

THE FLORIDA BAR BUSINESS LAW SECTION
CORPORATIONS, SECURITIES & FINANCIAL SERVICES
COMMITTEE MEETING

August 30, 2014
The Ritz Carlton
Naples, Florida

MINUTES

1. Call to Order and Welcome. Meeting was called to order at 9:40 a.m. by Stefan Rubin, Chair of the Committee, who presided at the meeting.
2. Introduction of Members and Guests Present. All members present at the meeting, and all guests attending the meeting, introduced themselves and signed an attendance sheet.
3. Approval of Minutes. Upon motion, duly seconded, the minutes of the June 26, 2014 Committee meeting were unanimously approved.
4. Website. Stefan Rubin discussed the establishment of a new Business Law Section website and encouraged everyone to put anything of interest on the website and not just on the CSFS page. Jordan Maglich volunteered to serve as the liaison to the Business Law Section for website matters.
5. Chapter 607 Benefit and Social Purpose Corporations/Special Message. Stu Ames announced that the Section's Benefit and Social Purpose Corporations proposed amendments to Chapter 607, F.S., became effective July 1, 2014 and that it passed unanimously in both houses. Through the amendments the original Chapter 607 is now codified in part 1, the special purpose corporation provisions are codified in part 2 and the benefit corporation provisions are codified in part 3. Professor Stuart Cohn clarified that the provisions of part 1 also apply to corporations formed under part 2 or part 3. The BLS Chair then entered the meeting and was introduced by Stefan Rubin and both Stu Ames and Professor Cohn were publicly thanked for their efforts in spending so much time to ensure the passage of the Benefit and Social Purpose Corporation legislation. They were presented with commemorative bills signed by the house, senate and governor. The BLS Chair then detailed the importance of having a robust BLS website to drive interest in the committee and section by posting of content. After the Chair left the meeting Gary Teblum pointed out that currently on sunbiz a B corporation is not distinguishable from any other corporation without reading the Articles of Incorporation themselves. However, it is his understanding from Brenda Tadlock, director of the state's Division of Corporations, that when the state is finished with changes to the website they will add B corporation designations. Stu Ames then concluded the discussion by pointing out that B corporation forms are available on the state's website.

6. Legislative Committee. Representatives from the Legislative Committee reported that anything to be included in the 2015 legislative session would need to be final before the winter meeting in January 2015. They also reported that in 2016 the legislative session will be moved up to start the first week of January and that all matters will need to be pushed up to the fall meeting for Executive Council approval in order to meet these deadlines. The only legislation pertaining to our committee that was discussed as being in the near future were an LLC Glitch Bill, a minor amendment to UCC Article 4A referenced by Lou Conti and potentially some family trust provisions that Gary Teblum would like to discuss further.
7. Chapter 607 Subcommittee. Phil Schwartz reported that the subcommittee is slowly but surely working its way through each Article and is now up to Article 7. The subcommittee meets every few weeks by phone during lunch and hopes that additional people will begin participating in addition to the core group. This is the first comprehensive review since 2003 and he expressed the importance of modernizing the statute, especially since a lot has changed because of the RMBCA.
8. Chapter 517 Subcommittee. Laurie Green expressed a desire to review the blue sky statute even though year after year the committee is advised that it is not a good time to make statutory changes. Professor Cohn reported that five states have adopted a crowd funding exemption through their intrastate exemption and that we should consider whether this is a good idea. This has been opposed in Florida by the Office of Financial Regulation because it thinks the SEC should take action first. Greg Yadley reported that crowd funding is a priority for the SEC but that changes to Regulation A will likely happen first. Stefan Rubin suggested that the discussion of these matters should be moved to the subcommittee level. Dan Aronson stated that the priority should be to tackle the base 517 matters first and then address the other types of issues discussed in the meeting today.
9. Chapter 605. A brief discussion was held as to the need for a glitch bill and Lou Conti reported that nothing controversial can be included in the upcoming legislative session but that a list of the glitches has already been prepared. Robert Barron raised questions about inadvertent amendments to an operating agreement, including by e-mail, and how dissociation should be best addressed. Greg Marks and Lou both commented on the policies behind the included dissociation provisions and the need to address this in the operating agreement. That led to a lengthy discussion about the costs associated with negotiating these provisions and the negative slant associated with those negotiations. Dan Aronson and Lou discussed this back and forth and the need to have Florida be a user friendly statute so that people do not just run to Delaware to form their LLCs there. Dan commented that as of January 1, 2015 the issue of capital calls and dissociation will become a big issue for those people forming LLCs in Florida. Phil Schwartz commented that the Chapter 605 subcommittee took a paternalistic approach due to the vast numbers of LLCs being formed in the state. Greg further commented that the intention was to create a balanced statute and balance paternalism with freedom of contract. Lou also further commented on this point to note that choosing between default rules was tough but that there was good discussion and that Delaware has minimal default rules which further exacerbates the need for carefully drafted operating agreements. Then there was

significant discussion about substantive issues that people have concern with in Chapter 605. Leslie Hudock pointed out that the indemnification provisions should allow for the power to indemnify officers of an LLC if officers are appointed. Robert Barron raised the question of whether noncompete provisions are binding on members who dissociate. There was a discussion about the ratification of prior defective acts. Gary Teblum noted that the conversion provisions work but that they are not user friendly and that perhaps the “conversion in” approach should be considered with a roadmap for use. Stefan Rubin led a discussion about whether the state should require a check the box for member managed versus manager managed so that people can tell what type of election has been made on the state’s website.

10. Opinion Standards. Rob Barron’s report was that a draft of a supplement is in process and that Barbara Yadley is drafting one with respect to margin stock.
11. New Business. Lou Conti reported on recent changes to Article 4A of the UCC and the federal preemption of Dodd Frank amendments to the Electronic Funds Transfer Act to our own statute. 39 states have adopted the changes and it is beneficial to have uniformity between our state laws and certain applicable federal laws such as this one. Bankers in the state are in favor of the conforming amendments. In addition, Lou reported that other states are once again evaluating series LLCs (adopted in 11 states and Washington DC and Puerto Rico). The Uniform Commission is not thrilled with the series LLCs although a drafting commission is reviewing it. It was previously determined that Florida was not ready for these and it is hard to say now what the best course should be as there are many issues.
12. Special Announcement by the Chair. Stefan Rubin congratulated his 7 year old daughter on her birthday and noted that he missed the fall meeting exactly 7 years prior for her birth.
13. Meeting Adjourned. The Chair adjourned the meeting at 11:54 a.m.