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Starting a Small Company Capital Funding Ecosystem in Florida

The following ideas are cumulative and will be updated regularly. Please submit additional comments and ideas in our [contact form](#) and our office will be in communication with you.

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1. IN GENERAL

- a. Provide an expedited filing service to incorporate or organize a business with the Department of State, Division of Corporations
 - i. Obtain confirmation of filing faster for a higher fee
 - ii. Provide real-time visibility of new filings on the Sunbiz.org website
- b. Provide walk-up filing services to incorporate or organize a business in major cities from Department of State, Division of Corporations
- c. Expand state trial run consumer finance FinTech “Sandbox”
 - i. Include securities, cryptocurrency, fintech, and blockchain technology
 - ii. Provide time limits to be in sandbox
 - iii. Allow portals to test the intrastate crowdfunding regulatory scheme
 - iv. Allow trial run to be free of cost for businesses and portals
- d. Provide the ecosystem an investment exit strategy
 - i. Provide investors with a clear path to liquidate and resell their small company investments

1. This will give investors greater confidence when investing
 - a. Ex. Silicon Prairie acquired SEC broker dealer license and then applied to SEC for Alternative Trading System registration to achieve this
 - b. Provide Florida portals a dealer registration that does something similar
2. Provide a resale market listing service for investors wanting to liquidate holdings
 - a. Michigan has an exchange to accomplish this purpose
- e. Need sophisticated stock transfer agents in ecosystem
 - i. Stock transfer agents interpret sophisticated investment terms such as when first refusal rights might apply on the resale of securities.
 - ii. Statutory requirement/incentive for centralized transfer agent to manage and deal with escrow agents, issuers, and investors
 1. Have the transfer agent (perhaps a portal) manage the issuance, transfer, and transparency of funds between all parties
 2. Have them also be responsible for in-state crowdfund offering education, compliance, and application/licensing
 3. Third party transfer agents allow for asset/client management, fraud protection, and the possible integration of cryptocurrency and blockchain technology
- f. Provide incentives for tech-company investments
 - i. Ex: tax benefits or equity
- g. Integrate the participation of Enterprise Florida
 - i. Private/Public partnership
 - ii. To serve as Florida network connection center
 - iii. To provide resources and education
 1. They have influence and resources to attract business to Florida
- h. Provide regulatory protections that favor entrepreneurs
- i. Modify in-state offering statutes to make sense at a local market-reality level
 - i. Federal rules do not always apply or transfer to the state level
- j. Florida's Office of Economic Development provide matching grants for intra-state capital raises (Added 7/19)
 - i. Cash incentives that supplement to funds will attract more Venture funds to Florida (Added 7/20)
- k. Have the State of Florida provide a fund or grants to qualified early state, pre-seed companies (Added 7/21)
 - i. This helps early stage companies build viable prototypes
 - ii. Initial capital can attract more investors
 - iii. Have state funds directed towards FinTech, HealthTech and SpaceTech.

1. State of Florida to announce and advertise that it is a viable and lucrative place for businesses (Added 7/21)
2. FLORIDA IN-STATE REGISTERED OFFERINGS
 - a. Revise review process to disclosure based, removing merit-review requirements
 - b. Allow Florida to participate in NASAA's coordinated review programs, allowing one-stop multi-state offering registrations
 - c. Allow applicants to submit filings, applications and other forms through the NASAA electronic filing depository
 - d. Maintain minimum viable product threshold requirement for pre-revenue startups
 - i. Maintain escrow agent requirement
 1. Funds need to be escrowed to ensure security
3. CROWDFUNDING FOR ISSUERS
 - a. Clearly Define "Issuer" as the company / business that it is raising capital. (Added 7/16)
 - i. To provide clear distinction from the intermediary (Added 7/16)
 - b. Raise the in-state crowdfunding offering amount ceiling to \$5 million or \$10 million
 - i. Alternatively, merge the best features of in-state crowdfunding with the in-state registered offering statute (SCOR)
 - c. Provide a short and simple offering form and process for *de minimis* offerings
 - i. Less than \$250k
 - ii. Crowdfunding offering forms to be fillable by the issuer without attorney or accountant assistance
 1. Compliance costs can make it impossible to conduct a small capital raise
 2. Standardized offering documents
 - iii. Bifurcate the \$250K into a "no questions asked" tier of \$0 to \$50K and second tier from \$50K to \$250K requiring more "business barriers" such as some evidence of receipt of entrepreneurial education, whether from an academic institution or a business incubator or accelerator (Added 6/28)
 - d. Allow for seed round/initial round investing to be free of accountant and attorney needs/costs
 - e. Create an affordable, clear and efficient filing and registration system that encourages issuers to engage in crowdfunding offerings
 - f. Maintain escrow requirement for startups
 - i. Need escrow to provide investors and issuers confidence that funds are maintained in a secure and trustworthy manner
 - g. Statutory requirement for issuer's capital stack to be fully disclosed to investors

- h. Remove audited financial statement requirements for start-ups
 - i. Start-ups have no records to audit
 - ii. It is a time and resource hurdle
 - i. Modify annual reporting requirement
 - i. Current reporting requirements are burdensome
 - 1. FINRA reporting requirement is not practical and it is difficult to enforce
 - ii. Allow annual report to shareholders to suffice for transparency/disclosure requirements
 - 1. Annual report provides a means for issuers to communicate ongoing goals and progress to investors
4. CROWDFUNDING PORTALS AND FINDERS
- a. Create a limited function dealer registration to allow in-state capital referral sources to be compensated for successful funding transactions
 - i. Fostering more introductions promotes more deals
 - ii. Allow for two types of registrations: individual finders and online portals
 - iii. Application will include background check
 - b. Allow finders to take equity as compensation
 - c. Allow portals to invest in companies conducting capital raises on their platform
 - d. Allow portals to charge variable fees
 - e. Allow independent finders to register with the State without having to work with a securities firm
 - f. Allow portals to offer all types of offerings; not limited solely to crowdfund offerings
 - i. Allow for portals to be utilized for Reg D offerings
 - ii. Allow portals to be utilized for all in-state offerings
 - iii. Align Florida's crowdfund statute with Reg A+
 - 1. This allows companies that are not suitable for VC investment to obtain financing
 - g. Limit solicitation to Floridians
 - i. Utilize technology platforms for solicitations
 - ii. Foster growth of Florida businesses and economy
 - 1. Keep Florida business from being drawn out of state by investors
(Added 7/19)
 - h. Allow for solicitation to and inclusion to out-of-state investors (Added 7/16)
 - i. Opens more capital sources (Added 7/16)
 - ii. Provide terms that allow outside capital sources to be solely directed to Florida businesses. (Added 7/16)

1. Foster and incentivize businesses receiving out of state capital to remain in Florida. (Added 7/16)
- i. Allow issuers and entrepreneurs to make their “pitch” through a portal
- j. Remove the advertising and marketing restrictions
 - i. Allow for full communication from issuers to investors
 - ii. Increase viewer volume and portal viability
 - iii. The more information provided to investors up front, the less chance investors will be successful claiming that information was omitted
- k. Open escrow requirements/definitions/qualifications that allow for more, local and diverse escrow agents
 - i. Examples: title companies, attorneys, broker/dealers
 1. FBO Accounts (Added 7/20)
 - ii. Allows portals to have more options for and easier access to escrow agents
 - iii. Have OFR Secure escrow agent financial institutions in advance (Added 7/19)
 - iv. Fosters growth of local business and economy
 1. Other companies are incentivized to act as escrow agents depending on cost/benefit
- l. Have portals manage the issuance/disbursement of funds for escrow agents
- m. Require time limits for escrow agents to disburse funds to issuers
- n. Require escrow agents/financial institutions to be educated in crowdfunding regulations and processes
- o. Require escrow agents to be FDIC/NCUSIF insured
 1. Gives greater confidence to issuers and investors
- p. Require portals to follow through and offer ongoing support to issuers once they have received capital
 - i. To ensure that funds are being properly and efficiently allocated
 - ii. Require issuer transparency of funds allocation with intermediary and investor
- q. Allow for Dual Registration
 - i. Allow for SEC and FINRA registered portals and portal operators to have portal registration reciprocity in Florida
 1. Ex. Background check, fingerprints, etc.
 2. FINRA would eventually have something to say about in-state offerings
 3. Not adding more regulation, but extending purpose to be mutually beneficial to state and FINRA
- r. Allow out of state investors to invest in Florida businesses (Added 7/20)
 - i. Create fund for out of state investments to go through for intra-state CF raises

- s. Create incentives for Intra-state CF capital raises (Added 7/20)
 - i. Incentives that are advantages over SEC national models
 - ii. Examples:
 1. Allow portals capacity to discern what companies can be posted on their platform to create quality deal flow.
 2. Allow portal to advertise and vet
 3. Have portals be endorsed and accredited by the state
 4. Have state CF process be more accessible and easier to navigate
 5. Allow portals to match contributions and invest in their own companies
 6. Limit liability, regulation and reporting requirements
 7. Allow for affordable compliance costs.
 8. In have instate offering very inclusive to investors and exclusive to entrepreneurs.
- t. Provide statutory limit on portal commission fees
 - i. Allows issuers to receive a sizeable portion of investments
- u. Portal/escrow transparency requirement
 - i. Issue receipt of funds to issuers and investors
- v. Allow Intermediaries to showcase the lead investor on an offering (Added 7/16)
 - i. Fosters confidence in other investors to follow suit and invest in an offering (Added 7/16)

5. OFR REGULATION

- a. OFR to provide highly trained staff to review crowdfunding filings and facilitate registrations
- b. Implement manageable regulations for early stage companies (Added 7/20)
 - i. Lower risks for entrepreneurs
 - ii. Make entry to market more accessible.
 1. Similar to a “Test the Waters” stage
- c. Allow state regulation that is outside of FINRA jurisdiction
 - i. Allows issuers to have recourse from FINRA allegations
- d. Provide state process that is simpler and more efficient than federal process
 - i. One localized source for information and registration so that marketplace participants know where to go and who to talk to
 1. Have issuers, intermediary and investor standards, qualifications and guidelines readily available and accessible on website (Added 7/16)
 - ii. One localized state process and location for education, applications, registrations, etc.
- e. Simplify Florida’s portal registration application

- i. Modernize it
 - ii. Keep the application up to date
 - iii. Improve response time from OFR to applications (Added 7/16)
 - 1. Offer expedited intermediary filing service with OFR (Added 7/16)
- f. Create notice system where issuers can report violations or improprieties by crowdfund issuers so portals can remove them from their platform.
 - i. Like SEC notice system, less formal than filing a complaint
 - ii. Not legislated but voluntary pilot program
 - 1. Ensure all parties are working towards fair dealings
 - iii. Create Hotline to OFR
 - 1. Allows for quick recourse to statutory authority regarding offerings
- g. Allow OFR authority to immediately take down offerings
 - i. Giving the Portal recourse to a regulatory “Kill Switch” (Added 7/16)

6. EDUCATION

- a. Portals to provide education to issuers on marketing and advertising
 - i. Connect Issuers to resources who can provide this education and mentorship
- a. OFR should publish guidelines to educate marketplace about investing in early stage companies
 - i. Companies must be ready to be investable
 - 1. Ready to raise capital
 - 2. Marketable
 - 3. They must demonstrate they are prepared to file a registration statement
- b. Provide state resources to educate issuers to assist in registration/filing process and educate investors in investing in startup enterprises
- c. Mandatory education for issuers after raising threshold amount of capital
 - a. Tie educational requirement to capital raises.
- d. Tie educational requirement to the “Finders” registration (Added 7/20)
- e. Require crowdfunding education coursework in university entrepreneur programs
 - 1. Encourage the use of in-state portals
- f. Provide publicly available online resources and materials that offer clear steps and processes
 - 1. Provide clear online resources and direction to resources
 - 2. Make grant opportunities clear and available (Added 7/16)
 - 3. Provide a comprehensive list of capital raising options
 - a. Including – bank financing, funds/grants available, Royalty purchase agreements, stakeholder options etc. (Added 7/21)
 - 4. Provide list of state-registered intermediaries (Added 7/16)

5. Provide list of incubator, accelerator, university program, and entrepreneurial networks (Added 7/16)
6. Provide financial reporting, auditing and tax education for entrepreneurs (Added 7/20)
7. Have one centralized location that is managed and monitored by a group of individuals based on volume (Added 7/20)
 - a. Based on NMLS model
- g. Direct crowdfunding/capital raising educational resources toward university entrepreneur/business acceleration/incubator programs
 - i. Encouraging the use of in-state portals in state universities
 - ii. Provide incentives for completion of educational programs
 1. University credits, grants, tax benefits, etc.
 - iii. Require crowdfunding education coursework in university programs
 1. The college professors and their incubator programs provide training to students and thereby create a pipeline of companies run by trained people and supported by the academic institution that wants to ensure the success of their students and those students' businesses
- h. Incentivize State universities and local high schools to develop Tech talent (Added 7/20)
 - a. Promoting local skill and talent will help local start up businesses
- i. Provide state incentive (tax/compensatory) benefits for portals to educate and mentor issuers/investors/escrow agents in crowdfunding process and registration
 - i. Provide the market ecosystem the element of education and training to perpetuate the ecosystem

7. INVESTORS

- a. Create a certified investor category
 - i. Separate from an accredited investor
 - ii. Allows for 1st/2nd round investors to invest more
 1. Other states allow this
 2. Ex: Wisconsin
 - a. In Wisconsin "Certified investor" is defined as someone who has an individual net worth (or joint net worth with the individual's spouse) of at least \$750,000, or had an individual income in excess of \$100,000 in each of the two most recent years (joint income with spouse in excess of \$150,000)
 3. \$100,000 or lower monetary threshold
 - iii. Create an Investor Certification test (Added 7/16)

1. Pre-screens investor proficiency
 - a. Can be used as a measure of investor suitability
- iv. Cap investment amount based on income (Added 7/16)
 1. Cap amount can increase once investor has proven proficiency
- b. Redefine “accredited investor” to be based on status, not money
 - i. Sophistication should qualify
 1. SEC proposed status included securities attorneys. Include business and education as qualifiers
 2. Broaden qualified investor pool and increase likelihood for high risk investments.
- c. Standardize and streamline Florida’s registration requirements for accredited investors
 - i. Allow background check and fingerprints from Federal SEC/FINRA level to transfer to state level
 - ii. Establish timelines for OFR’s response to applications and filings (Added 7/19)
- d. Exclude non-accredited investors from crowdfund offerings
 - i. Gives issuers and portals confidence in investments
- e. Include non-accredited investors in crowdfund offerings
 - i. They are the necessary proof of concept that makes accredited investors jump in
 - ii. Allows for customers to become investors
- f. Allow non-accredited investors a high cap
 - i. High return on high investment provides incentive
 - ii. Allow cap for non-accredited investors to be a percentage-of-the-offering cap and not a dollar limit
 - iii. Make the cap for investors based on a ‘suitability’ standard instead of a dollar figure
- g. Allow investors the ability to promote the companies they are investing in by reducing advertisement and solicitation requirements (Added 7/16)
 - i. Fosters confidence in other investors to invest in a company
 - ii. Allow angel investors this capacity
 - iii. Allow accredited investors this capacity

8. THE ECOSYSTEM NETWORK

- a. Foster visibility and transparency across the entire ecosystem
- b. Prioritize and provide adequate protections for data privacy (Added 7/20)
 - i. Data security for consumer, health, securities, and financial data.
- c. Mandate or incentivize startup/entrepreneur community involvement, participation and/or contribution

- i. Fosters ecosystem that promotes deals and networking
 - ii. Require or incentivize participation, involvement or investment in local Florida entrepreneur community once threshold amount of capital is raised
 - iii. Connect finders with entrepreneurial/business incubation programs
 - 1. Require or incentivize finders to associate with entrepreneur/start-up network
- d. Incorporate association membership into state registration
- e. Academic and accelerator communities need to provide education/training for jobs needed in the ecosystem
 - i. Particularly in tech-jobs and management programs focused on company growth
- f. Create a means and/or process that allows incubators, accelerators and universities to validate Start-Up businesses and/or entrepreneurs (Added 7/16)
 - i. Give accreditation to businesses that complete incubation programs (Added 7/16)
 - ii. Endorsements and validations from programs like these can foster confidence in investors and encourage them to invest (Added 7/16)
- g. Provide state resources incentives to commercialize businesses that develop from state public universities (Added 7/19)

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