

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

<http://www.flofr.com/StaticPages/NoticesOfPublicMeetingsHearingsAndWorkshops.htm>

August 19, 2014

MEMBERS

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

Contact: Meredith Stanfield
Legislative and Cabinet Affairs Director (OFR)
(850) 410-9544

9:00 A.M.
LL-03, The Capitol
Tallahassee, Florida

John Kim
Attorney, Division of Securities (OFR)
(850) 410-9781

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

1. The Office requests approval of the minutes of the May 13, 2014 meeting.

(ATTACHMENT 1)

FOR APPROVAL

2. **Securities:** The Office requests approval to file for adoption rule amendments to 25 rules to update materials incorporated by reference in Chapter 69W, Florida Administrative Code relating to securities regulation, one new rule (69W-200.002, F.A.C.) to update the method by which materials are incorporated by reference in Chapter 69W, F.A.C., and rule amendments to 10 rules amending 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, F.A.C.
- Registration of Securities: 69W-700.001, .002, .005, .006, .007, .008, .010, .014, .015, .026, .028, F.A.C.
- Notification Registration of Securities: 69W-800.001, F.A.C.
- Disclosure of Business Activities in Cuba: 69W-900.001, F.A.C.

(ATTACHMENT 2)

APPROVAL FOR FINAL ADOPTION

ATTACHMENT 1

STATE OF FLORIDA

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

IN RE: MEETING OF THE GOVERNOR AND
CABINET

_____ /

CABINET MEMBERS: GOVERNOR RICK SCOTT
ATTORNEY GENERAL PAM BONDI
CHIEF FINANCIAL OFFICER JEFF
ATWATER
COMMISSIONER OF AGRICULTURE
ADAM PUTNAM

DATE: TUESDAY, MAY 13, 2014

LOCATION: CABINET MEETING ROOM
LOWER LEVEL, THE CAPITOL
TALLAHASSEE, FLORIDA

REPORTED BY: NANCY S. METZKE, RPR, FPR
COURT REPORTER

C & N REPORTERS
POST OFFICE BOX 3093
TALLAHASSEE, FLORIDA 32315-3093
(850) 697-8314 / FAX (850) 697-8715
nancy@metzke.com
candnreporters.com

INDEX

PAGE NO.

State Board of Administration
 By Director Williams 4

Department of Veterans Affairs
 By Director Prendergast 7

Office of Financial Regulation
 By Commissioner Breakspear 18

Board of Trustees
 By Secretary Vinyard 20

Power Plant Siting Board
 By Secretary Vinyard 39

* * * *

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

OFFICE OF FINANCIAL REGULATION

1
2
3 GOVERNOR SCOTT: I'd now like to recognize
4 Drew Breakspear, Commissioner of the Office of
5 Financial Regulation, to present his agenda.

6 Good afternoon.

7 COMMISSIONER BREAKSPEAR: Good afternoon
8 Governor Scott, Attorney General Bondi,
9 CFO Atwater, and Commissioner Putnam.

10 Two items today, the first is the Office
11 requests the approval of the minutes of the
12 November 19th, 2013, meeting.

13 GOVERNOR SCOTT: Is there a motion to approve?

14 COMMISSIONER PUTNAM: So move.

15 GOVERNOR SCOTT: Is there a second?

16 CFO ATWATER: Second.

17 GOVERNOR SCOTT: Moved and seconded, show the
18 minutes approved without objection.

19 COMMISSIONER BREAKSPEAR: The Second item, the
20 Office requests approval to publish notices of
21 proposed rule -- for 25 rules to update the
22 materials incorporated by reference in Chapter 69W,
23 Florida Administrative Code, relating to securities
24 regulations. One proposed new rule, to update the
25 method by which materials are incorporated by

1 reference to Chapter 69W, Florida Administrative
2 Code, and ten rule amendments to update rules
3 relating to the registration of securities.

4 GOVERNOR SCOTT: Is there a motion to approve?

5 ATTORNEY GENERAL BONDI: So moved.

6 GOVERNOR SCOTT: Is there a second?

7 CFO ATWATER: Second.

8 GOVERNOR SCOTT: Any comments or objections?

9 (NO RESPONSE).

10 GOVERNOR SCOTT: Hearing none, the motion
11 carries.

12 COMMISSIONER BREAKSPEAR: Thank you members
13 of the Cabinet.

14 GOVERNOR SCOTT: Thank you.

15
16
17 * * * *

18
19
20
21
22
23
24
25

ATTACHMENT 2

**FINANCIAL SERVICES COMMISSION
OFFICE OF FINANCIAL REGULATION
AGENDA ITEM #2**

A. Action Requested

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

- The 25 rule amendments to update materials incorporated by reference are 69W-100.007; 200.001; 300.002; 500.005, .008, .012, .015, .016, .017; 600.006, .012, .013, .0131, .0132, .0133, .014, .015, .016, .017, .020; 700.002, .014, .015; 800.001, and 900.001.
- The 10 rule amendments to amend the registration of securities are 69W-700.001, .002, .005, .006, .007, .008, .010, .015, .026, and .028.
- The new proposed rule updating the method by which materials are incorporated by reference is 69W-200.002.

Final texts of rules

Page

Securities

69W-100.007 Advertising and Sales Literature.....10

Definitions

69W-200.001 Definitions.11

69W-200.002 General Industry Standards Incorporated by Reference..16

Applications

69W-300.002 Financial Statements and Reports.....20

Exempt Transactions

69W-500.005 Disclosure Requirements of Section 517.061(11)(a)3., F.S..22

69W-500.008 Unsolicited Purchase or Sale of Securities Pursuant to Section
517.061(13), F.S..23

69W-500.012 Exemption/Charitable Contributions to Pooled Income Funds..24

69W-500.015 Exemption for Offers and Sales of Securities of Foreign Issuers to
Non-U.S. Persons in Offshore Transactions..25

69W-500.016 Exemption for Issuers of Section 4(a)(2) Offerings.	26
69W-500.017 Compensatory Benefit Plan Exemption.....	27
<u>Registration of Dealers, Investment Advisers, Associated Persons</u>	
69W-600.006 Fingerprint Requirements..	28
69W-600.012 Rules of Conduct..	29
69W-600.013 Prohibited Business Practices for Dealers and Their Associated Persons.....	31
69W-600.0131 Prohibited Business Practices for Investment Advisers and Their Associated Persons.....	33
69W-600.0132 Custody Requirements for Investment Advisers..	34
69W-600.0133 Use of Senior-Specific Certifications and Professional Designations by Associated Persons and Investment Advisers.....	35
69W-600.014 Books and Records Requirements..	36
69W-600.015 Financial Reporting Requirements – Statement of Financial Condition – Dealers and Investment Advisers.....	39
69W-600.016 Net Capital Requirements for Dealers and Investment Advisers..	40
69W-600.017 Customer Protection Rule – Reserve Requirements and Custody of Customer Funds and Securities.....	42
69W-600.020 Continuing Education Requirements..	43
<u>Registration of Securities</u>	
69W-700.001 Registration of Securities.....	44
69W-700.002 Filing of Prospectus..	45
69W-700.005 Promoters Equity Investment Ratio.....	46
69W-700.006 Voting Rights.....	47
69W-700.007 Options or Warrants Granted Underwriters.....	48
69W-700.008 Options and Warrants to Officers, Employees and Others.....	49
69W-700.010 Preferred Stock or Debt Securities.....	52
69W-700.014 Real Estate Investment Trusts (REIT)..	53
69W-700.015 Offering Price of Equity Securities.....	54
69W-700.026 Unsound Financial Condition..	56
69W-700.028 Small Corporate Offering Registration (“SCOR” Offering)..	57
<u>Notification Registration of Securities</u>	
69W-800.001 Filing – Notification Registration Including Shelf Filings..	58
<u>Disclosure of Business Activities in Cuba</u>	
69W-900.001 Disclosure of Business Activities in Cuba.....	59

B. Procedural History

On April 15 and 22, 2014, Notices of Development of Rulemaking were published in the Florida Administrative Register (FAR) for the proposed rule amendments and proposed new rule, to advise the public of development of the rules and to provide that, if requested in writing, a rule development workshop would be held. No written requests for a workshop were received by the Office.

On May 13, 2014, the Financial Services Commission approved publishing Notices of Proposed Rule for the rules in the FAR. On May 19, 2014, Notices of Proposed Rule for the rules were published in the FAR. No comments or requests for hearing from the public were received regarding the proposed rules.

In May through July, 2014, the Office received a number of comments from the Joint Administrative Procedures Committee on the proposed rules, the majority of which were technical or stylistic changes. The Office published Notices of Change for the rules. No comments or requests for hearing from the public were received regarding the Notices of Change.

On August 4, 2014, a Notice of Meeting for the final public hearing was published in the FAR for the rules. A final hearing for the rules is noticed for the Financial Services Commission meeting to be held on August 19, 2014, at the regularly scheduled Cabinet meeting in Tallahassee.

69W-100.007 Advertising and Sales Literature.

(1) No change.

(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 Financial Industry Regulatory Authority (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) through (g) No change.

(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, Amended 9-20-82, Formerly 3E-100.07, 3E-100.007, Amended 9-30-10,_____.

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. § 77c (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. § 77c (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(c) of the Small Business Investment Act of 1958 (15 U.S.C. § 681(c) (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) No change.

(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. through d. No change.

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. through i. No change.

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 (8)(a)2.a. ~~(9)(a)2.a.~~ through i. above;

4. through 9. No change.

(b) Notwithstanding the exclusions provided in subparagraph (8)(a)2. ~~(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 (8)(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 ~~carries~~ accounts for Florida residents must be registered pursuant to the provisions of Section 517.12, F.S.

(11) ~~(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) through (b) No change.

(11) ~~(13)~~ "Dilution" for purposes of Rules 69W-700.008 and 69W-700.015, F.A.C., ~~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.

~~(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.~~

~~(13)~~ (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 ~~shall~~ ~~may~~ take into consideration any values as determined by independent appraisal ~~or otherwise.~~

~~(14)~~ (17) “Independent Director” shall be defined as a member of the Issuer’s Board of Directors who:

(a) through (c) No change.

~~(15)~~ (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.

~~(16)~~ (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.

~~(17)~~ (20) “Issuers” Within the Meaning of Section 517.021(14), F.S.

(a) through (b) No change.

~~(18)~~ (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.

~~(19)~~ (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.

~~(20)~~ (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) through (b) No change.

~~(21)~~ ~~(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.

~~(22)~~ ~~(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)).

~~(23)~~ ~~(26)~~ “Reaffiliation” refers to those associated persons leaving one registered dealer or investment adviser and reaffiliating with another registered dealer or investment adviser.

~~(24)~~ ~~(27)~~ “Registrant” shall mean an applicant for whom a registration has been declared effective by the Office of Financial Regulation.

~~(25)~~ ~~(28)~~ “Reportable Act” shall mean:

(a) through (d) No change.

~~(26)~~ ~~(29)~~ “Renewal Applicant” shall mean an applicant who is a registrant who seeks a timely renewal of the license.

~~(27)~~ ~~(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.

~~(28)~~ ~~(31)~~ “State” means any state, territory or possession of the United States, the District of Columbia and Puerto Rico.

~~(29)~~ ~~(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.

~~(30)~~ ~~(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,_____.

69W-200.002 General Industry Standards Incorporated by Reference.

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. The material incorporated by reference in this rule may also be obtained from the Florida Office of Financial Regulation (Office), Division of Securities' website at <http://www.flofr.com/StaticPages/DivisionOfSecurities.htm>, except where noted 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.

- (1) FINRA Rule 2210 (7-11-14), accessible at <http://www.flrules.org/>.
- (2) SEC Rule 501(a) of Regulation D (17 C.F.R. § 230.501(a)) (9-23-13), accessible at <http://www.flrules.org/>.
- (3) SEC Rule 15c3-1 (17 C.F.R. § 240.15c3-1) (7-7-14), accessible at <http://www.flrules.org/>.
- (4) SEC Rule 206(4)-3 (17 C.F.R. § 275.206(4)-3) (4-1-14 edition), accessible at <http://www.flrules.org/>.
- (5) NASD Rule 3010 (2-4-13), accessible at <http://www.flrules.org/>.
- (6) SEC Rule 144A (17 C.F.R. § 230.144A(a)) (9-23-13), accessible at <http://www.flrules.org/>.
- (7) Regulation S-X (17 C.F.R. Part 210) (4-1-13 edition), accessible at <http://www.flrules.org/>.
- (8) SEC Rules 17a-5 (17 C.F.R. § 240.17a-5) (6-1-14) and 17a-10 (17 C.F.R. § 240.17a-10) (12-9-81), accessible at <http://www.flrules.org/>.
- (9) Section 15A of the Securities Exchange Act of 1934 (15 U.S.C. §78o-3) (10-1-10), accessible at <http://www.flrules.org/>.
- (10) Regulation A of the Securities Act of 1933 (17 C.F.R. §§230.251 through 230.263) (4-1-13 edition), accessible at <http://www.flrules.org/>.
- (11) SEC Rule 144 (17 C.F.R. § 230.144) (4-1-13 edition), accessible at <http://www.flrules.org/>.
- (12) Section 642(c)(5) of the Internal Revenue Code of 1954 (26 U.S.C. §642(c)(5)) (1-23-02), accessible at <http://www.flrules.org/>.
- (13) Regulation S (17 C.F.R. §§ 230.901 through 230.905) (4-1-13 edition), accessible at <http://www.flrules.org/>.
- (14) Section 4(a)(2) of the Securities Act of 1933 (15 U.S.C. § 77d(a)(2)) (4-5-12), accessible at <http://www.flrules.org/>.
- (15) SEC Rule 701 (17 C.F.R. 230.701) (4-1-13 edition), accessible at <http://www.flrules.org/>.
- (16) Section 3(a) of the Securities Act of 1933 (15 U.S.C. §77c(a)) (7-9-12), accessible at <http://www.flrules.org/>.
- (17) Securities Act of 1933 Section 5 (15 U.S.C. §77e) (4-5-12); Section 6 (15 U.S.C. §77f) (4-5-12); Section 7 (15 U.S.C. §77g) (4-5-12); and Section 8 (15 U.S.C. §77h) (8-22-40), accessible at <http://www.flrules.org/>.
- (18) SEC Rule 17f-2 (17 C.F.R. § 240.17f-2) (4-1-13 edition), accessible at <http://www.flrules.org/>.
- (19) SEC Rule 10b-10 (17 CFR § 240.10b-10) (7-7-14), accessible at <http://www.flrules.org/>.
- (20) SEC Rule 17a-3 (17 CFR § 240.17a-3) (4-1-14 edition), accessible at <http://www.flrules.org/>.
- (21) MSRB Rules G-8 (7-5-14) and G-15 (existing as of 9-22-14), available for inspection at the Office due to

copyright restrictions.

(22) Securities Exchange Act of 1934 Section 9 (15 U.S.C. §78i) (2012); Section 10 (15 U.S.C. §78j) (7-16-11); Section 11A (15 U.S.C. §78k-1) (4-5-12); Section 15(c) and 15(g) (15 U.S.C. §78o(c) and 78o(g)) (2012), accessible at <http://www.flrules.org/>_____.

(23) SEC Rule 9b-1 (17 CFR § 240.9b-1) (4-1-14 edition), accessible at <http://www.flrules.org/>_____.

(24) 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) (4-1-14 edition), accessible at <http://www.flrules.org/>_____.

(25) 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) (4-1-14 edition), accessible at <http://www.flrules.org/>_____.

(26) 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) (4-1-14 edition), accessible at <http://www.flrules.org/>_____.

(27) 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) (4-1-14 edition), accessible at <http://www.flrules.org/>_____.

(28) Regulation M (17 CFR §242.100 through 242.105) (4-1-14 edition), accessible at <http://www.flrules.org/>_____.

(29) SEC Rule 601 (17 C.F.R. § 242.601) (4-1-14 edition), accessible at <http://www.flrules.org/>_____.

(30) 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 (1-1-13 edition), accessible at <http://www.flrules.org/>_____.

(31) SEC Rule 8c-1, (17 C.F.R. § 240.8c-1) (4-1-14 edition), accessible at <http://www.flrules.org/>_____.

(32) FINRA Rule 2000 Series (2010 through 2370) (existing as of 9-22-14), accessible at <http://www.flrules.org/>_____.

(33) FINRA Rule 3000 Series (only 3130, 3160, and 3220 through 3310) (existing as of 9-22-14), accessible at <http://www.flrules.org/>_____.

(34) FINRA Rule 4000 Series (4110 through 4570) (existing as of 9-22-14), accessible at <http://www.flrules.org/>_____.

(35) FINRA Rule 5000 Series (5110 through 5350) (existing as of 9-22-14), accessible at <http://www.flrules.org/>_____.

(36) FINRA Rule 6000 Series (6110 through 6770) (existing as of 9-22-14), accessible at <http://www.flrules.org/>_____.

(37) FINRA Rule 7000 Series (7110 through 7740) (existing as of 9-22-14), accessible at <http://www.flrules.org/>_____.

(38) NASD Conduct Rule 2000 Series (IM-2210-2 through 2830) (existing as of 9-22-14), accessible at <http://www.flrules.org/>_____.

(39) NASD Conduct Rule 3000 Series (3010 through 3170) (existing as of 9-22-14), accessible at

<http://www.flrules.org/>.

(40) FINRA Uniform Practice Code Rule 11000 Series (11100 through 11900) (existing as of 9-22-14), accessible at <http://www.flrules.org/>.

(41) NYSE Rules 405 (7-14-11), 412 (9-15-08), and 435 (5-29-09), accessible at <http://www.flrules.org/>.

(42) Section 2, 3, 4, 5, and 6 of the Securities Act of 1933, (15 U.S.C.A. §§ 77b, 77c, 77d, 77e, and 77f) (4-5-12), accessible at <http://www.flrules.org/>.

(43) SEC Rules 134, 134a, 135a, 144, 156, 419, 481, and 482, (17 C.F.R. §§ 230.134, 230.134a, 230.135a, 230.144, 230.156, 230.419, 230.481 and 230.482) (4-1-13 edition), accessible at <http://www.flrules.org/>.

(44) Section 15(b)(4)(E) of the Securities Exchange Act of 1934 (15 U.S.C. § 78o(b)(4)(E)) (2012), accessible at <http://www.flrules.org/>.

(45) Regulation SHO, Regulation of Short Sales, (17 C.F.R. §§ 242.200-242.203) (4-1-14 edition), accessible at <http://www.flrules.org/>.

(46) Section 15B of the Securities Exchange Act of 1934 (15 U.S.C. § 78o-4) (10-1-10), accessible at <http://www.flrules.org/>.

(47) MSRB Definitional Rules D-1 to D-14, and General Rules G-1 to G-17 and G-19 to G-43 (existing as of 9-22-14), available for inspection at the Office due to copyright restrictions.

(48) Sections 13 and 15D of the Securities Exchange Act of 1934 (15 U.S.C. §§ 78m (8-10-12) and 78o-6 (4-5-12)), accessible at <http://www.flrules.org/>.

(49) 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), accessible at <http://www.flrules.org/>.

(50) SEC Rule 204-3 (17 C.F.R. §275.204-3); Rule 205-1 (17 C.F.R. §275.205-1); Rule 205-2 (17 C.F.R. §275.205-2); Rule 205-3 (17 C.F.R. §275.205-3); Rule 206(3)-1 (17 C.F.R. §275.206(3)-1); Rule 206(3)-2 (17 C.F.R. §275.206(3)-2); Rule 206(4)-1 (17 C.F.R. §275.206(4)-1); Rule 206(4)-3 (17 C.F.R. §275.206(4)-3, (4-1-14 edition), accessible at <http://www.flrules.org/>.

(51) The Investment Advisers Act of 1940 (15 U.S.C. § 80b-1 through 80b-21) (2012), accessible at <http://www.flrules.org/>.

(52) National Securities Markets Improvement Act of 1996 (Pub. L. 104-290) (10-11-96), accessible at <http://www.flrules.org/>.

(53) Section 4f(a) of the Commodity Exchange Act (7 U.S.C. § 6f) (2012), accessible at <http://www.flrules.org/>.

(54) Investment Company Act of 1940 (15 U.S.C. § 80a-1 through 80a-64) (2012), accessible at <http://www.flrules.org/>.

(55) SEC Rules 17a-3 and 17a-4 (17 C.F.R. §§ 240.17a-3 and 240.17a-4) (4-1-14 edition), accessible at <http://www.flrules.org/>.

(56) SEC Rule 204-2 (17 C.F.R. §275.204-2) (4-1-13 edition), accessible at <http://www.flrules.org/>.

(57) SEC Rule 204-3 (17 C.F.R. §275.204-3) (4-1-13 edition), accessible at <http://www.flrules.org/>.

(58) SEC Rule 15c3-1 and appendices (17 C.F.R. §240.15c3-1 (7-7-14); 17 C.F.R. §240.15c3-1a (7-7-14); 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 (7-7-14); 17 C.F.R. §240.15c3-1f (7-7-14); 17 C.F.R. §240.15c3-1g (7-7-14)), accessible at <http://www.flrules.org/>_____.

(59) 17 C.F.R. § 240.17a-11 (6-1-14), accessible at <http://www.flrules.org/>_____.

(60) SEC Rule 15c3-3 and Exhibit A (17 C.F.R. § 240.15c3-3 (4-1-14 edition) and 240.15c3-3a (7-7-14)), accessible at <http://www.flrules.org/>_____.

(61) FINRA Rule 1250 (10-17-11), accessible at <http://www.flrules.org/>_____.

(62) NYSE Rule 345A (7-29-03), accessible at <http://www.flrules.org/>_____.

(63) NYSE MKT LLC Rule 341A (11-10-04), accessible at <http://www.flrules.org/>_____.

(64) Article VI, Rule 11 of the Chicago Stock Exchange (5-22-14), available for inspection at the Office due to copyright restrictions.

(65) Section 422 of the Internal Revenue Code (26 U.S.C. §422) (11-5-90), accessible at <http://www.flrules.org/>_____.

(66) Employee Retirement Income Security Act of 1974 (Pub.L. 93-406) (4-7-14), accessible at <http://www.flrules.org/>_____.

(67) Section 501(c)(3) of the Internal Revenue Code (26 U.S.C. §501(c)(3)) (3-30-10), accessible at <http://www.flrules.org/>_____.

(68) SEC Rule 15a-6(b)(4)(i) (17 C.F.R. §240.15a-6) (4-1-14 edition), accessible at <http://www.flrules.org/>_____.

(69) Sections 856, 857 and 858 of the Internal Revenue Code of 1954 (26 U.S.C. §§ 856 (7-30-08), 857 (7-30-08), 858 (11-10-88)), accessible at <http://www.flrules.org/>_____.

(70) Securities Exchange Act of 1934 (15 U.S.C. §§ 78a through 78pp) (2012), accessible at <http://www.flrules.org/>_____.

(71) SEC Rule 415 (17 C.F.R. § 230.415) (4-1-13 edition), accessible at <http://www.flrules.org/>_____.

(72) Section 10(a) of the Securities Act of 1933 (15 U.S.C. § 77j(a)) (8-10-54), accessible at <http://www.flrules.org/>_____.

*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*_____.

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) No change.

(3) Requirements for Dealers.

(a) through (c) No change.

(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), which is incorporated by reference in Rule 69W-200.002, F.A.C., (~~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) No change.

(5) No change.

(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), which is incorporated by reference in Rule 69W-200.002, F.A.C., 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) through (d) No change.

(7) No change.

~~(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,_____.

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

(1) through (5) No change.

(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 (15 U.S.C. § 78m, 78o(d)), 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(a)) 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) No change.

(7) No change.

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, Amended _____.

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) through (3) No change.

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,_____.

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) through (c) No change.

(2) No change.

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

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,_____.

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)), which is incorporated by reference in Rule 69W-200.002, F.A.C., (~~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,_____.

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) through (4) No change.

~~(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,_____.

69W-600.006 Fingerprint Requirements.

(1) No change.

(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,_____.

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) through (c) No change.

(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 those rules existed on June 23, 2010, shall be deemed compliance with this rule.

(2) through (4) No change.

(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(e) 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,_____.

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) through (c) No change.

(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. § 240.8e-1 (2010))~~.

(e) through (g) No change.

(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, 5, or 6 of the Securities Act of 1933, (15 U.S.C.A. §§ 77b, 77c, 77d, 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, which are incorporated by reference in Rule 69W-200.002, F.A.C. ~~as it existed on June 28, 2010.~~

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. No change.

(i) through (l) No change.

(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) through (o) No change.

(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) through (h) No change.

~~(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,_____.

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) through (q) No change.

(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) through (u) No change.

(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,_____.~~

69W-600.0132 Custody Requirements for Investment Advisers.

(1) Definitions. For purposes of this section:

(a) through (b) No change.

(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) No change.

(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. III)~~), (“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) through (c) No change.

(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) through (f) No change.

~~(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,_____.~~

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

(1) through (3) No change.

(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,_____.

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) through (b) No change.

(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) through (e) No change.

(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) through (c) No change.

(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) through (k) No change.

(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) through (6) No change.

(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) through (d) No change.

(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,_____.*

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

(1) No change.

(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) No change.

(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) through (4) No change.

~~(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,_____.~~

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

(1) No change.

(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)~~), which are incorporated by reference in Rule 69W-200.002, F.A.C., 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) No change.

(4) through (5) No change.

(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,_____.

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,_____.

69W-600.020 Continuing Education Requirements.

(4) 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,_____.

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.: ~~the forms described 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.

(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 _____.

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. Regulation A is incorporated by reference in Rule 69W-200.002, F.A.C., and Form U-7 is incorporated by reference in subsection 69W-301.002(7), F.A.C. ~~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,_____.*

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,_____.

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 cover of the prospectus includes a specific warning and a cross reference to a specific, appropriate risk factor; and The corporation is not a “development stage entity” as defined in Rule 69W 200.001, F.A.C.; and

~~(b) Dividend rights on voting and non-voting stock are equal per share; and~~

~~(b)(c)~~ 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 _____.

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: 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.~~

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.

(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 _____.

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 paragraph (4) of this rule, 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), which is incorporated by reference in Rule 69W-200.002, F.A.C., 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 an unaffiliated "institutional investor" as defined in paragraph (4) of this rule, 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.~~

~~2. 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.~~

3. 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 (26 U.S.C. §422), which is incorporated by reference in Rule 69W-200.002, F.A.C.; or

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

~~(e) 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 prospectus. ~~submit an analysis upholding the reasonableness of the issuance of such options or warrants.~~

(4) For the purposes of this rule, "institutional investor" means any of the following, whether acting for itself or for others in a fiduciary capacity:

(a) A depository institution or international banking institution;

(b) An insurance company;

(c) A separate account of an insurance company;

(d) An investment company as defined in the Investment Company Act of 1940, which is incorporated by reference in Rule 69W-200.002, F.A.C.;

(e) A broker-dealer registered under the Securities Exchange Act of 1934, which is incorporated by reference in Rule 69W-200.002, F.A.C.;

(f) An employee pension, profit-sharing, or benefit plan if the plan has total assets in excess of \$10,000,000 or its investment decisions are made by a named fiduciary, as defined in the Employee Retirement Income Security Act of 1974, which is incorporated by reference in Rule 69W-200.002, F.A.C., that is a broker-dealer registered under the Securities Exchange Act of 1934, an investment adviser registered or exempt from registration under the Investment Advisers Act of 1940, an investment adviser registered under Sections 517.021(13)(a) and 517.12, F.S., a depository institution, or an insurance company;

(g) A plan established and maintained by a State, a political subdivision of a State, or an agency or instrumentality of a State or a political subdivision of a State for the benefit of its employees, if the plan has total assets in excess of \$10,000,000 or its investment decisions are made by a duly designated public official or by a named fiduciary, as defined in the Employee Retirement Income Security Act of 1974, that is a broker-dealer registered under the Securities Exchange Act of 1934, an investment adviser registered or exempt from registration under the Investment Advisers Act of 1940, an investment adviser registered under Chapter 517, Florida Statutes, a depository institution, or an insurance company;

(h) A trust, if it has total assets in excess of \$10,000,000, its trustee is a depository institution, and its participants are exclusively plans of the types identified in subparagraph (f) or (g), regardless of the size of their

assets, except a trust that includes as participants self-directed individual retirement accounts or similar self-directed plans;

(i) An organization described in Section 501(c)(3) of the Internal Revenue Code (26 U.S.C. Section 501(c)(3)), which is incorporated by reference in Rule 69W-200.002, F.A.C., corporation, Massachusetts trust or similar business trust, limited liability company, or partnership, not formed for the specific purpose of acquiring the securities offered, with total assets in excess of \$10,000,000;

(j) A small business investment company licensed by the Small Business Administration under Section 301(c) of the Small Business Investment Act of 1958 (15 U.S.C. Section 681(c)) with total assets in excess of \$10,000,000;

(k) A private business development company as defined in Section 202(a)(22) of the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-2(a)(22)), which is incorporated by reference in Rule 69W-200.002, F.A.C., with total assets in excess of \$10,000,000;

(l) A federal covered investment adviser acting for its own account;

(m) A "qualified institutional buyer" as defined in Rule 144A(a)(1), other than Rule 144A(a)(1)(H), adopted under the Securities Act of 1933 (17 C.F.R. 230.144A), which is incorporated by reference in Rule 69W-200.002, F.A.C.;

(n) A "major U.S. institutional investor" as defined in Rule 15a-6(b)(4)(i) adopted under the Securities Exchange Act of 1934 (17 C.F.R. 240.15a-6), which is incorporated by reference in Rule 69W-200.002, F.A.C.; or

(o) Any other person, other than an individual, of institutional character with total assets in excess of \$10,000,000 not organized for the specific purpose of evading Chapter 517, Florida Statutes.

~~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 _____.

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) through (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_____.

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) through (9) No change.

(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 _____.

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 specific risk factor entitled "Immediate Substantial Dilution" in the prospectus 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., subsection 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,_____.

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 _____.

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

(1) For the purpose of compliance with the registration provisions of Section 517.081(3)(g)2., F.S., the issuer shall file an application on Form OFR S 12-97, SCOR (Small Corporate Offering Registration) Application to Register Securities, which is incorporated by reference in subsection 69W-301.002(7), F.A.C. The application shall include:

(a) ~~Three (3) copies of Form U-7, Small Corporate Offering Registration Form, which is incorporated by reference in subsection 69W-301.002(7), F.A.C.;~~

(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 517.081, F.S.;~~

(d) ~~Exhibits, where applicable, as prescribed in Part II to Form OFR S 12-97, SCOR (Small Corporate Offering Registration) Application to Register Securities, which is incorporated by reference in subsection 69W-301.002(7), F.A.C.~~

(2) ~~Self-underwritten offerings shall be offered and sold by the issuer registered with the Office of Financial Regulation in compliance with Section 517.12, F.S. All offerees shall be furnished with a prospectus approved by the Office of Financial Regulation and a copy of Florida’s Guide to Small Business Investments.~~

(3) ~~Annual financial reports shall be filed with the Office of Financial Regulation within 90 days after the close of the issuer’s fiscal year for a period of 5 years following the effective date of the registration. In the event the corporation ceases operations, such financial reports shall continue to be furnished to the Office of Financial Regulation unless the corporation is dissolved and all remaining assets distributed, if any. In such an event, the issuer shall furnish documentation to the Office of Financial Regulation to close the file.~~

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 _____.

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) through (c) No change.

(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) No change.

(2) through (6) No change.

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,_____.

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) No change.

(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) through (3) No change.

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