



Commissioner Russell C. Weigel, III

THE INVEST LOCAL ACT

Executive Summary

The Office of Financial Regulation (OFR), in conjunction with the Florida Bar Business Law Section, has drafted legislation called “The Invest Local Act.” The bill amends the Florida Securities and Investor Protection Act, chapter 517, Florida Statutes, which is administered by the OFR. The proposed amendments promote economic development, enhance investor protections, revise exemptions to registration requirements, clarify and modernize existing definitions, and incorporate new definitions.

- A. Improves the capacity of Florida-based companies to raise money in Florida by providing for:
 - An “Invest Local” offering exemption
 - The Florida Limited Offering Exemption (replaces the existing crowdfunding provision)
 - An accredited investor exemption
 - A safe harbor for demo day and pitch events
 - A pre-offering exemption for testing the waters to gauge potential investor interest in a securities offering
 - A standalone integration provision for all offering exemptions
- B. Provides for enhanced investor protection measures including:
 - Control person liability
 - Aider and abettor liability
 - Recovery of attorney fees and costs
 - Increased maximum civil penalties and administrative fines for violations and enhanced penalties and fines where the victim is a specified adult (65+ or a vulnerable adult)
 - Modified claimant eligibility criteria and recovery limits from Florida’s Securities Guaranty Fund
- C. Updates to registration exemptions for investment advisers
- D. Definitions

A. Small Company Capital Access

1. The Florida Invest Local Exemption (s. 517.0612)

This proposed “micro-offering” exemption is an important new fundraising provision for main street, startup businesses wishing to conduct small, localized offerings who are unable to or find it cost prohibitive to meet the more onerous requirements of other exemptions. The exemption includes the following provisions:

- Issuers must be for-profit business entities with a principal place of business in this state
- The transaction must meet the requirements of either section 3(a)(11) of the Securities Act of 1933 and SEC Rule 147, or SEC Rule 147A
- \$500,000 maximum raise
- \$10,000 investment limit for non-accredited investors

- No investment limit for accredited investors
- Limited general solicitation and advertising permissions

The exemption also includes the following investor protection provisions:

- Requires an offering disclosure document be provided to prospective investors
- Requires issues to specify a target offering amount
- Requires funds be deposited in a bank or other depository institution until target offering amount is reached
- Three-day voidability right

2. Revisions to Florida's Intrastate Crowdfunding Exemption (s. 517.0611)

This exemption has been renamed to the Florida Limited Offering Exemption and is amended to:

- Expand the type of companies eligible to use the exemption
 - Businesses with a principal place of business in Florida but incorporated or organized in another state can raise capital under this exemption if they conduct an offering in compliance with SEC Rule 147A.
- Increase the amount a company can raise under the exemption within a 12-month period from \$1 million to \$5 million
 - The SEC recently amended its crowdfunding exemption to allow for a \$5 million maximum amount.
- Limit the amount that a non-accredited investor can invest in an offering in a 12-month period to a flat \$10,000
 - This proposal avoids the confusion and potential liability of the formula-based limitations in the current statute. There is no investment limitation in the current statute or the proposed bill for accredited investors.
- Modify the requirement that the offering be administered by a dealer or an intermediary
 - The requirement that the issuer employ a third-party dealer or registered intermediary to administer the offering has been retained only for offerings of \$2.5 million or more.
- Eliminate the mandatory third-party escrow of funds
 - The proposal eliminates the mandatory escrow requirement but requires the issuer to deposit the proceeds in a federally insured financial institution until the target offering amount has been reached or the offering is terminated or expires.
- Allow issuers to engage in limited general solicitation and advertising
 - A benefit for smaller companies seeking to attract potential investors.
- Eliminate the requirement that annual reports be filed with the OFR and provided to investors
 - No other registration exemption has this requirement and both the corporation and limited liability company statutes allow for inspection of financial statements and other records by shareholders or members.

The proposal provides and retains the following investor protections:

- Three-day voidability
 - This provision is retained to allow an investor the right to rescind the transaction three days after purchase.
- Financial statement disclosures
 - The proposed bill adjusts the thresholds but retains the substantial full financial condition disclosure obligations of issuers to prospective investors.
- Investors funds must be held in escrow until the target amount is reached.
- Issuers must verify investor residency and accreditation status prior to receiving funds.
- All communications are subject to anti-fraud provisions.

3. Adoption of an Accredited Investor Exemption (s. 517.061(11))

The proposed bill adopts the Accredited Investor Exemption developed by the North American Securities Administrators Association. Many companies raise capital through SEC Rule 506(b), the federal private offering exemption that preempts state law and prohibits any form of general advertising or solicitation. This can hinder a small company's capacity to find accredited investors. The state accredited investor exemption is similar to SEC Rule 506(c), which also allows for general advertising and solicitation, but the proposed state rule uses the less onerous reasonable-belief-of-accredited-status standard found in Rule 506(b). The Accredited Investor Exemption may therefore prove very useful for local companies who need to engage in some general advertising or solicitation in order to attract potential investors.

Adoption of the Accredited Investor Exemption also allows both Florida and out-of-state issuers that wish to take advantage of the SEC Rule 504 federal exemption to offer securities to Florida residents under the Accredited Investor Exemption without the need to register the offering in Florida. Issuers are required to file a notice of transaction, a consent to service, and a copy of the general announcement with the OFR.

4. A Limited "Demo Day" safe harbor provision (s. 517.0615(1))

The proposed bill allows for issuers to participate in "demo day" presentations in accordance with provisions substantially similar to recently adopted SEC Rule 148. The presentations can only be at meetings sponsored by certain limited organizations, such as universities, state or local instrumentalities, defined business incubators, or defined angel investor groups, must involve more than one issuer, issuer communications are strictly limited, and there can be no investment recommendations, advice, negotiations, or commitments. The ability to engage in this limited form of public communication is important for smaller companies and startups trying to attract potential investors. Additionally, the provision creates a safe harbor, ensuring that: 1) the promoters – the business incubators and accelerators – and hosts of demo days are not required to register as dealers, provided certain restrictions are followed; and 2) communications made in connection with a demo day seminar or meeting are not deemed general solicitation or advertising.

5. A Pre-Offering "Testing the Waters" Provision (s. 517.0615(2))

The proposed bill allows issuers to "test the waters" by engaging in pre-offering oral or written communications with prospective investors to determine whether there is any interest in a contemplated securities offering. The ability to determine, in advance, the likelihood of investor reaction to a contemplated offering can save a company from the considerable time and expense of an unsuccessful offering. Additionally, the provision creates a safe harbor, ensuring that communications made in connection with a demo day seminar or meeting are not deemed general solicitation or advertising. Communications during the testing period are subject to the anti-fraud provisions of the statute.

6. A Standalone Integration Provision (s. 517.0614)

Due to the addition of several new registration exemptions, the proposed bill proposes a stand-alone integration provision, applicable to all issuer capital raising exemptions, and substantially similar to recently adopted SEC Rule 152. SEC Rule 152 significantly reduces the threat to companies, especially smaller ones that have continuing and sporadic needs for capital, that multiple offerings will be integrated as one, with the result that otherwise distinct valid exempt offerings will be deemed in violation of the registration provisions.

B. Enhanced Investor Protections

The proposed bill provides the following investor protection enhancements:

- 1. Control person liability (s. 517.191(5) and 517.211(3))**
 - Authorizes administrative and civil actions against control persons for violations by controlled persons unless the control person acted in good faith and did not directly or indirectly induce the acts that violated the statute.
- 2. Aiding and abetting liability (s. 517.191(6))**
 - Authorizes the OFR to bring enforcement actions against any person who knowingly or recklessly provides substantial assistance to another person in violation of the statute.
- 3. Recovery of attorney fees and costs by the office**
 - Allows the OFR to recover any costs and attorney fees related to OFR's investigation or enforcement of s. 517.191.
- 4. Increased maximum penalties (s. 517.191(4))**
 - Increased maximum civil and administrative penalties for natural persons in violation of securities laws from \$10,000 to \$20,000.
 - Civil and administrative penalties may be doubled when a specified adult (65+ or a vulnerable adult) is the victim of a securities law violation.
- 5. Addition of a "worthy issuer" provision (s. 517.0616)**
 - No registration exemption under s. 517.061(9), (10) and (11), s. 517.0611 or 517.0612 is available to an issuer that would be disqualified under Securities and Exchange Commission Rule 506(d), 17 C.F.R. 230.506(d), as amended, at the time the issuer makes an offer for the sale of a security.
- 6. Modified eligibility and increased recovery from Florida's Securities Guaranty Fund (s. 517.131 and 517.141)**
 - The eligibility requirements are modified to specify that a person must be a resident of or domiciled in Florida at the time of a violation of ss. 517.07 or 517.301 and to allow recovery for not only unsatisfied judgments, but also unsatisfied court confirmed arbitration awards.
 - The maximum amount of recovery an eligible victim may receive is increased from \$10,000 to \$15,000.
 - A specified adult (65+ or a vulnerable adult) may recover up to \$25,000.

C. Exemptions to Registration for Investment Advisers

The proposed bill modifies the following exemptions to registration:

- 1. Exemption from registration as an investment adviser reduced from 15 to six clients**
 - Modified to conform to the National Securities Markets Improvement Act and is consistent with majority of the states.
- 2. Exemption from registration as an investment adviser for government entities and their employees**
 - This is derived from the Investment Advisers Act of 1940.

D. Definitions (s. 517.021)

The proposed bill amends the definitions section to clarify and modernize existing definitions and to add a definition for "business entity."