

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

September 1, 2012
Ritz Carlton
Naples, Florida

MINUTES

1. Call to Order and Welcome. Meeting was called to order by Laurie Green, 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 request of the Committee Chair, approval of the June 2012 Committee meeting minutes was deferred.
4. Presentation. Robert Buchanan, of PCE Valuations, presented to the Committee on The State of the M&A Market. CLE credit was made available to members present.
5. Limited Liability Company Act Chapter 608 Revision.
 - (a) Status: Lou Conti led the discussion and advised the Committee that the bill drafting is coming along and Bill Wiley will attempt to procure a sponsor for the bill in November for the 2013 legislative session. The LLC draft was initially on target to be presented to the Legislature in 2012. However, due to a delay caused by the Olmstead case and revisions to the ABA Prototype and RULLCA, the draft is expected to be submitted in 2013. The sub-committee is not asking for approval of the bill today.
 - (b) Open Issue: Mr. Conti explained that oppression as a basis for dissolution remains an issue. RULLCA and several states have adopted minority oppression as a basis for dissolution. Several Committee members noted that the FBCA also does not allow oppression as a basis for dissolution of a Florida corporation, notwithstanding that approximately 35 states and the Model Act do allow it. The committee also discussed whether oppression, if included, should be waivable in an operating agreement. Some uniform acts have included this, but most states have not. The

Committee concluded that oppression should not be included in the LLC bill submitted to the legislature in 2013. It would be a radical departure from current Florida business entity law which could cause delays.

6. Public Benefit Corporations. Professor Stuart Cohn led the discussion. In the 2011 Florida legislative session a special interest group introduced a bill to create a special type of corporation known as a public benefit corporation (a/k/a a B-corp). Several states have authorized similar entities, and a recent search revealed over 600 registered B-corps in the United States. The FBCA allows directors to consider social factors, among others, in making decisions, but a B-corp typically places a greater emphasis on such factors. A sub-committee is preparing a bill to establish B-corps in Florida. Although some states have also authorized, or considered, allowing LLCs to be established for such purposes (a/k/a L3), the current proposal in Florida is only for corporations.
7. Business Identity Theft. Lou Conti informed the Committee that the Florida Division of Corporations created a task force to address the problem whereby third parties are reinstating administrative dissolved corporations, usurping their identities and using the entities for nefarious purposes.
8. Corporations Chapter 607 Revision Subcommittee. Alan Aronson advised the Committee the 607 Subcommittee is on hold pending final resolution of the LLC revision which is expected to be finalized and bill submitted in the 2013 legislative session.
9. Federal Legislation - JOBS Act - Rule 506. Laurie Green and Greg Yadley led the discussion. Under the JOBS Act, Rule 506 will no longer prohibit general solicitation if the issuer takes reasonable steps to verify that securities purchasers are accredited. It is a facts and circumstances test. Allowing purchasers to check the box and self-certify that they are accredited will not be sufficient. Specific revisions have not yet been enacted. It was suggested that the Committee consider hosting a CLE on the subject in 2013.
10. Meeting Adjourned.