or any transaction incident to a judicially approved reorganization in which a security is issued in exchange for one or more outstanding securities, claims, or property interests.

(2) By or for the account of a pledgeholder or mortgagee selling or offering for sale or delivery in the ordinary course of business and not for the purposes of avoiding the provisions of this chapter, to liquidate a bona fide debt, a security pledged in good faith as security for such debt.

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

(a) The offer or sale of securities is in a transaction satisfying all of the requirements of subparagraphs (11)(a)1., 2., 3., and 4. and paragraph (11)(b); or

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

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

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

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

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

(7) The offer or sale of securities to a bank, trust company, savings institution, insurance company, dealer, investment company as defined by the Investment Company Act of 1940, pension or profit-sharing trust, or qualified institutional buyer as defined by rule of the commission in accordance with Securities and Exchange Commission Rule 144A (17 C.F.R. s. 230.144(A)(a)), whether any of such entities is acting in its individual or fiduciary capacity; provided that such offer or sale of securities is not for the direct or indirect promotion of any scheme or enterprise with the intent of violating or evading any provision of this chapter.

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

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

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

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

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

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

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

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

3. Before the sale, each purchaser or the purchaser’s representative, if any, is provided with, or given reasonable access to, full and fair disclosure of all material information.

4. No person defined as a “dealer” in this chapter is paid a commission or compensation for the sale of the issuer’s securities unless such person is registered as a dealer under this chapter.

5. When sales are made to five or more persons in this state, any sale in this state made pursuant to this subsection is voidable by the purchaser in such sale either within 3 days after the first tender of consideration is made by such purchaser to the issuer, an agent of the issuer, or an escrow agent or within 3 days after the availability of that privilege is communicated to such purchaser, whichever occurs later.

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

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

2. Any trust or estate in which a purchaser, any of the persons related to such purchaser specified in

subparagraph 1., and any corporation specified in subparagraph 3. collectively have more than 50 percent of the beneficial interest (excluding contingent interest).

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

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

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

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

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

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

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

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

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

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

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

(15) The offer or sale of securities under a bona fide employer-sponsored stock option, stock purchase, pension, profit-sharing, savings, or other benefit plan when offered only to employees of the sponsoring organization or to employees of its controlled subsidiaries.

(16) The sale by or through a registered dealer of any securities option if at the time of the sale of the option:

(a) The performance of the terms of the option is guaranteed by any dealer registered under the federal

Securities Exchange Act of 1934, as amended, which guaranty and dealer are in compliance with such requirements or rules as may be approved or adopted by the commission; or

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

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

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

(e) Such sale is not directly or indirectly for the purpose of providing or furthering any scheme to violate or evade any provisions of this chapter.

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

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

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

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

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

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

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

(18) The offer or sale of any security effected by or through a person in compliance with s. 517.12(17).

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

(20) Any nonissuer transaction by a registered associated person of a registered dealer, and any resale transaction by a sponsor of a unit investment trust registered under the Investment Company Act of 1940, in a security of a class that has been outstanding in the hands of the public for at least 90 days; provided, at the time of the transaction:

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

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

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

(d) A nationally recognized securities manual designated by rule of the commission or order of the office or a document filed with the Securities and Exchange Commission that is publicly available through the commission's electronic data gathering and retrieval system contains:

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

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

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

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

(e) The issuer of the security has a class of equity securities listed on a national securities exchange registered under the Securities Exchange Act of 1934 or designated for trading on the National Association of Securities Dealers Automated Quotation System, unless:

1. The issuer of the security is a unit investment trust registered under the Investment Company Act of 1940;

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

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

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

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

History.—s. 1, ch. 78-435; ss. 4, 15, ch. 79-381; ss. 1, 5, ch. 80-254; ss. 1, 3, ch. 80-403; ss. 3, 6, ch. 81-115; ss. 2, 3, ch. 81-318; s. 2, ch. 83-184; s. 3, ch. 83-265; s. 3, ch. 84-159; s. 4, ch. 85-165; s. 5, ch. 86-85; ss. 3, 14, 15, ch. 90-362; s. 4, ch. 91-429; s. 2, ch. 92-45; s. 2, ch. 96-338; s. 1166, ch. 97-103; s. 3, ch. 98-221; s. 586, ch. 2003-261; s. 34, ch. 2006-213; s. 2, ch. 2015-171; s. 1, ch. 2016-111.

517.0611 Intrastate crowdfunding.—

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

(2) Notwithstanding any other provision of this chapter, an offer or sale of a security by an issuer is an exempt transaction under s. 517.061 if the offer or sale is conducted in accordance with this section. The exemption provided in this section may not be used in conjunction with any other exemption under s. 517.051 or s. 517.061.

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

adopted pursuant to the Securities Act of 1933.

(4) An issuer must:

(a) Be a for-profit business entity formed under the laws of the state, be registered with the Secretary of State, maintain its principal place of business in the state, and derive its revenues primarily from operations in the state.

(b) Conduct transactions for the offering through a dealer registered with the office or an intermediary registered under s. 517.12(20).

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

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

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

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

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

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

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

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

(c) Contain the name and contact information of the issuer.

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

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

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

fraud or deceit.

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

(h) Include the intermediary's website address where the issuer's securities will be offered.

(i) Include the target offering amount.

(6) The issuer must amend the notice form within 30 days after any information contained in the notice becomes inaccurate for any reason. The commission may require, by rule, an issuer who has filed a notice under this section to file amendments with the office.

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

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

(b) 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 shares of the issuer.

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

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

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

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

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

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

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

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

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

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

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

1. For offerings that, in combination with all other offerings of the issuer within the preceding 12-month period, have target offering amounts of $100,000 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.

2. For offerings that, in combination with all other offerings of the issuer within the preceding 12-month period, have target offering amounts of more than $100,000, but not more than $500,000, the description must include financial statements prepared in accordance with generally accepted accounting principles and reviewed by a certified public accountant, as defined in s. 473.302, who is independent of the issuer, using professional standards and procedures for such review or standards and procedures established by the office, by rule, for such purpose.

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

(i) The following statement 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.

(8) The issuer shall provide to the office a copy of the escrow agreement with a financial institution authorized to conduct business in this state. All investor funds must be deposited in the escrow account. The escrow agreement must require that all offering proceeds be released to the issuer only when the aggregate capital raised from all investors is equal to or greater than the minimum target offering amount specified in the disclosure statement as necessary to implement the business plan, and that all investors will receive a full return of their investment commitment if that target offering amount is not raised by the date stated in the disclosure statement.

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

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

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

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

(11) The issuer shall file with the office and provide to investors free of charge an annual report of the results of operations and financial statements of the issuer within 45 days after the end of its fiscal year, until no securities under this offering are outstanding. The annual reports must meet the following requirements:

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

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

(12)(a) A notice-filing under this section shall be summarily suspended by the office if the payment for the

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

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

(13) An intermediary must:

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

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

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

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

(c) Obtain a zip code or residence address from each potential investor who seeks to view information regarding specific investment opportunities, in order to confirm that the potential investor is a resident of the state.

(d) Obtain and verify a valid Florida driver license number or Florida identification card number from each investor before purchase of a security to confirm that the investor is a resident of the state. The commission may adopt rules authorizing additional forms of identification and prescribing the process for verifying any identification presented by the investor.

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

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

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

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

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

I understand and acknowledge that:

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

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

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

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

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

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

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

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

(l) Prohibit its directors and officers from having any financial interest in the issuer using its services.

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

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

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

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

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

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

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

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

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

History.—s. 3, ch. 2015-171.

517.07 Registration of securities.—

(1) It is unlawful and a violation of this chapter for any person to sell or offer to sell a security within this state unless the security is exempt under s. 517.051, is sold in a transaction exempt under s. 517.061, is a federal covered security, or is registered pursuant to this chapter.

(2) No securities that are required to be registered under this chapter shall be sold or offered for sale within this state unless such securities have been registered pursuant to this chapter and unless prior to each sale the purchaser is furnished with a prospectus meeting the requirements of rules adopted by the commission.

(3) The office shall issue a permit when registration has been granted by the office. A permit to sell securities is effective for 1 year from the date it was granted. Registration of securities shall be deemed to include the registration of rights to subscribe to such securities if the application under s. 517.081 or s. 517.082 for registration of such securities includes a statement that such rights are to be issued.

(4) A record of the registration of securities shall be kept by the office, in which register of securities shall also be recorded any orders entered by the office with respect to such securities. Such register, and all information with respect to the securities registered therein, shall be open to public inspection.

(5) Notwithstanding any other provision of this section, offers of securities required to be registered by this section may be made in this state before the registration of such securities if the offers are made in conformity with rules adopted by the commission.

History.—s. 6, ch. 14899, 1931; CGL 1936 Supp. 6002(7); s. 3, ch. 24066, 1947; s. 11, ch. 25035, 1949; ss. 12, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 2, ch. 78-435; ss. 5, 15, ch. 79-381; ss. 4, 5, ch. 80-254; ss. 2, 3, ch. 81-318; s. 1, ch. 83-201; s. 5, ch. 85-165; s. 6, ch. 86-85; ss. 14, 15, ch. 90-362; s. 4, ch. 91-429; s. 4, ch. 97-224; s. 587, ch. 2003-261.

517.072 Viatical settlement investments.—

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

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

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

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

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

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

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

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

History.—s. 2, ch. 2005-237; s. 3, ch. 2009-242.

517.075 Cuba, prospectus disclosure of doing business with, required.—

(1) Any issuer of securities that will be sold in this state pursuant to a prospectus must disclose in the prospectus if the issuer or any affiliate thereof, as defined in s. 517.021(1), does business with the government of Cuba or with any person or affiliate located in Cuba. The prospectus disclosure required by this subsection does not apply with respect to prospectuses prepared before April 10, 1992.

(2) Any disclosure required by subsection (1) must include:

(a) The name of such person, affiliate, or government with which the issuer does business and the nature of that business;

(b) A statement that the information is accurate as of the date the securities were effective with the United States Securities and Exchange Commission or with the office, whichever date is later; and

(c) A statement that current information concerning the issuer's business dealings with the government of Cuba or with any person or affiliate located in Cuba may be obtained from the office, which statement must include the address and phone number of the office.

(3) If an issuer commences engaging in business with the government of Cuba or with any person or affiliate located in Cuba, after the date issuer's securities become effective with the Securities and Exchange Commission or with the office, whichever date is later, or if the information reported in the prospectus concerning that business changes in any material way, the issuer must provide the office notice of that business or change, as appropriate, in a manner acceptable to the office. The commission shall prescribe by rule a form for persons to use to report the commencement of such business or any change in such business which occurs after the effective registration of such securities. This form must include, at a minimum, the information required by subsection (2). The information reported on the form must be kept current. Information is current if reported to the office within 90 days after the commencement of business or within 90 days after the change occurs with respect to previously reported information.

(4) The office shall provide, upon request, a copy of any form filed with the office under subsection (3) to any person requesting the form.

(5) Each securities offering sold in violation of this section, and each failure of an issuer to timely file the form required by subsection (3), subjects the issuer to a fine of up to $5,000. Any fine collected under this section shall be deposited into the Anti-Fraud Trust Fund of the office.

(6)(a) Any person who has purchased securities sold in violation of this section may commence a civil action against the issuer. Any court of competent jurisdiction in which the suit is filed may require the issuer to comply with this section and may also require the issuer to pay monetary damages to the purchaser of up to $5,000.

(b) Any person may bring an action in circuit court against the issuer to seek the imposition of a fine or injunction, or both, to ensure the issuer's compliance with this section. Proceeds from fines imposed pursuant to an action under this subsection shall be deposited into the General Revenue Fund.

(7) A broker, dealer, or agent is deemed to have complied with this section by obtaining from the issuer a written statement, at or prior to the sale of such securities, that the issuer has complied with all provisions of this section. A broker, dealer, or agent who sells any securities offered by an issuer in violation of this section and who has obtained a statement of compliance from the issuer shall be indemnified by the issuer for all losses, including attorney's fees, incurred by the broker, dealer, or agent as a result of the issuer's violation of this section.

(8) This section does not apply to securities or transactions that are exempt from registration under federal or state law or to investment companies registered under the Investment Company Act of 1940, as amended.

History.—s. 1, ch. 92-198; s. 588, ch. 2003-261.

517.081 Registration procedure.—

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

(2) The office shall receive and act upon applications to have securities registered, and the commission may prescribe forms on which it may require such applications to be submitted. Applications shall be duly signed by the applicant, sworn to by any person having knowledge of the facts, and filed with the office. The commission may establish, by rule, procedures for depositing fees and filing documents by electronic means provided such procedures provide the office with the information and data required by this section. An application may be made either by the issuer of the securities for which registration is applied or by any registered dealer desiring to sell the same within the state.

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

(a) The names and addresses of the directors, trustees, and officers, if the issuer be a corporation, association, or trust; of all the partners, if the issuer be a partnership; or of the issuer, if the issuer be an individual.

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

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

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

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

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

(g)1. A specimen copy of the security and a copy of any circular, prospectus, advertisement, or other description of such securities.

2. The commission shall adopt a form for a simplified offering circular to be used solely by corporations to register, under this section, securities of the corporation that are sold in offerings in which the aggregate offering price in any consecutive 12-month period does not exceed the amount provided in s. 3(b) of the Securities Act of 1933. The following issuers shall not be eligible to submit a simplified offering circular adopted pursuant to this subparagraph:

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

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

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

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

e. Any issuer the office determines is ineligible if the form would not provide full and fair disclosure of material information for the type of offering to be registered by the issuer.

f. Any corporation which has failed to provide the office the reports required for a previous offering registered pursuant to this subparagraph.

As a condition precedent to qualifying for use of the simplified offering circular, a corporation shall agree to provide the office with an annual financial report containing a balance sheet as of the end of the issuer's fiscal

year and a statement of income for such year, prepared in accordance with United States generally accepted accounting principles and accompanied by an independent accountant's report. If the issuer has more than 100 security holders at the end of a fiscal year, the financial statements must be audited. Annual financial reports must be filed with the office within 90 days after the close of the issuer's fiscal year for each of the first 5 years following the effective date of the registration.

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

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

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

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

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

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

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

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

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

(6) An issuer filing an application under this section shall, at the time of filing, pay the office a nonreturnable fee of $1,000 per application.

(7) If upon examination of any application the office shall find that the sale of the security referred to therein would not be fraudulent and would not work or tend to work a fraud upon the purchaser, that the terms of the sale of such securities would be fair, just, and equitable, and that the enterprise or business of the issuer is not based upon unsound business principles, it shall record the registration of such security in the register of securities; and thereupon such security so registered may be sold by any registered dealer, subject, however, to the further order of the office. In order to determine if an offering is fair, just, and equitable, the commission may by rule establish requirements and standards for the filing, content, and circulation of any preliminary, final, or amended prospectus and other sales literature and may by rule establish merit qualification criteria relating to the issuance of equity securities, debt securities, insurance company securities, real estate investment trusts, and other traditional and nontraditional investments, including, but not limited to, oil and gas investments. The criteria may include such elements as the promoter's equity investment ratio, the financial condition of the issuer, the voting rights of shareholders, the grant of options or warrants to underwriters and others, loans and other affiliated transaction, the use or refund of proceeds of the offering,

and such other relevant criteria as the office in its judgment may deem necessary to such determination.

(8) The commission may by rule establish requirements and standards for:

(a) Disclosures to purchasers of viatical settlement investments.

(b) Recordkeeping requirements for sellers of viatical settlement investments.

History.—s. 3, ch. 78-435; s. 148, ch. 79-164; ss. 6, 15, ch. 79-381; ss. 2, 5, ch. 80-254; ss. 2, 3, ch. 81-318; s. 6, ch. 85-165; ss. 14, 15, ch. 90-362; s. 4, ch. 91-429; s. 5, ch. 97-224; s. 4, ch. 98-221; s. 589, ch. 2003-261; s. 3, ch. 2005-237; s. 35, ch. 2006-213.

517.082 Notification registration.—

(1) Except as provided in subsection (3), securities offered or sold pursuant to a registration statement filed under the Securities Act of 1933 shall be entitled to registration by notification in the manner provided in subsection (2), provided that prior to the offer or sale the registration statement has become effective.

(2) An application for registration by notification shall be filed with the office, shall contain the following information, and shall be accompanied by the following:

(a) An application to sell executed by the issuer, any person on whose behalf the offering is made, a dealer registered under this chapter, or any duly authorized agent of any such person, setting forth the name and address of the applicant, the name and address of the issuer, and the title of the securities to be offered and sold;

(b) Copies of such documents filed with the Securities and Exchange Commission as the Financial Services Commission may by rule require;

(c) An irrevocable written consent to service as required by s. 517.101; and

(d) A nonreturnable fee of $1,000 per application.

A registration under this section becomes effective when the federal registration statement becomes effective or as of the date the application is filed with the office, whichever is later, provided that, in addition to the items listed in paragraphs (a)-(d), the office has received written notification of effective registration under the Securities Act of 1933 or the Investment Company Act of 1940 within 10 business days from the date federal registration is granted. Failure to provide all the information required by this subsection to the office within 60 days of the date the registration statement becomes effective with the Securities and Exchange Commission shall be a violation of this chapter.

(3) Except for units of limited partnership interests or such other securities as the commission describes by rule as exempt from this subsection due to high investment quality, the provisions of this section may not be used to register securities if the offering price at the time of effectiveness with the Securities and Exchange Commission is $5 or less per share, unless such securities are listed or designated, or approved for listing or designation upon notice of issuance, on a stock exchange registered pursuant to the Securities Exchange Act of 1934 or on the National Association of Securities Dealers Automated Quotation (NASDAQ) System, or unless such securities are of the same issuer and of senior or substantially equal rank to securities so listed or designated.

(4) In lieu of filing with the office the application, fees, and documents for registration required by subsection (2), the commission may establish, by rule, procedures for depositing fees and filing documents by electronic means, provided such procedures provide the office with the information and data required by this section.

History.—ss. 7, 15, ch. 85-165; s. 7, ch. 86-85; s. 4, ch. 87-316; ss. 4, 14, 15, ch. 90-362; s. 4, ch. 91-429; s. 3, ch. 96-338; s. 6, ch. 97-224; s. 5, ch. 98-221; s. 590, ch. 2003-261.

517.101 Consent to service.—

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

due service had been made on the issuer.

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

History.—s. 3, ch. 78-435; s. 5, ch. 80-254; s. 392, ch. 81-259; ss. 2, 3, ch. 81-318; ss. 14, 15, ch. 90-362; s. 4, ch. 91-429; s. 4, ch. 96-338; s. 7, ch. 97-224; s. 591, ch. 2003-261.

517.111 Revocation or denial of registration of securities.—

(1) The office may revoke or suspend the registration of any security, or may deny any application to register securities, if upon examination into the affairs of the issuer of such security it shall appear that:

(a) The issuer is insolvent;

(b) The issuer or any officer, director, or control person of the issuer has violated any provision of this chapter or any rule made hereunder or any order of the office of which such issuer has notice;

(c) The issuer or any officer, director, or control person of the issuer has been or is engaged or is about to engage in fraudulent transactions;

(d) The issuer or any officer, director, or control person of the issuer has been found guilty of a fraudulent act in connection with any sale of securities, has engaged, is engaged, or is about to engage, in making a fictitious sale or purchase of any security, or in any practice or sale of any security which is fraudulent or a violation of any law;

(e) The issuer or any officer, director, or control person of the issuer has had a final judgment entered against such issuer or person in a civil action on the grounds of fraud, embezzlement, misrepresentation, or deceit;

(f) The issuer or any officer, director, or control person of the issuer has demonstrated any evidence of unworthiness;

(g) The issuer or any officer, director, or control person of the issuer is in any other way dishonest or has made any fraudulent representations or failed to disclose any material information in any prospectus or in any circular or other literature that has been distributed concerning the issuer or its securities;

(h) The security registered or sought to be registered is the subject of an injunction entered by a court of competent jurisdiction or is the subject of an administrative stop-order or similar order prohibiting the offer or sale of the security;

(i) For any security for which registration has been applied pursuant to s. 517.081, the terms of the offer or sale of such securities would not be fair, just, or equitable; or

(j) The issuer or any person acting on behalf of the issuer has failed to timely complete any application for registration filed with the office pursuant to the provisions of s. 517.081 or s. 517.082 or any rule adopted under such sections.

In making such examination, the office shall have access to and may compel the production of all the books and papers of such issuer and may administer oaths to and examine the officers of such issuer or any other person connected therewith as to its business and affairs and may also require a balance sheet exhibiting the assets

and liabilities of any such issuer or its income statement, or both, to be certified to by a public accountant either of this state or of any other state where the issuer's business is located. Whenever the office deems it necessary, it may also require such balance sheet or income statement, or both, to be made more specific in such particulars as the office may require.

(2) If any issuer shall refuse to permit an examination to be made by the office, it shall be proper ground for revocation of registration.

(3) If the office deems it necessary, it may enter an order suspending the right to sell securities pending any investigation, provided that the order shall state the office's grounds for taking such action.

(4) Notice of the entry of such order shall be given by mail, personally, by telephone confirmed in writing, or by telegraph to the issuer. Before such order is made final, the issuer applying for registration shall, on application, be entitled to a hearing.

(5) The office may deny any request to terminate any registration or to withdraw any application for registration if the office believes that an act which would be grounds for denial, suspension, or revocation under this chapter has been committed.

History.—s. 3, ch. 78-435; s. 5, ch. 80-254; ss. 2, 3, ch. 81-318; s. 8, ch. 85-165; ss. 5, 14, 15, ch. 90-362; s. 4, ch. 91-429; s. 3, ch. 92-45; s. 592, ch. 2003-261.

517.12 Registration of dealers, associated persons, intermediaries, and investment advisers.—

(1) No dealer, associated person, or issuer of securities shall sell or offer for sale any securities in or from offices in this state, or sell securities to persons in this state from offices outside this state, by mail or otherwise, unless the person has been registered with the office pursuant to the provisions of this section. The office shall not register any person as an associated person of a dealer unless the dealer with which the applicant seeks registration is lawfully registered with the office pursuant to this chapter.

(2) The registration requirements of this section do not apply to the issuers of securities exempted by s. 517.051(1)-(8) and (10).

(3) Except as otherwise provided in s. 517.061(11)(a)4., (13), (16), (17), or (19), the registration requirements of this section do not apply in a transaction exempted by s. 517.061(1)-(12), (14), and (15).

(4) No investment adviser or associated person of an investment adviser or federal covered adviser shall engage in business from offices in this state, or render investment advice to persons of this state, by mail or otherwise, unless the federal covered adviser has made a notice-filing with the office pursuant to s. 517.1201 or the investment adviser is registered pursuant to the provisions of this chapter and associated persons of the federal covered adviser or investment adviser have been registered with the office pursuant to this section. The office shall not register any person or an associated person of a federal covered adviser or an investment adviser unless the federal covered adviser or investment adviser with which the applicant seeks registration is in compliance with the notice-filing requirements of s. 517.1201 or is lawfully registered with the office pursuant to this chapter. A dealer or associated person who is registered pursuant to this section may render investment advice upon notification to and approval from the office.

(5) No dealer or investment adviser shall conduct business from a branch office within this state unless the branch office is notice-filed with the office pursuant to s. 517.1202.

(6) A dealer, associated person, or investment adviser, in order to obtain registration, must file with the office a written application, on a form which the commission may by rule prescribe. The commission may establish, by rule, procedures for depositing fees and filing documents by electronic means provided such procedures provide the office with the information and data required by this section. Each dealer or investment adviser must also file an irrevocable written consent to service of civil process similar to that provided for in s. 517.101. The application shall contain such information as the commission or office may require concerning such matters as:

(a) The name of the applicant and the address of its principal office and each office in this state.

(b) The applicant's form and place of organization; and, if the applicant is a corporation, a copy of its articles of incorporation and amendments to the articles of incorporation or, if a partnership, a copy of the partnership agreement.

(c) The applicant's proposed method of doing business and financial condition and history, including a certified financial statement showing all assets and all liabilities, including contingent liabilities of the applicant as of a date not more than 90 days prior to the filing of the application.

(d) The names and addresses of all associated persons of the applicant to be employed in this state and the offices to which they will be assigned.

(7) The application must also contain such information as the commission or office may require about the applicant; any member, principal, or director of the applicant or any person having a similar status or performing similar functions; any person directly or indirectly controlling the applicant; or any employee of a dealer or of an investment adviser rendering investment advisory services. Each applicant and any direct owners, principals, or indirect owners that are required to be reported on Form BD or Form ADV pursuant to subsection (15) shall submit fingerprints for live-scan processing in accordance with rules adopted by the commission. The fingerprints may be submitted through a third-party vendor authorized by the Department of Law Enforcement to provide live-scan fingerprinting. The costs of fingerprint processing shall be borne by the person subject to the background check. The Department of Law Enforcement shall conduct a state criminal history background check, and a federal criminal history background check must be conducted through the Federal Bureau of Investigation. The office shall review the results of the state and federal criminal history background checks and determine whether the applicant meets licensure requirements. The commission may waive, by rule, the requirement that applicants, including any direct owners, principals, or indirect owners that are required to be reported on Form BD or Form ADV pursuant to subsection (15), submit fingerprints or the requirement that such fingerprints be processed by the Department of Law Enforcement or the Federal Bureau of Investigation. The commission or office may require information about any such applicant or person concerning such matters as:

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

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

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

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

(8) The commission or office may require the applicant or one or more principals or general partners, or natural persons exercising similar functions, or any associated person applicant to successfully pass oral or written examinations. Because any principal, manager, supervisor, or person exercising similar functions shall be responsible for the acts of the associated persons affiliated with a dealer, the examination standards may be higher for a dealer, office manager, principal, or person exercising similar functions than for a nonsupervisory associated person. The commission may waive the examination process when it determines that such examinations are not in the public interest. The office shall waive the examination requirements for any person who has passed any tests as prescribed in s. 15(b)(7) of the Securities Exchange Act of 1934 that relates to the position to be filled by the applicant.

(9)(a) All dealers, except securities dealers who are designated by the Federal Reserve Bank of New York as

primary government securities dealers or securities dealers registered as issuers of securities, shall comply with the net capital and ratio requirements imposed pursuant to the Securities Exchange Act of 1934. The commission may by rule require a dealer to file with the office any financial or operational information that is required to be filed by the Securities Exchange Act of 1934 or any rules adopted under such act.

(b) The commission may by rule require the maintenance of a minimum net capital for securities dealers who are designated by the Federal Reserve Bank of New York as primary government securities dealers and securities dealers registered as issuers of securities and investment advisers, or prescribe a ratio between net capital and aggregate indebtedness, to assure adequate protection for the investing public. The provisions of this section shall not apply to any investment adviser that maintains its principal place of business in a state other than this state, provided such investment adviser is registered in the state where it maintains its principal place of business and is in compliance with such state's net capital requirements.

(10) An applicant for registration shall pay an assessment fee of $200, in the case of a dealer or investment adviser, or $50, in the case of an associated person. An associated person may be assessed an additional fee to cover the cost for the fingerprints to be processed by the office. Such fee shall be determined by rule of the commission. Such fees become the revenue of the state, except for those assessments provided for under s. 517.131(1) until such time as the Securities Guaranty Fund satisfies the statutory limits, and are not returnable in the event that registration is withdrawn or not granted.

(11) If the office finds that the applicant is of good repute and character and has complied with the provisions of this chapter and the rules made pursuant hereto, it shall register the applicant. The registration of each dealer, investment adviser, and associated person expires on December 31 of the year the registration became effective unless the registrant has renewed his or her registration on or before that date. Registration may be renewed by furnishing such information as the commission may require, together with payment of the fee required in subsection (10) for dealers, investment advisers, or associated persons and the payment of any amount lawfully due and owing to the office pursuant to any order of the office or pursuant to any agreement with the office. Any dealer, investment adviser, or associated person who has not renewed a registration by the time the current registration expires may request reinstatement of such registration by filing with the office, on or before January 31 of the year following the year of expiration, such information as may be required by the commission, together with payment of the fee required in subsection (10) for dealers, investment advisers, or associated persons and a late fee equal to the amount of such fee. Any reinstatement of registration granted by the office during the month of January shall be deemed effective retroactive to January 1 of that year.

(12)(a) The office may issue a license to a dealer, investment adviser, or associated person to evidence registration under this chapter. The office may require the return to the office of any license it may issue prior to issuing a new license.

(b) Every dealer, investment adviser, or federal covered adviser shall promptly file with the office, as prescribed by rules adopted by the commission, notice as to the termination of employment of any associated person registered for such dealer or investment adviser in this state and shall also furnish the reason or reasons for such termination.

(c) Each dealer or investment adviser shall designate in writing to, and register with, the office a manager for each office the dealer or investment adviser has in this state.

(13) Changes in registration occasioned by changes in personnel of a partnership or in the principals, copartners, officers, or directors of any dealer or investment adviser or by changes of any material fact or method of doing business shall be reported by written amendment in such form and at such time as the commission may specify. In any case in which a person or a group of persons, directly or indirectly or acting by or through one or more persons, proposes to purchase or acquire a controlling interest in a registered dealer or investment adviser, such person or group shall submit an initial application for registration as a dealer or investment adviser prior to such purchase or acquisition. The commission shall adopt rules providing for waiver

of the application required by this subsection where control of a registered dealer or investment adviser is to be acquired by another dealer or investment adviser registered under this chapter or where the application is otherwise unnecessary in the public interest.

(14) Every dealer or investment adviser registered or required to be registered or branch office notice-filed or required to be notice-filed with the office shall keep records of all currency transactions in excess of $10,000 and shall file reports, as prescribed under the financial recordkeeping regulations in 31 C.F.R. part 103, with the office when transactions occur in or from this state. All reports required by this subsection to be filed with the office shall be confidential and exempt from s. 119.07(1) except that any law enforcement agency or the Department of Revenue shall have access to, and shall be authorized to inspect and copy, such reports.

(15)(a) In order to facilitate uniformity and streamline procedures for persons who are subject to registration or notification in multiple jurisdictions, the commission may adopt by rule uniform forms that have been approved by the Securities and Exchange Commission, and any subsequent amendments to such forms, if the forms are substantially consistent with the provisions of this chapter. Uniform forms that the commission may adopt to administer this section include, but are not limited to:

1. Form BR, Uniform Branch Office Registration Form, adopted October 2005.
2. Form U4, Uniform Application for Securities Industry Registration or Transfer, adopted October 2005.
3. Form U5, Uniform Termination Notice for Securities Industry Registration, adopted October 2005.
4. Form ADV, Uniform Application for Investment Adviser Registration, adopted October 2003.
5. Form ADV-W, Notice of Withdrawal from Registration as an Investment Adviser, adopted October 2003.
6. Form BD, Uniform Application for Broker-Dealer Registration, adopted July 1999.
7. Form BDW, Uniform Request for Broker-Dealer Withdrawal, adopted August 1999.

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

(16) Except for securities dealers who are designated by the Federal Reserve Bank of New York as primary government securities dealers or securities dealers registered as issuers of securities, every applicant for initial or renewal registration as a securities dealer and every person registered as a securities dealer shall be registered as a broker or dealer with the Securities and Exchange Commission and shall be subject to insurance coverage by the Securities Investor Protection Corporation.

(17)(a) A dealer that is located in Canada, does not have an office or other physical presence in this state, and has made a notice-filing in accordance with this subsection is exempt from the registration requirements of this section and may effect transactions in securities with or for, or induce or attempt to induce the purchase or sale of any security by:

1. A person from Canada who is present in this state and with whom the Canadian dealer had a bona fide dealer-client relationship before the person entered the United States; or
2. A person from Canada who is present in this state and whose transactions are in a self-directed, tax-advantaged retirement plan in Canada of which the person is the holder or contributor.

(b) A notice-filing under this subsection must consist of documents the commission by rule requires to be filed, together with a consent to service of process and a nonrefundable filing fee of $200. The commission may establish by rule procedures for the deposit of fees and the filing of documents to be made by electronic means, if such procedures provide the office with the information and data required by this section.

(c) A Canadian dealer may make a notice-filing under this subsection if the dealer provides to the office:

1. A notice-filing in the form the commission requires by rule.

2. A consent to service of process.

3. Evidence that the Canadian dealer is registered as a dealer in the jurisdiction in which the dealer's main office is located.

4. Evidence that the Canadian dealer is a member of a self-regulatory organization or stock exchange in Canada.

(d) The office may issue a permit to evidence the effectiveness of a notice-filing for a Canadian dealer.

(e) A notice-filing is effective upon receipt by the office. A notice-filing expires on December 31 of the year in which the filing becomes effective unless the Canadian dealer has renewed the filing on or before that date. A Canadian dealer may annually renew a notice-filing by furnishing to the office such information as the office requires together with a renewal fee of $200 and the payment of any amount due and owing the office pursuant to any agreement with the office. Any Canadian dealer who has not renewed a notice-filing by the time a current notice-filing expires may request reinstatement of such notice-filing by filing with the office, on or before January 31 of the year following the year the notice-filing expires, such information as the commission requires by rule, together with the payment of $200 and a late fee of $200. A reinstatement of a notice-filing granted by the office during the month of January is effective retroactively to January 1 of that year.

(f) An associated person who represents a Canadian dealer who has made a notice-filing under this subsection is exempt from the registration requirements of this section and may effect transactions in securities in this state as permitted for a dealer under paragraph (a) if such person is registered in the jurisdiction from which he or she is effecting transactions into this state.

(g) A Canadian dealer who has made a notice-filing under this subsection shall:

1. Maintain its provincial or territorial registration and its membership in a self-regulatory organization or stock exchange in good standing.

2. Provide the office upon request with its books and records relating to its business in this state as a dealer.

3. Provide the office upon request notice of each civil, criminal, or administrative action initiated against the dealer.

4. Disclose to its clients in this state that the dealer and its associated persons are not subject to the full regulatory requirements under this chapter.

5. Correct any inaccurate information within 30 days after the information contained in the notice-filing becomes inaccurate for any reason.

(h) An associated person representing a Canadian dealer who has made a notice-filing under this subsection shall:

1. Maintain provincial or territorial registration in good standing.

2. Provide the office upon request with notice of each civil, criminal, or administrative action initiated against such person.

(i) A notice-filing may be terminated by filing notice of such termination with the office. Unless another date is specified by the Canadian dealer, such notice is effective upon receipt of the notice by the office.

(j) All fees collected under this subsection become the revenue of the state, except those assessments provided for under s. 517.131(1), until the Securities Guaranty Fund has satisfied the statutory limits. Such fees are not returnable if a notice-filing is withdrawn.

(18) Every dealer or associated person registered or required to be registered with the office shall satisfy any continuing education requirements established by rule pursuant to law.

(19) The registration requirements of this section which apply to investment advisers and associated persons do not apply to a commodity trading adviser who:

(a) Is registered as such with the Commodity Futures Trading Commission pursuant to the Commodity Exchange Act.

(b) Advises or exercises trading discretion, with respect to foreign currency options listed and traded exclusively on the Philadelphia Stock Exchange, on behalf of an "appropriate person" as defined by the Commodity Exchange Act.

The exemption provided in this subsection does not apply to a commodity trading adviser who engages in other activities that require registration under this chapter.

(20) An intermediary may not engage in business in this state unless the intermediary is registered as a dealer or as an intermediary with the office pursuant to this section to facilitate the offer or sale of securities in accordance with s. 517.0611. An intermediary, in order to obtain registration, must file with the office a written application on a form prescribed by commission rule and pay a registration fee of $200. The fees under this subsection shall be deposited into the Regulatory Trust Fund of the office. The commission may establish by rule procedures for depositing fees and filing documents by electronic means if such procedures provide the office with the information and data required by this section. Each intermediary must also file an irrevocable written consent to service of civil process, as provided in s. 517.101.

(a) The application must contain such information as the commission or office may require concerning:

1. The name of the applicant and address of its principal office and each office in this state.

2. The applicant's form and place of organization; and, if the applicant is a corporation, a copy of its articles of incorporation and amendments to the articles of incorporation or, if a partnership, a copy of the partnership agreement.

3. The website address where securities of the issuer will be offered.

4. Contact information.

(b) The application must also contain such information as the commission may require by rule about the applicant; any member, principal, or director of the applicant or any person having a similar status or performing similar functions; or any persons directly or indirectly controlling the applicant. Each applicant and any direct owners, principals, or indirect owners that are required to be reported on a form adopted by commission rule shall submit fingerprints for live-scan processing in accordance with rules adopted by the commission. The fingerprints may be submitted through a third-party vendor authorized by the Department of Law Enforcement to provide live-scan fingerprinting. The costs of fingerprint processing shall be borne by the person subject to the background check. The Department of Law Enforcement shall conduct a state criminal history background check, and a federal criminal history background check must be conducted through the Federal Bureau of Investigation. The office shall review the results of the state and federal criminal history background checks and determine whether the applicant meets registration requirements. The commission may waive, by rule, the requirement that applicants, including any direct owners, principals, or indirect owners, which are required to be reported on a form adopted by commission rule, submit fingerprints or the requirement that such fingerprints be processed by the Department of Law Enforcement or the Federal Bureau of Investigation. The commission, by rule, or the office may require information about any applicant or person, including:

1. His or her full name and any other names by which he or she may have been known and his or her age, social security number, photograph, qualifications, and educational and business history.

2. Any injunction or administrative order by a state or federal agency, national securities exchange, or national securities association involving a security or any aspect of the securities business and any injunction or administrative order by a state or federal agency regulating banking, insurance, finance, or small loan companies, real estate, mortgage brokers, or other related or similar industries, which relate to such person.

3. His or her conviction of, or plea of nolo contendere to, a criminal offense or his or her commission of any acts that would be grounds for refusal of an application under s. 517.161.

(c) The application must be amended within 30 days if any information contained in the form becomes inaccurate for any reason.

(d) An intermediary or persons affiliated with the intermediary are not subject to any disqualification described in s. 517.1611 or United States Securities and Exchange Commission Rule 506(d), 17 C.F.R. 230.506(d), adopted pursuant to the Securities Act of 1933. Each director, officer, control person of the issuer, any person occupying a similar status or performing a similar function, and each person holding more than 20 percent of the shares of the intermediary is subject to this requirement.

(e) If the office finds that the applicant is of good repute and character and has complied with the provisions of this chapter and the rules adopted thereunder, it shall register the applicant. The registration of each intermediary expires on December 31 of the year the registration became effective unless the registrant renews his or her registration on or before that date. Registration may be renewed by furnishing such information as the commission may require by rule, together with payment of a $200 fee and the payment of any amount due to the office pursuant to any order of the office or pursuant to any agreement with the office. An intermediary who has not renewed a registration by the time that the current registration expires may request reinstatement of such registration by filing with the office, on or before January 31 of the year following the year of expiration, such information as required by the commission, together with payment of the $200 fee and a late fee of $200. Any reinstatement of registration granted by the office during the month of January is deemed effective retroactive to January 1 of that year.

(21) The registration requirements of this section do not apply to any general lines insurance agent or life insurance agent licensed under chapter 626, for the sale of a security as defined in s. 517.021(22)(g), if the individual is directly authorized by the issuer to offer or sell the security on behalf of the issuer and the issuer is a federally chartered savings bank subject to regulation by the Federal Deposit Insurance Corporation. Actions under this subsection shall constitute activity under the insurance agent's license for purposes of ss. 626.611 and 626.621.

(22)(a) As used in this subsection, the term:

1. "Broker" has the same meaning as "dealer" as defined in s. 517.021.

2. "Control person" means an individual or entity that possesses the power, directly or indirectly, to direct the management or policies of a company through ownership of securities, by contract, or otherwise. A person is presumed to be a control person of a company if, with respect to a particular company, the person:

a. Is a director, a general partner, a member, or a manager of a limited liability company, or is an officer who exercises executive responsibility or has a similar status or function;

b. Has the power to vote 20 percent or more of a class of voting securities or has the power to sell or direct the sale of 20 percent or more of a class of voting securities; or

c. In the case of a partnership or limited liability company, may receive upon dissolution, or has contributed, 20 percent or more of the capital.

3. "Eligible privately held company" means a company that meets all of the following conditions:

a. The company does not have any class of securities which is registered, or which is required to be registered, with the United States Securities and Exchange Commission under the Securities Exchange Act of 1934, 15 U.S.C. ss. 78a et seq., or with the office under s. 517.07, or for which the company files, or is required to file, summary and periodic information, documents, and reports under s. 15(d) of the Securities Exchange Act of 1934, 15 U.S.C. s. 78o(d).

b. In the fiscal year immediately preceding the fiscal year during which the merger and acquisition broker begins to provide services for the securities transaction, the company, in accordance with its historical financial accounting records, has earnings before interest, taxes, depreciation, and amortization of less than $25 million or has gross revenues of less than $250 million. On July 1, 2021, and every 5 years thereafter, each dollar amount in this sub-subparagraph shall be adjusted by dividing the annual value of the Employment Cost Index for wages and salaries for private industry workers, or any successor index, as published by the Bureau of Labor Statistics, for the calendar year preceding the calendar year in which the adjustment is being made, by the

annual value of such index or successor index for the calendar year ending December 31, 2012, and multiplying such dollar amount by the quotient obtained. Each dollar amount determined under this sub-subparagraph shall be rounded to the nearest multiple of $100,000.

4. "Merger and acquisition broker" means any broker and any person associated with a broker engaged in the business of effecting securities transactions solely in connection with the transfer of ownership of an eligible privately held company, regardless of whether that broker acts on behalf of a seller or buyer, through the purchase, sale, exchange, issuance, repurchase, or redemption of, or a business combination involving, securities or assets of the eligible privately held company.

5. "Public shell company" means a company that at the time of a transaction with an eligible privately held company:

a. Has any class of securities which is registered, or which is required to be registered, with the United States Securities and Exchange Commission under the Securities Exchange Act of 1934, 15 U.S.C. ss. 78a et seq., or with the office under s. 517.07, or for which the company files, or is required to file, summary and periodic information, documents, and reports under s. 15(d) of the Securities Exchange Act of 1934, 15 U.S.C. s. 78o(d);

b. Has nominal or no operations; and

c. Has nominal assets or no assets, assets consisting solely of cash and cash equivalents, or assets consisting of any amount of cash and cash equivalents and nominal other assets.

(b) Prior to the completion of any securities transaction described in s. 517.061(22), a merger and acquisition broker must receive written assurances from the control person with the largest percentage of ownership for both the buyer and seller engaged in the transaction that:

1. After the transaction is completed, any person who acquires securities or assets of the eligible privately held company, acting alone or in concert, will be a control person of the eligible privately held company or will be a control person for the business conducted with the assets of the eligible privately held company; and

2. If any person is offered securities in exchange for securities or assets of the eligible privately held company, such person will, before becoming legally bound to complete the transaction, receive or be given reasonable access to the most recent year-end financial statements of the issuer of the securities offered in exchange. The most recent year-end financial statements shall be customarily prepared by the issuer's management in the normal course of operations. If the financial statements of the issuer are audited, reviewed, or compiled, the most recent year-end financial statements must include any related statement by the independent certified public accountant; a balance sheet dated not more than 120 days before the date of the exchange offer; and information pertaining to the management, business, results of operations for the period covered by the foregoing financial statements, and material loss contingencies of the issuer.

(c) A merger and acquisition broker engaged in a transaction exempt under s. 517.061(22) is exempt from registration under this section unless the merger and acquisition broker:

1. Directly or indirectly, in connection with the transfer of ownership of an eligible privately held company, receives, holds, transmits, or has custody of the funds or securities to be exchanged by the parties to the transaction;

2. Engages on behalf of an issuer in a public offering of any class of securities which is registered, or which is required to be registered, with the United States Securities and Exchange Commission under the Securities Exchange Act of 1934, 15 U.S.C. ss. 78a et seq., or with the office under s. 517.07; or for which the issuer files, or is required to file, periodic information, documents, and reports under s. 15(d) of the Securities Exchange Act of 1934, 15 U.S.C. s. 78o(d);

3. Engages on behalf of any party in a transaction involving a public shell company;

4. Is subject to a suspension or revocation of registration under s. 15(b)(4) of the Securities Exchange Act of 1934, 15 U.S.C. s. 78o(b)(4);

5. Is subject to a statutory disqualification described in s. 3(a)(39) of the Securities Exchange Act of 1934,

15 U.S.C. s. 78c(a)(39);

6. Is subject to a disqualification under the United States Securities and Exchange Commission Rule 506(d), 17 C.F.R. s. 230.506(d); or

7. Is subject to a final order described in s. 15(b)(4)(H) of the Securities Exchange Act of 1934, 15 U.S.C. s. 78o(b)(4)(H).

History.—s. 11, ch. 14899, 1931; s. 6, ch. 17253, 1935; CGL 1936 Supp. 6002(12); s. 3, ch. 20960, 1941; s. 3, ch. 21709, 1943; s. 1, ch. 57-288; s. 1, ch. 59-169; s. 1, ch. 63-321; s. 6, ch. 65-454; ss. 12, 35, ch. 69-106; s. 6, ch. 71-96; s. 2, ch. 72-152; s. 3, ch. 73-68; s. 1, ch. 74-278; s. 3, ch. 76-168; s. 194, ch. 77-104; s. 1, ch. 77-457; s. 4, ch. 78-435; s. 19, ch. 79-8; s. 149, ch. 79-164; ss. 7, 15, ch. 79-381; ss. 3-5, ch. 80-254; ss. 2, 3, ch. 80-403; ss. 4, 6, ch. 81-115; ss. 2, 3, ch. 81-318; s. 3, ch. 83-184; s. 3, ch. 83-265; s. 4, ch. 84-159; s. 9, ch. 85-165; s. 8, ch. 86-85; s. 2, ch. 88-187; ss. 6, 14, 15, ch. 90-362; s. 4, ch. 91-429; s. 3, ch. 92-9; s. 4, ch. 92-45; s. 5, ch. 96-338; s. 336, ch. 96-406; s. 1167, ch. 97-103; s. 8, ch. 97-224; s. 1, ch. 98-82; s. 6, ch. 98-221; s. 51, ch. 2000-154; s. 12, ch. 2002-404; s. 65, ch. 2003-1; s. 593, ch. 2003-261; s. 62, ch. 2006-1; s. 36, ch. 2006-213; s. 1, ch. 2007-63; s. 4, ch. 2009-242; s. 48, ch. 2013-116; s. 3, ch. 2013-201; s. 1, ch. 2013-202; s. 4, ch. 2015-171; s. 2, ch. 2016-111.

517.1201 Notice filing requirements for federal covered advisers.—

(1) It is unlawful for a person to transact business in this state as a federal covered adviser unless such person has made a notice filing with the office. A notice filing under this section shall consist of a copy of those documents that have been filed or are required to be filed by the federal covered adviser with the Securities and Exchange Commission that the Financial Services Commission by rule requires to be filed, together with a consent to service of process and a filing fee of $200. The commission may establish by rule procedures for the deposit of fees and the filing of documents to be made through electronic means, if the procedures provide to the office the information and data required by this section.

(2) A notice filing shall be effective upon receipt. A notice filing shall expire on December 31 of the year in which the filing became effective unless the federal covered adviser has renewed the filing on or before that date. A federal covered adviser may renew a notice filing by furnishing to the office such information that has been filed or is required to be filed with the Securities and Exchange Commission, as the Financial Services Commission or office may require, together with a renewal fee of $200 and the payment of any amount due and owing the office pursuant to any agreement with the office. Any federal covered adviser who has not renewed a notice filing by the time a current notice filing expires may request reinstatement of such notice filing by filing with the office, on or before January 31 of the year following the year the notice filing expires, such information that has been filed or is required to be filed with the Securities and Exchange Commission as may be required by the Financial Services Commission or office, together with the payment of $200 and a late fee equal to $200. Any reinstatement of a notice filing granted by the office during the month of January shall be deemed effective retroactive to January 1 of that year.

(3) The commission may require, by rule, a federal covered adviser who has made a notice filing pursuant to this section to file with the office copies of any amendments filed or required to be filed with the Securities and Exchange Commission.

(4) The office may issue a permit to evidence the effectiveness of a notice filing for a federal covered adviser.

(5) A notice filing may be terminated by filing notice of such termination with the office. Unless another date is specified by the federal covered adviser, such notice shall be effective upon its receipt by the office.

(6) All fees collected under this section become the revenue of the state, except for those assessments provided for under s. 517.131(1) until such time as the Securities Guaranty Fund satisfies the statutory limits, and are not returnable in the event that a notice filing is withdrawn.

History.—s. 7, ch. 98-221; s. 594, ch. 2003-261.

517.1202 Notice-filing requirements for branch offices.—

(1) It is unlawful for a dealer or investment adviser to conduct business from a branch office in this state

unless the dealer or investment adviser has made a branch office notice-filing with the office. A notice-filing under this section shall consist of a form that the commission may prescribe by rule. The commission may establish, by rule, procedures for the deposit of fees and filing of documents by electronic means if the procedures provide the office with the information and data required by this section.

(2) A notice-filing shall be effective upon receipt by the office of the form and filing fee. Each dealer and each investment adviser shall pay a filing fee of $100 for each branch office in this state.

(3) A notice-filing shall expire on December 31 of the year in which the filing became effective unless the dealer or investment adviser has renewed the filing on or before that date. A dealer or investment adviser may renew a branch office notice-filing by furnishing to the office such information as the commission or office may require, together with a renewal fee of $100 and the payment of any amount due and owing the office pursuant to any agreement with the office. Any dealer or investment adviser who has not renewed a branch office notice-filing by the time a current notice-filing expires may request reinstatement of such notice-filing by filing with the office, on or before January 31 of the year following the year the notice-filing expires, such information as the commission or office may require, together with the filing fee of $100 and a late fee equal to $100. Any reinstatement of a branch office notice-filing granted by the office during the month of January shall be deemed effective retroactive to January 1 of that year.

(4) A branch office notice-filing under this section shall be summarily suspended by the office if the notice-filer fails to provide to the office, within 30 days after a written request by the office, all of the information required by this section and the rules adopted under this section. The summary suspension shall be in effect for the branch office until such time as the notice-filer submits the requested information to the office, pays a fine as prescribed by s. 517.221(3), and a final order is entered. At such time, the suspension shall be lifted. For purposes of s. 120.60(6), failure to provide all information required by this section and the underlying rules constitutes immediate and serious danger to the public health, safety, and welfare. If the notice-filer fails to provide all of the requested information within a period of 90 days, the notice-filing shall be revoked by the office.

(5) Notification under this section may be revoked by the office if the notice-filer makes payment to the office for a branch office notice-filing with a check or electronic transmission of funds that is dishonored by the notice-filer's financial institution.

(6) The commission may require, by rule, a dealer or investment adviser who has made a branch office notice-filing pursuant to this section to file amendments with the office.

(7) A branch office notice-filing may be terminated by filing notice of such termination with the office. Unless another date is specified by the dealer or investment adviser, such notice shall be effective upon its receipt by the office.

(8) All fees collected under this section become the revenue of the state, except for those assessments provided for under s. 517.131(1) until such time as the Securities Guaranty Fund satisfies the statutory limits, and are not returnable in the event that a branch office notice-filing is withdrawn.

History.—s. 2, ch. 2013-202.

517.1205 Registration of associated persons specific as to securities dealer, investment adviser, or federal covered adviser identified at time of registration approval.—Inasmuch as this chapter is intended to protect investors in securities offerings and other investment transactions regulated by that chapter, its provisions are to be construed to require full and fair disclosure of all, but only, those matters material to the investor's evaluation of the offering or other transaction. It should, furthermore, be construed to impose the standards provided by law on all those seeking to participate in the state's securities industry through registration as a securities dealer, investment adviser, or associated person. To this end, it is declared to be the intent of the Legislature that the registration of associated persons required by law is specific to the securities dealer, investment adviser, or federal covered adviser identified at the time such registration is approved.

Notwithstanding any interpretation of law to the contrary, the historical practice of the Department of Banking and Finance, reflected in its rules, that requires a new application for registration from a previously registered associated person when that person seeks to be associated with a new securities dealer or investment adviser is hereby ratified and approved as consistent with legislative intent. It is, finally, declared to be the intent of the Legislature that while approval of an application for registration of a securities dealer, investment adviser, or associated person requires a finding of the applicant's good repute and character, such finding is precluded by a determination that the applicant may be denied registration on grounds provided by law.

History.—s. 3, ch. 88-187; s. 1, ch. 89-296; ss. 14, 15, ch. 90-362; s. 4, ch. 91-429; s. 8, ch. 98-221; s. 3, ch. 2013-202.

517.121 Books and records requirements; examinations.—

(1) A dealer, investment adviser, branch office, associated person, or intermediary shall maintain such books and records as the commission may prescribe by rule.

(2) The office shall, at intermittent periods, examine the affairs and books and records of each registered dealer, investment adviser, associated person, intermediary, or branch office notice-filed with the office, or require such records and reports to be submitted to it as required by rule of the commission, to determine compliance with this act.

(3) Registration under s. 517.12 or notification under s. 517.1202 may be summarily suspended by the office pursuant to s. 120.60(6) if the registrant or notice-filed branch office fails to promptly provide to the office, after a written request, any of the records required by this section and the rules adopted under this section. The suspension may be rescinded if the registrant or notice-filed branch office submits the requested records to the office. For purposes of s. 120.60(6), failure to provide substantially all of such records constitutes immediate and serious danger to the public health, safety, and welfare.

History.—ss. 10, 15, ch. 85-165; ss. 7, 14, 15, ch. 90-362; s. 4, ch. 91-429; s. 597, ch. 2003-261; s. 5, ch. 2009-242; s. 4, ch. 2013-202; s. 5, ch. 2015-171.

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

(1) The commission shall specify by rule requirements for investment advisors deemed to have custody of client funds which concern the following:

(a) Notification of custody of, maintenance of, and safeguards for client funds.

(b) Communications with clients and independent representatives.

(c) Requirements for investment advisers who have custody of pooled investments.

(d) Exceptions to the custody requirements.

In adopting the rules, the commission shall consider the rules and regulations of the federal regulatory authority and the North American Securities Administrators Association.

(2) The commission shall by rule establish rules of conduct and prohibited business practices for investment advisers and their associated persons. In adopting the rules, the commission shall consider general industry standards as expressed in the rules and regulations of the various federal and self-regulatory agencies and regulatory associations, including, but not limited to, the United States Securities and Exchange Commission, the Financial Industry Regulatory Authority, and the North American Securities Administrators Association.

History.—s. 4, ch. 2005-237; s. 6, ch. 2009-242.

517.1217 Rules of conduct and prohibited business practices for dealers and their associated persons.—The commission by rule may establish rules of conduct and prohibited business practices for dealers and their associated persons. In adopting the rules, the commission shall consider general industry standards as expressed in the rules and regulations of the various federal and self-regulatory agencies and regulatory associations, including, but not limited to, the United States Securities and Exchange Commission, the Financial

Industry Regulatory Authority, and the North American Securities Administrators Association.

History.—s. 5, ch. 2005-237; s. 7, ch. 2009-242.

517.122 Arbitration.—Any agreement to provide services that are covered by this chapter, entered into after October 1, 1996, by a person required to register under this chapter, for arbitration of disputes arising under the agreement may provide to an aggrieved party the option of having arbitration before and pursuant to the rules of the American Arbitration Association or other independent nonindustry arbitration forum as well as any industry forum.

History.—ss. 9, 15, ch. 86-85; ss. 8, 14, 15, ch. 90-362; s. 4, ch. 91-429; s. 6, ch. 96-338.

517.131 Securities Guaranty Fund.—

(1)(a) The Chief Financial Officer shall establish a Securities Guaranty Fund. An amount not exceeding 20 percent of all revenues received as assessment fees pursuant to s. 517.12(10) and (11) for dealers and investment advisers or s. 517.1201 for federal covered advisers and an amount not exceeding 10 percent of all revenues received as assessment fees pursuant to s. 517.12(10) and (11) for associated persons shall be part of the regular license fee and shall be transferred to or deposited in the Securities Guaranty Fund.

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

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

(a) A violation of s. 517.07.

(b) A violation of s. 517.301.

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

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

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

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

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

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

(4) Any person who files an action that may result in the disbursement of funds from the Securities Guaranty Fund pursuant to the provisions of s. 517.141 shall give written notice by certified mail to the office as soon as practicable after such action has been filed. The failure to give such notice shall not bar a payment from the Securities Guaranty Fund if all of the conditions specified in subsection (3) are satisfied.

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

History.—s. 5, ch. 78-435; ss. 8, 15, ch. 79-381; s. 5, ch. 80-254; ss. 2, 3, ch. 81-318; s. 5, ch. 84-159; ss. 9, 14, 15, ch. 90-362; s. 4, ch. 91-429; s. 5, ch. 92-45; s. 7, ch. 96-338; s. 1168, ch. 97-103; s. 10, ch. 97-224; s. 4, ch. 98-82; s. 9, ch. 98-221; s. 598, ch. 2003-261; s. 37, ch. 2006-213; s. 3, ch. 2007-63.

517.141 Payment from the fund.—

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

(2) Regardless of the number of claims or claimants involved, payments for claims shall be limited in the aggregate to $100,000 against any one dealer, investment adviser, or associated person. If the total claims exceed the aggregate limit of $100,000, the office shall prorate the payment based upon the ratio that the person's claim bears to the total claims filed.

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

(a) The office shall determine those persons eligible for payment or for potential payment in the event of a pending action. All such persons may be entitled to receive their pro rata shares of the fund as provided in this section.

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

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

(4) Individual claims filed by persons owning the same joint account, or claims stemming from any other type of account maintained by a particular licensee on which more than one name appears, shall be treated as the claims of one eligible claimant with respect to payment from the fund. If a claimant who has obtained a judgment which qualifies for disbursement under s. 517.131 has maintained more than one account with the dealer, investment adviser, or associated person who is the subject of the claims, for purposes of disbursement of the fund, all such accounts, whether joint or individual, shall be considered as one account and shall entitle such claimant to only one distribution from the fund not to exceed the lesser of $10,000 or the unsatisfied

portion of such claimant's judgment as provided in subsection (1). To the extent that a claimant obtains more than one judgment against a dealer, investment adviser, or one or more associated persons arising out of the same transactions, occurrences, or conduct or out of the dealer's, investment adviser's, or associated person's handling of the claimant's account, such judgments shall be consolidated for purposes of this section and shall entitle the claimant to only one disbursement from the fund not to exceed the lesser of $10,000 or the unsatisfied portion of such claimant's judgment as provided in subsection (1).

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

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

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

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

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

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

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

History.—s. 5, ch. 78-435; s. 5, ch. 80-254; ss. 2, 3, ch. 81-318; s. 6, ch. 84-159; s. 67, ch. 87-225; ss. 14, 15, ch. 90-362; s. 4, ch. 91-429; s. 6, ch. 92-45; s. 683, ch. 97-103; s. 599, ch. 2003-261; s. 38, ch. 2006-213; s. 8, ch. 2009-242.

517.151 Investments of the fund.—The funds of the Securities Guaranty Fund shall be invested by the Chief Financial Officer under the same limitations as other state funds, and the interest earned thereon shall be deposited to the credit of the fund and available for the same purpose as other moneys deposited in the Securities Guaranty Fund.

History.—s. 5, ch. 78-435; s. 5, ch. 80-254; ss. 2, 3, ch. 81-318; s. 7, ch. 84-159; ss. 14, 15, ch. 90-362; s. 4, ch. 91-429; s. 600, ch. 2003-261.

517.161 Revocation, denial, or suspension of registration of dealer, investment adviser, intermediary, or associated person.—

(1) Registration under s. 517.12 may be denied or any registration granted may be revoked, restricted, or suspended by the office if the office determines that such applicant or registrant; any member, principal, or director of the applicant or registrant or any person having a similar status or performing similar functions; or

any person directly or indirectly controlling the applicant or registrant:

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

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

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

(d) Has made a misrepresentation or false statement to, or concealed any essential or material fact from, any person in the rendering of investment advice or the sale of a security to such person;

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

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

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

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

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

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

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

(l) Is of bad business repute;

(m) Has been the subject of any decision, finding, injunction, suspension, prohibition, revocation, denial, judgment, or administrative order by any court of competent jurisdiction, administrative law judge, or by any state or federal agency, national securities, commodities, or option exchange, or national securities, commodities, or option association, involving a violation of any federal or state securities or commodities law or any rule or regulation promulgated thereunder, or any rule or regulation of any national securities, commodities, or options exchange or national securities, commodities, or options association, or has been the subject of any injunction or adverse administrative order by a state or federal agency regulating banking, insurance, finance or small loan companies, real estate, mortgage brokers or lenders, money transmitters, or other related or similar industries. For purposes of this subsection, the office may not deny registration to any applicant who has been continuously registered with the office for 5 years after the date of entry of such decision, finding, injunction, suspension, prohibition, revocation, denial, judgment, or administrative order provided such decision, finding, injunction, suspension, prohibition, revocation, denial, judgment, or administrative order has been timely reported to the office pursuant to the commission's rules; or

(n) Made payment to the office for a registration with a check or electronic transmission of funds that is dishonored by the applicant's or registrant's financial institution.

(2) The payment or anticipated payment of any amount from the Securities Guaranty Fund in settlement of a claim or in satisfaction of a judgment against an applicant or registrant constitutes prima facie grounds for the denial of the applicant's application for registration or the revocation of the registrant's registration.

(3) In the event the office determines to deny an application or revoke a registration, it shall enter a final order with its findings on the register of dealers and associated persons; and denial, suspension, or revocation of the registration of a dealer, intermediary, or investment adviser shall also deny, suspend, or revoke the registration of all her or his associated persons.

(4) It shall be sufficient cause for denial of an application or revocation of registration, in the case of a partnership, corporation, or unincorporated association, if any member of the partnership or any officer, director, or ultimate equitable owner of the corporation or association has committed any act or omission which would be cause for denying, revoking, restricting, or suspending the registration of an individual dealer, investment adviser, intermediary, or associated person. As used in this subsection, the term "ultimate equitable owner" means a natural person who directly or indirectly owns or controls an ownership interest in the corporation, partnership, association, or other legal entity however organized, regardless of whether such natural person owns or controls such ownership interest through one or more proxies, powers of attorney, nominees, corporations, associations, partnerships, trusts, joint stock companies, or other entities or devices, or any combination thereof.

(5) The office may deny any request to terminate or withdraw any application or registration if the office believes that an act which would be a ground for denial, suspension, restriction, or revocation under this chapter has been committed.

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

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

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

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

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

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

(c) For purposes of this subsection:

1. The term "enforcement action" means any judicial proceeding or any administrative proceeding where such judicial or administrative proceeding is brought by an agency of the United States or of any state to enforce or restrain violation of any state or federal law, or any disciplinary proceeding maintained by the Financial Industry Regulatory Authority, the National Futures Association, or any other similar self-regulatory organization.

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

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

History.—s. 5, ch. 78-435; s. 5, ch. 80-254; s. 393, ch. 81-259; ss. 2, 3, ch. 81-318; s. 8, ch. 84-159; s. 11, ch. 85-165; s. 10, ch. 86-85; s. 5, ch. 87-316; ss. 13, 14, 15, ch. 90-362; s. 4, ch. 91-429; s. 7, ch. 92-45; s. 243, ch. 96-410; s. 1169, ch. 97-103; s. 10, ch. 98-221; s. 601, ch. 2003-261; s. 39, ch. 2006-213; s. 9, ch. 2009-242; s. 5, ch. 2013-202; s. 6, ch. 2015-171.

517.1611 Guidelines.—

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

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

(b) The commission shall identify mitigating and aggravating circumstances by rule that allow the office to impose a penalty other than that specified in the guidelines.

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

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

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

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

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

History.—s. 10, ch. 2009-242; s. 6, ch. 2013-202.

517.171 Burden of proof.—It shall not be necessary to negate any of the exemptions provided in this chapter in any complaint, information, indictment, or other writ or proceedings brought under this chapter; and the burden of establishing the right to any exemption shall be upon the party claiming the benefit of such exemption.

History.—s. 5, ch. 78-435; s. 5, ch. 80-254; s. 394, ch. 81-259; ss. 2, 3, ch. 81-318; ss. 14, 15, ch. 90-362; s. 4, ch. 91-429.

517.181 Escrow agreement.—

(1) If the statement containing information as to securities to be registered, as provided for in s. 517.081, shall disclose that any such securities or any securities senior thereto shall have been or shall be intended to be issued for any patent right, copyright, trademark, process, formula, or goodwill; for organization or promotion fees or expenses; or for goodwill or going-concern value or other intangible assets, then the amount and nature thereof shall be fully set forth, and the office may require that such securities so issued in payment of such patent right, copyright, trademark, process, formula, or goodwill; for organization or promotion fees or expenses; or for other intangible assets shall be delivered in escrow to the office or other depository satisfactory to the office under an escrow agreement. The escrow agreement shall be in a form suitable to the office and shall provide for the escrow or impoundment of such securities for a reasonable length of time determined by the office to be in the best interest of other shareholders. The securities subject to escrow shall also include any dividend, cash, or stock that may be paid during the life of the escrow and any stock issued through, or by reason of, any stock split, exchange of shares, recapitalization, merger, consolidation, reorganization, or similar combination or subdivision in substitution for or in lieu of any stock subject to this provision; and in case of dissolution or insolvency during the time such securities are held in escrow, the owners

of such securities shall not participate in the assets until after the owners of all other securities shall have been paid in full.

(2) Any securities held in escrow under this section on November 1, 1978, may be released to the owners thereof upon request, if satisfactory financial data is submitted to the office showing that the issuer is currently operating on sound business principles and has net income in accordance with criteria-implementing rules of the commission relating to escrow of securities. At any time, the office may review any existing escrow agreement made under this section and determine that the same may be amended in order to permit a subsequent release of the securities upon terms and conditions which are just and equitable as defined by said rules.

(3) When it shall appear from information available to the office that the issuer of securities held in escrow has been dissolved or disbanded or is defunct or no longer actively engaged in business and such securities are of no value, the office, after giving at least 60 days' notice in at least one newspaper of general circulation and after giving interested parties opportunity for hearing, may enter its order authorizing the destruction of said securities. Any affected escrow agent may rely on such order and shall not be required to determine the validity or sufficiency thereof.

History.—s. 5, ch. 78-435; s. 5, ch. 80-254; ss. 2, 3, ch. 81-318; ss. 14, 15, ch. 90-362; s. 4, ch. 91-429; s. 602, ch. 2003-261.

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

(1) When it appears to the office, either upon complaint or otherwise, that a person has engaged or is about to engage in any act or practice constituting a violation of this chapter or a rule or order hereunder, the office may investigate; and whenever it shall believe from evidence satisfactory to it that any such person has engaged, is engaged, or is about to engage in any act or practice constituting a violation of this chapter or a rule or order hereunder, the office may, in addition to any other remedies, bring action in the name and on behalf of the state against such person and any other person concerned in or in any way participating in or about to participate in such practices or engaging therein or doing any act or acts in furtherance thereof or in violation of this chapter to enjoin such person or persons from continuing such fraudulent practices or engaging therein or doing any act or acts in furtherance thereof or in violation of this chapter. In any such court proceedings, the office may apply for, and on due showing be entitled to have issued, the court's subpoena requiring forthwith the appearance of any defendant and her or his employees, associated persons, or agents and the production of documents, books, and records that may appear necessary for the hearing of such petition, to testify or give evidence concerning the acts or conduct or things complained of in such application for injunction. In such action, the equity courts shall have jurisdiction of the subject matter, and a judgment may be entered awarding such injunction as may be proper.

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

(3) In addition to, or in lieu of, any other remedies provided by this chapter, the office may apply to the court hearing this matter for an order directing the defendant to make restitution of those sums shown by the office to have been obtained in violation of any of the provisions of this chapter. The office has standing to

request such restitution on behalf of victims in cases brought by the office under this chapter, regardless of the appointment of an administrator or receiver under subsection (2) or an injunction under subsection (1). Further, such restitution shall, at the option of the court, be payable to the administrator or receiver appointed pursuant to this section or directly to the persons whose assets were obtained in violation of this chapter.

(4) In addition to any other remedies provided by this chapter, the office may apply to the court hearing the matter for, and the court shall have jurisdiction to impose, a civil penalty against any person found to have violated any provision of this chapter, any rule or order adopted by the commission or office, or any written agreement entered into with the office in an amount not to exceed $10,000 for a natural person or $25,000 for any other person, or the gross amount of any pecuniary gain to such defendant for each such violation other than a violation of s. 517.301 plus $50,000 for a natural person or $250,000 for any other person, or the gross amount of any pecuniary gain to such defendant for each violation of s. 517.301. All civil penalties collected pursuant to this subsection shall be deposited into the Anti-Fraud Trust Fund.

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

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

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

History.—s. 5, ch. 78-435; s. 5, ch. 80-254; s. 395, ch. 81-259; ss. 2, 3, ch. 81-318; s. 12, ch. 85-165; ss. 14, 15, ch. 90-362; s. 4, ch. 91-429; s. 684, ch. 97-103; s. 603, ch. 2003-261; s. 11, ch. 2009-242; s. 113, ch. 2010-5.

517.201 Investigations; examinations; subpoenas; hearings; witnesses.—

(1) The office:

(a) May make investigations and examinations within or outside of this state as it deems necessary:

1. To determine whether a person has violated or is about to violate any provision of this chapter or a rule or order hereunder; or

2. To aid in the enforcement of this chapter.

(b) May require or permit a person to file a statement in writing, under oath or otherwise as the office determines, as to all the facts and circumstances concerning the matter to be investigated.

(2) When it is proposed to conduct an investigation or examination, the office may gather evidence in the

matter. The office may administer oaths, examine witnesses, and issue subpoenas.

(3) Subpoenas for witnesses whose evidence is deemed material to any investigation or examination may be issued by the office under the seal of the office, or by any county court judge or clerk of the circuit court or county court, commanding such witnesses to be or appear before the office at a time and place to be therein named and to bring such books, records, and documents as may be specified or to submit such books, records, and documents to inspection; and such subpoenas may be served by an authorized representative of the office.

(4)(a) In the event of substantial noncompliance with a subpoena or subpoena duces tecum issued or caused to be issued by the office pursuant to this section, the office may petition the circuit court of the county in which the person subpoenaed resides or has its principal place of business for an order requiring the subpoenaed person to appear and testify and to produce such books, records, and documents as are specified in such subpoena duces tecum. The court may grant injunctive relief restraining the issuance, sale or offer for sale, purchase or offer to purchase, promotion, negotiation, advertisement, or distribution in or from offices in this state of securities or investments by a person or agent, employee, broker, partner, officer, director, or stockholder thereof, and may grant such other relief, including, but not limited to, the restraint, by injunction or appointment of a receiver, of any transfer, pledge, assignment, or other disposition of such person's assets or any concealment, alteration, destruction, or other disposition of subpoenaed books, records, or documents, as the court deems appropriate, until such person has fully complied with such subpoena or subpoena duces tecum and the office has completed its investigation or examination. The office is entitled to the summary procedure provided in s. 51.011, and the court shall advance the cause on its calendar. Costs incurred by the office to obtain an order granting, in whole or in part, such petition for enforcement of a subpoena or subpoena duces tecum shall be taxed against the subpoenaed person, and failure to comply with such order shall be a contempt of court.

(b) When it shall appear to the office that the compliance with a subpoena or subpoena duces tecum issued or caused to be issued by the office pursuant to this section is essential and otherwise unavailable to an investigation or examination, the office, in addition to the other remedies provided for herein, may, by verified petition setting forth the facts, apply to the circuit court of the county in which the subpoenaed person resides or has its principal place of business for a writ of ne exeat. The court shall thereupon direct the issuance of the writ against the subpoenaed person requiring sufficient bond conditioned on compliance with the subpoena or subpoena duces tecum. The court shall cause to be endorsed on the writ a suitable amount of bond on payment of which the person named in the writ shall be freed, having a due regard to the nature of the case.

(5) Witnesses shall be entitled to the same fees and mileage as they may be entitled by law for attending as witnesses in the circuit court, except where such examination or investigation is held at the place of business or residence of the witness.

History.—s. 5, ch. 78-435; s. 5, ch. 80-254; ss. 2, 3, ch. 81-318; s. 13, ch. 85-165; s. 68, ch. 87-225; ss. 10, 14, 15, ch. 90-362; s. 4, ch. 91-429; s. 6, ch. 92-9; s. 604, ch. 2003-261.

517.2015 Confidentiality of information relating to investigations and examinations.—

(1)(a) Except as otherwise provided by this section, information relative to an investigation or examination by the office pursuant to this chapter, including any consumer complaint, is confidential and exempt from s. 119.07(1) until the investigation or examination is completed or ceases to be active. The information compiled by the office in such an investigation or examination shall remain confidential and exempt from s. 119.07(1) after the office's investigation or examination is completed or ceases to be active if the office submits the information to any law enforcement or administrative agency or regulatory organization for further investigation. Such information shall remain confidential and exempt from s. 119.07(1) until that agency's or organization's investigation is completed or ceases to be active. For purposes of this section, an investigation or examination shall be considered "active" so long as the office or any law enforcement or administrative agency or regulatory organization is proceeding with reasonable dispatch and has a reasonable good faith belief that

the investigation or examination may lead to the filing of an administrative, civil, or criminal proceeding or to the denial or conditional grant of a license, registration, or permit. This section shall not be construed to prohibit disclosure of information which is required by law to be filed with the office and which, but for the investigation or examination, would be subject to s. 119.07(1).

(b) Except as necessary for the office to enforce the provisions of this chapter, a consumer complaint and other information relative to an investigation or examination shall remain confidential and exempt from s. 119.07(1) after the investigation or examination is completed or ceases to be active to the extent disclosure would:

1. Jeopardize the integrity of another active investigation or examination.

2. Reveal the name, address, telephone number, social security number, or any other identifying number or information of any complainant, customer, or account holder.

3. Disclose the identity of a confidential source.

4. Disclose investigative techniques or procedures.

5. Reveal a trade secret as defined in s. 688.002.

(c) In the event that office personnel are or have been involved in an investigation or examination of such nature as to endanger their lives or physical safety or that of their families, then the home addresses, telephone numbers, places of employment, and photographs of such personnel, together with the home addresses, telephone numbers, photographs, and places of employment of spouses and children of such personnel and the names and locations of schools and day care facilities attended by the children of such personnel are confidential and exempt from s. 119.07(1).

(d) Nothing in this section shall be construed to prohibit the office from providing information to any law enforcement or administrative agency or regulatory organization. Any law enforcement or administrative agency or regulatory organization receiving confidential information in connection with its official duties shall maintain the confidentiality of the information so long as it would otherwise be confidential.

(e) All information obtained by the office from any person which is only made available to the office on a confidential or similarly restricted basis shall be confidential and exempt from s. 119.07(1). This exemption shall not be construed to prohibit disclosure of information which is required by law to be filed with the office or which is otherwise subject to s. 119.07(1).

(2) If information subject to subsection (1) is offered in evidence in any administrative, civil, or criminal proceeding, the presiding officer may, in her or his discretion, prevent the disclosure of information which would be confidential pursuant to paragraph (1)(b).

(3) A privilege against civil liability is granted to a person who furnishes information or evidence to the office, unless such person acts in bad faith or with malice in providing such information or evidence.

History.—s. 4, ch. 92-9; s. 337, ch. 96-406; s. 1170, ch. 97-103; s. 605, ch. 2003-261.

517.2016 Public records exemption; examination techniques or procedures.—

(1) As used in this section, the term “examination techniques or procedures” means the methods, processes, and guidelines used to evaluate regulatory compliance and to collect and analyze data, records, and testimony for the purpose of documenting violations of this chapter and the rules adopted thereunder.

(2) Information that would reveal examination techniques or procedures used by the office pursuant to this chapter is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This exemption applies to such information held by the office before, on, or after the effective date of this exemption.

(3) Confidential and exempt information that would reveal examination techniques or procedures may be provided by the office to another governmental entity having oversight or regulatory or law enforcement authority.

History.—s. 1, ch. 2010-65; s. 1, ch. 2015-72.

517.211 Remedies available in cases of unlawful sale.—

(1) Every sale made in violation of either s. 517.07 or s. 517.12(1), (4), (5), (9), (11), (13), (16), or (18) may be rescinded at the election of the purchaser, except a sale made in violation of the provisions of s. 517.1202(3) relating to a renewal of a branch office notification shall not be subject to this section, and a sale made in violation of the provisions of s. 517.12(13) relating to filing a change of address amendment shall not be subject to this section. Each person making the sale and every director, officer, partner, or agent of or for the seller, if the director, officer, partner, or agent has personally participated or aided in making the sale, is jointly and severally liable to the purchaser in an action for rescission, if the purchaser still owns the security, or for damages, if the purchaser has sold the security. No purchaser otherwise entitled will have the benefit of this subsection who has refused or failed, within 30 days of receipt, to accept an offer made in writing by the seller, if the purchaser has not sold the security, to take back the security in question and to refund the full amount paid by the purchaser or, if the purchaser has sold the security, to pay the purchaser an amount equal to the difference between the amount paid for the security and the amount received by the purchaser on the sale of the security, together, in either case, with interest on the full amount paid for the security by the purchaser at the legal rate, pursuant to s. 55.03, for the period from the date of payment by the purchaser to the date of repayment, less the amount of any income received by the purchaser on the security.

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

(3) In an action for rescission:

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

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

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

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

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

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

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

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

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

History.—s. 5, ch. 78-435; ss. 9, 15, ch. 79-381; s. 5, ch. 80-254; ss. 5, 6, ch. 81-115; ss. 2, 3, ch. 81-318; s. 3, ch. 83-265; s. 9, ch. 84-159; ss. 11, 14, 15, ch. 90-362; s. 4, ch. 91-429; s. 1, ch. 2000-123; s. 7, ch. 2013-202.

517.221 Cease and desist orders.—

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

(2) Whenever the office finds that conduct described in subsection (1) presents an immediate danger to the public requiring an immediate final order, it may issue an emergency cease and desist order reciting with particularity the facts underlying such findings. The emergency cease and desist order is effective immediately upon service of a copy of the order on the respondent named therein and remains effective for 90 days. If the office begins nonemergency cease and desist proceedings under subsection (1), the emergency cease and desist order remains effective until conclusion of the proceedings under ss. 120.569 and 120.57.

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

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

History.—s. 5, ch. 78-435; s. 5, ch. 80-254; ss. 2, 3, ch. 81-318; s. 11, ch. 86-85; ss. 14, 15, ch. 90-362; s. 4, ch. 91-429; s. 244, ch. 96-410; s. 606, ch. 2003-261; s. 12, ch. 2009-242.

517.241 Remedies.—

(1) Any person aggrieved by a final order of the office may have the order reviewed as provided by chapter 120, the Administrative Procedure Act.

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

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

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

History.—s. 5, ch. 78-435; ss. 10, 15, ch. 79-381; s. 5, ch. 80-254; ss. 2, 3, ch. 81-318; s. 10, ch. 84-159; ss. 14, 15, ch. 90-362; s. 4, ch. 91-429; s. 607, ch. 2003-261.

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

History.—ss. 12, 15, ch. 84-159; ss. 14, 15, ch. 90-362; s. 4, ch. 91-429; s. 13, ch. 2009-242.

517.301 Fraudulent transactions; falsification or concealment of facts.—

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

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

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

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

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

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

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

(2) For purposes of ss. 517.311 and 517.312 and this section, the term "investment" means any commitment of money or property principally induced by a representation that an economic benefit may be derived from such commitment, except that the term does not include a commitment of money or property for:

(a) The purchase of a business opportunity, business enterprise, or real property through a person licensed under chapter 475 or registered under former chapter 498; or

(b) The purchase of tangible personal property through a person not engaged in telephone solicitation, where said property is offered and sold in accordance with the following conditions:

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

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

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

History.—s. 1, ch. 65-428; ss. 12, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 6, ch. 78-435; ss. 4, 5, ch. 80-254; s. 396, ch. 81-259; ss. 2, 3, ch. 81-318; s. 13, ch. 84-159; s. 12, ch. 86-85; ss. 14, 15, ch. 90-362; s. 4, ch. 91-429; s. 8, ch. 92-45; s. 608, ch. 2003-261; s. 40, ch. 2008-240.

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

(1) Whoever violates any of the provisions of this chapter is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) Any person who violates the provisions of s. 517.312(1) by obtaining money or property of an aggregate value exceeding $50,000 from five or more persons is guilty of a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) In lieu of a fine otherwise authorized by law, a person who has been convicted of or who has pleaded guilty or no contest to having engaged in conduct in violation of this chapter may be sentenced to pay a fine that does not exceed the greater of three times the gross value gained or three times the gross loss caused by such conduct, plus court costs and the costs of investigation and prosecution reasonably incurred.

(4) There is created within the office a trust fund to be known as the Anti-Fraud Trust Fund. Any amounts assessed as costs of investigation and prosecution under this subsection shall be deposited in the trust fund. Funds deposited in the trust fund must be used, when authorized by appropriation, for investigation and prosecution of administrative, civil, and criminal actions arising under this chapter. Funds may also be used to improve the public's awareness and understanding of prudent investing.

(5) Criminal prosecution for offenses under this chapter is subject to the time limitations in s. 775.15.

History.—s. 1, ch. 65-102; s. 488, ch. 71-136; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 4, 5, ch. 80-254; s. 397, ch. 81-259; ss. 2, 3, ch. 81-318; s. 13, ch. 86-85; ss. 12, 14, 15, ch. 90-362; s. 4, ch. 91-429; s. 2, ch. 97-90; s. 11, ch. 98-221; s. 609, ch. 2003-261; s. 151, ch. 2010-102.

517.311 False representations; deceptive words; enforcement.—

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

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

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

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

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

(4)(a) No provision of subsection (1) or subsection (2) shall be construed to prohibit a statement that a person or security is registered or has made a notice filing under this chapter if such statement is required by the provisions of this chapter or rules promulgated thereunder, if such statement is true in fact, and if the effect of such statement is not misrepresented.

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

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

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

History.—s. 1, ch. 63-98; ss. 12, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 8, ch. 78-435; ss. 11, 15, ch. 79-381; ss. 4, 5, ch. 80-254; s. 398, ch. 81-259; ss. 2, 3, ch. 81-318; s. 14, ch. 84-159; s. 14, ch. 86-85; ss. 14, 15, ch. 90-362; s. 4, ch. 91-429; s. 685, ch. 97-103; s. 12, ch. 98-221.

517.312 Securities, investments, boiler rooms; prohibited practices; remedies.—

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

(a) To offer or sell, in this state or from this state, any security or investment when such offer or sale is in violation of s. 517.301 or s. 517.311; or

(b) To directly or indirectly manage, supervise, control, or own, either alone or in association with others, any boiler room in this state which sells or offers for sale any security or investment in violation of paragraph (a).

(2) Any purchaser of a security or investment sold in violation of subsection (1) is entitled to rescind such

purchase at any time and recover damages as provided in s. 517.211(3)(a), (4), and (6).

History.—ss. 11, 15, ch. 84-159; ss. 14, 15, ch. 90-362; s. 4, ch. 91-429.

517.313 Destroying certain records; reproduction.—

(1) The commission and office may photograph, microphotograph, or reproduce on film or prints documents, records, data, and information of a permanent character.

(2) The commission and office may destroy any of said documents after audit has been completed for the period embracing the dates of said instruments, after complying with the provisions of chapter 119.

(3) Duly certified or authenticated photographs or microphotographs in the form of film or prints of any records made in compliance with the provisions of this section shall have the same force and effect as the originals thereof would have and shall be treated as originals for the purpose of their admissibility as evidence.

History.—s. 7, ch. 78-435; s. 5, ch. 80-254; ss. 2, 3, ch. 81-318; ss. 14, 15, ch. 90-362; s. 4, ch. 91-429; s. 610, ch. 2003-261.

517.315 Fees.—All fees of any nature collected by the office pursuant to this chapter shall be disbursed as follows:

(1) The office shall transfer the amount of fees required to be deposited into the Securities Guaranty Fund pursuant to s. 517.131;

(2) After the transfer required in subsection (1), the office shall transfer the $50 assessment fee collected from each associated person under s. 517.12(10) and (11) and 30.44 percent of the $100 assessment fee paid by dealers and investment advisors for each office in the state under s. 517.12(10) and (11) to the Regulatory Trust Fund; and

(3) All remaining fees shall be deposited into the General Revenue Fund.

History.—s. 7, ch. 78-435; s. 5, ch. 80-254; ss. 2, 3, ch. 81-318; ss. 14, 15, ch. 90-362; s. 4, ch. 91-429; s. 611, ch. 2003-261; s. 4, ch. 2007-63; s. 3, ch. 2008-132.

517.32 Exemption from excise tax, certain obligations to pay.—There shall be exempt from all excise taxes imposed by chapter 201 all promissory notes, nonnegotiable notes, and other written obligations to pay money bearing dates subsequent to July 1, 1957, when the maker thereof is a security dealer registered by the office under this chapter and when such promissory note, nonnegotiable note or notes, or other written obligation to pay money shall be for the duration of 30 days or less and secured by pledge or deposit, as collateral security for the payment thereof, security or securities as defined in s. 517.021, provided all excise taxes imposed by chapter 201 shall have been paid upon such collateral security.

History.—s. 1, ch. 57-823; ss. 12, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 4, 5, ch. 80-254; s. 399, ch. 81-259; ss. 2, 3, ch. 81-318; ss. 14, 15, ch. 90-362; s. 4, ch. 91-429; s. 612, ch. 2003-261.