

**AGENDA
FINANCIAL SERVICES COMMISSION
OFFICE OF FINANCIAL REGULATION**

http://www.flofr.com/Cabinet/Public_Notices.aspx

May 13, 2014

MEMBERS

Governor Rick Scott
Attorney General Pam Bondi
Chief Financial Officer Jeff Atwater
Commissioner Adam Putnam

Contact: **Jo Morris (OFR)**
(850) 410-9544

9:00 AM
LL-03, The Capitol
Tallahassee, Florida

ITEM	SUBJECT	RECOMMENDATION
-------------	----------------	-----------------------

1. The Office requests approval of the minutes of the November 19, 2013, meeting.

(ATTACHMENT 1)

FOR APPROVAL

2. The Office requests approval to publish Notices of Proposed Rule for 25 rules to update the materials incorporated by reference in Chapter 69W, Florida Administrative Code, relating to securities regulation, one proposed new rule (*69W-200.002, F.A.C.) to update the method by which materials are incorporated by reference in Chapter 69W, Florida Administrative Code, and 10 rule amendments to update rules relating to the registration of securities:

- Securities: 69W-100.007, F.A.C.
- Definitions: 69W-200.001, .002*, F.A.C.
- Applications: 69W-300.002, F.A.C.
- Exempt Transactions: 69W-500.005, .008, .012, .015, .016, .017, F.A.C.
- Registration of Dealers, Investment Advisers, Associated Persons: 69W-600.006, .012, .013, .0131, .0132, .0133, .014, .015, .016, .017, .020
- Registration of Securities: 69W-700.002, .014, .015, F.A.C.
- Notification of Registration of Securities: 69W-800.001, F.A.C.
- Disclosure of Business Activities in Cuba: 69W-900.001, F.A.C.
- Regulation of Securities: 69W-700.001, F.A.C.
- Filing of Prospectus: 69W-700.002, F.A.C.
- Promoters Equity Investment Ratio: 69W-700.005, F.A.C.
- Voting Rights: 69W-700.006, F.A.C.
- Options or Warrants Granted Underwriters: 69W-700.007, F.A.C.
- Options and Warrants to Officers, Employees and Others: 69W-700.008
- Preferred Stock or Debt Securities: 69W-700.010, F.A.C.
- Offering Price of Equity Securities: 69W-700.015, F.A.C.
- Unsound Financial Condition: 69W-700.026, F.A.C.
- Small Corporate Offering Registration ("SCOR" Offering): 69W-700.028, F.A.C

(ATTACHMENT 2)

APPROVAL FOR PUBLICATION

ATTACHMENT 1

**FINANCIAL SERVICES COMMISSION
OFFICE OF FINANCIAL REGULATION
MEETING MINUTES
NOVEMBER 19, 2013**

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

requirements for money services business applicants.

GOVERNOR SCOTT: Is there a motion to approve?

CFO ATWATER: So move.

GOVERNOR SCOTT: Is there a second?

COMMISSIONER PUTNAM: Second.

GOVERNOR SCOTT: Any comments or objections?

(NO RESPONSE).

GOVERNOR SCOTT: Hearing none, the motion carries.

COMMISSIONER BREAKSPEAR: Thank you very much.

GOVERNOR SCOTT: Thank you, Drew.

* * * *

ATTACHMENT 2

**FINANCIAL SERVICES COMMISSION
OFFICE OF FINANCIAL REGULATION**

AGENDA ITEM #2

Action Requested

The Office requests approval to file Notices of Proposed Rules to amend twenty-five rules, relating to the regulation of Securities (69W-100.007, 200.001, 300.002, 700.002, 500.005, 500.008, 500.012, 500.015, 500.016, 500.017, 600.006, 600.012, 600.013, 600.0131, 600.0132, 600.0133, 600.014, 600.015, 600.016, 600.017, 600.020, 700.014, 700.015, 800.001, and 900.001, F.A.C.).

Proposed Rule Amendment

Rule 69W-100.007

Chapter Name: Securities

Title: Advertising Sales and Literature

A. Summary and Justification

Rule 69W-100.007, F.A.C. is proposed for amendment to update references to incorporated material. The Office of Financial Regulation proposes to consolidate all material incorporated by reference in Chapter 69W, F.A.C. into a new proposed rule 69W-200.002, F.A.C. that conforms with Section 120.54(1)(i), F.S. The proposed amendment would reference 69W-200.002, F.A.C., where the material can be accessed via the FAR.

B. Full Text of Proposed Rule

69W-100.007 Advertising and Literature

(1) It is unlawful for any person, in connection with the offer or sale of any security registered pursuant to Section 517.081, F.S., to publish, circulate or use any advertising which contains an untrue statement of material fact or omits to state a material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not

misleading. All advertising shall be filed with the Office of Financial Regulation not later than the ten (10) days prior to the date of publication or circulation except as the Financial Services Commission or Office of Financial Regulation may otherwise provide by rule or order. The Office of Financial Regulation may by order prohibit the publication, circulation or use of any advertising deemed false or misleading.

(2) Every advertisement used in connection with an offering of securities registered pursuant to Section 517.081, F.S., must be authorized in writing by the Office of Financial Regulation before being published or circulated unless it is within the requirements of FINRA Rule 2210, which is incorporated by reference in Rule 69W-200.002, F.A.C., NASD Rule 2210 concerning advertisements for use in newspapers or any other means of public communication, or contains no more than the following:

- (a) Date of issuance or release;
- (b) Name and address of issuer;
- (c) Identity or title of securities;
- (d) Per unit offering price;
- (e) Amount of offering;
- (f) Brief statement of general character of the business;
- (g) Address where prospectus or offering circular may be obtained.

(3) Any advertisement, except an offering circular or prospectus, intended to be used by a registered Florida dealer in connection with the public sale or offer for sale of any securities within the State of Florida shall be filed with the Office of Financial Regulation at least ten (10) days prior to publication or circulation if such advertisement contains more than the disclosure items listed in subsection (2), or does not meet the requirements of FINRA Rule 2210 ~~NASD Rule 2210~~.

(4) ~~NASD Rule 2210 (Feb. 5, 2009) is hereby incorporated by reference. Copies of the rule may be obtained through the Financial Industry Regulatory Authority's website~~

~~(http://finra.complinet.com/en/display/display_viewall.html?rbid=2403&element_id=3617&record_id=10467)~~

~~or by contacting the Florida Office of Financial Regulation, Division of Securities, 200 E. Gaines Street, Tallahassee, Florida 32399, (850)410-9500.~~

Rulemaking Authority 517.03 FS. Law Implemented 517.081 FS. History--New 12-5-79,

Proposed Rule Amendment

Rule 69W-200.001

Chapter Name: Definitions

Title: Definitions

A. Summary and Justification

Rule 69W-200.001, F.A.C., is proposed for amendment to update references to incorporated material. The Office of Financial Regulation proposes to consolidate all material incorporated by reference in Chapter 69W, F.A.C. into a new proposed rule 69W-200.002, F.A.C. that conforms with Section 120.54(1)(i), F.S. The proposed amendment would reference 69W-200.002, F.A.C., where the material can be accessed via the FAR.

B. Full Text of Proposed Rule

69W-200.001 Definitions.

As used in the Rules and Regulations of the Financial Services Commission and Office of Financial Regulation, pursuant to Chapter 517, F.S., unless the context otherwise specifically requires:

(1) “Accredited Investor” is defined pursuant to S.E.C. Rule 501(a) of Regulation D (17 C.F.R. § 230.501(a)), which is incorporated by reference in Rule 69W-200.002, F.A.C.. ~~shall mean any person who comes within any of the following categories, or who the issuer reasonably believes comes within any of the following categories, at the time of the sale of the securities to that person:~~

~~(a) Any bank as defined in section 3(a)(2) of the Securities Act of 1933 (15 U.S.C. § 77e (a)(2) (2006 & Supp. II)), or any savings and loan association or other institution as defined in section 3(a)(5)(A) of that Act (15 U.S.C. § 77e (a)(5)(A) (2006 & Supp. II)), whether acting in its individual or fiduciary capacity; any broker or dealer registered pursuant to section 15 of the Securities Exchange Act of 1934 (15 U.S.C. § 78o (2006 & Supp. II)); any insurance company as defined in section 2(13) of the Securities Act of 1933 (15 U.S.C. § 77b (2006 & Supp. II)); any investment company registered under the Investment Company Act of 1940 (15 U.S.C. §§ 80a-1~~

~~through 80a-64 (2006 & Supp. II) or a business development company as defined in section 2(a)(48) of that Act (15 U.S.C. § 80a-2(a)(48) (2006 & Supp. II)); Small Business Investment Company licensed by the U.S. Small Business Administration under section 301(e) of the Small Business Investment Act of 1958 (15 U.S.C. § 681(e) (2006 & Supp. II)) any plan established and maintained by a state, its political subdivisions, or any agency or instrumentality of a state or its political subdivisions for the benefit of its employees, if such plan has total assets in excess of \$5,000,000; employee benefit plan within the meaning of the Employee Retirement Income Security Act of 1974 (29 U.S.C. § 1002(3) (2006 & Supp. II)) if the investment decision is made by a plan fiduciary, as defined in section 3(21) of such Act (29 U.S.C. § 1002(21) (2006 & Supp. II)), which is either a bank, savings and loan association, insurance company, or registered investment adviser, or if a self-directed plan, with investment decisions made solely by persons that are accredited investors;~~

~~(b) Any private business development company as defined in section 202(a)(22) of the Investment Advisers Act of 1940 (15 U.S.C. § 80b-2(a)(22) (2006 & Supp. II));~~

~~(c) Any organization described in section 501(c)(3) of the Internal Revenue Code (26 I.R.C. § 501(c)(3) (2006 & Supp. III)), corporation, Massachusetts or similar business trust or partnership, not formed for the specific purpose of acquiring the securities offered, with total assets in excess of \$5,000,000;~~

~~(d) Any director, executor officer, or general partner of the issuer of the securities being offered or sold, or any director, executive officer, or general partner of a general partner of that issuer;~~

~~(e) Any natural person whose individual net worth or joint net worth with that person's spouse, at the time of his purchase exceeds \$1,000,000;~~

~~(f) Any natural person who had an individual income in excess of \$200,000 in each of the two most recent fiscal years or joint income with that person's spouse in excess of \$300,000 in each of those years and has a reasonable expectation of reaching the same income level in the current year;~~

~~(g) Any trust, with total assets in excess of \$5,000,000, not formed for the purpose of acquiring the securities offered, whose purchase is directed by a sophisticated person as described in Securities and Exchange Commission Regulation 230.506(b)(2)(ii) (17 C.F.R. § 230.506(b)(2)(ii) (2009)); and~~

~~(h) Any entity in which all of the equity owners are accredited investors.~~

(2) "Advertising" means any circular, prospectus, advertisement or other material or any

communication by radio, television, Internet, pictures or similar means used in connection with a sale or purchase or an offer to sell or purchase any security.

(3) “Aggregate Indebtedness” is defined pursuant to S.E.C. Rule 15c3-1 (17 C.F.R. § 240.15c3-1), which is incorporated by reference in Rule 69W-200.002, F.A.C. (~~17 C.F.R. § 240.15c3-1 (2009)~~).

(4) ~~“Allowable Assets” is defined pursuant to S.E.C. Rule 15c3-1 (17 C.F.R. § 240.15c3-1 (2009))~~.

(4) (5) The term “Applicant” shall mean a person natural or otherwise, executing or submitting an application for registration.

(5) (6) “Application” means all information required by the forms prescribed by the Financial Services Commission and any additional information required by the Financial Services Commission or Office of Financial Regulation together with all required statutory fees.

(6)(a) (7)(a) “Associated person” as defined in Section 517.021(2), F.S., shall include any person who for compensation refers, solicits, offers, or negotiates for the purchase or sale of securities and/or of investment advisory services. A person whose activities fall within this definition is required to register with the Office of Financial Regulation as an associated person pursuant to Sections 517.12(1) or (4), F.S.

(b) Notwithstanding the provisions of paragraph (a), an associated person registered with the Office of Financial Regulation and operating in compliance with subsection 69W-600.003(3), F.A.C., shall not be deemed an associated person of any investment adviser other than the investment adviser or dually registered dealer/investment adviser with which such associated person is registered.

(c) Any person acting in compliance with S.E.C. Rule 206(4)-3 (17 C.F.R. § 275.206(4)-3), which is incorporated by reference in Rule 69W-200.002, F.A.C. (~~17 C.F.R. § 275.206(4)-3 (2009)~~), shall not be deemed an associated person of an investment adviser.

(7) (8) “Bona Fide Employee” is deemed to be a partner, officer, director, or trustee of the issuer, or any employee of such partner, officer, director or trustee, who has not participated in the distribution or sale of any securities within the preceding twelve (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.

(8)(a) (9)(a) Except as otherwise provided in this subsection, the term “Branch Office” shall

mean 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. Pursuant to Section 517.021(4), F.S., the Financial Services Commission may adopt exceptions to this definition. The following locations shall not be deemed branch offices for purposes of Section 517.12(5), F.S., and are considered exceptions to the definition of a branch office under Section 517.021(4), F.S.:

1. Any location that is established solely for customer service or back office type functions where no sales activities are conducted and that is not held out to the public as a branch office;
2. Any location that is the associated person's primary residence; provided that:
 - a. Only one associated person, or multiple associated persons, who reside at that location and are members of the same immediate family, conduct business at the location;
 - b. The location is not held out to the public as an office and the associated person does not meet with customers at the location;
 - c. Neither customer funds nor securities are handled at that location;
 - d. The associated person is assigned to a designated branch office, and such designated branch office is reflected on all business cards, stationery, advertisements and other communications to the public by such associated person;
 - e. The associated person's correspondence and communications with the public are subject to the firm's supervision in accordance with NASD Rule 3010, as incorporated in Rule 69W-200.002, F.A.C. subparagraph 69W-600.013(1)(h)1., F.A.C.;
 - f. Electronic communications (e.g., e-mail) are made through the registrant's electronic system;
 - g. All orders are entered through the designated branch office or an electronic system established by the registrant that is reviewable at the branch office;
 - h. Written supervisory procedures pertaining to supervision of sales activities conducted at the residence are maintained by the registrant; and
 - i. A list of the residence locations is maintained by the registrant;
3. Any location, other than a primary residence, that is used for securities business for less than 30 business days in any one calendar year, provided the registrant complies with the provisions of this rule in sub-subparagraphs (9)(a)2.a. through i. above;

4. Any office of convenience, where associated persons occasionally and exclusively by appointment meet with customers, which is not held out to the public as an office;

5. Any location that is used primarily to engage in non-securities activities and from which the associated person(s) effects no more than 25 securities transactions in any one calendar year; provided that any advertisement or sales literature identifying such location also sets forth the address and telephone number of the location from which the associated person(s) conducting business at the non-branch locations are directly supervised;

6. The floor of a registered national securities exchange where a registrant conducts a direct access business with public customers; or

7. A temporary location established in response to the implementation of a business continuity plan.

8. The principal office and place of business of an investment adviser registered with the Office of Financial Regulation pursuant to Section 517.12(4), F.S.

9. Any location of an investment adviser that is notice-filed as a branch office of a dealer, provided the dealer and investment adviser use the same CRD number.

(b) Notwithstanding the exclusions provided in subparagraph (9)(a)2. above, any location of a dealer that is responsible for supervising the activities of persons associated with the registrant at one or more non-branch locations of the registrant is considered to be a branch office.

(c) The term “business day” as used in subparagraph (9)(a)3. above ~~NASD Rule 3010(g)(2)(A), which is incorporated by reference in subparagraph 69W-600.013(1)(h)1., F.A.C.,~~ shall not include any partial business day provided that the associated person spends at least four hours on such business day at his or her designated branch office during the hours that such office is normally open for business.

(9) ~~(10)~~ “Carrying Dealer” means any dealer maintaining a fully/principally disclosed agreement/arrangement with an introducing dealer, whereby the carrying dealer is responsible for customer monies and securities, and confirms transactions to the customer accounts introduced; such dealer who carries accounts for Florida residents must be registered pursuant to the provisions of Section 517.12, F.S.

~~(11) “Custody” means a person directly or indirectly holds customer funds or securities, has any authority to obtain possession of them, or has the ability to appropriate them.~~

(10) ~~(12)~~ “Developmental Stage Entities” shall be defined as those entities which are devoting

substantially all of their efforts to establishing a new business and for which either of the following conditions exists:

(a) Planned principal operations have not commenced; or

(b) Planned principal operations have commenced but whose annual net earnings for each of the last two (2) consecutive fiscal years or whose average annual net earnings for the last five (5) fiscal years prior to the public offering have been less than five percent (5%) of the aggregate public offering.

(11) ~~(13)~~ “Dilution” for purposes of paragraph 69W-700.015(2)(b), F.A.C., shall be determined by subtracting the maximum sales commissions and expenses set forth in the prospectus from the gross proceeds of the offering and adding the net worth prior to the offering. Divide this sum by the total number of shares to be outstanding at the conclusion of the offering to determine book value. Subtract the book value from the proposed offering price and divide the result by the proposed offering price to arrive at the percentage of dilution. For the purpose of calculating “dilution” or “book value”, intangible assets such as patents, copyrights, franchises, trademarks, operating rights and goodwill are deducted from total assets.

Dilution Formula:

NP = Gross Proceeds minus Maximum Sales Commissions and Expenses

NW = Net Worth prior to the offering

TS = Total Number of shares to be outstanding after a successful offering

BV = Book Value

OP = Offering Price

Example:

$$\frac{NP + NW}{TS} = BV$$

$$\frac{OP - BV}{OP} = \text{Dilution}$$

(12) ~~(14)~~ “Established Market Price” for purposes of Rule 69W-700.015, F.A.C., shall be the OTC price for a security published in The Wall Street Journal in the Over-The-Counter Markets

Section, Quotations from the NASDAQ System of such publication or the price for a security published on any stock exchange registered pursuant to the Securities Exchange Act of 1934.

(13) ~~(15)~~ “Executing Dealer” means any dealer who executes transactions entered by another dealer; such dealer need not be registered under Section 517.12, F.S., unless such dealer confirms said transactions directly to Florida resident accounts, and/or maintains responsibility for such accounts as either introducing dealer or carrying dealer.

(14) ~~(16)~~ “Fair Value of the Equity Investment” for purposes of subsection 69W-700.005(1), F.A.C., of the promoters or insiders shall mean the total of all sums contributed to the issuer in cash together with the reasonable value of all tangible assets contributed to the issuer, and as adjusted by the earned surplus or deficit of the issuer subsequent to the dates of contribution. In determining the reasonable value of tangible assets contributed, the Office of Financial Regulation may take into consideration any values as determined by independent appraisal or otherwise.

(15) ~~(17)~~ “Independent Director” shall be defined as a member of the Issuer’s Board of Directors who:

(a) Is not an officer or employee of the Issuer, its subsidiaries, or their affiliates or associates and has not been an officer or employee of the Issuer, its subsidiaries or their affiliates or associates within the last two years; and

(b) Is not a promoter as defined in Section 517.021(18)(b), F.S.; and

(c) Does not have a material business or professional relationship with the issuer or any of its affiliates or associates. For purposes of determining whether or not a business or professional relationship is material, the gross revenue derived by the Independent Director from the Issuer, its affiliates and associates shall be deemed material if it exceeds 5% of the Independent Director’s;

1. Annual gross revenue, derived from all sources, during either of the last two years; or
2. Net worth, on a fair market value basis.

(16) ~~(18)~~ “Introducing Dealer” means any dealer maintaining a formal agreement/arrangement with another dealer whereby the introducing dealer does not carry (i.e., holds funds or securities, or confirms transactions) customer accounts; such dealer who introduces Florida resident accounts must be registered pursuant to Section 517.12, F.S.

(17) ~~(19)~~ “Issuer” in Rules 69W-400.001, 69W-500.005, 69W-500.006, and 69W-500.008, F.A.C., shall mean any person who proposes to issue or has issued or shall hereafter issue any securities. For purposes of this subsection only, the term “issuer” shall not include a promoter of

the issuer for the purposes of these rules.

~~(18)~~ ~~(20)~~ “Issuers” Within the Meaning of Section 517.021(14), F.S.

(a) For the purposes of determining whether a person is an issuer within the meaning of Section 517.021(14), F.S., the term “promoter” shall be deemed to include:

1. Any person who, acting alone or in conjunction with one or more other persons, directly or indirectly initiates the founding or organizing of the business or enterprise of an issuer; or

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

(b) Notwithstanding the provisions of subsection (1) of this rule, no person shall be deemed to be a promoter with respect to any issuer which is duly qualified to transact business under the laws of the jurisdiction in which it is organized and which has actively been engaged in business for a continuous period of one year.

~~(19)~~ ~~(21)~~ “Issuer/Dealer” means any issuer who through either persons directly or indirectly compensated or controlled by the issuer engages, either for all or part of his time, directly or indirectly, in the business of offering or selling securities which are issued or are proposed to be issued by said issuer.

~~(20)~~ ~~(22)~~ “Principal Office” or “Home Office” shall mean the place where the chief or principal affairs and business of the applicant or registrant are transacted.

~~(21)~~ ~~(23)~~ “Promotional Securities” for purposes of Rule 69W-700.015, F.A.C., shall mean securities that are to be issued or were issued:

(a) By an issuer which is a development stage company to promoters for cash or other consideration, including services rendered, patents, copyrights, and other intangibles, that will be or was less than eighty-five percent (85%) of the proposed offering price, or

(b) Within three (3) years prior to the filing of an application to register securities with the Office of Financial Regulation by an issuer, which is not a development stage company, to promoters for cash or other considerations, including services rendered, patents, copyrights and

other intangibles, that will be or was less than eighty-five percent (85%) of the proposed offering price. (Shares issued pursuant to conversion or exercise rights shall be included as promoters shares).

~~(22)~~ ~~(24)~~ “Publication” means advertising printed in any newspaper, magazine, periodical or other publication and mailed or delivered to its subscribers or addresses, or communicated by radio, television or similar means.

~~(23)~~ ~~(25)~~ “Qualified Institutional Buyer” for purposes of Section 517.061(7), F.S., shall be defined as provided in Securities and Exchange Commission rule 144A(a) (17 C.F.R. § 230.144A(a)), which is incorporated by reference in Rule 69W-200.002, F.A.C. ~~(17 C.F.R. § 230.144A(a) (2009))~~.

~~(24)~~ ~~(26)~~ “Reaffiliation” refers to those associated persons leaving one registered dealer or investment adviser and reaffiliating with another registered dealer or investment adviser.

~~(25)~~ ~~(27)~~ “Registrant” shall mean an applicant for whom a registration has been declared effective by the Office of Financial Regulation.

~~(26)~~ ~~(28)~~ “Reportable Act” shall mean:

(a) Having exercised management or policy control over or owned 10 percent or more of the securities of any dealer or investment adviser for which a Securities Investor Protection Corporation (“SIPC”) trustee was appointed pursuant to the Securities Investor Protection Act or which is insolvent;

(b) Conviction of or entry of a plea of guilty or no contest to any criminal act, excluding traffic violations or other minor offenses;

(c) Having been the subject of any decision, finding, injunction, suspension, prohibition, revocation, denial, judgment, or 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 having been the subject of any injunction or adverse order by a state or federal agency or court of competent jurisdiction regulating banking, insurance, finance or small loan companies, real estate, mortgage brokers, or other related or similar industries;

(d) Being charged, in a pending enforcement action or pending criminal prosecution, with any conduct that if proven and not subsequently reversed, suspended, or vacated, would be deemed a reportable act under paragraphs (a) through (c) of this rule.

1. For purposes of this rule, “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 (formerly known as the National Association of Securities Dealers), the National Futures Association, the New York Stock Exchange, or any other similar self-regulatory organization.

2. An enforcement action is pending at any time after notice to the respondent 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.

~~(27)~~ (29) “Renewal Applicant” shall mean an applicant who is a registrant who seeks a timely renewal of the license.

~~(28)~~ (30) “Securities Act of 1933”, 15 U.S.C. §§ 77a through 77mm ~~(2006 & Supp. II)~~, “Securities Exchange Act of 1934”, 15 U.S.C. §§ 78a through 78oo ~~(2006 & Supp. II)~~, “Investment Company Act of 1940”, 15 U.S.C. §§ 80a-1 through 80a-64 ~~(2006 & Supp. II)~~, “Investment Advisers Act of 1940”, 15 U.S.C. §§ 80b-1 through 80b-21 ~~(2006 & Supp. II)~~, and “Internal Revenue Code”, 26 U.S.C. Subtitles A through K ~~(2006 & Supp. III)~~, means the federal statutes of those names.

~~(29)~~ (31) “State” means any state, territory or possession of the United States, the District of Columbia and Puerto Rico.

~~(30)~~ (32) “Total Equity Investment” for purposes of subsection 69W-700.005(1), F.A.C., shall mean the total of (1) par or stated values of all equity securities offered or proposed to be offered; and (2) the amount of surplus of any kind, regardless of description and whether or not restricted.

~~(31)~~ (33) “Wholesaler” is defined as any dealer conducting business exclusively with other dealers in this State, and such dealer need not be registered as a dealer under Section 517.12, F.S.

~~(34)~~ The federal statutes and regulations referenced in this rule are hereby incorporated by

~~reference. Copies of the United States Code are available online through the U.S. House of Representatives, Office of the Law Revision Counsel: <http://uscode.house.gov/download/downloadPDF.shtml>. Copies of the Code of Federal Regulation are available online through the U.S. Government Printing Office via GPO Access: <http://www.gpoaccess.gov/cfr/retrieve.html>.~~

Rulemaking Authority 517.03(1) FS. Law Implemented 517.07, 517.12, 517.021, 517.061, 517.051, 517.081, 517.161 FS. History—New 12-5-79, Amended 9-20-82, Formerly 3E-200.01, Amended 12-8-87, 10-14-90, 7-31-91, 6-16-92, 1-10-93, 5-5-94, 10-20-97, 8-9-98, 8-19-99, 10-30-03, Formerly 3E-200.001, Amended 5-15-07, 9-30-10, 11-11-13,_____.

Proposed New Rule

Rule 69W-200.002

Chapter Name: Securities

Title: General Industry Standards Incorporated by Reference

A. Summary and Justification

Proposed Rule 69W-200.002, F.A.C. consolidates all material incorporated by reference in Chapter 69W, F.A.C. into one rule. The rule has a table format that identifies each material, its date, the effective date of incorporation, the referencing rule(s), and the hyperlink to the Florida Administrative Register (FAR) where a copy of the material can be downloaded (or alternatively, how the material can be inspected if it is copyright-restricted).

B. Full Text of Proposed Rule

69W-200.002 General Industry Standards Incorporated by Reference.

(1) The following general industry standards as expressed in the statutes, rules and regulations of the various federal and self-regulatory agencies and regulatory associations and referenced in Chapter 69W, F.A.C., are hereby incorporated by reference and adopted by this rule.

Material (with version/edition date)	Effective date of incorporation	Referencing rule(s)	Hyperlink to material
FINRA Rule 2210 (2-4-13)		69W-100.007(4)  69W-100.007.doc	http://www.flrules.org/  Adobe Acrobat Document
S.E.C. Rule 501(a) of Regulation D (17 C.F.R. § 230.501(a)) (9-23-13)		69W-200.001(1)  69W-200.001.doc	http://www.flrules.org/  Adobe Acrobat Document
SEC Rule 15c3-1 (17 C.F.R. § 240.15c3-1) (10-21-13)		69W-200.001(3), 69W-200.001(4), 69W-300.002(4)	http://www.flrules.org/  Adobe Acrobat Document
SEC Rule 206(4)-3 (17 C.F.R. § 275.206(4)-3) (9-13-10)		69W-200.001(7)(c), 600.014(3)	http://www.flrules.org/  Adobe Acrobat Document
NASD Rule 3010 (2-4-13)		69W-200.001(9)(a)2.e.	http://www.flrules.org/  Adobe Acrobat Document
SEC Rule 144A(a) (17 C.F.R. § 230.144A(a)) (9-23-13)		69W-200.001(25)	http://www.flrules.org/  Adobe Acrobat Document
Regulation S-X (17 C.F.R. Part 210) (C.F.R. 2013 edition)		69W-300.002(1)  69W-300.002.doc	http://www.flrules.org/  Adobe Acrobat Document
SEC Rules 17a-5 (17 C.F.R. § 240.17a-5) (12-31-13) and 17a-10 (17 C.F.R. § 240.17a-10) (9-9-81)		69W-300.002(3)(d); 69W-600.015(2)(c)  69W-600.015.doc	http://www.flrules.org/  Adobe Acrobat Document
Section 15A of the Securities Exchange Act of 1934 (15 U.S.C. §78o-3) (10-1-10)		69W-300.002(3)(e)	http://www.flrules.org/  Adobe Acrobat Document

Material (with version/edition date)	Effective date of incorporation	Referencing rule(s)	Hyperlink to material
Regulation A of the Securities Act of 1933 (17 C.F.R. §§230.251 through 230.263) (C.F.R. 2013 edition)		69W-300.002(6)(a), 700.002(2)  69W-700.002.doc	http://www.flrules.org/  Adobe Acrobat Document
SEC Rule 144 (17 C.F.R. § 230.144) (2-27-12)		69W-500.008(1)  69W-500.005.doc  69W-500.008.doc	http://www.flrules.org/  Adobe Acrobat Document
Section 642(c)(5) of the Internal Revenue Code of 1954 (26 U.S.C. §642(c)(5) (2012))		69W-500.012(1)(a)  69W-500.012.doc	http://www.flrules.org/  Adobe Acrobat Document
Regulation S (17 C.F.R. §§ 230.901 through 230.905) (C.F.R. 2013 edition)		69W-500.015  69W-500.015.doc	http://www.flrules.org/  Adobe Acrobat Document
Section 4(a)(2) of the Securities Act of 1933 (15 U.S.C. § 77d(a)(2)) (2012)		69W-500.016  69W-500.016.doc	http://www.flrules.org/  Adobe Acrobat Document
SEC Rule 701 (17 C.F.R. 230.701) (3-4-08)		69W-500.017(1)(a), 500.017(2)  69W-500.017.doc	http://www.flrules.org/  Adobe Acrobat Document
Section 3(a) of the Securities Act of 1933 (15 U.S.C. §77c(a)) (2012)		69W-500.017(1)(b)	http://www.flrules.org/  Adobe Acrobat Document
Securities Act of 1933 Section 5 (15 U.S.C. §77e); Section 6 (15 U.S.C. §77f); Section 7 (15 U.S.C. §77g); Section 8 (15 U.S.C. §77h) (2012)		69W-500.017(1)(c)	http://www.flrules.org/  Adobe Acrobat Document

Material (with version/edition date)	Effective date of incorporation	Referencing rule(s)	Hyperlink to material
SEC Rule 17f-2 (17 C.F.R. § 240.17f-2) (12-1-82)		69W-600.006(2), (3), (4)  69W-600.006.doc	http://www.flrules.org/  Adobe Acrobat Document
SEC Rule 10b-10 (17 CFR § 240.10b-10) (8-29-05)		69W-600.012(1)(d)  69W-600.012.doc	http://www.flrules.org/  Adobe Acrobat Document
SEC Rule 17a-3 (17 CFR § 240.17a-3) (10-21-13)		69W-600.012(1)(d)	http://www.flrules.org/  Adobe Acrobat Document
MSRB Rules G-8 and G-15 (3-31-14)		69W-600.012(1)(d)	Due to copyright restrictions, see paragraph (2) below for access information. http://www.flrules.org/  Adobe Acrobat Document
Securities Exchange Act of 1934 Section 9 (15 U.S.C. §78i); Section 10 (15 U.S.C. §78j); Section 11A (15 U.S.C. §78k-1); Section 15(c) and 15(g) (15 U.S.C. §78o(c) and 78o(g)) (2012)		69W-600.012(5)(a)	http://www.flrules.org/  Adobe Acrobat Document
SEC Rule 9b-1 (17 CFR § 240.9b-1) (1-2-03)		69W-600.012(5)(b)	http://www.flrules.org/  Adobe Acrobat Document
SEC Rules 10b-1, 10b-3, 10b-5, 10b5-1, 10b5-2, 10b-9, 10b-10, 10b-16, 10b-17, 10b-18, and 10b-21 (17 CFR §§ 240.10b-1, 240.10b-3, 240.10b-5, 240.10b5-1, 240.10b5-2, 240.10b-9, 240.10b-10, 240.10b-16, 240.10b-17, 240.10b-18, and 240.10b-21) (C.F.R. 2013 edition)		69W-600.012(5)(c)	http://www.flrules.org/  Adobe Acrobat Document

Material (with version/edition date)	Effective date of incorporation	Referencing rule(s)	Hyperlink to material
SEC Rules 15c1-1 through 15c1-3 and 15c1-5 through 15c1-9 (17 CFR §§ 240.15c1-1 through 240.15c1-3 and 240.15c1-5 through 240.15c1-9) (C.F.R. 2013 edition)		69W-600.012(5)(d)	http://www.flrules.org/  Adobe Acrobat Document
SEC Rules 15c2-1, 15c2-4, 15c2-5, 15c2-7, 15c2-8, 15c2-11, and 15c2-12 (17 CFR §§ 240.15c2-1, 240.15c2-4, 240.15c2-5, 240.15c2-7, 240.15c2-8, 240.15c2-11, and 240.15c2-12 (C.F.R. 2013 edition)		69W-600.012(5)(e)	http://www.flrules.org/  Adobe Acrobat Document
SEC Rules 15g-1 through 15g-6, 15g-8, and 15g-9 (17 CFR §§ 240.15g-1 through 240.15g-6, 240.15g-8 and 240.15g-9) (C.F.R. 2013 edition)		69W-600.012(5)(f)	http://www.flrules.org/  Adobe Acrobat Document
Regulation M (17 CFR §242.100 (8-28-05); 17 CFR §242.101 (9-23-13); 17 CFR §242.102 (9-23-13); 17 CFR §242.103 (8-29-05); 17 CFR §242.104 (9-23-13); 17 CFR §242.105) (10-9-07)		69W-600.012(5)(g)	http://www.flrules.org/  Adobe Acrobat Document
SEC Rule 601 (17 C.F.R. § 242.601) (8-29-05)		69W-600.012(5)(h)	http://www.flrules.org/  Adobe Acrobat Document
Regulation T, Credit by Brokers and Dealers, (12 C.F.R. §§ 220.1 through 220.12, 220.101, 220.103, 220.105, 220.108, 220.110, 220.111, 220.113, 220.117, 220.118, 220.119, 220.121, 220.122, 220.123, 220.124, 220.127, 220.128, 220.131, 220.132); and 12 C.F.R. § 221.125 of Regulation U (C.F.R. 2013 edition)		69W-600.013(1)(a)  69W-600.013.doc	http://www.flrules.org/  Adobe Acrobat Document
SEC Rule 8c-1, (17 C.F.R. § 240.8c-1) (11-3-98)		69W-600.013(1)(d)	http://www.flrules.org/  Adobe Acrobat Document

Material (with version/edition date)	Effective date of incorporation	Referencing rule(s)	Hyperlink to material
FINRA Rule 2000 Series (existing as of 3-28-14)		69W-600.013(1)(h)1.	http://www.firules.org/  Adobe Acrobat Document
FINRA Rule 3000 Series (existing as of 3-28-14)		69W-600.013(1)(h)1.; 600.013(2)(a) (FINRA Rule 3240)	http://www.firules.org/  Adobe Acrobat Document
FINRA Rule 4000 Series (existing as of 3-28-14)		69W-600.013(1)(h)1.	http://www.firules.org/  Adobe Acrobat Document
FINRA Rule 5000 Series (existing as of 3-28-14)		69W-600.013(1)(h)1.	http://www.firules.org/  Adobe Acrobat Document
FINRA Rule 6000 Series (existing as of 3-28-14)		69W-600.013(1)(h)1.	http://www.firules.org/  Adobe Acrobat Document
FINRA Rule 7000 Series (existing as of 3-28-14)		69W-600.013(1)(h)1.	http://www.firules.org/  Adobe Acrobat Document
NASD Conduct Rule 2000 Series (existing as of 3-28-14)		69W-600.013(1)(h)1.	http://www.firules.org/  Adobe Acrobat Document
NASD Conduct Rule 3000 Series (existing as of 3-28-14)		69W-600.013(1)(h)1.; 600.013(1)(h)4. (NASD Rule 3210); 69W-600.014(1)	http://www.firules.org/  Adobe Acrobat Document
NASD Uniform Practice Code Rule 11000 Series (existing as of 3-28-14)		69W-600.013(1)(h)1.	http://www.firules.org/  Adobe Acrobat Document

Material (with version/edition date)	Effective date of incorporation	Referencing rule(s)	Hyperlink to material
NYSE Rules 405, 412, and 435 (existing as of 3-28-14)		69W-600.013(1)(h)2.	Due to copyright restrictions, see paragraph (2) below for access information. http://www.flrules.org/  Adobe Acrobat Document
Section 2, 3, 4, 4A, 5, and 6 of the Securities Act of 1933, (15 U.S.C.A. §§ 77b, 77c, 77d, 77d-1, 77e, or 77f) (2012)		69W-600.013(1)(h)3.	http://www.flrules.org/  Adobe Acrobat Document
SEC Rules 134, 134a, 135a, 144, 144A, 156, 419, 481, or 482, (17 C.F.R. §§ 230.134, 230.134a, 230.135a, 230.144, 230.144A, 230.156, 230.419, 230.481 or 230.482) (C.F.R. 2013 edition)		69W-600.013(1)(h)3.	http://www.flrules.org/  Adobe Acrobat Document
Section 15(b)(4)(E) of the Securities Exchange Act of 1934 (15 U.S.C. § 78o(b)(4)(E)) (2012)		69W-600.013(1)(h)4.	http://www.flrules.org/  Adobe Acrobat Document
Regulation SHO, Regulation of Short Sales, (17 C.F.R. §§ 242.200-242.203) (C.F.R. 2013 edition)		69W-600.013(1)(h)4.	http://www.flrules.org/  Adobe Acrobat Document
Section 15B of the Securities Exchange Act of 1934, (15 U.S.C. § 78o-4) (2012)		69W-600.013(1)(h)5.	http://www.flrules.org/  Adobe Acrobat Document
MSRB Definitional Rules D-1 to D-14, and General Rules G-1 to G-43 (existing as of 3-28-14)		69W-600.013(1)(h)5.; 69W-600.014(1) (Rules G-7, G-8, G-9); 69W-600.014(7)(a) (Rule G-9); 69W-600.020(3) (Rule G-3(h))	Due to copyright restrictions, see paragraph (2) below for access information. http://www.flrules.org/  Adobe Acrobat Document
Sections 13 and 15D of the Securities Exchange Act of 1934, (15 U.S.C. §§ 78m, 78o-6)		69W-600.013(1)(m)	http://www.flrules.org/  Adobe Acrobat Document

Material (with version/edition date)	Effective date of incorporation	Referencing rule(s)	Hyperlink to material
Sections 204, 204A, 205, 206, 207, 208 of the Investment Advisers Act of 1940 (15 U.S.C.A. §§ 80b-4, 80b-4a, 80b-5, 80b-6, 80b-7, 80b-8 (2012))		69W-600.0131(1)(a); 600.0131(1)(r) (Section 205)  69W-600.0131.doc	http://www.flrules.org/  Adobe Acrobat Document
SEC Rule 204-3 (17 C.F.R. §275.204-3) (10-12-10); Rule 205-1(17 C.F.R. §275.205-1) (8-29-72); Rule 205-2 (17 C.F.R. §275.205-2) (11-22-72); Rule 205-3 (17 C.F.R. §275.205-3) (5-22-12); Rule 206(3)-1 (17 C.F.R. §275.206(3)-1) (8-27-75); Rule 206(3)-2 (17 C.F.R. §275.206(3)-2) (5-22-97); Rule 206(4)-1 (17 C.F.R. §275.206(4)-1) (5-22-97) Rule 206(4)-3 (17 C.F.R. §275.206(4)-3) (9-13-10); Rule 206(4)-4 (17 C.F.R. §275.206(4)-4) (10-12-10)		69W-600.0131(1)(a)	http://www.flrules.org/  Adobe Acrobat Document
Section 203(b) of the Investment Advisers Act of 1940, (15 U.S.C. § 80b-3(b)) (2012)		69W-600.0131(1)(r)	http://www.flrules.org/  Adobe Acrobat Document
The Investment Advisers Act of 1940 (15 U.S.C. § 80b-1 through 80b-21) (2012)		69W-600.0131(1)(s)	http://www.flrules.org/  Adobe Acrobat Document
National Securities Markets Improvement Act of 1996 (Pub. L. 104-290) (10-11-96)		69W-600.0131(2)	http://www.flrules.org/  Adobe Acrobat Document
Section 4f(a) of the Commodity Exchange Act (7 U.S.C. § 6f) (2012)		 69W-600.0132.doc	http://www.flrules.org/  Adobe Acrobat Document

Material (with version/edition date)	Effective date of incorporation	Referencing rule(s)	Hyperlink to material
Section 5(a)(1) of the Investment Company Act of 1940, (15 U.S.C. § 80a-5(a)(1)) (2012)		69W-600.0132(3)(a)	http://www.flrules.org/  Adobe Acrobat Document
Investment Company Act of 1940 (15 U.S.C. § 80a-1 through 80a-64) (2012)		69W-600.0132(3)(d), 69W-600.0133(4)(b) (§§80a-2 and 80a-3)  69W-600.0133.doc	http://www.flrules.org/  Adobe Acrobat Document
SEC Rules 17a-3 and 17a-4 (17 C.F.R. §§ 240.17a-3 and 240.17a-4) (10-21-13)		69W-600.014(1), 600.014(2)(c), 600.014(7)(a), 600.016(2)(b)  69W-600.014.doc  69W-600.016.doc	http://www.flrules.org/  Adobe Acrobat Document
SEC Rule 204-2 (17 C.F.R. §275.204-2) (9-19-11)		69W-600.014(3), 600.014(4), 600.014(7)	http://www.flrules.org/  Adobe Acrobat Document
SEC Rule 204-3 (17 C.F.R. §275.204-3) (10-12-10)		69W-600.014(3)(e)	http://www.flrules.org/  Adobe Acrobat Document
SEC Rule 15c3-1 and appendices: 17 C.F.R. §240.15c3-1 (10-21-13); 17 C.F.R. §240.15c3-1a (10-21-13); 17 C.F.R. §240.15c3-1b (8-9-84); 17 C.F.R. §240.15c3-1c (12-2-92); 17 C.F.R. §240.15c3-1d (6-5-08); 17 C.F.R. §240.15c3-1e (1-8-14); 17 C.F.R. §240.15c3-1f (1-8-14); 17 C.F.R. §240.15c3-1g (1-8-14)		69W-600.016(2), 600.016(3)	http://www.flrules.org/  Adobe Acrobat Document

Material (with version/edition date)	Effective date of incorporation	Referencing rule(s)	Hyperlink to material
17 C.F.R. § 240.17a-11 (10-21-13)		69W-600.016(2)(a)	http://www.flrules.org/  Adobe Acrobat Document
SEC Rule 15c3-3 and Exhibit A (17 C.F.R. § 240.15c3-3 and 240.15c3-3a) (10-21-13)		69W-600.017  69W-600.017.doc	http://www.flrules.org/  Adobe Acrobat Document
FINRA Rule 1250 (existing as of 3-28-14)		69W-600.020(1)  69W-600.020.doc	http://www.flrules.org/  Adobe Acrobat Document
NYSE Rule 345A (existing as of 3-28-14)		69W-600.020(2)	Due to copyright restrictions, see paragraph (2) below for access information. http://www.flrules.org/  Adobe Acrobat Document
NYSE MKT LLC Rule 341A (existing as of 3-28-14)		69W-600.020(1)(d)	Due to copyright restrictions, see paragraph (2) below for access information. http://www.flrules.org/  Adobe Acrobat Document
Article VI, Rule 11 of the Chicago Stock Exchange (existing as of 3-28-14)		69W-600.020(1)(e)	Due to copyright restrictions, see paragraph (2) below for access information. http://www.flrules.org/  Adobe Acrobat Document
Sections 856, 857 and 858 of the Internal Revenue Code of 1954 (26 U.S.C. §§ 856, 857, 858) (2012)		69W-700.014  69W-700.014.doc	http://www.flrules.org/  Adobe Acrobat Document

Material (with version/edition date)	Effective date of incorporation	Referencing rule(s)	Hyperlink to material
Securities Exchange Act of 1934 (15 U.S.C. §§ 78a through 78pp) (2012)		69W-700.015  69W-700.015.doc	http://www.flrules.org/  Adobe Acrobat Document
SEC Rule 415 (17 C.F.R. § 230.415) (2-4-08)		69W-800.001(1)(d); 900.001(1)(c)  69W-800.001.doc  69W-900.001.doc	http://www.flrules.org/  Adobe Acrobat Document
Section 10(a) of the Securities Act of 1933 (15 U.S.C. § 77j(a) (2012))		69W-900.001(1)(a)	http://www.flrules.org/  Adobe Acrobat Document

(2) The material incorporated by reference in this rule may also be obtained from the Florida Office of Financial Regulation, Division of Securities' website at <http://www.flofr.com/StaticPages/DivisionOfSecurities.htm>, except where noted in paragraph (1) above for copyright restrictions. Materials subject to copyright restrictions may be inspected and examined by contacting the Florida Office of Financial Regulation, Division of Securities, at 200 E. Gaines Street, Tallahassee, Florida 32399, (850) 410-9500.

Rulemaking Authority 517.03(1), 517.1215(2), 517.1217 FS. Law Implemented 517.081, 517.12(4), 517.1215, 517.1217, 517.161(1) FS. History—New _____.

Proposed Rule Amendment

Rule 69W-300.002

Chapter Name: Applications

Title: Financial Statements and Reports

A. Summary and Justification

Rule 69W-300.002, F.A.C., is proposed for amendment to update references to incorporated material. The Office of Financial Regulation proposes to consolidate all material incorporated by reference in Chapter 69W, F.A.C. into a new proposed rule 69W-200.002, F.A.C. that conforms with Section 120.54(1)(i), F.S. The proposed amendment would reference 69W-200.002, F.A.C., where the material can be accessed via the FAR.

B. Full Text of Proposed Rule

69W-300.002 Financial Statements and Reports.

(1) All financial statements required for registration of securities, or registration of dealers and investment advisers, shall be prepared in accordance with United States generally accepted accounting principles. Financial statements required to be prepared in accordance with Regulation S-X (17 C.F.R. Part 210), which is incorporated by reference in Rule 69W-200.002, F.A.C., (~~17 C.F.R. Part 210 (2009)~~) will be acceptable to the Office of Financial Regulation unless otherwise required by these rules.

(2) Definitions:

(a) “Audited Financial Statements” shall be defined as those financial statements prepared by an independent certified public accountant, and shall include at least the following information:

1. Date of report, manual signature, city and state where issued, and identification without detailed enumeration the financial statements and schedules covered by the report;

2. Representations as to whether the audit was made in accordance with generally accepted auditing standards and designation of any auditing procedures deemed necessary by the accountant under the circumstances of the particular case which may have been omitted, and the reason for their omission; nothing in this rule however shall be construed to imply authority for the omission of any procedure which independent accountants would ordinarily employ in the course of an audit for the purpose of expressing the opinions required under this rule;

3. Statement of the opinion of the accountant in respect to the financial statements and schedules covered by the report and the accounting principles and practices reflected therein, and as to the consistency of the application of the accounting principles and practices reflected therein, and as to the consistency of the application of the accounting principles, or as to any changes in such principles which would have a material effect on the financial statements;

4. Any matters to which the accountant takes exception shall be clearly identified, the

exception thereto specifically and clearly stated, and, to the extent practicable, the effect of each such exception on the related financial statements given.

(b) “Financial Statements and Reports” shall be defined as those reports, schedules and statements, prepared in accordance with United States generally accepted accounting principles, which contain at least the following information unless the context otherwise dictates:

1. Statement of Financial Condition or Balance Sheet;
2. Statement of Income;
3. Statement of Changes in Financial Position;
4. Statement of Changes in Stockholder’s/Partner’s/Proprietor’s Equity;
5. Statement of Changes in Liabilities Subordinated to Claims of General Creditors.

(c) “Independent Accountant” shall be defined as any certified public accountant in good standing and entitled to practice as such under the laws of his principal place of business or residence, and who is in fact not controlled by, or under common control with, the entity or person being audited; for purposes of this definition, an accountant will be considered not independent with respect to any person or any of its parents, its subsidiaries, or other affiliates (1) in which, during the period of his professional engagement to examine the financial statements being reported on or at the date of his report, he or his firm or a member thereof had, or was committed to acquire, any direct financial interest or any material indirect financial interest; (2) with which, during the period of his professional engagement to examine the financial statements being reported on, at the date of his report or during the period covered by the financial statements, he or his firm or a member thereof was connected as a promoter, underwriter, voting trustee, director, officer, or employee, except that a firm will not be deemed not independent in regard to a particular person if a former officer or employee of such person is employed by the firm and such individual has completely disassociated himself from the person and its affiliates covering any period of his employment by the person; for the purposes of this rule the term “member” means all partners in the firm and all professional employees participating in the audit or located in an office of the firm participating in a significant portion of the audit; and in determining whether an accountant may in fact be not independent with respect to a particular person, the Office of Financial Regulation will give appropriate consideration to all relevant circumstances, including evidence bearing on all relationships between the accountant and that person or any affiliate thereof, and will not confine itself to the relationships existing in connection with the filing of reports with the Office

of Financial Regulation.

(d) “Unaudited Financial Statements” shall be defined as those financial statements prepared in accordance with United States generally accepted accounting principles, not accompanied by the statements and representations as set forth in subparagraphs (2)(a)2., 3. and 4. of this rule, and shall include an oath or affirmation that such statement or report is true and correct to the best knowledge, information, and belief of the person making such oath or affirmation; such oath or affirmation shall be made before a person authorized to administer such oath or affirmation, and shall be made by a duly authorized representative of the entity for whom the financial statements were prepared.

(3) Requirements for Dealers.

(a) Every dealer applicant, unless exempted under paragraph (3)(b) or (3)(e) of this rule, shall file financial statements as of a date within ninety (90) days prior to the date of filing for registration. These financial statements need not be audited provided that there shall also be filed audited financial statements as of said applicant’s most recent fiscal year end.

(b) Those dealer applicants which have been in operation for a period of time less than twelve (12) months, and for whom an audited financial statement has not been prepared or is not available, shall be permitted to file unaudited financial statements provided the following conditions are met:

1. Such financial statements are as of a date within thirty (30) days prior to the date of filing for registration, and are prepared in accordance with the provisions of paragraphs (2)(b), (2)(d) and (3)(c) of this rule; and

2. Such applicant is effectively registered with the Securities Exchange Commission or Financial Industry Regulatory Authority (formerly known as the National Association of Securities Dealers, Inc.)

(c) Every dealer applicant and registrant shall file, in addition to the information specified in paragraph (2)(b) of this rule, the following:

1. Computations of net capital and customer reserve requirements prepared in accordance with the provisions of Rules 69W-600.016 and 69W-600.017, F.A.C.;

2. Written notice of designation of an independent certified public accountant, which notice shall include name, address, and telephone number of the accountant so designated;

3. Written notice of fiscal year end or audit date of such dealer;

4. Disclosure of any contingent, civil or criminal liabilities of such dealer.

(d) The Office of Financial Regulation shall deem those financial statements and reports, prepared and filed in accordance with the provisions of SEC Rule 17a-5 (17 C.F.R. § 240.17a-5) (~~17 C.F.R. § 240.17a-5 (2009)~~) and SEC Rule 17a-10 (17 C.F.R. § 240.17a-10), which are incorporated by reference in Rule 69W-200.002, F.A.C. (17 C.F.R. § 240.17a-10 (2009)), to be in compliance with, and fulfill the requirements of, this rule as applicable to a dealer.

(e) The financial statements and reports required by paragraphs (a) through (d) are not required to be filed with the Office of Financial Regulation, unless specifically requested by the Office of Financial Regulation, by a dealer applicant or registrant if the dealer registrant is a current member of a securities association registered pursuant to section 15A of the Securities Exchange Act of 1934 (15 U.S.C. § 78o-3) (~~15 U.S.C. § 78o-3 (2006 & Supp. II)~~) and such association requires financial reports to be filed with it.

(4) Requirements for Investment Advisers.

(a) Investment adviser applicants shall file financial statements as of a date within ninety (90) days prior to the date of filing for registration, which statements may be unaudited financial statements defined in paragraph (2)(d) of this rule. However, each investment adviser who has custody or possession of client's funds or securities; requires prepayment of advisory fees six months or more in advance and in excess of \$500 per client; or computes net capital pursuant to SEC Rule 15c3-1 (17 C.F.R. § 240.15c3-1), which is incorporated by reference in Rule 69W-200.002, F.A.C., (17 C.F.R. § 240.15c3-1 (2009)) for purposes of compliance with subsection 69W-600.016(3), F.A.C., shall file financial statements as required by paragraphs (3)(a) and (3)(b) of this rule.

(b) Investment adviser registrants shall provide the Office of Financial Regulation with written notification of such investment adviser's fiscal year end or annual audit date, and thereafter file annually financial statements as of said date in accordance with the provisions of subsection 69W-600.015(3), F.A.C. Such financial statements may be unaudited as defined in paragraph (2)(d) of this rule. However, each investment adviser who has custody or possession of client's funds or securities; requires prepayment of advisory fees six months or more in advance and in excess of \$500 per client; or computes net capital pursuant to SEC Rule 15c3-1 (17 C.F.R. § 240.15c3-1) (~~17 C.F.R. § 240.15c3-1 (2009)~~) for purposes of compliance with subsection 69W-600.016(3), F.A.C., shall file audited financial statements as defined by paragraph (2)(a) of this rule. Accompanying all audited financial statements shall be a written statement from the independent

certified public accountant verifying compliance with subsection 69W-600.016(3), F.A.C.

(c) Every investment adviser applicant and registrant, in addition to the information specified in paragraphs (2)(b) and (2)(d) of this rule, shall provide to the Office of Financial Regulation:

1. Computations of net capital requirements prepared in accordance with the provision of Rule 69W-600.016, F.A.C.;

2. Written disclosure of any contingent, civil or criminal liabilities of such investment adviser.

(5) Requirements for Issuer/Dealers.

(a) Issuer/dealer applicants shall submit financial statements with their applications for registration as issuer/dealer as required in paragraph (3)(a) of this rule, unless such financial statements have been submitted pursuant to the provisions of subsection (6) of this rule in connection with said issuer's registration of securities or subsection 69W-400.002(1), F.A.C.

(b) Issuer/dealer applicants for registration shall submit the following:

1. Written notice of designation of an independent certified public accountant, which notice shall include name, address and telephone number of the accountant so designated;

2. Written notice of fiscal year end or audit date of such issuer/dealer;

3. Disclosure of any contingent, civil or criminal liabilities of such issuer/dealer.

(c) An issuer/dealer shall file annually, within ninety (90) days after the conclusion of the registrant's fiscal year, financial statements prepared in accordance with the provisions of paragraph (2)(a) of this rule, unless excluded by subsection (6) of this rule or subsection 69W-400.002(1), F.A.C.

(6) Requirements for Securities Registration.

(a) All applicants for Registration of Securities pursuant to Section 517.081, F.S., shall file audited financial statements. An applicant offering securities pursuant to Regulation A of the Securities Act of 1933 (17 C.F.R. §§ 230.251 through 230.263) is not required to file audited financial statements unless audited statements have been prepared and submitted to the Securities and Exchange Commission in perfecting the Regulation A exemption.

(b) The applicant shall file such financial statements as of a date within 90 days prior to the date of filing the registration statement or application, these financial statements need not be audited, however, if these statements are not audited, there shall be filed, in addition, audited statements as of the applicant's last fiscal year.

1. All such financial statements should be normally on a consolidated basis with respect to a

parent corporation in which it owns directly or indirectly more than 50% of the outstanding voting securities.

2. Separate financial statements are required for unconsolidated subsidiaries, or 50% or less owned companies, accounted for by the equity method.

(c) If any of the proceeds of the securities offered for registration are to be used directly or indirectly for the purchase of any business or portion thereof, financial statements of such business or portion thereof are required to be filed as required by paragraph (6)(a) of this rule.

(d) For purposes of Rule 69W-700.005, F.A.C., Individual General Partners shall submit an unaudited sheet which conforms to United States generally accepted accounting principles. Such balance sheet should be prepared on a cost basis. A two-column presentation showing both cost in the first column paralleled by a second column presenting estimated values will also be acceptable. However, the Office of Financial Regulation will not base the net worth computation on estimated values unless satisfactory evidence of the estimated values is presented to the Office of Financial Regulation.

(7) Other Financial Information.

(a) The Office of Financial Regulation may, upon the written request of the applicant, and where not contrary to the interests of the investing public, permit the omission of one or more of the financial statements or related requirements of this rule, provided that said applicant, or registrant, can demonstrate good cause for such consideration;

(b) The Office of Financial Regulation may also by informal written notice require the filing of other financial statements, reports or schedules, in addition to, or in substitution for, the statements herein required, for those cases where such statements are necessary or appropriate for an adequate presentation or analysis of the financial conditions of any person or entity whose financial statements are required, or which statements are otherwise necessary for the protection of investors;

(c) An audit opinion qualified as to the scope of the audit, the entity's ability to continue on a going-concern basis, or other material qualifications may result in denial of application for registration, or either revocation or suspension of effective registration; an adverse audit opinion or a disclaimer of opinion may also result in the same administrative actions.

~~(8) The federal statutes and regulations referenced in this rule are hereby incorporated by reference. Copies of the United States Code are available online through the U.S. House of~~

~~Representatives, Office of the Law Revision Counsel: <http://uscode.house.gov/download/downloadPDF.shtml>. Copies of the Code of Federal Regulation are available online through the U.S. Government Printing Office via GPO Access: <http://www.gpoaccess.gov/cfr/retrieve.html>~~

Rulemaking Authority 517.03 FS. Law Implemented 517.081, 517.12 FS. History—New 12-5-79, Amended 9-20-82, Formerly 3E-300.02, Amended 6-28-93, 11-22-93, 12-24-95, 9-19-00, 10-30-03, Formerly 3E-300.002, Amended 5-15-07, 9-30-10,_____.

Proposed Rule Amendment

Rule 69W-500.005

Chapter Name: Exempt transactions

Title: Disclosure Requirements of Section 517.061(11)(a)3., F.S.

A. Summary and Justification

Rule 69W-500.005, F.A.C., is proposed for amendment to update references to incorporated material. The Office of Financial Regulation proposes to consolidate all material incorporated by reference in Chapter 69W, F.A.C. into a new proposed rule 69W-200.002, F.A.C. that conforms with Section 120.54(1)(i), F.S. The proposed amendments would reference 69W-200.002, F.A.C., where the material can be accessed via the FAR.

B. Full Text of Proposed Rule

69W-500.005 Disclosure Requirements of Section 517.061(11)(a)3., F.S.

(1) Transactions by an issuer which do not satisfy all of the conditions of this rule shall not raise any presumption that the exemptions provided by Section 517.061(11), F.S., is not available for such transactions. Attempted compliance with this rule does not act as an election; the issuer can also claim the availability of Section 517.061(11), F.S., outside this rule.

(2) The determination as to whether sales of securities are part of a larger offering (i.e., are deemed to be “integrated”) depends on the particular facts and circumstances. In determining whether sales should be regarded as part of a larger offering and thus should be integrated, the

facts described in Rule 69W-500.001, F.A.C., should be considered.

(3) Although sales made pursuant to Section 517.061(11), F.S., and in compliance with this rule, are exempt from the registration provisions of this Act, such exemption does not avoid the anti-fraud provisions of Sections 517.301 and 517.311, F.S.

(4) The provisions of this rule shall apply only to transactions which are consummated with persons in the State of Florida.

(5) The requirement of Section 517.061(11)(a)3., F.S., that each purchaser, or his representative be provided with or given reasonable access to full and fair disclosure of all material information shall be deemed to be satisfied if either paragraph (5)(a) or (b) are complied with:

(a) Access to or Furnishing of Information. Reasonable access to, or the furnishing of, material information shall be deemed to have been satisfied if prior to the sale a purchaser is given access to the following information:

1. All material books and records of the issuer; and
2. All material contracts and documents relating to the proposed transaction; and
3. An opportunity to question the appropriate executive officers or partners.

(b) Offering Circular. At the election of the issuer an offering circular containing the following information may be provided to a purchaser prior to the sale:

1. All material risks involved in the offering;
2. The business name of the issuer;
3. The state of incorporation or organization;
4. The business address of the issuer;
5. A brief description of the business background of the executive personnel and promoters of the issuer;
6. Underwriters' names and addresses;
7. Principal owners of securities of the issuer;
8. Amount of securities held or subscribed for by affiliates or promoters;
9. A description of the business of the issuer;
10. Capitalization of the issuer;
11. Options and warrants in connection with the securities to be offered;
12. Amount of securities issued or to be offered and a statement that the securities have not been registered with the State of Florida; the terms of the offering and a description of the securities

being offered;

13. Amount and nature of funded debt of the issuer;
14. Estimated amount of proceeds from the sale of securities;
15. Use of proceeds from the offering;
16. Executive remuneration;
17. Underwriter's commissions and discounts;
18. Offering expenses of the issuer;
19. Compensation to promoters;
20. Brief description of prior offerings if material;
21. Information concerning property acquired or to be acquired with proceeds from securities;
22. General Partners', officers', stockholders', or directors' interests in property acquired by or from the issuer;
23. Information concerning the material contracts of the issuer;
24. Pending material litigation involving the issuer;
25. Adverse actions taken against (or in which were named) the issuer, underwriter, any promoter or any officer or director by any state, federal or self-regulatory agency if material;
26. Offering date;
27. A statement indicating that the sale shall be voidable by the purchaser within three days of the sale, as required by Section 517.061(11)(a)5., F.S.;
28. Information, where appropriate, concerning the financial condition of the issuer, as follows:
 - a. A balance sheet and statement of profit and loss as of a date not earlier than the end of the last fiscal year of the issuer; provided, however, that if the last fiscal year shall have ended within 90 days of the date of the circular in which such data is to be included, such data may be supplied as of a date not earlier than the end of the fiscal year preceding the last fiscal year of the issuer.
 - b. If the balance sheet and statement of profit and loss included in an offering circular pursuant to subparagraph a. above are as of a date 120 days prior to the date of the offering circular in which such data are included, sales and net income information as of a date not earlier than 90 days prior to the date of the offering circular shall be included.
 - c. Financial statements required by sub-subparagraph 28.a. need not be certified by an independent certified public accountant; however, if certified financial statements shall have been prepared for any period specified in sub-subparagraph 28.a., such certified financial statements

shall be included.

(6) In the case of an issuer that is subject to the reporting requirements of section 13 or 15(d) of the Securities Exchange Act of 1934, the provisions of paragraph (5)(b) of this rule shall be deemed satisfied by providing the following:

(a) The information contained in the annual report required to be filed under the Securities Exchange Act of 1934 or a registration statement on Form S-1 under the Securities Act of 1933, whichever filing is the most recent required to be filed, and the information contained in any definitive proxy statement required to be filed pursuant to section 14 of the Securities Exchange Act of 1934 (15 U.S.C. § 78n) and in any reports or documents required to be filed by the issuer pursuant to section 13(a) (15 U.S.C. § 78m) or 15(d) (15 U.S.C. § 78o(d)) of the Securities Exchange Act of 1934, since the filing of such annual report or registration statement; and

(b) A brief description of the securities being offered, the use of the proceeds from the offering, and any material changes in the issuer's affairs which are not disclosed in the documents furnished.

(7) For purposes of Rule 69W-500.005, F.A.C., the term "Issuer" is defined in Rule 69W-200.001, F.A.C.

Specific Authority 517.03(1) FS. Law Implemented 517.061(11) FS. History—New 12-5-79, Amended 9-20-82, Formerly 3E-500.05, Amended 10-14-90, 7-31-91, Formerly 3E-500.005,_____.

Proposed Rule Amendment

Rule 69W-500.008

Chapter Name: Exempt Transactions

Title: Unsolicited Purchase or Sale of Securities Pursuant to Section 517.061(13), F.S.

A. Summary and Justification

Rule 69W-500.008, F.A.C., is proposed for amendment to update references to incorporated material. The Office of Financial Regulation proposes to consolidate all material incorporated by reference in Chapter 69W, F.A.C. into a new proposed rule 69W-200.002, F.A.C. that conforms with Section 120.54(1)(i), F.S. The proposed amendments would reference 69W-200.002, F.A.C., where the material can be accessed via the FAR.

B. Full Text of Proposed Rule

69W-500.008 Unsolicited Purchase or Sale of Securities Pursuant to Section 517.061(13), F.S.

(1) For purposes of Section 517.061(13), F.S., the offer or sale of securities in a transaction meeting the requirements of SEC Rule 144 (17 C.F.R. § 230.144), which is incorporated by reference in Rule 69W-200.002, F.A.C. (~~17 C.F.R. § 230.144 (2009)~~), which is hereby incorporated by reference, shall be deemed an unsolicited purchase or sale of securities on order of and as agent for another. ~~Copies of the Code of Federal Regulation are available online through the U.S. Government Printing Office via GPO Access:~~ <http://www.gpoaccess.gov/cfr/retrieve.html>.

(2) For purposes of Section 517.061(13), F.S., a promoter or affiliate of an issuer shall not be deemed an underwriter of or an issuer of, or to be engaged in a sale directly or indirectly for the benefit of an issuer with respect to, any securities he has owned beneficially for at least one (1) year.

(3) For purposes of Rule 69W-500.008, F.A.C., the term “Issuer” is defined in Rule 69W-200.001, F.A.C.

Rulemaking Authority 517.03(1) FS. Law Implemented 517.061(13) FS. History—New 12-5-79, Amended 9-20-82, Formerly 3E-500.08, Amended 10-14-90, Formerly 3E-500.008, Amended 9-30-10,_____.

Proposed Rule Amendment

Rule 69W-500.012

Chapter Name: Exempt Transactions

Title: Exemption/Charitable Contributions to Pooled Income Funds.

A. Summary and Justification

Rule 69W-500.012, F.A.C., is proposed for amendment to update references to incorporated material. The Office of Financial Regulation proposes to consolidate all material incorporated by reference in Chapter 69W, F.A.C. into a new proposed rule 69W-200.002, F.A.C. that conforms with Section 120.54(1)(i), F.S. The proposed amendments would reference 69W-200.002, F.A.C., where the material can be accessed via the FAR.

B. Full Text of Proposed Rule

69W-500.012 Exemption/Charitable Contributions to Pooled Income Funds.

(1) Transactions involving the offer and sale of certificates of interest or participation in pooled income funds operated, maintained and controlled by, and for the ultimate benefit of, charitable corporations as described in Section 517.051(9), F.S., are hereby exempted from the registration provisions of Section 517.07, F.S., provided such certificates or participation interests and the issuers, promoters or sponsors of such fund meet and comply with the following criteria:

(a) That the fund qualifies as a recipient of tax deductible contributions under section 642(c)(5) of the Internal Revenue Code of 1954 (26 U.S.C. § 642(c)(5)), which is incorporated by reference in Rule 69W-200.002, F.A.C.;

(b) That each prospective donor is furnished disclosures which fully and fairly describe the operation of the fund in compliance with the requirements of Section 517.051(9), F.S., and Chapter 69W-400, F.A.C.; and

(c) That each person soliciting gifts by means of the fund is either a volunteer or a person who is employed in the charitable corporation's overall fund-raising efforts who receives no commissions or other compensation based on the amount of the gift transferred to the pooled income fund.

(2) Persons, as described above, may disseminate promotional literature and provide other information and documentation concerning the fund and its charitable purposes, however, any such persons who actually accept gifts or consummate donations on behalf of the fund must be registered as provided in Section 517.12, F.S. and Chapter 69W-600, F.A.C.

Rulemaking Authority 517.03(1) FS. Law Implemented 517.061(19) FS. History—New 2-28-83, Formerly 3E-500.12, 3E-500.012.

Proposed Rule Amendment

Rule 69W-500.015

Chapter Name: Exempt Transactions

**Title: Exemption for Offers and Sales of Securities of Foreign Issuers to Non-U.S. Persons
in Offshore Transactions.**

A. Summary and Justification

Rule 69W-500.015, F.A.C., is proposed for amendment to update references to incorporated material. The Office of Financial Regulation proposes to consolidate all material incorporated by reference in Chapter 69W, F.A.C. into a new proposed rule 69W-200.002, F.A.C. that conforms with Section 120.54(1)(i), F.S. The proposed amendments would reference 69W-200.002, F.A.C., where the material can be accessed via the FAR.

B. Full Text of Proposed Rule

69W-500.015 Exemption for Offers and Sales of Securities of Foreign Issuers to Non-U.S. Persons in Offshore Transactions.

(1) Any offer or sale of securities of a foreign issuer made to a person, other than a U.S. person, in an offshore transaction that is exempt from registration pursuant to Regulation S (17 C.F.R. §§ 230.901 through 230.905 ~~(2009)~~), which is incorporated by reference in Rule 69W-200.002, F.A.C., is hereby exempted from the registration requirements of Section 517.07, F.S.

(2) For purposes of this rule, the terms “foreign issuer,” “offshore transaction,” and “U.S. person” shall have the meanings prescribed in rule 902 of Regulation S (17 C.F.R. § 230.902) ~~(17 C.F.R. § 230.902 (2009))~~.

~~(3) The federal regulations referenced in this rule are hereby incorporated by reference. Copies of the Code of Federal Regulation are available online through the U.S. Government Printing Office via GPO Access: <http://www.gpoaccess.gov/cfr/retrieve.html>.~~

Rulemaking Authority 517.03(1), 517.061(19) FS. Law Implemented 517.061(19) FS. History—New 7-30-98, Formerly 3E-500.015, Amended 9-30-10,_____.

Proposed Rule Amendment

Rule 69W-500.016

Chapter Name: Exempt Transactions

Title: Exemption for Issuers of Section 4(2) Offerings

A. Summary and Justification

Rule 69W-500.016, F.A.C., is proposed for amendment to update references to incorporated material. The Office of Financial Regulation proposes to consolidate all material incorporated by

reference in Chapter 69W, F.A.C. into a new proposed rule 69W-200.002, F.A.C. that conforms with Section 120.54(1)(i), F.S. The proposed amendments would reference 69W-200.002, F.A.C., where the material can be accessed via the FAR.

B. Full Text of Proposed Rule

69W-500.016 Exemption for Issuers of Section 4(a)(2) ~~4(2)~~ Offerings.

Securities offered or sold in a transaction exempt under a rule or regulation issued by the Securities and Exchange Commission under Section 4(a)(2) ~~4(2)~~ of the Securities Act of 1933 (15 U.S.C. § 77d(a)(2)) (~~15 U.S.C. § 77d(2) (2006 & Supp. II)~~), are hereby exempted from the filing requirements of Section 517.07, F.S. An issuer of such securities and each of its bona fide employees who satisfy the criteria set forth in Section 517.021(6)(b)6., F.S., and through whom the issuer elects to sell such securities, shall be exempted from the registration requirements of Section 517.12(1), F.S. ~~The federal statute cited in this rule is hereby incorporated by reference. Copies of the United States Code are available online through the U.S. House of Representatives, Office of the Law Revision Counsel: <http://uscode.house.gov/download/downloadPDF.shtml>.~~

Rulemaking Authority 517.03(1), 517.061(19) FS. Law Implemented 517.061(19) FS. History—New 1-1-02, Formerly 3E-500.016, Amended 9-30-10,_____.

Proposed Rule Amendment

Rule 69W-500.017

Chapter Name: Exempt Transactions

Title: Compensatory Benefit Plan Exemption.

A. Summary and Justification

Rule 69W-500.017, F.A.C., is proposed for amendment to update references to incorporated material. The Office of Financial Regulation proposes to consolidate all material incorporated by reference in Chapter 69W, F.A.C. into a new proposed rule 69W-200.002, F.A.C. that conforms with Section 120.54(1)(i), F.S. The proposed amendments would reference 69W-200.002, F.A.C., where the material can be accessed via the FAR.

B. Full Text of Proposed Rule

69W-500.017 Compensatory Benefit Plan Exemption.

(1) Transactions involving the offer or sale of a security pursuant to a written compensatory benefit plan (or a written compensation contract) or similar plan established by the issuer, its parent, its majority-owned subsidiaries or majority-owned subsidiaries of the issuer's parent, for the participation of their employees, directors, general partners, trustees, officers, or consultants and advisors, and their family members who acquire such securities from such persons through gifts or domestic relations orders, are exempt from the registration provisions of Section 517.07, F.S., if:

(a) The sale of the security meets all of the requirements of SEC Rule 701 (17 C.F.R. 230.701), which is incorporated by reference in Rule 69W-200.002, F.A.C. (~~17 C.F.R. 230.701 (2009)~~);

(b) The security is sold pursuant to a plan of a type exempt under section 3(a) of the Securities Act of 1933 (15 U.S.C. § 77c(a)), which is incorporated by reference in Rule 69W-200.002, F.A.C.; or

(c) The security is effectively registered under sections 6 to 8 of the Securities Act of 1933; (15 U.S.C. §§ 77f through h) ~~15 U.S.C. §§ 77f through h (2006 & Supp. II)~~, and is offered and sold in compliance with the provisions of section 5 of the Securities Act of 1933; (15 U.S.C. § 77e), which are incorporated by reference in Rule 69W-200.002, F.A.C. ~~15 U.S.C. § 77e (2006 & Supp. II)~~.

(2) For the purposes of this rule, the terms "compensatory benefit plan" and "family member," shall have the same meanings as defined in SEC Rule 701 (17 C.F.R. § 230.701) (~~17 C.F.R. § 230.701 (2009)~~).

(3) The purpose of this rule is to provide an exemption from the registration requirements of Section 517.07, F.S., for securities issued in compensatory circumstances. This exemption is not available for plans or schemes to circumvent this purpose, such as to raise capital or to evade the registration provisions of Section 517.07, F.S.

(4) Issuers and persons making offers and sales of securities that are exempt pursuant to this rule are exempt from the registration requirements of Section 517.12, F.S., provided that:

(a) All sales of securities are made by a partner, officer, director, trustee of the issuer, its parent, its majority-owned subsidiaries or majority-owned subsidiaries of the issuer's parent, or any person employed by any of the foregoing who primarily performs substantial duties for, on behalf

of any of the foregoing, other than in connection with transactions in securities; and

(b) No commission or compensation is paid to any person for the sale of the issuer's securities unless such person is registered as a dealer in this state. For the purposes of this rule, regular compensation paid to employees of the issuer for the performance of duties not in connection with transactions in securities shall not be deemed compensation for the sale of the issuer's securities.

~~(5) The federal statutes and regulations referenced in this rule are hereby incorporated by reference. Copies of the United States Code are available online through the U.S. House of Representatives, Office of the Law Revision Counsel: <http://uscode.house.gov/download/downloadPDF.shtml>. Copies of the Code of Federal Regulation are available online through the U.S. Government Printing Office via GPO Access: <http://www.gpoaccess.gov/cfr/retrieve.html>.~~

Rulemaking Authority 517.03(1), 517.061(19) FS. Law Implemented 517.061(19) FS. History—New 11-25-01, Formerly 3E-500.017, Amended 9-30-10,_____.

Proposed Rule Amendment

Rule 69W-600.006

Chapter Name: Registration of Dealers, Investment Advisers, Associated Persons

Title: Fingerprint Requirements

A. Summary and Justification

Rule 69W-600.006, F.A.C., is proposed for amendment to update references to incorporated material. The Office of Financial Regulation proposes to consolidate all material incorporated by reference in Chapter 69W, F.A.C. into a new proposed rule 69W-200.002, F.A.C. that conforms with Section 120.54(1)(i), F.S. The proposed amendments would reference 69W-200.002, F.A.C., where the material can be accessed via the FAR.

B. Full Text of Proposed Rule

69W-600.006 Fingerprint Requirements.

(1) Fingerprints filed in accordance with Section 517.12(7), F.S., shall be submitted to the Office of Financial Regulation (Office) through a live scan vendor approved by the Florida

Department of Law Enforcement (FDLE) and published on FDLE's website for submission to FDLE and the Federal Bureau of Investigation (FBI) for a state criminal background check and a federal criminal background check. The cost of fingerprint processing shall be borne by the applicant and paid directly to the live scan vendor.

(2) The requirement to submit fingerprints is waived for those associated persons pending registration in Florida with a Financial Industry Regulatory Authority (FINRA) member firm and such fingerprints have been submitted and processed by FINRA on behalf of the member firm with which said associated person is pending registration, pursuant to the provisions of SEC rule 17f-2 (17 C.F.R. § 240.17f-2), which is incorporated by reference in Rule 69W-200.002, F.A.C. (~~17 C.F.R. § 240.17f-2 (2010)~~).

(3) Notwithstanding any exemptions found in SEC rule 17f-2 (17 C.F.R. § 240.17f-2) (~~17 C.F.R. § 240.17f-2 (2010)~~), any direct owner, principal, or indirect owner that is required to be reported on Form BD, Uniform Application for Broker-Dealer Registration, or Form ADV, Uniform Application for Investment Adviser Registration, pursuant to Section 517.12(7), F.S., who is not currently registered in Florida with the firm they are seeking to join or act as a direct owner, principal, or indirect owner shall submit fingerprints to the Office through a live scan vendor approved by FDLE and published on FDLE's website for submission to FDLE and the FBI for a state criminal background check and a federal criminal background check. The cost of fingerprint processing shall be borne by the applicant and paid directly to the live scan vendor.

(4) The requirement to submit fingerprints is waived for any direct owner, principal, or indirect owner that is required to be reported on Form BD, Uniform Application for Broker-Dealer Registration, or Form ADV, Uniform Application for Investment Adviser Registration, pursuant to Section 517.12(7), F.S., if fingerprints have been submitted and processed by FINRA on behalf of the member firm with which the owner or principal is affiliated, pursuant to the provisions of SEC Rule 17f-2 (17 C.F.R. § 240.17f-2) (~~17 C.F.R. § 240.17f-2 (2010)~~).

~~(5) The federal regulations referenced in this rule are hereby incorporated by reference and may be obtained by mail from the Florida Office of Financial Regulation, Division of Securities, 200 E. Gaines Street, Tallahassee, Florida 32399. Copies of the Code of Federal Regulation are also available online through the U.S. Government Printing Office via GPO Access: <http://www.gpoaccess.gov/cfr/index.html>.~~

Rulemaking Authority 215.405, 517.03 FS. Law Implemented 517.12(7), 943.053 FS. History—

New 12-5-79, Amended 9-20-82, Formerly 3E-600.06, Amended 8-1-91, Formerly 3E-600.006, Amended 5-15-07, 12-24-07, 12-25-08, 11-22-10, 5-29-12, 11-11-13,_____.

Proposed Rule Amendment

Rule 69W-600.012

Chapter Name: Registration of Dealers, Investment Advisers, Associated Persons

Title: Rules of Conduct

A. Summary and Justification

Rule 69W-600.012, F.A.C., is proposed for amendment to update references to incorporated material. The Office of Financial Regulation proposes to consolidate all material incorporated by reference in Chapter 69W, F.A.C. into a new proposed rule 69W-200.002, F.A.C. that conforms with Section 120.54(1)(i), F.S. The proposed amendments would reference 69W-200.002, F.A.C., where the material can be accessed via the FAR.

B. Full Text of Proposed Rule

69W-600.012 Rules of Conduct.

(1) Confirmation of Transactions: Every dealer registered in this state, including those defined as issuer/dealers under Rule 69W-200.001, F.A.C., shall give or send to the customer a written confirmation at or before completion of each transaction. Such confirmation shall set forth at least the following:

(a) A description of the security purchased or sold, the date of the transaction, the price at which the security was purchased or sold and any commission charged;

(b) Designation of capacity in which the dealer was acting: as principal for its own account, as agent for the customer, as agent for some other person, or as agent for both the customer and some other person;

(c) Where the dealer acted as agent for the customer, either the name of the contraparty and whether like commissions were charged, or the fact that the information will be furnished upon the request of the customer, if the information is known to, or with reasonable diligence may be ascertained by, the dealer;

(d) Compliance with SEC Rule 10b-10 (17 CFR § 240.10b-10), which is incorporated by

reference in Rule 69W-200.002, F.A.C., (17 CFR § 240.10b-10 (2010)) and the confirmation, preparation and disclosure requirements of SEC Rule 17a-3 (17 CFR § 240.17a-3) (17 CFR § 240.17a-3 (2010)) or MSRB Rules G-8 and G-15, which are incorporated by reference in Rule 69W-200.002, F.A.C. as these rules existed on June 23, 2010, shall be deemed compliance with this rule.

(2) A dealer shall not enter into any contract with a customer if the contract contains any condition, stipulation or provision binding the customer to waive any rights under Chapter 517, F.S., or any rule or order thereunder. Any such condition, stipulation or provision is void.

(3) No dealer or investment adviser shall permit or effect a withdrawal of any part of its net worth, including subordinated indebtedness, whether by redemption, retirement, repurchase, repayment or otherwise, that would cause its net capital or its aggregate indebtedness to violate any provisions of Office of Financial Regulation Rule 69W-600.016, F.A.C., without prior written approval of the Office of Financial Regulation.

(4) Each dealer and investment adviser shall provide each customer with a confirmed copy of all contracts or agreements between such dealer or investment adviser and such customer within a timely manner.

(5) It shall be a violation of Section 517.301(1), F.S., for any dealer or associated person to engage in any “device, scheme, or artifice to defraud” which shall include selling or effecting the purchase of any security into, in, or from offices in this state in violation of:

(a) Sections 9, 10, 11A, 15(c) or 15(g) of the Securities Exchange Act of 1934 (15 U.S.C. §§ 78i, 78j, 78k-1, 78o(c) or 78o(g)), which are incorporated by reference in Rule 69W-200.002, F.A.C. (15 U.S.C. §§ 78i, 78j, 78k-1, 78o(c) or 78o(g) (2006 & Supp. III));

(b) SEC Rule Rules 9b-1 (17 CFR § 240.9b-1), which is incorporated by reference in Rule 69W-200.002, F.A.C. (17 CFR § 240.9b-1 (2010));

(c) SEC Rules 10b-1, 10b-3, 10b-5, 10b5-1, 10b5-2, 10b-9, 10b-10, 10b-16, 10b-17, 10b-18, and 10b-21 (17 CFR §§ 240.10b-1, 240.10b-3, 240.10b-5, 240.10b5-1, 240.10b5-2, 240.10b-9, 240.10b-10, 240.10b-16, 240.10b-17, 240.10b-18, and 240.10b-21), which are incorporated by reference in Rule 69W-200.002, F.A.C. (17 CFR §§ 240.10b-1, 240.10b-3, 240.10b-5, 240.10b5-1, 240.10b5-2, 240.10b-9, 240.10b-10, 240.10b-16, 240.10b-17, 240.10b-18, and 240.10b-21 (2010));

(d) SEC Rules 15c1-1 through 15c1-3 and 15c1-5 through 15c1-9 (17 CFR §§ 240.15c1-1 through 240.15c1-3 and 240.15c1-5 through 240.15c1-9), which are incorporated by reference in Rule 69W-200.002, F.A.C. (~~17 CFR §§ 240.15c1-1 through 240.15c1-3 and 240.15c1-5 through 240.15c1-9 (2010)~~);

(e) SEC Rules 15c2-1, 15c2-4, 15c2-5, 15c2-7, 15c2-8, 15c2-11, and 15c2-12 (17 CFR §§ 240.15c2-1, 240.15c2-4, 240.15c2-5, 240.15c2-7, 240.15c2-8, 240.15c2-11, and 240.15c2-12), which are incorporated by reference in Rule 69W-200.002, F.A.C. (~~17 CFR §§ 240.15c2-1, 240.15c2-4, 240.15c2-5, 240.15c2-7, 240.15c2-8, 240.15c2-11, and 240.15c2-12 (2010)~~);

(f) SEC Rules 15g-1 through 15g-6, 15g-8, and 15g-9 (17 CFR §§ 240.15g-1 through 240.15g-6, 240.15g-8 and 240.15g-9), which are incorporated by reference in Rule 69W-200.002, F.A.C. (~~17 CFR §§ 240.15g-1 through 240.15g-6, 240.15g-8 and 240.15g-9 (2010)~~);

(g) Regulation M (17 CFR 242.100 through 242.105), which is incorporated by reference in Rule 69W-200.002, F.A.C. (~~17 CFR 242.100 through 242.105 (2010)~~); or

(h) SEC Rule 601 (17 C.F.R. § 242.601), which is incorporated by reference in Rule 69W-200.002, F.A.C. (~~17 C.F.R. § 242.601 (2010)~~).

~~(6) All federal statutes, federal regulations, and Municipal Securities Rulemaking Board (MSRB) rules referenced in this rule are incorporated by reference and may be obtained by mail from the Florida Office of Financial Regulation, Division of Securities, 200 E. Gaines Street, Tallahassee, Florida 32399. Copies of the United States Code are also available online through the U.S. House of Representatives, Office of the Law Revision Counsel: <http://uscode.house.gov/download/downloadPDF.shtml>. Copies of the Code of Federal Regulation are available online through the U.S. Government Printing Office via GPO Access: <http://www.gpoaccess.gov/cfr/index.html>.~~

Rulemaking Authority 517.03(1) FS. Law Implemented 517.121, 517.301(1) FS. History—New 12-5-79, Amended 9-20-82, Formerly 3E-600.12, Amended 12-25-89, 10-14-90, 8-1-91, 6-16-92, 1-11-93, 4-11-94, 1-3-99, 8-19-99, 10-30-03, Formerly 3E-600.012, Amended 11-22-10, ____.

Proposed Rule Amendment

Rule 69W-600.013

Chapter Name: Registration of Dealers, Investment Advisers, Associated Persons

Title: Prohibited Business Practices for Dealers and Their Associated Persons

A. Summary and Justification

Rule 69W-600.013, F.A.C., is proposed for amendment to update references to incorporated material. The Office of Financial Regulation proposes to consolidate all material incorporated by reference in Chapter 69W, F.A.C. into a new proposed rule 69W-200.002, F.A.C. that conforms with Section 120.54(1)(i), F.S. The proposed amendments would reference 69W-200.002, F.A.C., where the material can be accessed via the FAR.

B. Full Text of Proposed Rule

69W-600.013 Prohibited Business Practices for Dealers and Their Associated Persons.

(1) The following are deemed demonstrations of unworthiness by a dealer under Section 517.161(1)(h), F.S., without limiting that term to the practices specified herein:

(a) Extending, arranging for, or participating in arranging for credit to a customer in violation of Regulation T, Credit by Brokers and Dealers, (12 C.F.R. §§ 220.1 through 220.12, 220.101, 220.103, 220.105, 220.108, 220.110, 220.111, 220.113, 220.117, 220.118, 220.119, 220.121, 220.122, 220.123, 220.124, 220.127, 220.128, 220.131, and 220.132) ~~(2010)~~ and 12 C.F.R. § 221.125 of Regulation U. ~~(2010)~~. The foregoing rules are incorporated by reference in Rule 69W-200.002, F.A.C.

(b) Executing any transaction in a margin account without obtaining from its customer a written margin agreement prior to settlement date for the initial transaction in the account.

(c) Failing to segregate customers' free securities or securities in safekeeping.

(d) Hypothecating a customer's securities in violation of SEC Rule 8c-1, (17 C.F.R. § 240.8c-1), which is incorporated by reference in Rule 69W-200.002, F.A.C. ~~(17 C.F.R. § 240.8c-1 (2010))~~.

(e) Failing to execute a customer's order.

(f) Executing orders for the purchase by a customer of securities not registered under Section 517.081 or 517.082, F.S., unless the securities are exempted under Section 517.051, F.S., or the transaction is exempted under Section 517.061, F.S.

(g) Representing itself as a financial or investment planner, consultant, or advisers, when the representation does not fairly describe the nature of the services offered, the qualifications of the person offering the services, and the method of compensation for the services.

(h) With respect to any customer, transaction or business in this state, violating any of the following:

1. Financial Industry Regulatory Authority (FINRA) rules contained in the Rule 2000 Series (Duties and Conflicts), Rule 3000 Series (Supervision and Responsibilities Relating to Associated Persons), Rule 4000 Series (Financial and Operational Rules), Rule 5000 Series (Securities Offering and Trading Standards and Practices), Rule 6000 Series (Quotation and Transaction Reporting Facilities), or Rule 7000 Series (Clearing, Transaction and Order Data Requirements, and Facility Charges), ~~as such rules existed on June 28, 2010~~; National Association of Securities Dealers (NASD) Conduct Rules contained in the Rule 2000 Series (Business Conduct) or Rule 3000 Series (Responsibilities Relating to Associated Persons, Employees, and Others' Employees), ~~as such rules existed on June 28, 2010~~; or NASD Uniform Practice Code rules contained in the Rule 11000 Series, ~~as such rules existed on June 28, 2010~~. The foregoing rules are incorporated by reference in Rule 69W-200.002, F.A.C.

2. For members of the New York Stock Exchange, Rule 405, 412, or 435 of the New York Stock Exchange, which are incorporated by reference in Rule 69W-200.002, F.A.C. ~~as such rules and interpretative supplementary materials existed on June 23, 2010.~~

3. Section 2, ~~3~~, 4, 4A, 5, or 6 of the Securities Act of 1933, (15 U.S.C.A. §§ 77b, 77c, 77d, 77d-1, 77e, or 77f ~~(2006 & Supp. III)~~), or SEC Rules 134, 134a, 135a, 144, 144A, 156, 419, 481, or 482, (17 C.F.R. §§ 230.134, 230.134a, 230.135a, 230.144, 230.144A, 230.156, 230.419, 230.481 or 230.482 ~~(2010)~~), which are incorporated by reference in Rule 69W-200.002, F.A.C.

4. Section 15(b)(4)(E) of the Securities Exchange Act of 1934, (15 U.S.C. § 78o(b)(4)(E) ~~(2006 & Supp. III)~~); Regulation SHO, Regulation of Short Sales, (17 C.F.R. §§ 242.200-242.203 ~~(2010)~~); or NASD Conduct Rule 3210; ~~as it existed on June 28, 2010~~ which are incorporated by reference in Rule 69W-200.002, F.A.C.

5. Section 15B of the Securities Exchange Act of 1934, (15 U.S.C.A. § 78o-4 ~~(2006 & Supp. III)~~), or the following rules of the Municipal Securities Rulemaking Board (MSRB), MSRB Definitional Rules D-1 to ~~D-14~~ D-12, and General Rules G-1 to G-43 ~~G-41~~, as those rules existed on June 23, 2010. The foregoing are incorporated by reference in Rule 69W-200.002, F.A.C.

6. To the extent that any of the rules described in subparagraphs 1. through 5. of this section or their interpretation by the FINRA, NASD, NYSE, MSRB, or SEC, as appropriate, conflict or are inconsistent with other provisions of the Florida Securities and Investor Protection Act or rules

promulgated pursuant thereto, this paragraph of this rule shall not be deemed controlling.

(i) Failing to furnish to a customer purchasing securities in an offering, not later than the date of confirmation of the transaction, either a final prospectus or a preliminary prospectus and an additional document, which together include all information set forth in the final prospectus.

(j) Introducing customer transactions on a “fully disclosed” basis to another dealer that is not registered under Chapter 517, F.S., unless the customer is a person described in Section 517.061(7), F.S.

(k) Recommending to a customer that the customer engage the services of an investment adviser that is not registered or exempt from registration under Chapter 517, F.S., unless the customer is a person described in Section 517.061(7), F.S.

(l) Recommending to a customer that the customer engage the services of an investment adviser in connection with which the dealer receives a fee or remuneration (other than directed business) from the investment adviser, except as permitted in Rule 69W-600.003, F.A.C.

(m) Selling or offering for sale any security in a transaction exempt from registration pursuant to Section 517.061(17)(a)1., F.S., where the issuer of such securities has not filed with the SEC within the specified period of time all reports required by Sections 13 or 15D of the Securities Exchange Act of 1934, (15 U.S.C. §§ 78m, 78o-6), which are incorporated by reference in Rule 69W-200.002, F.A.C. (15 U.S.C. §§ 78m, 78o-6 (2006 & Supp. III)).

(n) Giving false or otherwise misleading customer information to any financial institution or regulatory agency.

(o) Any unethical practice pursuant to Rule 69W-600.0133, F.A.C.

(2) The following are deemed demonstrations of unworthiness by an associated person of a dealer under Section 517.161(1)(h), F.S., without limiting that term to the practices specified herein:

(a) Borrowing money or securities from a customer, except when persons are in compliance with FINRA Rule 3240, which is incorporated by reference in Rule 69W-200.002, F.A.C. FINRA Rule 3240(a)(1), (a)(2)(A) (C) only, and FINRA Conduct Rule 3240(b) (c), as these rules existed on June 28, 2010;

(b) Acting as a custodian for money, securities or an executed stock power of a customer;

(c) Effecting transactions in securities, or investments as defined by Section 517.301(2), F.S., not recorded on the regular books or records of the dealer, which the associated person represents,

unless the transactions are disclosed to, and authorized in writing by, the dealer prior to execution of the transactions;

(d) Operating an account under a fictitious name, unless disclosed to the dealer, which the associated person represents;

(e) Sharing directly or indirectly in profits or losses in the account of any customer without the written authorization of the customer and the dealer, which the associated person represents;

(f) Dividing or otherwise splitting commissions, profits or other compensation in connection with the purchase or sale of securities in this state with any person not also licensed as an associated person for the same dealer, or for a dealer under direct or in indirect common control;

(g) Failing to furnish to each offeree of a Small Corporate Offering Registration (SCOR) a copy of the “Florida Guide to Small Business Investments”, OFR-S-13-97, which is incorporated by reference in subsection 69W-301.002(7), F.A.C.; and

(h) Engaging in any of the practices specified in paragraph (1)(a), (b), (e), (f), (g), (h), (i), (k), (l), (m), (n) or (o).

~~(3) The federal statutes, federal regulations, Financial Industry Regulatory Authority (FINRA) rules, National Association of Securities Dealers (NASD) rules, New York Stock Exchange rules, and Municipal Securities Rulemaking Board (MSRB) rules referenced in this rule are hereby incorporated by reference and may be obtained by mail from the Office of Financial Regulation, Bureau of Securities Regulation, 200 E. Gaines Street, Tallahassee, Florida 32399-0374. Copies of the United States Code are also available through the U.S. House of Representatives, Office of the Law Revision Counsel: <http://uscode.house.gov/download/downloadPDF.shtml>. Copies of the Code of Federal Regulation are available online through the U.S. Government Printing Office via GPO Access: <http://www.gpoaccess.gov/cfr/index.html>.~~

Rulemaking Authority 517.03(1), 517.1217 FS. Law Implemented 517.081, 517.1217, 517.161(1) FS. History—New 12-5-79, Amended 9-20-82, Formerly 3E-600.13, Amended 8-1-91, 6-16-92, 1-11-93, 11-7-93, 5-5-94, 9-9-96, 10-20-97, 1-25-00, 10-30-03, Formerly 3E-600.013, Amended 10-23-06, 1-18-09, 11-22-10,_____.

Proposed Rule Amendment

Rule 69W-600.0131

Chapter Name: Registration of Dealers, Investment Advisers, Associated Persons

Title: Prohibited Business Practices for Investment Advisers and Their Associated Persons

A. Summary and Justification

Rule 69W-600.0131, F.A.C., is proposed for amendment to update references to incorporated material. The Office of Financial Regulation proposes to consolidate all material incorporated by reference in Chapter 69W, F.A.C. into a new proposed rule 69W-200.002, F.A.C. that conforms with Section 120.54(1)(i), F.S. The proposed amendments would reference 69W-200.002, F.A.C., where the material can be accessed via the FAR.

B. Full Text of Proposed Rule

69W-600.0131 Prohibited Business Practices for Investment Advisers and Their Associated Persons.

(1) The following are deemed demonstrations of unworthiness by an investment adviser or an associated person of an investment adviser under Section 517.161(1)(h), F.S., without limiting that term to the practices specified herein:

(a) With respect to any customer, transaction or business in, to or from this state, engaging in any conduct prohibited by, or failing to comply with the requirements of, the following:

Sections 204, 204A, 205, 206, 207, 208 of the Investment Advisers Act of 1940, (15 U.S.C.A. §§ 80b-4, 80b-4a, 80b-5, 80b-6, 80b-7, 80b-8 (~~2006 & Supp. III~~)), or SEC Rules 204-3, 205-1, 205-2, 205-3, 206(3)-1, 206(3)-2, 206(4)-1, 206(4)-3, and 206(4)-4, (17 C.F.R. §§ 275.204-3, 275.205-1, 275.205-2, 275.205-3, 275.206(3)-1, 275.206(3)-2, 275.206(4)-1, 275.206(4)-3, and 275.206(4)-4 (~~2010~~)), which are incorporated by reference in Rule 69W-200.002, F.A.C.

(b) Borrowing money or securities from a customer unless the customer is a dealer, an affiliate of the investment adviser, or a financial institution engaged in the business of loaning funds;

(c) Loaning money to a customer unless the investment adviser is a financial institution engaged in the business of loaning funds or the customer is an affiliate of the investment adviser;

(d) Recommending to a customer the purchase, sale or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the customer on the basis of information furnished by the customer after reasonable inquiry concerning the customer's investment objectives, financial situation and needs, and any other information known by the investment adviser;

(e) Exercising any discretionary power in placing an order for the purchase or sale of securities for a customer's account without first obtaining written discretionary authority from the customer, unless the discretionary power relates solely to the time or price for the execution of orders;

(f) Inducing trading in a customer's account which is excessive in size or frequency in view of the financial resources, investment objectives, and character of the account;

(g) Placing an order to purchase or sell a security on behalf of a customer without authority to do so;

(h) Placing an order to purchase or sell a security for a customer's account upon instruction of a third party without first having obtained a written third-party trading authorization from the customer;

(i) Misrepresenting the qualifications of the investment adviser or any employee of the investment adviser to a client or prospective client when the representation does not fairly describe the nature of the services offered, the qualifications of the person offering the services, and the method of compensation for the services or omitting to state a material fact;

(j) Charging a customer an unreasonable advisory fee;

(k) Failing to disclose to customers in writing before any advice is rendered any material conflict of interest relating to the adviser or any of its employees which could reasonably be expected to impair the rendering of unbiased and objective advice including:

1. Compensation arrangements connected with advisory services to customers which are in addition to compensation from such customers for such services; and

2. Charging a customer an advisory fee for rendering advice when a commission for executing securities transactions pursuant to such advice will be received by the adviser or its employees;

(l) Guaranteeing a customer that a specific result will be achieved with the advice to be rendered;

(m) Recommending to a customer that the customer engage the services of a dealer that is not registered or exempt from registration under Chapter 517, F.S., unless the customer is a person described in Section 517.061(7), F.S.;

(n) Recommending to a customer that the customer engage the services of a dealer in connection with which the investment adviser receives a fee or remuneration from the dealer, except as permitted in Rule 69W-600.003, F.A.C.;

(o) Disclosing the identity, affairs, or investments of any customer unless required to do so by

law or consented to by the customer;

(p) Giving false or otherwise misleading customer information to any financial institution or regulatory agency;

(q) Entering into, extending or renewing any investment advisory contract unless such contract is in writing and discloses, in substance, the services to be provided, the term of the contract, the advisory fee, the formula for computing the fee, the amount of prepaid fee to be returned in the event of contract termination or non-performance, whether the contract grants discretionary power to the adviser and that no assignment of such contract shall be made by the investment adviser without the consent of the other party to the contract;

(r) Entering into, extending or renewing any investment advisory contract contrary to the provisions of Section 205 of the Investment Advisers Act of 1940, 15 U.S.C. § 80b-5 (~~2006 & Supp. III~~). This provision shall apply to all advisers and investment adviser representatives registered or required to be registered under this Act, notwithstanding whether such adviser or representative would be exempt from federal registration pursuant to Section 203(b) of the Investment Advisers Act of 1940, (15 U.S.C. § 80b-3(b) (~~2006 & Supp. III~~)), which is incorporated by reference in Rule 69W-200.002, F.A.C. ;

(s) Including, in an advisory contract, any condition, stipulation, or provisions binding any person to waive compliance with any provision of Chapter 517, F.S., or with any provision of, or with any rule, regulation, or order issued under, the Investment Advisers Act of 1940 (15 U.S.C. § 80b-1 through 80b-21 (~~2006 & Supp. III~~)), which is incorporated by reference in Rule 69W-200.002, F.A.C.;

(t) Taking any action, directly or indirectly, with respect to those securities or funds in which any client has any beneficial interest, where the investment adviser has custody or possession of such securities or funds when the adviser's action is subject to and does not comply with the requirements of Rule 69W-600.0132, F.A.C.

(u) Any unethical practice pursuant to Rule 69W-600.0133, F.A.C.

(2) The federal statutory and regulatory provisions referenced herein shall apply to investment advisers, investment adviser representatives and federal covered advisers, to the extent permitted by the National Securities Markets Improvement Act of 1996 (Pub. L. 104-290), which is incorporated by reference in Rule 69W-200.002, F.A.C..

~~(3) The federal statutes and federal regulations referenced in this rule are hereby incorporated by reference and may be obtained by mail from the Office of Financial Regulation, Bureau of Securities Regulation, 200 E. Gaines Street, Tallahassee, Florida 32399-0374. Copies of the United States Code are also available online through the U.S. House of Representatives, Office of the Law Revision Counsel: <http://uscode.house.gov/download/downloadPDF.shtml>. Copies of the Code of Federal Regulation are available online through the U.S. Government Printing Office via GPO Access: <http://www.gpoaccess.gov/cfr/index.html>.~~

Rulemaking Authority 517.03(1), 517.1215 FS. Law Implemented 517.12(4), 517.1215, 517.161(1) FS. History—New 1-25-00, Amended 10-30-03, Formerly 3E-600.0131, Amended 10-23-06, 1-18-09, 11-22-10,_____.

Proposed Rule Amendment

Rule 69W-600.0132

Chapter Name: Registration of Dealers, Investment Advisers, Associated Persons

Title: Custody Requirements for Investment Advisers

A. Summary and Justification

Rule 69W-600.0132, F.A.C., is proposed for amendment to update references to incorporated material. The Office of Financial Regulation proposes to consolidate all material incorporated by reference in Chapter 69W, F.A.C. into a new proposed rule 69W-200.002, F.A.C. that conforms with Section 120.54(1)(i), F.S. The proposed amendments would reference 69W-200.002, F.A.C., where the material can be accessed via the FAR.

B. Full Text of Proposed Rule

69W-600.0132 Custody Requirements for Investment Advisers.

(1) Definitions. For purposes of this section:

(a) “Custody” means holding directly or indirectly, client funds or securities, or having any authority to obtain possession of them or has the ability to appropriate them.

1. Custody includes:

a. Possession of client funds or securities unless received inadvertently and returned to the sender promptly, but in any case within three business days of receiving them;

b. Any arrangement (including a general power of attorney) under which the investment adviser is authorized or permitted to withdraw client funds or securities maintained with a custodian upon the investment adviser's instruction to the custodian; and

c. Any capacity (such as general partner of a limited partnership, managing member of a limited liability company or a comparable position for another type of pooled investment vehicle, or trustee of a trust) that gives the investment adviser or the investment adviser's supervised person legal ownership of or access to client funds or securities.

2. Receipt of checks drawn by clients and made payable to unrelated third parties will not meet the definition of custody if forwarded to the third party within 24 hours of receipt and the adviser maintains the records required under subsections 69W-600.014(3)-(7), F.A.C.;

(b) "Independent representative" means a person who:

1. Acts as agent for an advisory client, including in the case of a pooled investment vehicle, for limited partners of a limited partnership, members of a limited liability company, or other beneficial owners of another type of pooled investment vehicle and by law or contract is obliged to act in the best interest of the advisory client or the limited partners (or members, or other beneficial owners);

2. Does not control, is not controlled by, and is not under common control with the investment adviser; and

3. Does not have, and has not had within the past two years, a material business relationship with the investment adviser.

(c) "Qualified custodian" means the following independent institutions or entities that are not affiliated with the adviser by any direct or indirect common control and have not had a material business relationship with the adviser in the previous two years:

1. A bank or savings association that has deposits insured by the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act;

2. A registered broker-dealer holding the client assets in customer accounts;

3. A registered futures commission merchant registered under Section 4f(a) of the Commodity Exchange Act (7 U.S.C. § 6f ~~(2006 & Supp. III)~~), which is incorporated by reference in Rule 69W-200.002, F.A.C., holding the client assets in customer accounts, but only with respect to clients'

funds and security futures, or other securities incidental to transactions in contracts for the purchase or sale of a commodity for future delivery and options thereon; and

4. A foreign financial institution that customarily holds financial assets for its customers, provided that the foreign financial institution keeps the advisory clients' assets in customer accounts segregated from its proprietary assets.

(2) Safekeeping required. If the investment adviser is registered or required to be registered, it is unlawful and deemed to be a fraudulent, deceptive, or manipulative act, practice or course of business for the investment adviser to have custody of client funds or securities unless:

(a) Notice to Office. The investment adviser notifies the Office of Financial Regulation promptly in writing that the investment adviser has or may have custody. Such notification is required to be given on Form ADV, which is incorporated by reference in subsection 69W-301.002(7), F.A.C.;

(b) Qualified Custodian. A qualified custodian maintains those funds and securities in a separate account for each client under that client's name or in accounts that contain only the investment adviser's clients' funds and securities, under the investment adviser's name as agent or trustee for the clients;

(c) Notice to Clients. If the investment adviser opens an account with a qualified custodian on their client's behalf, either under the client's name or under the investment adviser's name as agent, the investment adviser must notify the client in writing of the qualified custodian's name, address, and the manner in which the funds or securities are maintained, promptly when the account is opened and following any changes to this information.

(d) Account statements must be sent to clients, either:

1. By a qualified custodian for which the investment adviser has a reasonable basis for believing that the qualified custodian sends an account statement, at least quarterly, to each of the adviser's clients for which it maintains funds or securities, identifying the amount of funds and of each security in the account at the end of the period and setting forth all transactions in the account during that period; or

2. By the adviser who sends an account statement, at least quarterly, to each client for whom the adviser has custody of funds or securities, identifying the amount of funds and of each security of which the adviser has custody at the end of the period and setting forth all transactions during that period; and an independent certified public accountant verifies all client funds and securities

by actual examination at least once during each calendar year at a time chosen by the accountant without prior notice or announcement to the adviser and that is irregular from year to year, and files a copy of the auditors report and financial statements with the Office of Financial Regulation within 30 days after the completion of the examination, along with a letter stating that it has examined the funds and securities and describing the nature and extent of the examination; and the independent certified public accountant, upon finding any material discrepancies during the course of the examination, notifies the Office of Financial Regulation within one business day of the finding, by means of a facsimile transmission or electronic mail, followed by first class mail, directed to the attention of the Office of Financial Regulation;

3. If the investment adviser is a general partner of a limited partnership (or managing member of a limited liability company, or holds a comparable position for another type of pooled investment vehicle), the account statements required under paragraph (d) of this subsection must be sent to each limited partner (or member or other beneficial owner or their independent representative).

(e) Independent Representative. A client may designate an independent representative to receive, on his behalf, notices and account statements as required under paragraphs (c) and (d) of this subsection.

(f) Direct Fee Deduction. An adviser who has custody as defined in sub-subparagraph (1)(a)1.b. of this rule by having fees directly deducted from client accounts must also provide the following safeguards:

1. Written Authorization. The adviser must have written authorization from the client to deduct advisory fees from the account held with the qualified custodian;

2. Notice of Fee Deduction. Each time a fee is directly deducted from a client account, the adviser must concurrently:

a. Send the qualified custodian an invoice of the amount of the fee to be deducted from the client's account; and

b. Send the client an invoice itemizing the fee. Itemization includes the formula used to calculate the fee, the amount of assets under managements the fee is based on, and the time period covered by the fee.

3. Notice of Safeguards. The investment adviser notifies the Office of Financial Regulation in writing that the investment adviser intends to use the safeguards provided above. Such notification

is required to be given on Form ADV, which is incorporated by reference in subsection 69W-301.002(7), F.A.C.

4. Waiver of Net Capital Requirement. An investment adviser having custody solely because it meets the definition of custody as defined in sub-subparagraph (1)(a)1.b. of this rule and who complies with the safekeeping requirements in paragraphs (2)(a)-(f) of this rule will not be required to meet the financial requirements for custodial advisers as set forth in paragraph 69W-600.016(3)(a), F.A.C.

5. Waiver of Audited Financial Statements. An investment adviser having custody solely because it meets the definition of custody as defined in sub-subparagraph (1)(a)1.b. of this rule and who complies with the safekeeping requirements in paragraphs (2)(a)-(f) of this rule may file unaudited financial statements and must comply with the requirements as set forth in paragraph 69W-300.002(4)(c), F.A.C.

(g) Pooled Investments. An investment adviser who has custody as defined in sub-subparagraph (1)(a)1.c. of this rule and who does not meet the exception provided under paragraph (3)(c) of this rule must, in addition to the safeguards set forth in paragraphs (a) through (e) of this subsection, also comply with the following:

1. Engage an Independent Party. Hire an independent party to review all fees, expenses and capital withdrawals from the pooled accounts;

2. Review of Fees. Send all invoices or receipts to the independent party, detailing the amount of the fee, expenses or capital withdrawal and the method of calculation such that the independent party can determine that the payment is in accordance with the pooled investment vehicle standards (generally the partnership agreement or membership agreement) and forward, to the qualified custodian, approval for payment of the invoice with a copy to the investment adviser.

3. For purposes of this rule section, an Independent Party means a person that: is engaged by an investment adviser to act as a gatekeeper for the payment of fees, expenses and capital withdrawals from the pooled investment; does not control and is not controlled by and is not under common control with the investment adviser; and does not have, and has not had within the past two years, a material business relationship with the investment adviser. This shall not prohibit renewal of contracts with an existing independent third party.

4. Notice of Safeguards. The investment adviser notifies the Office of Financial Regulation in writing that the investment adviser intends to use the safeguards provided above. Such notification

is required to be given on Form ADV, which is incorporated by reference in subsection 69W-301.002(7), F.A.C.

5. Waiver of Net Worth or Bonding Requirements and Audited Financial Statement. An investment adviser having custody solely because it meets the definition of custody as defined in sub-subparagraph (1)(a)1.c. of this rule and who complies with the safekeeping requirements under paragraphs (2)(a)-(e) and (g) of this rule, will not be required to meet the financial requirements as set forth in paragraph 69W-600.016(3)(a), F.A.C.

(h) Investment Adviser or Investment Adviser as Trustee. When a trust retains an investment adviser, investment adviser representative or employee, director or owner of an investment adviser as trustee and the investment adviser acts as the investment adviser to that trust, the investment adviser will instruct the qualified custodian of the trust as follows:

1. Payment of fees. The qualified custodian will not deliver trust securities to the investment adviser, any investment adviser representative or employee, director or owner of the investment adviser, nor will the investment adviser instruct the qualified custodian to transmit any funds to the investment adviser, any investment adviser representative or employee, director or owner of the investment adviser, except that the qualified custodian may pay trustees' fees to the trustee and investment management or advisory fees to investment adviser, provided that:

a. The grantor of the trust or attorneys for the trust, if it is a testamentary trust, the co-trustee (other than the investment adviser, investment adviser representative or employee, director or owner of the investment adviser), or a defined beneficiary of the trust has authorized the qualified custodian in writing to pay those fees;

b. The statements for those fees show the amount of the fees for the trustee and, in the case of statements for investment management or advisory fees, show the value of the trust assets on which the fee is based and the manner in which the fee was calculated; and

c. The qualified custodian agrees to send to the grantor of the trust, the attorneys for a testamentary trust, the co-trustee (other than the investment adviser, investment adviser representative or employee, director or owner of the investment adviser), or a defined beneficiary of the trust, at least quarterly, a statement of all disbursements from the account of the trust, including the amount of investment management fees paid to the investment adviser and the amount of trustees' fees paid to the trustee.

2. Distribution of Assets. Except as otherwise set forth in sub-subparagraph a. below, the qualified custodian may transfer funds or securities, or both, of the trust only upon the direction of the trustee (who may be the investment adviser, investment adviser representative or employee, director or owner of the investment adviser), who the investment adviser has duly accepted as an authorized signatory. The grantor of the trust or attorneys for the trust, if it is a testamentary trust, the co-trustee (other than the investment adviser, investment adviser representative or employee, director or owner of the investment adviser), or a defined beneficiary of the trust, must designate the authorized signatory for management of the trust. The direction to transfer funds or securities, or both, can only be made to the following:

a. To a trust company, bank trust department or brokerage firm independent of the investment adviser for the account of the trust to which the assets relate;

b. To the named grantors or to the named beneficiaries of the trust;

c. To a third person independent of the investment adviser in payment of the fees or charges of the third person including, but not limited to:

(I) Attorney's accountant's or custodian's fees for the trust; and

(II) Taxes, interest, maintenance or other expenses, if there is property other than securities or cash owned by the trust;

d. To third persons independent of the investment adviser for any other purpose legitimately associated with the management of the trust; or

e. To a dealer in the normal course of portfolio purchases and sales, provided that the transfer is made on payment against delivery basis or payment against trust receipt.

3. Statements. If the qualified custodian agrees to these instructions and is authorized to pay the fees, the investment adviser will send to the grantor of the trust, the attorney of the trust if it is a testamentary trust, the co-trustee (other than the investment adviser, investment adviser representative or employee, director or owner of the investment adviser), or a defined beneficiary of the trust, at the same time that it sends any statement to the qualified custodian, a statement showing the amount of the trustees' fees or investment management or advisory fee, the value of the assets on which the fees were based, and the specific manner in which the fees were calculated.

4. Notice of Safeguards. The investment adviser notifies the Office of Financial Regulation in writing that the investment adviser intends to use the safeguards provided above. Such notification

is required to be given on Form ADV, which is incorporated by reference in subsection 69W-301.002(7), F.A.C.

5. Waiver of Net Capital Requirements. An investment adviser having custody solely because it meets the definition of custody as defined in sub-subparagraph (1)(a)1.c. of this rule and who complies with the safekeeping requirements under paragraphs (2)(a)-(e) and (h) of this rule, will not be required to meet the financial requirements for custodial advisers as set forth in paragraph 69W-600.016(3)(a), F.A.C.

(3) Exceptions.

(a) Shares of mutual funds. With respect to shares of an “open-end company” as defined in Section 5(a)(1) of the Investment Company Act of 1940, (15 U.S.C. § 80a-5(a)(1) ~~(2006 & Supp. II)~~), (“mutual fund”), which is incorporated by reference in Rule 69W-200.002, F.A.C., the investment adviser may use the mutual fund’s transfer agent in lieu of a qualified custodian for purposes of complying with subsection (2) of this rule;

(b) Certain privately offered securities.

1. The investment adviser is not required to comply with subsection (2) of this rule with respect to securities that are:

a. Acquired from the issuer in a transaction or chain of transactions not involving any public offering;

b. Uncertificated, and ownership thereof is recorded only on books of the issuer or its transfer agent in the name of the client; and

c. Transferable only with prior consent of the issuer or holders of the outstanding securities of the issuer.

2. Notwithstanding subparagraph (b)1. of this subsection, the provisions of paragraph (b) of this subsection are available with respect to securities held for the account of a limited partnership (or limited liability company, or other type of pooled investment vehicle) only if the limited partnership is audited, the audited financial statements are distributed, as described in paragraph (c) of this subsection and the investment adviser notifies the Office of Financial Regulation in writing that the investment adviser intends to provide audited financial statements, as described above. Such notification is required to be given on Form ADV, which is incorporated by reference in subsection 69W-301.002(7), F.A.C.

(c) Limited partnerships subject to annual audit. The investment adviser is not required to comply with paragraph (2)(d) of this rule with respect to the account of a limited partnership (or limited liability company, or another type of pooled investment vehicle) that is subject to audit at least annually and distributes its audited financial statements prepared in accordance with generally accepted accounting principles to all limited partners (or members or other beneficial owners) within 120 days of the end of its fiscal year. The investment adviser must also notify the Office of Financial Regulation in writing that the investment adviser intends to employ the use of the audit safeguards described above. Such notification is required to be given on Form ADV, which is incorporated by reference in subsection 69W-301.002(7), F.A.C.

(d) Registered investment companies. The investment adviser is not required to comply with this rule with respect to the account of an investment company registered under the Investment Company Act of 1940 (15 U.S.C. § 80a-1 through 80a-64 ~~(2006 & Supp. III)~~), which is incorporated by reference in Rule 69W-200.002, F.A.C.

(e) Beneficial Trusts. The investment adviser is not required to comply with safekeeping requirements of subsection (2) of this rule or the net capital requirements of paragraph 69W-600.016(3)(a), F.A.C., if the investment adviser has custody solely because the investment adviser, investment adviser representative or employee, director or owner of the investment adviser is the trustee for a beneficial trust, if all of the following conditions are met for each trust:

1. The beneficial owner of the trust is a parent, a grandparent, a spouse, a sibling, a child or a grandchild of the trustee. These relationships shall include “step” relationships.
2. For each account under subparagraph 1. the investment adviser complies with the following:
 - a. Provide a written statement to each beneficial owner of the account setting forth a description of the requirements of subsection (2) of this rule and the reasons why the investment adviser will not be complying with those requirements;
 - b. Obtain from each beneficial owner a signed and dated statement acknowledging the receipt of the written statement required under sub-subparagraph a. above;
 - c. Maintain a copy of both documents described in sub-subparagraphs a. and b. above until the account is closed or the investment adviser is no longer trustee.

(f) Any investment adviser who intends to have custody of client funds or securities, but does not utilize a qualified custodian as defined in subsection (1) of this rule must obtain approval from the Office of Financial Regulation before conducting business in this manner. Any investment

adviser who seeks to conduct business in this manner must submit such request to the Office using OFR Form IA-CF-01, Application to Maintain Custody of Client Funds or Securities Without Utilizing a Qualified Custodian, effective October, 2006, which is incorporated by reference. The Office will approve the request if the investment adviser agrees to comply with all of the applicable safekeeping provisions under subsection (2) of this rule, including taking responsibility for those provisions that are designated to be performed by a qualified custodian.

~~(4) The federal statutes referenced in this rule are hereby incorporated by reference and may be obtained by mail from the Office of Financial Regulation, Bureau of Securities Regulation, 200 E. Gaines Street, Tallahassee, Florida 32399-0374. Copies of the United States Code are also available online through the U.S. House of Representatives, Office of the Law Revision Counsel: <http://uscode.house.gov/download/downloadPDF.shtml>.~~

Rulemaking Authority 517.03(1), 517.1215 FS. Law Implemented 517.1215 FS. History—New 10-23-06, Amended 11-22-10,_____.

Proposed Rule Amendment

Rule 69W-600.0133

Chapter Name: Registration of Dealers, Investment Advisers, Associated Persons

Title: Use of Senior - Specific Certifications and Professional Designations by Associated Persons and Investment Advisers

A. Summary and Justification

Rule 69W-600.0133, F.A.C., is proposed for amendment to update references to incorporated material. The Office of Financial Regulation proposes to consolidate all material incorporated by reference in Chapter 69W, F.A.C. into a new proposed rule 69W-200.002, F.A.C. that conforms with Section 120.54(1)(i), F.S. The proposed amendments would reference 69W-200.002, F.A.C., where the material can be accessed via the FAR.

B. Full Text of Proposed Rule

69W-600.0133 Use of Senior-Specific Certifications and Professional Designations by Associated Persons and Investment Advisers.

(1) The use of a senior specific certification or designation by any person in connection with the offer, sale, or purchase of securities, or the provision of advice as to the value of or the advisability of investing in, purchasing, or selling securities, either directly or indirectly or through publications or writings, or by issuing or promulgating analyses or reports relating to securities, that indicates or implies that the user has special certification or training in advising or servicing senior citizens or retirees, in such a way as to mislead any person shall be a dishonest and unethical business practice in the securities industry in violation of Section 517.161(1)(d) or 517.161(1)(h), F.S., by an associated person of a dealer or investment adviser. The prohibited use of such certifications or professional designation includes, but is not limited to, the following:

(a) Use of a certification or professional designation by a person who has not actually earned or is otherwise ineligible to use such certification or designation;

(b) Use of a nonexistent or self-conferred certification or professional designation;

(c) Use of a certification or professional designation that indicates or implies a level of occupational qualifications obtained through education, training, or experience that the person using the certification or professional designation does not have; and

(d) Use of a certification or professional designation that was obtained from a designating or certifying organization that:

1. Is primarily engaged in the business of instruction in sales and/or marketing;

2. Does not have standards or procedures for assuring the competency of its designees or certificants;

3. Does not have standards or procedures for monitoring and disciplining its designees or certificants for improper or unethical conduct; or

4. Does not have continuing education requirements for its designees or certificants in order to maintain the designation or certificate.

(2) There is a rebuttable presumption that a designating or certifying organization is not disqualified solely for purposes of paragraph (1)(d) above when the organization has been accredited by:

(a) The American National Standards Institute; or

(b) The National Commission for Certifying Agencies; or

(c) An organization that is on the United States Department of Education’s list entitled “Accrediting Agencies Recognized for Title IV Purposes” and the designation or credential issued therefrom does not primarily apply to sales and/or marketing.

(3) In determining whether a combination of words (or an acronym standing for a combination of words) constitutes a certification or professional designation indicating or implying that a person has special certification or training in advising or servicing senior citizens or retirees, factors to be considered shall include:

(a) Use of one or more words such as “senior,” “retirement,” “elder,” or like words, combined with one or more words such as “certified,” “registered,” “chartered,” “adviser,” “specialist,” “consultant,” “planner,” or like words, in the name of the certification or professional designation; and

(b) The manner in which those words are combined.

(4) For purposes of this rule, a certification or professional designation does not include a job title within an organization that is licensed or registered by a state or federal financial services regulatory agency, when that job title:

(a) Indicates seniority or standing within the organization; or

(b) Specifies an individual’s area of specialization within the organization.

For purposes of this subsection, financial services regulatory agency includes, but is not limited to, an agency that regulates brokers, dealers, investment advisers, or investment companies as defined under the Investment Company Act of 1940, 15 U.S.C. ss. 80a-2, 80a-3, which is incorporated by reference in Rule 69W-200.002, F.A.C. (2006). ~~The cited sections of the Investment Company Act of 1940 are hereby incorporated by reference.~~

(5) Nothing in this rule shall limit the Office of Financial Regulation’s authority to enforce existing law.

~~(6) This rule is based on the model rule adopted on March 20, 2008, by the North American Securities Administrators Association (NASAA) regarding the use of senior specific certifications and professional designations. The NASAA model rule is hereby incorporated by reference.~~

~~(7) All materials incorporated by reference in this rule may be obtained by writing to: Office of Financial Regulation, 200 East Gaines Street, Tallahassee, Florida 32399-0375.~~

Specific Authority 517.03(1), 517.1215(2), 517.1217 FS. Law Implemented 517.1215(2), 517.1217, 517.161 FS. History—New 1-18-09,_____.

Proposed Rule Amendment

Rule 69W-600.014

Chapter Name: Registration of Dealers, Investment Advisers, Associated Persons

Title: Books and Records Requirements

A. Summary and Justification

Rule 69W-600.014, F.A.C., is proposed for amendment to update references to incorporated material. The Office of Financial Regulation proposes to consolidate all material incorporated by reference in Chapter 69W, F.A.C. into a new proposed rule 69W-200.002, F.A.C. that conforms with Section 120.54(1)(i), F.S. The proposed amendments would reference 69W-200.002, F.A.C., where the material can be accessed via the FAR.

B. Full Text of Proposed Rule

69W-600.014 Books and Records Requirements.

Except as otherwise provided herein, every dealer, investment adviser, branch office, and associated person conducting business in this state shall prepare and maintain on a current basis, and preserve for the periods of time specified, such records, prescribed herein, as are appropriate for said dealer's, investment adviser's, branch office's, or associated person's course of business, and are sufficient to provide an audit trail of all business transactions by said dealer, investment adviser, associated person, or branch office. Associated persons who conduct business from a branch office notice-filed in this state shall be exempt from the provisions of this rule.

(1) All dealers are required to prepare and maintain appropriate books and records relating to their business as described in either SEC Rules 17a-3 or 17a-4, (17 C.F.R. §§ 240.17a-3, 240.17a-4 (2010)), or MSRB Rules G-7, G-8 and G-9, ~~as such rules existed on June 23, 2010~~; and records evidencing compliance with NASD Rule Series 3000 ~~NASD Conduct rule 3000, as such rule existed on June 23, 2010~~. The foregoing rules are incorporated by reference in Rule 69W-200.002, F.A.C. ~~MSRB Rules G-7, G-8, and G-9 are incorporated by reference in subparagraph 69W-600.013(1)(h)5, F.A.C. NASD Conduct Rule 3000 is incorporated by reference in subparagraph 69W-600.013(1)(h)1, F.A.C.~~

(2) All issuer/dealers are required to maintain at least the following records:

(a) Ledgers, journals (or other records) reflecting all assets, liabilities, income and expenses,

and capital accounts properly maintained in accordance with United States generally accepted accounting principles;

(b) Copies of all promotional sales materials and correspondence used in connection with the sales of all securities as distributed;

(c) A record of all sales of securities made by, or on behalf of, the issuer as described in and in compliance with SEC Rule 17a-3(a)(1), (17 C.F.R. § 17a-3(a)(1) ~~(2010)~~), which is incorporated by reference in Rule 69W-200.002, F.A.C.;

(d) Securities certificate and securities holder records reflecting names and addresses of all holders of record, certificates issued to such holders, number of shares or bonds issued, and full details as to transfers or cancellations;

(e) In lieu of the issuer/dealer preparing and maintaining such records as detailed in paragraph (d) above, a qualified transfer agent/registrar may be appointed, provided such information is accessible to the issuer/dealer.

(3) All investment advisers, notwithstanding the fact that the investment adviser is not registered or required to be registered under the Investment Advisers Act of 1940, shall prepare and maintain true, accurate and current records relating to their business as described in SEC Rule 204-2, (17 C.F.R. § 275.204-2 ~~(2010)~~), which is incorporated by reference in Rule 69W-200.002, F.A.C.; and have available for the Office of Financial Regulation at least the following records:

(a) All trial balances, financial statements prepared in accordance with United States generally accepted accounting principles, and internal audit working papers relating to the investment adviser's business as an investment adviser. For purposes of this paragraph, "financial statements" means balance sheets, income statements, cash flow statements and net worth computations as required by Rule 69W-300.002, F.A.C.

(b) A list or other record of all accounts with respect to the funds, securities, or transactions of any client.

(c) A copy in writing of each agreement entered into by the investment adviser with any client.

(d) A file containing a copy of each record required by SEC Rule 204-2(11), (17 C.F.R. § 275.204-2(11) ~~(2010)~~), including any communication by electronic media that the investment adviser circulates or distributes, directly or indirectly, to two or more persons, other than persons connected with the investment adviser.

(e) A copy of each written statement and each amendment or revision given or sent to any

client or prospective client of the investment adviser in accordance with the provisions of SEC Rule 204-3, (17 C.F.R. § 275.204-3 ~~(2010)~~), which is incorporated by reference in Rule 69W-200.002, F.A.C. which is incorporated by reference in paragraph 69W-600.0131(1)(a), F.A.C., and a record of the dates that each written statement, and each amendment or revision was given or offered to be given to any client or prospective client who subsequently becomes a client.

(f) For each client that was obtained by the adviser by means of a solicitor to whom a cash fee was paid by the adviser, records required by SEC Rule 206(4)-3, (17 C.F.R. § 275.206(4)-3 ~~(2010)~~), which is incorporated by reference in Rule 69W-200.002, F.A.C. which is incorporated by reference in paragraph 69W-600.0131(1)(a), F.A.C.

(g) All records required by SEC Rule 204-2(16), (17 C.F.R. § 275.204-2(16) ~~(2010)~~).

(h) A file containing a copy of all communications received or sent regarding any litigation involving the investment adviser or any investment adviser representative or employee, and regarding any customer or client complaint.

(i) Written information about each investment advisory client that is the basis for making any recommendation or providing any investment advice to such client.

(j) Written procedures to supervise the activities of employees and investment adviser representatives that are reasonably designed to achieve compliance with applicable securities laws and regulations.

(k) A file containing a copy of each document, other than any notices of general dissemination, that was filed with or received from any state or federal agency or self regulatory organization and that pertains to the registrant or its investment adviser representatives. Such file should contain, but is not limited to, all applications, amendments, renewal filings, and correspondence.

(4) Notwithstanding other record preservation requirements of this rule, the following records or copies shall be required to be maintained in the business location of the investment adviser from which the customer or client is being provided or has been provided with investment advisory services:

(a) Records required to be preserved under paragraphs (a)(3), (a)(7)-(11), (a)(14)-(15), (b) and (c) inclusive, of SEC Rule 204-2 of the Investment Advisers Act of 1940, (17 C.F.R. § 275.204-2 ~~(2010)~~), which is incorporated by reference in subsection (3); and

(b) Records or copies required under the provision of paragraphs (a)(11) and (a)(16) of SEC Rule 204-2 of the Investment Advisers Act of 1940 (17 C.F.R. § 275.204-2 ~~(2010)~~), which records

or related records identify the name of the investment adviser representative providing investment advice from that business location, or which identify the business location's physical address, mailing address, electronic mailing address, or telephone number.

(5) No provisions of this rule, unless specifically designated as a required form, shall be deemed to require the preparation, maintenance, or preservation of a dealer's or investment adviser's books and records in a particular form or system, provided that whatever form or system utilized by such dealer's or investment adviser's course of business is sufficient to provide an audit trail of all business transactions.

(6) Every investment adviser that has its principal place of business in a state other than this state shall be exempt from the requirements of this rule, provided the investment adviser is licensed in such state and is in compliance with that state's record keeping requirements.

(7) All books and records described in this rule shall be preserved in accordance with the following:

(a) Those records required under subsection (1) of this rule shall be preserved for such periods of time as specified in either SEC Rule 17a-4, (17 C.F.R. § 240.17a-4-(2010)), or MSRB Rule G-9, ~~as such rule existed on June 23, 2010, which is incorporated by reference in paragraph 69W-600.013(1)(h), F.A.C.~~

(b) Those records required under subsection (2) of this rule shall be preserved for a period of not less than five (5) years while effectively registered with the Office of Financial Regulation, nor for less than five (5) years after withdrawal or expiration of registration in this State.

(c) Books and records required to be prepared under the provisions of subsection (3) shall be maintained and preserved in an easily accessible place for a period of not less than five years from the end of the fiscal year during which the last entry was made on such record, the first two years in the principal office of the investment adviser.

(d) Books and records required to be made under the provisions of subsection (3), shall be maintained and preserved for a period of not less than five years from the end of the fiscal year during which the last entry was made on such record or for the time period during which the investment adviser was registered or required to be registered in the state, if registered less than five years.

(e) Each investment adviser registered or required to be registered in this state and which has a business location in this state shall maintain at such business location:

1. The records or copies required under the provisions of paragraphs (a)(3), (a)(7)-(10), (a)(14)-(15), (b), and (c) of SEC Rule 204-2, (17 C.F.R. § 275.204-2 (2010)); and

2. The records or copies required under the provisions of paragraphs (3)(a)-(k) above related to customers or clients for whom the investment adviser representative provides or has provided investment advisory services; and

3. The records or copies required under the provisions of paragraphs (a)(11) and (a)(16) of SEC Rule 204-2, (17 C.F.R. § 275.204-2 (2010)), which records or related records identify the name of the investment adviser representative or which identify the business location's physical address, mailing address, electronic mailing address, or telephone number. The records will be maintained for the period described in subsections (d) and (e) of SEC Rule 204-2, (17 C.F.R. § 275.204-2 (2010)). The investment adviser shall be responsible for ensuring compliance with the provision of this subsection. SEC Rule 204-2, (17 C.F.R. § 275-204-2 (2010)).

~~(8) The federal regulations, federal statutes, and Municipal Securities Rulemaking Board (MSRB) rules referenced in this rule are hereby incorporated by reference and may be obtained by mail from the Office of Financial Regulation, Bureau of Securities Regulation, 200 E. Gaines Street, Tallahassee, Florida 32399-0374. Copies of the United States Code are also available online through the U.S. House of Representatives, Office of the Law Revision Counsel: <http://uscode.house.gov/download/downloadPDF.shtml>. Copies of the Code of Federal Regulation are available online through the U.S. Government Printing Office via GPO Access: <http://www.gpoaccess.gov/cfr/index.html>.~~

Rulemaking Authority 517.03(1), 517.121(1), 517.1215 FS. Law Implemented 517.121(1), 517.1215 FS. History—New 12-5-79, Amended 9-20-82, Formerly 3E-600.14, Amended 10-14-90, 8-1-91, 6-16-92, 1-11-93, 9-9-96, 6-22-98, 1-25-00, 10-30-03, Formerly 3E-600.014, Amended 10-23-06, 5-15-07, 11-22-10, 11-11-13,_____.

Proposed Rule Amendment

Rule 69W-600.015

Chapter Name: Registration of Dealers, Investment Advisers, Associated Persons

Title: Financial Reporting Requirements – Statement of Financial Condition – Dealers and Investment Advisers.

A. Summary and Justification

Rule 69W-600.015, F.A.C., is proposed for amendment to update references to incorporated material. The Office of Financial Regulation proposes to consolidate all material incorporated by reference in Chapter 69W, F.A.C. into a new proposed rule 69W-200.002, F.A.C. that conforms with Section 120.54(1)(i), F.S. The proposed amendments would reference 69W-200.002, F.A.C., where the material can be accessed via the FAR.

B. Full Text of Proposed Rule

69W-600.015 Financial Reporting Requirements – Statement of Financial Condition – Dealers and Investment Advisers.

(1) Except as otherwise specifically noted in this rule, an applicant filing an application for registration as a dealer or investment adviser shall file a balance sheet in accordance with Rule 69W-300.002, F.A.C.

(2) Every dealer registered pursuant to Section 517.12, F.S., and rules thereunder shall file annually with the Office of Financial Regulation, within ninety (90) days after the conclusion of said registrant's fiscal year, audited financial statements as prepared by an independent outside auditor, unless exempted under Rule 69W-300.002, F.A.C.

(a) The Office of Financial Regulation will allow up to a thirty (30) day extension of the filing requirement as set forth in this paragraph provided written request is made prior to the date such audited report is due to be filed, and provided further that good cause for such delay is shown. Good cause shall include excusable neglect or circumstances beyond the control of the registrant.

(b) Every dealer defined as a broker/dealer under Rule 69W-300.002, F.A.C., shall be required to include in such audited financial statements filed verification of said broker/dealer's compliance with the provisions of Rules 69W-600.016 and 69W-600.017, F.A.C.

(c) In lieu of the provisions of paragraph (b) above, the Office of Financial Regulation will accept those statements prepared and filed by a dealer in accordance with the provisions of SEC Rule 17a-5 (17 C.F.R. § 240.17a-5 (~~2010~~)) and SEC Rule 17a-10 (17 C.F.R. § 240.17a-10 (~~2010~~)), which are incorporated by reference in Rule 69W-200.002, F.A.C.

(3) Every investment adviser registered pursuant to Section 517.12, F.S., and rules thereunder shall file annually with the Office of Financial Regulation, within ninety (90) days after the conclusion of said registrant's fiscal year, financial statements as of fiscal year end, such

statements prepared in accordance with the provisions of Rule 69W-300.002, F.A.C.

(4) The provisions of paragraph (2)(a) of this rule apply to the filing requirements set forth in subsection (3).

~~(5) The federal regulations referenced in this rule are hereby incorporated by reference and may be obtained by mail from the Florida Office of Financial Regulation, Division of Securities, 200 E. Gaines Street, Tallahassee, Florida 32399. Copies of the Code of Federal Regulation are also available online through the U.S. Government Printing Office via GPO Access: <http://www.gpoaccess.gov/cfr/index.html>.~~

Rulemaking Authority 517.03(1), 517.12(9), 517.121(2) FS. Law Implemented 517.12(9), 517.121(2) FS. History—New 12-5-79, Amended 9-20-82, Formerly 3E-600.15, Amended 6-16-92, 10-30-03, 4-8-04, Formerly 3E-600.015, Amended 11-22-10,_____.

Proposed Rule Amendment

Rule 69W-600.016

Chapter Name: Registration of Dealers, Investment Advisers, Associated Persons

Title: Net Capital Requirements for Dealers and Investment Advisers

A. Summary and Justification

Rule 69W-600.016, F.A.C., is proposed for amendment to update references to incorporated material. The Office of Financial Regulation proposes to consolidate all material incorporated by reference in Chapter 69W, F.A.C. into a new proposed rule 69W-200.002, F.A.C. that conforms with Section 120.54(1)(i), F.S. The proposed amendments would reference 69W-200.002, F.A.C., where the material can be accessed via the FAR.

B. Full Text of Proposed Rule

69W-600.016 Net Capital Requirements for Dealers and Investment Advisers.

(1) The net capital of an applicant or registrant under Section 517.12, F.S., shall be maintained at a level required by this rule.

(2) All dealer applicants and registrants shall meet and at all times maintain the net capital and ratio requirements as prescribed by SEC Rule 15c3-1 including any appendices thereto (17 C.F.R.

§ 240.15c3-1, 240.15c3-1a, 240.15c3-1b, 240.15c3-1c, ~~and 240.15c3-1d, 240.15c3-1e, 240.15c3-1f, and 204.15c3-1g (2010)~~, computed in accordance with said rule. The foregoing are incorporated by reference in Rule 69W-200.002, F.A.C.

(a) All reporting requirements as specified in (17 C.F.R. § 240.17a-11 ~~(2010)~~), which is incorporated by reference in Rule 69W-200.002, F.A.C., when such regulation is referred in SEC Rule 15c3-1 shall be applicable with the exception that such reports and notifications required by said rule shall be forwarded to the Office of Financial Regulation as well as the other regulatory agencies specified, if applicable.

(b) All references to (17 C.F.R. § 240.17a-3 ~~(2010)~~) and (17 C.F.R. § 240.17a-4 ~~(2010)~~), in the foregoing and subsequent provisions of Office of Financial Regulation or SEC Rules as adopted by the Office of Financial Regulation, shall be read as to mean Office of Financial Regulation, Rule 69W-600.014, F.A.C. The foregoing SEC Rules are incorporated by reference in Rule 69W-200.002, F.A.C.

(3) Issuer/dealer or investment adviser applicants or registrants shall meet the net capital requirements of this section:

(a) Investment advisers who have custody of client funds or securities or who receive payment of advisory fees six months or more in advance and in excess of \$500 per client shall maintain net capital in the amount of \$25,000 calculated as prescribed by SEC Rule 15c3-1 (17 C.F.R. § 240.15c3-1 ~~(2010)~~), including any ratio requirements and appendices thereto.

(b) Investment advisers who do not have custody of client funds or securities or who do not receive payment for advisory services six months or more in advance and in excess of \$500 per client shall maintain net capital: (1) in the amount of \$5,000 calculated as prescribed by SEC Rule 15c3-1 (17 C.F.R. § 240.15c3-1 ~~(2010)~~), including any ratio requirements and appendices thereto; or (2) of at least \$2,500. For purposes of option (2) of this subsection, net capital shall be defined as assets minus liabilities in accordance with United States Generally Accepted Accounting Principles.

(c) Investment advisers who compute net capital in accordance with SEC Rule 15c3-1, may exclude liabilities which are subordinated to the claims of creditors pursuant to a subordination agreement, provided such agreement complies with all terms and conditions specified in Appendix D to SEC Rule 15c3-1 (17 C.F.R. § 240.15c3-1 and 240.15c-1d ~~(2010)~~), except for the requirement that such agreement be filed with and approved by the Securities and Exchange Commission.

Those investment advisers who have subordination agreements in effect prior to the effective date of this subsection shall not be required to comply with the conditions specified in Appendix D to SEC Rule 15c3-1. Should the investment adviser renegotiate or enter into a new subordination agreement, the agreement must comply with the provisions of Appendix D of SEC Rule 15c3-1.

(d) An issuer/dealer shall maintain net capital, defined as assets minus liabilities and computed in accordance with United States Generally Accepted Accounting Principles, of at least \$5,000, unless required elsewhere by these rules to maintain a greater minimum net capital.

(4) The Office of Financial Regulation may examine the financial statements, general ledgers, journals, source documents, general correspondence, contracts and other pertinent data and receive testimony from employees of entities associated or affiliated with, or controlling or controlled by, a dealer or investment adviser applicant or registrant.

(5) Any dealer, issuer/dealer or investment adviser who fails to maintain the minimum net capital as required under this rule shall, in addition to the financial reporting requirements set forth in paragraph (2)(a) above, give the Office of Financial Regulation telegraphic or facsimile notice within 24 hours that such entity's net capital is less than required under the rule and immediately suspend business operations. Such entity shall not resume operations unless and until financial statements which verify compliance with this rule have been submitted and approved by the Office of Financial Regulation in writing.

~~(6) The federal regulations referenced in this rule are hereby incorporated by reference and may be obtained by mail from the Florida Office of Financial Regulation, Division of Securities, 200 E. Gaines Street, Tallahassee, Florida 32399. Copies of the Code of Federal Regulation are also available online through the U.S. Government Printing Office via GPO Access: <http://www.gpoaccess.gov/cfr/index.html>.~~

Rulemaking Authority 517.03(1) FS. Law Implemented 517.12(9), (16) FS. History—New 12-5-79, Amended 9-20-82, Formerly 3E-600.16, Amended 10-15-86, 8-1-91, 6-29-93, 11-22-93, Formerly 3E-600.016, Amended 11-22-10,_____.

Proposed Rule Amendment

Rule 69W-600.017

Chapter Name: Registration of Dealers, Investment Advisers, Associated Persons

Title: Customer Protection Rule – Reserve Requirements and Custody of Customer

Funds and Securities

A. Summary and Justification

The proposed amendment to Rule 69W-600.017, F.A.C., The rules are proposed for amendment to update references to incorporated material. The Office of Financial Regulation proposes to consolidate all material incorporated by reference in Chapter 69W, F.A.C. into a new proposed rule 69W-200.002, F.A.C. that conforms with Section 120.54(1)(i), F.S. The proposed amendments would reference 69W-200.002, F.A.C., where the material can be accessed via the FAR.

B. Full Text of Proposed Rule

69W-600.017 Customer Protection Rule – Reserve Requirements and Custody of Customer Funds and Securities.

All Dealer applicants and registrants subject to the net capital provisions of subsection 69W-600.016(2), F.A.C., shall be required to prepare and maintain such records and accounts as specified in, and to comply in all other respects with, the provisions of SEC Rule 15c3-3 and Exhibit A (17 C.F.R. § 240.15c3-3 and 240.15c3-3a (2010)), which are incorporated by reference in Rule 69W-200.002, F.A.C. ~~which is hereby incorporated by reference and may be obtained by mail from the Florida Office of Financial Regulation, Division of Securities, 200 E. Gaines Street, Tallahassee, Florida 32399. Copies of the Code of Federal Regulation are also available online through the U.S. Government Printing Office via GPO Access: <http://www.gpoaccess.gov/cfr/index.html>.~~

Rulemaking Authority 517.03(1), 517.12(9), 517.121(2) FS. Law Implemented 517.12(9), 517.121(2) FS. History—New 12-5-79, Formerly 3E-600.17, Amended 6-16-92, Formerly 3E-600.017, Amended 11-22-10,_____.

Proposed Rule Amendment

Rule 69W-600.020

Chapter Name: Registration of Dealers, Investment Advisers, Associated Persons

Title: Continuing Education Requirements.

A. Summary and Justification

Rule 69W-600.020, F.A.C., is proposed for amendment to update references to incorporated material. The Office of Financial Regulation proposes to consolidate all material incorporated by reference in Chapter 69W, F.A.C. into a new proposed rule 69W-200.002, F.A.C. that conforms with Section 120.54(1)(i), F.S. The proposed amendments would reference 69W-200.002, F.A.C., where the material can be accessed via the FAR.

B. Full Text of Proposed Rule

69W-600.020 Continuing Education Requirements.

~~(1)~~ Failure to comply with any of the applicable continuing education requirements set forth in any one of the following shall be deemed a demonstration of unworthiness by a dealer or associated person under Section 517.161(1)(h), F.S.:

~~(1) (a) FINRA Rule 1250 NASD Membership and Registration Rule 1120 of the Financial Industry Regulatory Authority, which is incorporated by reference in Rule 69W-200.002, F.A.C.; as such provisions existed on June 23, 2010;~~

~~(2) (b) Rule 345A of the NYSE MKT LLC, which is incorporated by reference in Rule 69W-200.002, F.A.C. New York Stock Exchange, as such provisions existed on June 23, 2010;~~

~~(3) (c) Rule G-3(h) of the Municipal Securities Rulemaking Board, which is incorporated by reference in Rule 69W-200.002, F.A.C. as such provisions existed on June 23, 2010;~~

~~(4) (d) Rule 341A of the NYSE MKT LLC American Stock Exchange, which is incorporated by reference in Rule 69W-200.002, F.A.C. as such provisions existed on June 23, 2010;~~

~~(5) (e) Article VI, Rule 11 of the Chicago Stock Exchange, which is incorporated by reference in Rule 69W-200.002, F.A.C. as such provisions existed on June 23, 2010;~~

~~(2) The rules of the NASD, New York Stock Exchange, Municipal Securities Rulemaking Board, American Stock Exchange and Chicago Stock Exchange referenced in this rule are hereby incorporated by reference and may be obtained by mail from Florida Office of Financial Regulation, Division of Securities, 200 E. Gaines Street, Tallahassee, Florida 32399.~~

Rulemaking Authority 517.03(1) FS. Law Implemented 517.12(18), 517.161(1) FS. History—New 12-21-95, Amended 8-19-99, 10-30-03, Formerly 3E-600.020, Amended 11-22-10,_____.

Proposed Rule Amendment

Rule 69W-700.002

Chapter Name: Registration of Securities

Title: Filing of Prospectus

A. Summary and Justification

Rule 69W-700.002, F.A.C., is proposed for amendment to update references to incorporated material. The Office of Financial Regulation proposes to consolidate all material incorporated by reference in Chapter 69W, F.A.C. into a new proposed rule 69W-200.002, F.A.C. that conforms with Section 120.54(1)(i), F.S. The proposed amendments would reference 69W-200.002, F.A.C., where the material can be accessed via the FAR.

B. Full Text of Proposed Rule

69W-700.002 Filing of Prospectus.

(1) An applicant for registration of securities must file a related prospectus containing significant information about the issuer and the offering so that the Office of Financial Regulation may ascertain if the proposed offering meets the requirements of Chapter 517, F.S. Such prospectus must be in the hands of a prospective purchaser prior to the consummation of the sale of any securities thereof and every prospectus must carry the following information shown boldly on the outside cover: "THESE SECURITIES HAVE BEEN REGISTERED BY THE STATE OF FLORIDA, OFFICE OF FINANCIAL REGULATION, AS HAVING COMPLIED WITH CHAPTER 517, F.S. THE OFFICE OF FINANCIAL REGULATION HAS NOT PASSED UPON THE ACCURACY OR ADEQUACY OF THIS PROSPECTUS, AND SUCH REGISTRATION DOES NOT CONSTITUTE A RECOMMENDATION OF THE SECURITIES FOR INVESTMENT PURPOSES."

(2) Any prospectus which depicts the United States Securities and Exchange Commission's statement pursuant to a registration statement filed under the Securities Act of 1933 or a letter of notification under Regulation A of the Securities Act of 1933 (17 C.F.R. §§ 230.251 through 230.263 (2010)), which is incorporated by reference in Rule 69W-200.002, F.A.C., will be considered to be in substantial compliance with the requirement of subsection (1) above. ~~The federal regulations referenced in this rule are hereby incorporated by reference and may be obtained by mail from the Florida Office of Financial Regulation, Division of Securities, 200 E.~~

~~Gaines Street, Tallahassee, Florida 32399. Copies of the Code of Federal Regulation are also available online through the U.S. Government Printing Office via GPO Access: <http://www.gpoaccess.gov/cfr/index.html>.~~

Rulemaking Authority 517.03(1) FS. Law Implemented 517.081(3) FS. History—(Formerly 3E-20.01) New 9-20-82, Formerly 3E-700.02, Amended 10-26-97, Formerly 3E-700.002, Amended 11-22-10,___.

Proposed Rule Amendment

Rule 69W-700.014

Chapter Name: Registration of Securities

Title: Real Estate Investment Trusts (REIT)

A. Summary and Justification

Rule 69W-700.014, F.A.C., is proposed for amendment to update references to incorporated material. The Office of Financial Regulation proposes to consolidate all material incorporated by reference in Chapter 69W, F.A.C. into a new proposed rule 69W-200.002, F.A.C. that conforms with Section 120.54(1)(i), F.S. The proposed amendments would reference 69W-200.002, F.A.C., where the material can be accessed via the FAR.

B. Full Text of Proposed Rule

69W-700.014 Real Estate Investment Trusts (REIT).

A Real Estate Investment Trust required to register its securities pursuant to Section 517.081, F.S., must have provisions in its Declaration of Trust, other organizational instruments or prospectus that satisfy the following conditions:

(1) The Trust must have net assets equal to fifteen percent (15%) of the aggregate dollar amount of the securities to be offered to the public, or have \$200,000 of net assets prior to the public offering, whichever is less. Net assets shall mean total invested assets at cost after deducting depreciation reserves, less total liabilities.

(2)(a) Any property or asset purchased or sold in behalf of the Trust in which the Trustees or allied parties have an interest, directly or indirectly, must be so purchased or sold on the basis of independent appraisals of said property or asset; or

(b) Such transaction must be fully described and set out in a registration statement and

prospectus filed with the Office of Financial Regulation prior to the transaction.

(3) The aggregate annual expenses of every character paid or incurred by the Trust, excluding interest, taxes, expenses in connection with the issuance of securities, shareholder relations, and acquisition, operation, maintenance, protection and disposition of Trust properties, but including advisory fees and mortgage servicing fees and all other expenses, shall not exceed the greater of:

(a) One and one-half percent (1 1/2%) of the average net assets of the Trust, net assets being defined as total invested assets at cost before deducting depreciation reserves, less total liabilities, calculated at least quarterly on a basis consistently applied; or

(b) Twenty-five percent (25%) of the net income of the Trust excluding provision for depreciation and realized capital gains and losses and extraordinary items, and before deducting advisory and servicing fees and expenses, calculated at least quarterly on a basis consistently applied; but in no event shall aggregate annual expenses exceed one and one-half percent (1 1/2%) of the total invested assets of the Trust.

(4) The adviser shall reimburse the Trust at least annually for the amount by which aggregate annual expenses paid or incurred by the Trust as defined herein exceed the amounts provided for in subsection (3) above.

(5) The aggregate borrowings of the Trust, secured and unsecured, shall not be unreasonable in relation to the net assets of the Trust and the maximum amount of such borrowings in relation to the net assets shall be stated in the prospectus.

(6) A Trust shall not issue debt securities to the public unless the historical cash flow of the Trust or the substantiated future cash flow of the Trust, excluding extraordinary items, is sufficient to cover fixed charges, including interest.

(7) Any advisory contract entered into by the Trust prior to the initial public offering shall be for a period not longer than three (3) years and such contract entered into thereafter shall be for a period not longer than one (1) year. Any such advisory contract shall provide that it may be terminated at any time without penalty, by the Trustees or majority of the holders of outstanding shares of beneficial interest, upon not less than sixty (60) days written notice to the adviser.

(8) Nothing contained in the Declaration of Trust shall relieve a trustee or agent or representative of the Trust against liability to the Trust or to the beneficiaries for willful misfeasance, gross negligence or bad faith in the conduct of his duties, or for failure to exercise that degree of care which ordinarily prudent men would exercise under the same or similar

circumstances in like employment, having regard to the business of the Trust and the circumstances of each case.

(9) Not less than a majority vote of the beneficiaries or shareholders present in person or by proxy at a special or annual meeting shall be required to:

- (a) Elect successor trustees.
- (b) Remove any trustee.
- (c) Approve termination of the Trust.
- (d) Approve amendment of the Declaration of Trust.

(10) The foregoing listed terms and conditions shall apply unless such term or condition is directly contradictory to the intent of sections 856, 857 and 858 of the Internal Revenue Code of 1954 (26 U.S.C. §§ 856, 857, 858), which are incorporated by reference in Rule 69W-200.002, F.A.C., ~~as amended~~, and applicable ~~or pending~~ rules of the Treasury Department.

Specific Authority 517.03 FS. Law Implemented 517.081(7) FS. History—(Formerly 3E-20.13) New 9-20-82, Formerly 3E-700.14, 3E-700.014, Amended _____.

Proposed Rule Amendment

Rule 69W-700.015

Chapter Name: Registration of Securities

Title: Offering Price of Equity Securities

A. Summary and Justification

Rule 69W-700.015, F.A.C., is proposed for amendment to update references to incorporated material. The Office of Financial Regulation proposes to consolidate all material incorporated by reference in Chapter 69W, F.A.C. into a new proposed rule 69W-200.002, F.A.C. that conforms with Section 120.54(1)(i), F.S. The proposed amendments would reference 69W-200.002, F.A.C., where the material can be accessed via the FAR.

B. Full Text of Proposed Rule

69W-700.015 Offering Price of Equity Securities.

(1) The offering price of securities that an issuer is seeking to register shall not exceed:

- (a) The established market price, for the securities of the same class as that proposed to be

offered; or

(b) A proposed price that reflects a price earnings ratio of securities of similar issuers in the same industry; and further provided that the issuer has a consistent record of earnings for the preceding three (3) fiscal years; or

(c) The proposed offering price established by an underwriter under a firm underwriting commitment, if the underwriter is registered under the Securities Exchange Act of 1934 (15 U.S.C. §§ 78a through 78pp), which is incorporated by reference in Rule 69W-200.002, F.A.C. (~~15 U.S.C. §§ 78a through 78oo (2006 & Supp. III)~~) and has the financial ability to perform its commitment in light of its net capital position. ~~The federal statutes referenced in this rule are hereby incorporated by reference and may be obtained by mail from the Florida Office of Financial Regulation, Division of Securities, 200 E. Gaines Street, Tallahassee, Florida 32399. Copies of the United States Code are also available online through the U.S. House of Representatives, Office of the Law Revision Counsel: <http://uscode.house.gov/download/downloadPDF.shtml>.~~

(2) In offerings where the issuer is in the development phase, or the issuer fails to comply with subsection (1) of this rule:

(a) The offering price shall not exceed five (5) times the book value of the company; and

(b) The issuance of such securities being registered shall not have dilution greater than fifty percent (50%).

(3) In offerings where the issuer is complying with the registration provisions of Section 517.081(3)(g)2., F.S., and Rule 69W-700.028, F.A.C., the Office of Financial Regulation shall allow the offering to be offered and sold at a minimum of \$5 per share provided that all promotional securities are escrowed.

(4) As a condition to registration, the Office of Financial Regulation shall require an escrow of all promotional securities issued where the Office of Financial Regulation determines that the promoters are unfairly benefiting at the expense of the public shareholders. The escrow agreement shall comply with Section 517.181, F.S., on Form OFR-S-14-97, SCOR (Small Corporate Offering Registration) Application to Register Securities, which is incorporated by reference in subsection 69W-301.002(7), F.A.C., and shall include but not be limited to the following:

(a) The escrow agent depository shall be limited to state banks with trust powers, trust companies, and national banks with trust powers which are located within the United States or any territory or insular possession thereof.

(b) The owners of such stock shall not be entitled to sell or transfer the stock or withdraw the stock from escrow until the issuer has submitted financial statements prepared in accordance with subsection 69W-300.002(6), F.A.C., evidencing that the issuer has net earnings, after tax and before extraordinary items, based on the shares to be outstanding after a successful completion of the offering of five percent (5%) of the public offering price for two (2) consecutive fiscal years, or ten percent (10%) for one (1) fiscal year, following the public offering.

(c) The maximum length of time for shares escrowed shall be five (5) years from the date of completion of the offering at which time the escrow agreement shall automatically be terminated and the shares released.

(d) When the offering fails to raise the minimum amount as set forth in the prospectus and the proceeds collected are returned to investors as prescribed in Rule 69W-700.009, F.A.C., all shares held in escrow shall be released and the escrow agreement terminated.

Rulemaking Authority 517.03(1) FS. Law Implemented 517.081(3), (7) FS. History—(Formerly 3E-20.15) New 9-20-82, Formerly 3E-700.15, Amended 11-30-97, Formerly 3E-700.015, Amended 11-22-10,_____.

Proposed Rule Amendment

Rule 69W-800.001

Chapter Name: Notification Registration of Securities

Title: Notification Registration Including Shelf Filings

A. Summary and Justification

Rule 69W-800.001, F.A.C., is proposed for amendment to update references to incorporated material. The Office of Financial Regulation proposes to consolidate all material incorporated by reference in Chapter 69W, F.A.C. into a new proposed rule 69W-200.002, F.A.C. that conforms with Section 120.54(1)(i), F.S. The proposed amendment would reference 69W-200.002, F.A.C., where the material can be accessed via the FAR.

B. Full Text of Proposed Rule

69W-800.001 Filing – Notification Registration Including Shelf Filings.

(1) An application for Notification Registration or a shelf filing not in conflict with the

provisions of Section 517.082(3), F.S., shall be filed on Form OFR-S-3-91, Notification Registration, and Form U-1, Uniform Application to Register Securities, which are hereby incorporated by reference in subsection 69W-301.002(7), F.A.C. The application shall include:

(a) One (1) copy of the initial registration statement as filed with the United States Securities and Exchange Commission unless effective upon filing with the Office of Financial Regulation;

(b) An irrevocable written Uniform Consent to Service of Process, Form U-2 or Form OFR-S-5-91 and Uniform Corporate Resolution, Form U-2A or Form OFR-S-6-91, which are incorporated by reference in subsection 69W-301.002(7), F.A.C., as described in Section 517.101, F.S. It shall be the choice of the applicant to file either the Form U-2 or the Form OFR-S-5-91, either of which are acceptable to the office. It shall also be the choice of the applicant to file either the Form U-2A or Form OFR-S-6-91;

(c) Payment of the statutory fee as required in Section 517.082, F.S.;

(d) One (1) copy of the final pricing amendment/final prospectus as per the effective registration date with the Securities and Exchange Commission, except for Shelf Registration offerings to be made on a delayed or continuous basis pursuant to SEC Rule 415 (17 C.F.R. § 230.415 (2010)), which is incorporated by reference in Rule 69W-200.002, F.A.C. ~~and may be obtained by mail from the Florida Office of Financial Regulation, Division of Securities, 200 E. Gaines Street, Tallahassee, Florida 32399;~~ and

(e) Unless specifically requested by the Office of Financial Regulation, sales reports will not be required for securities offered or sold pursuant to Section 517.082, F.S.

(2) Exhibits which are required may not be incorporated by reference to previous filings.

(3) It shall not be the policy of the Office of Financial Regulation to issue status reports of an application filed unless the Office of Financial Regulation deems it necessary to issue such information.

(4) Electronic notification of effective registration with the SEC shall be filed within ten (10) business days from the date federal registration is granted if such registration was pending with the SEC at the time the notification application was filed.

(5) Should all documents required under this rule not be furnished to the Office of Financial Regulation within 60 days of the date of the effective federal registration, the Office of Financial Regulation shall deem the registration to be subject to revocation.

(6) Any application found to contain a material false statement shall be subject to

administrative action by the Office of Financial Regulation.

Rulemaking Authority 517.03(1) FS. Law Implemented 517.082 FS. History—New 10-15-86, Amended 12-8-87, 7-31-91, 10-1-96, 10-20-97, Formerly 3E-800.001, Amended 11-22-10, 10-29-12,_____.

Proposed Rule Amendment

Rule 69W-900.001

Chapter Name: Disclosure of Business Activities in Cuba

Title: Disclosure of Business Activities in Cuba

A. Summary and Justification

Rule 69W-900.001, F.A.C., is proposed for amendment to update references to incorporated material. The Office of Financial Regulation proposes to consolidate all material incorporated by reference in Chapter 69W, F.A.C. into a new proposed rule 69W-200.002, F.A.C. that conforms with Section 120.54(1)(i), F.S. The proposed amendment would reference 69W-200.002, F.A.C., where the material can be accessed via the FAR.

B. Full Text of Proposed Rule

69W-900.001 Disclosure of Business Activities in Cuba.

(1) For purposes of Section 517.075, F.S., a prospectus shall be defined as:

(a) A final prospectus containing the information required by Section 10(a) of the Securities Act of 1933 (15 U.S.C. § 77j(a) ~~(2006 & Supp. III)~~), which is incorporated by reference in Rule 69W-200.002, F.A.C. for securities registered pursuant to Section 517.082, F.S.; or

(b) A final prospectus in the form prescribed by Rule 69W-700.003, F.A.C., for securities registered pursuant to Section 517.081, F.S.

(c) The term prospectus shall not include amendments or supplements to a prospectus that is part of a registration statement filed with the Securities and Exchange Commission under Rule 415 of the Securities Act of 1933 (17 C.F.R. § 230.415 ~~(2010)~~), which is incorporated by reference in Rule 69W-200.002, F.A.C.

~~(d) The federal regulations and federal statutes referenced in this subsection are hereby incorporated by reference and may be obtained by mail from the Florida Office of Financial~~

~~Regulation, Division of Securities, 200 E. Gaines Street, Tallahassee, Florida 32399. Copies of the United States Code are also available online through the U.S. House of Representatives, Office of the Law Revision Counsel: <http://uscode.house.gov/download/downloadPDF.shtml>. Copies of the Code of Federal Regulation are also available online through the U.S. Government Printing Office via GPO Access: <http://www.gpoaccess.gov/cfr/index.html>.~~

(2) The disclosure and notice requirements of Section 517.075, F.S., apply only to issuers filing initial or renewal applications for securities registration pursuant to Section 517.081 or 517.082, F.S., on or subsequent to April 10, 1992, who:

- (a) Conduct business or have affiliates who conduct business in or with Cuba;
- (b) Commence doing business in or with Cuba after the issuer's securities become effective with the Office of Financial Regulation; or
- (c) Are required by Florida Law to report a material change in information previously reported regarding business conducted in or with Cuba.

(3) The Office of Financial Regulation's CUBA FORM, which is incorporated by reference in subsection 69W-301.002(7), F.A.C., and available from the Office of Financial Regulation, shall be used to notify the Office of Financial Regulation of any business or change in business as required by subsection (3) of Section 517.075, F.S.

(a) When required by Section 517.075, F.S., such form shall be filed with the Office of Financial Regulation.

(b) The obligation to provide updated information required by Section 517.075(3), F.S., shall terminate when the distribution of the securities has been completed.

Rulemaking Authority 517.075 FS. Law Implemented 517.075 FS. History—New 8-17-92, Formerly 3E-900.001, Amended 11-22-10,_____.

Proposed Rule Amendment

Rule 69W-700.001

Chapter Name: Registration of Securities

Title: Registration of Securities

A. Summary and Justification

Rule 69W-700.001, F.A.C., is proposed for amendment to update the rules relating to the registration of securities to clearly state the forms required for the registration of securities.

B. Full Text of Proposed Rule

69W-700.001 Registration of Securities.

(1) An applicant for registration of securities pursuant to Section 517.081, F.S., shall comply with the rules contained in Chapter 69W-700, F.A.C., and shall use the below forms which are incorporated by reference in subsection 69W-301.002(7), F.A.C.:

(a) Form OFR-S-1-91, Application for Registration of Securities or Form OFR-S-12-97, SCOR (Small Corporate Offering Registration) Application to Register Securities;

(b) OFR-S-7-91, Exhibit 1 (General Issue);

(c) An irrevocable written Uniform Consent to Service of Process, Form U-2 or Form OFR-S-5-91;

(d) Uniform Corporate Resolution, Form U-2A or Form OFR-S-6-91, which are incorporated by reference.

~~the forms described in subsection 69W-301.002(7), F.A.C.~~

(2) No change.

Rulemaking Authority 517.03 FS. Law Implemented 517.081(3) FS. History—(Formerly 3E-20.011) New 9-20-82, Formerly 3E-700.01, Amended 7-31-91, Formerly 3E-700.001. Amended_____.

Proposed Rule Amendment

Rule 69W-700.002

Chapter Name: Registration of Securities

Title: Filing of Prospectus

A. Summary and Justification

Rule 69W-700.002, F.A.C., is proposed for amendment to update the rules relating to the registration of securities. Specifically, the proposed amendment to 69W-700.002, F.A.C., adds a

provision from 69W-700.028, F.A.C., relating to a form incorporated by reference, allowing for repeal of 69W-700.0028, F.A.C.

B. Full Text of Proposed Rule

69W-700.002 Filing of Prospectus.

(1) No change.

(2) Any prospectus which depicts the United States Securities and Exchange Commission's statement pursuant to a registration statement filed under the Securities Act of 1933, ~~or~~ a letter of notification under Regulation A of the Securities Act of 1933 (17 C.F.R. §§ 230.251 through 230.263 (2010)) or Form U-7, Small Corporate Offering Registration, will be considered to be in substantial compliance with the requirement of subsection (1) above. The federal regulations referenced in this rule are hereby incorporated by reference and may be obtained by mail from the Florida Office of Financial Regulation, Division of Securities, 200 E. Gaines Street, Tallahassee, Florida 32399. Copies of the Code of Federal Regulation are also available online through the U.S. Government Printing Office via GPO Access: <http://www.gpoaccess.gov/cfr/index.html>.

Rulemaking Authority 517.03(1) FS. Law Implemented 517.081(3) FS. History—(Formerly 3E-20.01) New 9-20-82, Formerly 3E-700.02, Amended 10-26-97, Formerly 3E-700.002, Amended 11-22-10,_____.

Proposed Rule Amendment

Rule 69W-700.005

Chapter Name: Registration of Securities

Title: Promoters Equity Investment Ratio

A. Summary and Justification

Rule 69W-700.005, F.A.C., is proposed for amendment to update the rules relating to the registration of securities. Specifically, the proposed amendment broadens the rule to include all types of offerings and increases investor protections by including more types of offerings under this rule.

B. Full Text of Proposed Rule

69W-700.005 Promoters Equity Investment Ratio.

(1) In ~~corporate~~ offerings where the issuer is in a development stage, the ratio of equity investment by promoters or insiders to the aggregate public offering shall be no less than:

- (a) Ten percent (10%) of the first \$1,000,000 of the aggregate public offering; and
- (b) Seven percent (7%) of the next \$500,000 of the aggregate public offering; and
- (c) Five percent (5%) of the next \$500,000 of the aggregate public offering; and
- (d) Two and one-half percent (2 1/2%) of the balance over \$2,000,000.

~~(2) Contributions of intangible assets may not be considered as promoters equity, however, any earned surplus that had been accumulated, but not paid out as dividends, shall be counted as promoters equity.~~

~~(3) In all limited partnership offerings, the following will be acceptable in lieu of a 15% ratio of equity investment:~~

~~(a) In order that a general partner(s) be sufficiently capitalized to indicate the ability to perform the commitments which are made in regard to such programs, the net worth of the individual general partner(s), excluding home, home furnishings and automobile or the net worth of the corporate general partner(s), must be equal to 15% of the aggregate amount of limited partnership interests to be sold with a maximum net worth requirement of \$250,000. The net worth of a general partner(s) shall be revealed by a balance sheet prepared by an independent certified public accountant in accordance with United States generally accepted accounting principles as prescribed in Rule 69W 300.002, F.A.C. The general partner(s) shall make a direct investment, net of commissions, in the limited partnership(s) equal to 5% of the aggregate amount of limited partnership interests to be sold with a maximum participation requirement of \$100,000. The required participation may be reduced by 10% of the general partner(s) net worth in excess of the amount required.~~

~~(b) In the alternative, to paragraph (a) of this subsection, the general partner(s) may make a direct investment, net of commissions, in the limited partnership equal to 10% of the amount paid, or to be paid, into the partnership by the limited partners with a maximum participation requirement of \$100,000.~~

~~(c) The election as to compliance with paragraph (a) or (b) must be made by the general partner(s) prior to effectiveness in Florida and shall be binding thereafter unless the Office of~~

~~Financial Regulation consents to a change from paragraph (a) or (b).~~

~~(d) In a series of limited partnerships, the general partner(s) shall spread the required participation figure as equitably among the partnerships to be formed as possible.~~

Rulemaking Authority 517.03(1) FS. Law Implemented 517.081(3), (7) FS. History—(Formerly 3E-20.03) New 9-20-82, Formerly 3E-700.05, Amended 10-26-97, Formerly 3E-700.005, Amended 5-15-07,_____.

Proposed Rule Amendment

Rule 69W-700.006

Chapter Name: Registration of Securities

Title: Voting Rights

A. Summary and Justification

Rule 69W-700.006, F.A.C., is proposed for amendment to update the rules relating to the registration of securities. Specifically, the proposed amendment allows companies to determine voting rights of common stock when coupled with adequate disclosure and provides disclosure protections which allow the decision making to be on the investor rather than the Office exercising is discretion.

B. Full Text of Proposed Rule

69W-700.006 Voting Rights.

(1) Registration involving the sale of non-voting common stock or other equity security interests will not be permitted unless:

~~(a) The corporation is not a “development stage entity” as defined in Rule 69W-200.001, F.A.C.; and~~

~~(a) (b) The cover of the Disclosure Document includes a specific warning and a cross reference to a specific, appropriate risk factor; and Dividend rights on voting and non-voting stock are equal per share; and~~

~~(b) (e) Full and complete disclosure is made to the prospective purchaser and imprinted on the cover of the prospectus in bold face type in a contrasting color is the following notation: “THESE SECURITIES DO NOT ENTITLE THE HOLDER THEREOF TO VOTE.”~~

~~(d) Registration may not be granted for the sale of equity securities of which the voting ratio is inequitable, considering the offering price and voting rights of the outstanding equity securities at the time of filing an application for registration.~~

~~(2) Registration involving the sale of limited partnership interests will not be allowed unless:~~

~~(a) Meetings of the limited partnership may be called by the general partner(s) or the limited partner(s) holding more than 10% of the then outstanding limited partnership interests, for any matters for which the partners may vote as set forth in the limited partnership agreement.~~

~~(b) To the extent the law of the state in question is not inconsistent, the limited partnership agreement must provide that a majority of the then outstanding limited partnership interests may, without the necessity for concurrence by the general partner, vote to:~~

- ~~1. Amend the limited partnership agreement;~~
- ~~2. Dissolve the partnership;~~
- ~~3. Remove the general partner and elect a new general partner; or~~
- ~~4. Approve or disapprove the sale of all or substantially all of the assets of the partnership.~~

Rulemaking Authority 517.03 FS. Law Implemented 517.081(7) FS. History—New 9-20-82, Formerly 3E-700.06, Amended 10-14-90, Formerly 3E-700.006. Amended, _____.

Proposed Rule Amendment

Rule 69W-700.007

Chapter Name: Registration of Securities

Title: Options or Warrants Granted Underwriters

A. Summary and Justification

Rule 69W-700.007, F.A.C., is proposed for amendment to update the rules relating to the registration of securities. Specifically, the proposed amendment provides greater investor protections by forbidding the transfer of options and warrants to anyone outside of the underwriter at any time and limiting the number of shares to 10% of the shares actually sold rather than the shares being offered. The proposed amendment also removes unlimited discretion of the Office.

B. Full Text of Proposed Rule

69W-700.007 Options or Warrants Granted Underwriters.

The Office of Financial Regulation will permit the registration of securities where options or warrants are granted to underwriters only on the condition that such options or warrants meet the criteria set forth in subsections (1) through (6) hereafter:

(1)(a) They are issued to the underwriters under a firm underwriting agreement; or

(b) They are issued in connection with a best efforts underwriting only when the entire issue is sold, provided however, that options or warrants may be issued in connection with a minimum-maximum offering only if the amount of options or warrants to be issued to the underwriters is pro-rated in accordance with the amount of the underwriting which is sold; and

(c) Option or warrants may not be transferred, except:

1. To partners of the underwriter, if the underwriter is a partnership;

2. To officers and employees of the underwriter, who are also shareholders of the underwriter, if the underwriter is a corporation; or

3. By will, under the laws of descent and distribution, or by operation of law.

~~The options or warrants may not be assignable or transferable for a period of one (1) year from the date of issuance except to partners of the underwriters when the underwriter is a partnership, and officers or directors of the underwriters when the underwriter is a corporation.~~

(2) The number of shares covered by the underwriter's options or warrants must not exceed ten percent (10%) of the shares of common stock actually sold in the public offering. ~~The number of shares covered by the warrants or options do not exceed 10% of the shares being offered to the public in the offering under consideration.~~

(3) The initial exercise price of the options or warrants is at least equal to the public offering price with a "step-up" of the exercise price of 7% each year they are outstanding, or in the alternative, an overall 20% step-up. The step-up shall commence twelve (12) months after the grant of the option or warrant. The election as to the step-up rate must be made at the time the option or warrant is issued.

(4) The options or warrants do not exceed five (5) years in duration and are exercisable no sooner than twelve (12) ~~eleven (11)~~ months after issuance.

~~(5) When the options or warrants are issued by a relatively small company in the promotional stage it must appear from all the facts and circumstances that the issuance of such options is~~

~~necessary to obtain competent investment banking service, provided that the direct commissions to the underwriters are lower than the usual and customary commissions would be in absence of such options.~~

~~(5) (6)~~ The prospectus used in connection with the offering fully discloses the terms and the reason for the issuance of such options or warrants; provided that if such reason relates to future advisory services to be performed by the underwriter without compensation in consideration for the issuance of such options or warrants, a statement to that effect is placed in the prospectus.

~~(6) (7)~~ It is hereby established that 20% of the original public offering price per security of the issue multiplied by the number of securities the underwriters have the right to purchase under the options or warrants shall be included by the Office of Financial Regulation in considering the overall cost limitation of the issue.

Rulemaking Authority 517.03 FS. Law Implemented 517.081(7) FS. History—(Formerly 3E-20.06) New 9-20-82, Formerly 3E-700.07, 3E-700.007. Amended, _____.

Proposed Rule Amendment

Rule 69W-700.008

Chapter Name: Registration of Securities

Title: Options and Warrants to Officers, Employees and Others

A. Summary and Justification

Rule 69W-700.008, F.A.C., is proposed for amendment to update the rules relating to the registration of securities. Specifically, the proposed amendment removes discretion of the Office and defines parameters to provide better investor protections.

B. Full Text of Proposed Rule

69W-700.008 Options and Warrants to Officers, Employees and Others.

The Office of Financial Regulation will permit the registration of securities where options and warrants are granted to officers, employees and others only on the condition that such options or warrants meet the criteria set forth below.

(1) An issuer may not grant options or warrants at an exercise price that is less than 85% of the

~~fair market value of the issuer's underlying shares of common stock or similar securities on the date of grant. The number of shares, issued or reserved for issuance, covered by options and warrants shall be reasonable in number and the exercise price of such options and warrants shall not be less than fair market value at the date of granting. In the event such warrants and options exceed 10% of the shares to be outstanding upon completion of the offering, the issuer shall submit a written analysis supporting the reasonableness of the issuer's warrant and option policy.~~

~~(2) Limitations on the Total Number of Options and Warrants. Options or warrants issued in connection with private placement financing arrangements made by the issuer may be excluded from the 10% computation if the exercise price of the warrant or option is not less than fair market value at time of issuance and the following conditions are met:~~

~~(a) For one year following the effective date of the offering, the total number of options and warrants that the issuer may issue or reserve for issuance may not exceed 15% of the sum of the issuer's common stock outstanding at the date of the public offering plus: The options or warrants are issued contemporaneously with the issuance of the evidence of indebtedness of the loan and expire no later than the final maturity date of the loan;~~

~~1. The number of firmly underwritten shares being offered, or~~

~~2. The number of shares required to meet the minimum offering amount, if not firmly underwritten.~~

~~(b) The calculation in paragraph (a) excludes options and warrants that: The options or warrants are issued as a result of a bona fide negotiation between the issuer and parties not affiliated with the issuer;~~

~~1. The issuer issued or reserved for issuance to an unaffiliated "institutional investor" as defined in Section 102(11) of the Uniform Securities Act of 2002, or a "business development company" as defined in Section 2(a)(48) of the Investment Company Act of 1940 (15 U.S.C. § 80a-(2)(a)(48), in connection with a loan if:~~

~~a. The options or warrants are issued at the same time as the loan;~~

~~b. The options or warrants are issued as the result of negotiations between the issuer and the an unaffiliated "institutional investor" as defined in Section 102(11) of the Uniform Securities Act of 2002, or a "business development company" as defined in Section 2(a)(48) of the Investment Company Act of 1940 (15 U.S.C. § 80a-(2)(a)(48);~~

~~c. The exercise price of the options or warrants is not less than the fair market value of the~~

issuer's common stock or similar securities underlying the options or warrants on the date the loan was approved; and

d. The number of shares that can be issued on exercise of the options or warrants multiplied by the options or warrants' exercise price does not exceed the face amount of the loan.

3. In connection with acquisitions, reorganizations, consolidations, or mergers, if:

a. The options or warrants are issued to persons that are unaffiliated with the issuer; and

b. Exercising the options or warrants will not materially dilute the issuer's earnings at the time of grant after giving effect to the acquisition, reorganization, consolidation or merger.

4. The issuer issued or reserved for issuance to employees or consultants who are not promoters under an incentive stock option plan under Section 422 of the Internal Revenue Code; or

5. A person may exercise at or above the offering price for public investors.

~~(c) The options or warrants are issued to obtain favorable financing arrangements in a private placement financing with persons not affiliated with the issuer; and~~

~~(d) The number of shares issuable upon exercise of the options or warrants multiplied by the exercise price thereof does not exceed the face amount of the loan.~~

(3) Options and warrants issued in connection with acquisitions, reorganizations, consolidations or mergers may be excluded in determining the reasonableness of the number of shares covered by warrants and options if they are issued to parties not affiliated with the issuer. In the event the earnings per share of the issuer would be diluted in excess of 10% by the issuance of shares upon exercise of such options and warrants, the issuer shall disclose such dilution as a specific risk factor in the Disclosure Document. ~~submit an analysis upholding the reasonableness of the issuance of such options or warrants.~~

(4) The federal statute cited in this rule is hereby incorporated by reference. Copies of the United States Code are available online through the U.S. House of Representatives, Office of the Law Revision Counsel: <http://uscode.house.gov/download/downloadPDF.shtml>. The Uniform Securities Act of 2002 cited in this rule is hereby incorporated by reference. Copies of the Uniform Securities Act of 2002 are available online through the American Bar Association: <http://apps.americanbar.org/buslaw/newsletter/0009/materials/uniformsecure.pdf>.

~~The requirements of this rule shall apply to applications for registration of equity securities or securities convertible into equity securities. In the event that a written analysis supporting the reasonableness of a warrant and option policy is unacceptable, the Office of Financial Regulation~~

~~may disregard the number of shares reserved for issuance covered by options and warrants if it is stated in the prospectus that the issuer will not grant options or warrants to purchase shares which would result in their being outstanding options or warrants covering a total of shares in excess of 10% of the then outstanding shares.~~

Rulemaking Authority 517.03 FS. Law Implemented 517.03, 517.081(5); (7) FS. History—(Formerly 3E-20.07) New 9-20-82, Formerly 3E-700.08, 3E-700.008. Amended, _____.

Proposed Rule Amendment

Rule 69W-700.010

Chapter Name: Registration of Securities

Title: Preferred Stock or Debt Securities

A. Summary and Justification

Rule 69W-700.010, F.A.C., is proposed for amendment to update the rules relating to the registration of securities. Specifically, the proposed amendment removes discretion of the Office and removes provisions that are duplicative of statute.

B. Full Text of Proposed Rule

69W-700.010 Preferred Stock or Debt Securities.

~~Issuers in a promotional or development phase will not normally qualify to issue preferred stock or debt securities.~~

(1) No change.

(2) No change.

(3) No change.

(4) No change.

~~(5) All debt securities issued by a corporation, which corporation was created by a spin-off or was separately chartered as a wholly owned subsidiary of a listed company, will be considered on its own merits by the Office of Financial Regulation.~~

Rulemaking Authority 517.03 FS. Law Implemented 517.081(7) FS. History—(Formerly 3E-20.09)

New 9-20-82, Formerly 3E-700.10, 3E-700.010. Amended.

Proposed Rule Amendment

Rule 69W-700.015

Chapter Name: Registration of Securities

Title: Offering Price of Equity Securities

A. Summary and Justification

Rule 69W-700.015, F.A.C., is proposed for amendment to update the rules relating to the registration of securities. Specifically, the proposed amendment incorporates the contents of and removes a cross-reference to 69W-700.028, F.A.C., as this rule is being proposed for repeal. The proposed amendment also removes discretion of the Office and adds disclosure language.

B. Full Text of Proposed Rule

69W-700.015 Offering Price of Equity Securities.

(1) The offering price of securities that an issuer is seeking to register shall not exceed:

(a) The established market price, for the securities of the same class as that proposed to be offered; or

(b) A proposed price that reflects a price earnings ratio of securities of similar issuers in the same industry; and further provided that the issuer has a consistent record of earnings for the preceding three (3) fiscal years; or

(c) The proposed offering price established by an underwriter under a firm underwriting commitment, if the underwriter is registered under the Securities Exchange Act of 1934 (15 U.S.C. §§ 78a through 78oo (2006 & Supp. III)) and has the financial ability to perform its commitment in light of its net capital position. The federal statutes referenced in this rule are hereby incorporated by reference and may be obtained by mail from the Florida Office of Financial Regulation, Division of Securities, 200 E. Gaines Street, Tallahassee, Florida 32399. Copies of the United States Code are also available online through the U.S. House of Representatives, Office of the Law Revision Counsel: <http://uscode.house.gov/download/downloadPDF.shtml>.

(2) In offerings where the issuer is in the development phase, or the issuer fails to comply with

subsection (1) of this rule; a specific risk factor entitled “Immediate Substantial Dilution” in the Disclosure Document stating the book value per share before and after completion of the offering and the dilution percentage to purchasers of the offering.

~~(a) The offering price shall not exceed five (5) times the book value of the company; and~~

~~(b) The issuance of such securities being registered shall not have dilution greater than fifty percent (50%).~~

(3) In offerings where the issuer is complying with the registration provisions of Section 517.081(3)(g)2., and F.S., Rule 69W-700.002(2) ~~Rule 69W-700.028~~, F.A.C., the Office of Financial Regulation shall allow the offering to be offered and sold at a minimum of \$5 per share provided that all promotional securities are escrowed.

~~(4) As a condition to registration, the Office of Financial Regulation shall require an escrow of all promotional securities issued where the Office of Financial Regulation determines that the promoters are unfairly benefiting at the expense of the public shareholders. The escrow agreement shall comply with Section 517.181, F.S., on Form OFR-S-14-97, SCOR (Small Corporate Offering Registration) Application to Register Securities, which is incorporated by reference in subsection 69W-301.002(7), F.A.C., and shall include but not be limited to the following:~~

~~(a) The escrow agent depository shall be limited to state banks with trust powers, trust companies, and national banks with trust powers which are located within the United States or any territory or insular possession thereof.~~

~~(b) The owners of such stock shall not be entitled to sell or transfer the stock or withdraw the stock from escrow until the issuer has submitted financial statements prepared in accordance with subsection 69W-300.002(6), F.A.C., evidencing that the issuer has net earnings, after tax and before extraordinary items, based on the shares to be outstanding after a successful completion of the offering of five percent (5%) of the public offering price for two (2) consecutive fiscal years, or ten percent (10%) for one (1) fiscal year, following the public offering.~~

~~(c) The maximum length of time for shares escrowed shall be five (5) years from the date of completion of the offering at which time the escrow agreement shall automatically be terminated and the shares released.~~

~~(d) When the offering fails to raise the minimum amount as set forth in the prospectus and the proceeds collected are returned to investors as prescribed in Rule 69W-700.009, F.A.C., all shares held in escrow shall be released and the escrow agreement terminated.~~

Rulemaking Authority 517.03(1) FS. Law Implemented 517.081(3), (7) FS. History—(Formerly 3E-20.15) New 9-20-82, Formerly 3E-700.15, Amended 11-30-97, Formerly 3E-700.015, Amended 11-22-10,_____.

Proposed Rule Amendment

Rule 69W-700.026

Chapter Name: Registration of Securities

Title: Unsound Financial Condition

A. Summary and Justification

Rule 69W-700.026, F.A.C., is proposed for amendment to update the rules relating to the registration of securities.

B. Full Text of Proposed Rule

69W-700.026 Unsound Financial Condition.

(1) Registration of an issuer may not be permitted if the financial statements demonstrate the issuer to have an unsound financial condition.

(2)~~(a)~~ Such unsound financial condition is determined by:

~~(b) An explanatory paragraph in the independent auditor's report or in a footnote to the financial statements regarding the issuer's ability to continue as a going concern; and~~

~~(a) 1. An accumulated deficit; or~~

~~(b) 2. Negative shareholders equity; or~~

~~(c) 3. An inability to satisfy current obligations as they become due; or~~

~~(d) 4. Negative cash flow; (or revenues not being generated from operations, but from financing and borrowing activities.) or~~

(e) Financial statements that include a footnote or explanatory paragraph in the independent auditor's report regarding the issuer's ability to continue as a going concern.

Rulemaking Authority 517.03(1) FS. Law Implemented 517.081(3), (7) FS. History—New 10-26-97, Formerly 3E-700.026. Amended,_____.

Proposed Rule Amendment

Rule 69W-700.028

Chapter Name: Registration of Securities

Title: Unsound Financial Condition

A. Summary and Justification

Rule 69W-700.028, F.A.C., is proposed for repeal to update the rules relating to the registration of securities. The Office of Financial Regulation proposes repeal of rule 69W-700.028, F.A.C., which moves part of the proposed repealed rule to 69W-700.001(2) and 69W-700.002(2), F.A.C. The remainder of the rule is duplicative of other rules and statutes.

B. Full Text of Proposed Rule

69W-700.028 Small Corporate Offering Registration (“SCOR” Offering).

Rulemaking Authority 517.03(1) FS. Law Implemented 517.081(3), (7) FS. History—New 11-30-97, Formerly 3E-700.028, Amended 11-22-10. Repealed.