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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 with 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
 - 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. Allow portals to invest in companies conducting capital raises on their platform
 - h. 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
 - i. Provide regulatory protections that favor entrepreneurs
 - j. 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
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. 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
- b. 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
- c. Allow for seed round/initial round investing to be free of accountant and attorney needs/costs
- d. Create an affordable, clear, and efficient filing and registration system that encourages issuers to engage in crowdfunding offerings
- e. Maintain escrow requirement for startups
 - i. Need escrow to provide investors and issuers confidence that funds are maintained in a secure and trustworthy manner
- f. Statutory requirement for issuer's capital stack to be fully disclosed to investors
- g. Create notice system where issuers can report violations or improprieties
 - 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
- 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 charge variable fees
- d. Allow independent finders to register with the State without having to work with a securities firm
- e. 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
- f. Limit solicitation to Floridians
 - i. Utilize technology platforms for solicitations
 - ii. Foster growth of Florida businesses and economy
- g. Allow issuers and entrepreneurs to make their "pitch" through a portal
- h. 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
- i. Open escrow requirements/definitions/qualifications that allow for more, local and diverse escrow agents
 - i. Examples: title companies, attorneys, broker/dealers
 - ii. Allows portals to have more options for and easier access to escrow agents
 - iii. Fosters growth of local business and economy
 - 1. Other companies are incentivized to act as escrow agents depending on cost/benefit
- j. Have portals manage the issuance/disbursement of funds for escrow agents
- k. Require time limits for escrow agents to disburse funds to issuers
- l. Require escrow agents/financial institutions to be educated in crowdfunding regulations and processes
- m. Require escrow agents to be FDIC/NCUSIF insured
 - 1. Gives greater confidence to issuers and investors
- n. 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
- o. 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
- p. Provide statutory limit on portal commission fees
 - i. Allows issuers to receive a sizeable portion of investments
- q. Portal/escrow transparency requirement
 - i. Issue receipt of funds to issuers and investors

5. OFR REGULATION

- a. OFR to provide highly trained staff to review crowdfunding filings and facilitate registrations
- b. Allow state regulation that is outside of FINRA jurisdiction
 - i. Allows issuers to have recourse from FINRA allegations
- c. 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
 - ii. One localized state process and location for education, applications, registrations, etc.
- d. Simplify Florida's portal registration application
 - i. Modernize it
 - ii. Keep the application up to date

6. EDUCATION

- a. Portals to provide education to issuers on marketing and advertising
 - i. Or they connect them 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
- d. Require crowdfunding education coursework in university entrepreneur programs
 - 1. Encourage the use of in-state portals
- e. Provide publicly available online resources and materials that offer clear steps and processes
 - 1. Provide clear online resources and direction
- f. Direct crowdfunding/capital raising educational resources toward university entrepreneur/business acceleration/incubator programs
 - i. Encouraging the use of in-state portal 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
- g. 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)
- b. Exclude non-accredited investors
 - i. Gives issuers and portals confidence in investments
- c. Include non-accredited investors

- i. They are the necessary proof of concept that makes accredited investors jump in
 - ii. Allows for customers to become investors
 - d. 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

8. THE ECOSYSTEM NETWORK

- a. Foster visibility and transparency across the entire ecosystem
- b. 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
- c. Incorporate association membership into state registration

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