

Locke Lord QuickStudy: Revisions to Chapter 517, F.S., the Florida Securities and Investor Protection Act

Locke Lord LLP

WRITTEN BY

[Gil Greber](#)

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Overview

On May 10, 2024, the Florida Governor approved Senate Bill 532 (“**SB 532**”), which passed the Florida House and Senate by nearly unanimous vote (1 vote against in the Senate). SB 532 substantially revises Chapter 517, F.S., the Securities and Investor Protection Act (the “**SIPA**”). SB 532 is intended to modernize the SIPA, and conform it with current federal rules and recent legislation adopted in other states. The bill seeks to improve the process for small and developing Florida businesses to raise capital, while simultaneously strengthening investor protections and enforcement measures to protect against fraud and abuse. SB 532 has an effective date of October 1, 2024. The remainder of this paper gives an overview of the most significant changes in SB 532.

Securities Guaranty Fund

The Securities Guaranty Fund (the “**Fund**”) under s. 517.131, F.S. exists to provide relief to victims of violations of the SIPA who are entitled to monetary damages or restitution, but who cannot recover the full amount of their damages or restitution from the offender. The amendment under SB 532 makes a significant number of changes to the Fund, including but not limited to (1) removing the 2-year waiting period for compensation; (2) increasing the amount an eligible person may recover from the Fund from \$10,000 to \$15,000 and increasing the aggregate limits on claims from \$100,000 to \$250,000; (3) removing barriers to apply; (4) permitting receivers to apply; and (5) adding an enhanced recovery of up to \$25,000 if the victim was a specified adult. A “specified adult” means a natural person 65 years of age or older, or a vulnerable adult as defined in s. 415.102, F.S. The amendment will also provide for recovery for unpaid arbitration awards confirmed by a court of competent jurisdiction, in addition to final judgments in court.

Raising Capital and Investor Protections

SB 532 makes a number of changes designed to simplify raising capital in Florida. These include:

- Renaming the intrastate crowdfunding exemption, the “Florida Limited Offering Exemption” under s. 517.0611, F.S.
- Changes to the Florida Limited Offering Exemption for crowdfunding will include: (1) reducing the technical and regulatory requirements for issuers; (2) requiring the use of a registered intermediary or dealer for offerings of

\$2.5 million or more, and for offerings below this threshold, making the use of such intermediary or dealer optional; (3) increasing the maximum offering limit from \$1 million to \$5 million, to conform with federal crowdfunding rules; and (4) permitting the issuer to engage in general advertising and general solicitation of the offering.

- Creates the “Florida Invest Local Exemption,” as s. 517.0612, F.S., which provides an exemption for registering certain micro-offerings of an issuer, up to \$500,000 in securities to Florida residents, less the aggregate amount received for all sales of securities by the issuer within the 12 months before the first offer or sale made in reliance of this exemption. An issuer cannot accept more than \$10,000 from any single purchaser, unless the purchaser is an accredited investor or falls within the other exceptions listed in the statute, for which there are no sale limits. Under this exemption, the issuer may engage in general advertising and general solicitation of the offering. Any sale made pursuant to this exemption must include to the purchaser a disclosure regarding the purchaser’s right to void the transaction within 3 days after the first tender of consideration is made by such purchaser to the issuer, and purchaser must make appropriate written notice of their intent to void the transaction.
- Eliminates the registration exemption for short-term notes of \$25,000 or more, which have a maturity date of 9 months or less under 517.051, F.S.
- Revises the section “Exempt Transactions” under s. 517.061, F.S. to:
 - Amend the opening paragraph to clarify that the exemptions therein are subject to the anti-fraud provisions of s. 517.301, F.S., even though the registration provisions of s. 517.07, F.S. do not apply. The exemptions from the registration requirements of s. 517.07, F.S. provided in this section remain self-executing.
 - For the exemption under subparagraph (10)(a)(1), require a disclosure regarding the purchaser’s right to void the transaction within 3 days after the first tender of consideration is made by such purchaser to the issuer, and purchaser must make appropriate written notice of their intent to void the transaction, regardless of the number of purchasers located in Florida, whereas previously this requirement only applied if 5 or more purchasers resided in Florida.
 - For the exemption under subparagraph (10)(a)(1), remove the requirement that dealers need to be registered to be paid a commission or compensation for the sale, however, this is already covered in s. 517.12, F.S., and so dealers still need to be registered to be paid a commission or compensation for such sale. This subparagraph is not included in the exemptions for dealer registration included in s. 517.12(2), F.S.
 - For the purposes of counting 35 purchasers under subparagraph (10)(a)(1), a business entity shall now be counted as 1 purchaser, unless the business entity is organized for the specific purpose of acquiring the securities offered, and is not an accredited investor. In that case, each beneficial owner of equity in the business entity must be counted as a separate purchaser.

Modernization of Chapter 517, F.S.

SB 532 makes a number of changes designed to conform Chapter 517, F.S. with federal rules or legislation in other states. These include:

- The changes to the Florida Limited Offering Exemption under s. 517.0611, F.S. are in order to conform with the updated Jumpstart Our Business Startups Act.
- Creates the section “Solicitations of Interest” as s. 517.0615, F.S., which adopts safe harbor provisions similar to the federal “Demo Day Presentations” rule under 17 C.F.R. §230.148. This section permits presentations made by issuers at seminars or conferences, without deeming such communication to constitute general advertising or solicitation, provided that certain criteria are met. These criteria include, but are not limited to:
 - The event must be sponsored by a college, a university, or another institution of higher education; a state or local government or an instrumentality thereof; a nonprofit chamber of commerce or other nonprofit organization; or an angel investor group, incubator, or accelerator.
 - Advertising for the seminar or meeting does not reference a specific offering of securities by the issuer.
 - The sponsor of the seminar or meeting does not charge attendees any fees other than reasonable administrative fees; engage in investment negotiations between the issuer and investors attending the seminar or meeting; make investment recommendations; or receive any compensation for making introductions between seminar attendees and issuers.

- Eliminates the requirement under s. 517.081, F.S. that issuers of simplified securities offerings that use the Small Company Offering Registration must submit annual financial reports for the first 5 years following the effective date of said offering.
- Creates the section “Integration of Offerings” s. 517.0614, F.S., which adopts provisions substantially consistent with 17 C.F.R. §230.152. This section provides general principles of integration and non-exclusive safe harbors from integration of registered and exempt offerings.

State Enforcement and Registration

SB 532 provides new authority to the Florida Office of Financial Regulation (the “**OFR**”), including:

- Reducing the requirement to register with the OFR as an investment adviser from any person who has 15 clients to just 6 clients.
- Increasing the amount of civil penalties the OFR may petition the court to impose against a defendant from \$10,000 to \$20,000 for individuals and \$25,000 for business entities, or the gross amount of any pecuniary loss to investors, and authorizing the imposition of a civil penalty of twice the amount that would otherwise be imposed if a specified adult is the victim of a violation of ch. 517, F.S.
- Authorizing the OFR to recover any costs and attorney’s fees relating to any investigation or enforcement under s. 517.191, F.S. with such money recovered deposited into the Anti-Fraud Trust Fund.
- Establishing joint and several liability for any control person who is found to have violated any provision of the SIPA, and providing that a person who knowingly and recklessly provides substantial assistance to another person in violating a provision of the SIPA is deemed to have violated the provision to the same extent as the person to whom such assistance was provided.
- Allowing the OFR to issue and serve upon a person a cease-and-desist order if the OFR has reason to believe the person violates, has violated, or is about to violate any provision of the SIPA, any commission or OFR rule or order, or any written agreement entered into with the OFR, as well as an emergency cease and desist order under certain circumstances that present an immediate danger to the public.
- Allowing the OFR to bar, permanently or for a specific period of time, any person found to have violated the SIPA, any rule or order adopted by the commission or OFR, or any written agreement entered into with the OFR from applying or notification for a license or registration with the OFR.
- Granting authority to the OFR to impose and collect an administrative fine against any person found to have violated any provision of the SIPA, any rule or order adopted by the commission or OFR, or any written agreement entered into with the OFR in an amount not to exceed the penalties provided in s. 517.191(4). All fines collected thereunder must be deposited into the Anti-Fraud Trust Fund.

Conclusion

This paper is intended as a guide only and is not a substitute for specific legal or tax advice. Please reach out to the author for any specific questions. We expect to continue to monitor the topics addressed in this paper and provide future client updates when useful.

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