

HOUSE BILL NO. 194

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-NINTH LEGISLATURE - FIRST SESSION

BY THE HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 4/13/15

Referred: Labor and Commerce, Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act repealing and reenacting the Alaska Securities Act, including provisions
2 relating to exempt securities and transactions; relating to registration of securities,
3 firms, and agents that offer or sell securities and investment advice; relating to
4 administrative, civil, and criminal enforcement provisions, including restitution and civil
5 penalties for violations; allowing certain civil penalties to be used for an investor
6 training fund; establishing increased civil penalties for harming older Alaskans;
7 retaining provisions concerning corporations organized under the Alaska Native Claims
8 Settlement Act; amending Rules 4, 5, 54, 65, and 90, Alaska Rules of Civil Procedure;
9 and providing for an effective date."

10 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

11 * **Section 1.** AS 45 is amended by adding a new chapter to read:

12 **Chapter 56. Alaska Securities Act.**

Article 1. General Provisions.

Sec. 45.56.105. Securities registration requirement. A person may not offer or sell a security in this state unless

- (1) the security is a federal covered security;
- (2) is registered under this chapter; or
- (3) the security or transaction is exempted from registration under
- 45.56.250.

Article 2. Exemptions from Registration of Securities.

Sec. 45.56.205. Exempt securities. The following securities are exempt from the requirements of AS 45.56.105, 45.56.305 - 45.56.360 and 45.56.550:

(1) a security, including a revenue obligation or a separate security, as defined in 17 C.F.R. Part 230.131 adopted under 15 U.S.C. 77a - 77aa (Securities Act of 1933), issued, insured, or guaranteed by the United States; by a state; by a political subdivision of a state; by a public authority, agency, or instrumentality of one or more states; by a political subdivision of one or more states; or by a person controlled or supervised by and acting as an instrumentality of the United States under authority granted by the United States Congress; or a certificate of deposit for any of the foregoing;

(2) a security issued, insured, or guaranteed by a foreign government with which the United States maintains diplomatic relations, or by any of its political subdivisions, if the security is recognized as a valid obligation by the issuer, insurer, or guarantor;

(3) a security issued by and representing, or that will represent an interest in or a direct obligation of, or be guaranteed by,

(A) an international banking institution;

(B) a banking institution organized under the laws of the United States; a member bank of the Federal Reserve System; or a depository institution a substantial portion of the business of which consists or will consist of receiving deposits or share accounts that are insured to the maximum amount authorized by statute by the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund, or a successor authorized by

1 federal law or exercising fiduciary powers that are similar to those permitted
2 for national banks under the authority of the United States Comptroller of
3 Currency under 12 U.S.C. 92a; or

4 (C) any other depository institution, unless, by a regulation or
5 order, the administrator proceeds under AS 45.56.250;

6 (4) a security issued by and representing an interest in, or a debt of, or
7 insured or guaranteed by, an insurance company authorized to do business in this
8 state;

9 (5) a security issued or guaranteed by a railroad, other common carrier,
10 public utility, or public utility holding company that is

11 (A) regulated with respect to its rates and charges by the United
12 States or a state;

13 (B) regulated with respect to the issuance or guarantee of the
14 security by the United States, a state, Canada, or a Canadian province or
15 territory; or

16 (C) a public utility holding company registered under 42
17 U.S.C. 16451 et seq. (Energy Policy Act of 2005) or a subsidiary of the
18 registered holding company within the meaning of that Act;

19 (6) a federal covered security specified in 15 U.S.C. 77r(b)(1) or
20 adopted by rule under that provision or a security listed or approved for listing on
21 another securities market specified by regulation under this chapter; a put or a call
22 option contract; a warrant; a subscription right on or with respect to the security; an
23 option or similar derivative security on a security or an index of securities or foreign
24 currencies issued by a clearing agency registered under 15 U.S.C. 78a - 78pp
25 (Securities Exchange Act of 1934) and listed or designated for trading on a national
26 securities exchange, a facility of a national securities exchange, or a facility of a
27 national securities association registered under 15 U.S.C. 78a - 78pp (Securities
28 Exchange Act of 1934) or an offer or sale of the underlying security in connection
29 with the offer, sale, or exercise of an option or other security that was exempt when
30 the option or other security was written or issued; or an option or a derivative security
31 designated by the Securities and Exchange Commission under 15 U.S.C. 78i(b);

(7) a security issued by a person organized and operated exclusively for religious, educational, benevolent, fraternal, charitable, social, athletic, or reformatory purposes, or as a chamber of commerce, and not for pecuniary profit, no part of the net earnings of which inures to the benefit of a private stockholder or other person, or a security of a company that is excluded from the definition of an investment company under 15 U.S.C. 80a-3(c)(10)(B), except that, with respect to the offer or sale of a note, bond, debenture, or other evidence of indebtedness issued by the person, a regulation may be adopted under this chapter limiting the availability of this exemption by classifying securities, persons, and transactions, imposing different requirements for different classes, specifying, with respect to (B) of this paragraph, the scope of the exemption and the grounds for denial or suspension, and requiring an issuer

(A) to file a notice specifying the material terms of the proposed offer or sale and copies of any proposed sales and advertising literature to be used and provide that the exemption becomes effective if the administrator does not disallow the exemption within the period established by the regulation;

(B) to file a request for exemption authorization for which a regulation adopted under this chapter may specify the

(i) scope of the exemption;

(ii) requirement of an offering statement;

(iii) filing of sales and advertising literature;

(iv) filing of consent to service of process complying

with AS 45.56.630; and

(v) grounds for denial or suspension of the exemption;

or

(C) to register under AS 45.56.310;

(8) a member's or owner's interest in, or a retention certificate or like security given in lieu of a cash patronage dividend issued by, a cooperative organized and operated as a nonprofit membership cooperative under the cooperative laws of a state, but not a member's or owner's interest, retention certificate, or like security sold

1 to persons other than bona fide members of the cooperative;

2 (9) an equipment trust certificate with respect to equipment leased or
3 conditionally sold to a person if any security issued by the person would be exempt
4 under this section or would be a federal covered security under 15 U.S.C. 77r(b)(1);
5 and

6 (10) shares of membership stock in the Alaska Commercial Fishing
7 and Agriculture Bank under AS 44.81.010 and other securities issued by that bank to
8 members or in connection with loans to members.

9 **Sec. 45.56.210. Exempt transactions.** The following transactions are exempt
10 from the requirements of AS 45.56.105, 45.56.305 - 45.56.360, and 45.56.550:

11 (1) an isolated nonissuer transaction, whether effected by or through a
12 broker-dealer, if the seller is not a promoter or controlling person as the administrator
13 may define by regulation or order;

14 (2) a nonissuer transaction by or through a broker-dealer registered or
15 exempt from registration under this chapter and a resale transaction by a sponsor of a
16 unit investment trust registered under 15 U.S.C. 80a-1 - 80a-64 (Investment Company
17 Act of 1940) in a security of a class that has been outstanding in the hands of the
18 public for at least 90 days if, at the date of the transaction,

19 (A) the issuer of the security is engaged in business, the issuer
20 is not in the organizational stage or in bankruptcy or receivership, and the
21 issuer is not a blank check, blind pool, or shell company that does not have a
22 specific business plan or purpose or has indicated that its primary business plan
23 is to engage in a merger or combination of the business with or an acquisition
24 of an unidentified person;

25 (B) the security is sold at a price reasonably related to its
26 current market price;

27 (C) the security does not constitute the whole or part of an
28 unsold allotment to or a subscription or participation by the broker-dealer as an
29 underwriter of the security or a redistribution;

30 (D) a nationally recognized securities manual or its electronic
31 equivalent designated by a regulation adopted or order issued under this

1 chapter or a record filed with the Securities and Exchange Commission that is
2 publicly available contains

3 (i) a description of the business and operations of the
4 issuer;

5 (ii) the names of the issuer's executive officers and the
6 names of the issuer's directors, if any;

7 (iii) an audited balance sheet of the issuer as of a date
8 within 18 months before the date of the transaction or, in the case of a
9 reorganization or merger when the parties to the reorganization or
10 merger each had an audited balance sheet, a pro forma balance sheet for
11 the combined organization; and

12 (iv) an audited income statement for each of the issuer's
13 two immediately previous fiscal years or for the period of existence of
14 the issuer, whichever is shorter, or, in the case of a reorganization or
15 merger when each party to the reorganization or merger had audited
16 income statements, a pro forma income statement; and

17 (E) any one of the following requirements is met:

18 (i) the issuer of the security has a class of equity
19 securities listed on a national securities exchange registered under 15
20 U.S.C. 78f or designated for trading on the National Association of
21 Securities Dealers Automated Quotations;

22 (ii) the issuer of the security is a unit investment trust
23 registered under 15 U.S.C. 80a-1 - 80a-64 (Investment Company Act of
24 1940);

25 (iii) the issuer of the security, including its
26 predecessors, has been engaged in continuous business for at least three
27 years; or

28 (iv) the issuer of the security has total assets of at least
29 \$2,000,000 based on an audited balance sheet as of a date within 18
30 months before the date of the transaction or, in the case of a
31 reorganization or merger when the parties to the reorganization or

merger each had an audited balance sheet, a pro forma balance sheet for the combined organization;

(3) a nonissuer transaction by or through a broker-dealer registered or exempt from registration under this chapter in a security of a foreign issuer that is a margin security defined in regulations or rules adopted by the Board of Governors of the Federal Reserve System;

(4) a nonissuer transaction by or through a broker-dealer registered or exempt from registration under this chapter in an outstanding security if the guarantor of the security files reports with the Securities and Exchange Commission under the reporting requirements of 15 U.S.C. 78m or 15 U.S.C. 78o (Securities Exchange Act of 1934);

(5) a nonissuer transaction by or through a broker-dealer registered or exempt from registration under this chapter in a security that

(A) is rated at the time of the transaction by a nationally recognized statistical rating organization as identified by regulations in one of its four highest rating categories; or

(B) has a fixed maturity or a fixed interest or dividend if

(i) a default has not occurred during the current fiscal year or within the three previous fiscal years or, if the issuer has been in business less than three fiscal years, during the existence of the issuer and any predecessor in the payment of principal, interest, or dividends on the security; and

(ii) the issuer is engaged in business, is not in the organizational stage or in bankruptcy or receivership, and is not and has not, within the previous 12 months, been a blank check, blind pool, or shell company that does not have a specific business plan or purpose or has indicated that its primary business plan is to engage in a merger or combination of the business with or an acquisition of an unidentified person;

(6) a nonissuer transaction by or through a broker-dealer registered or exempt from registration under this chapter effecting an unsolicited order or offer to

1 purchase;

2 (7) a nonissuer transaction executed by a bona fide pledgee without the
3 purpose of evading this chapter;

4 (8) a nonissuer transaction by a federal covered investment adviser
5 with investments under management in excess of \$100,000,000 acting in the exercise
6 of discretionary authority in a signed record for the account of others;

7 (9) a transaction in a security, whether or not the security or
8 transaction is otherwise exempt, in exchange for one or more bona fide outstanding
9 securities, claims, or property interests, or partly in exchange for one or more bona
10 fide outstanding securities, claims, or property interests and partly for cash if the terms
11 and conditions of the issuance and exchange or the delivery and exchange and the
12 fairness of the terms and conditions have been approved by the administrator after a
13 hearing;

14 (10) a transaction between the issuer or other person on whose behalf
15 the offering is made and an underwriter or among underwriters;

16 (11) a transaction in a bond or other evidence of indebtedness secured
17 by a real or chattel mortgage or deed of trust, or by an agreement for the sale of real
18 estate or chattels, if the entire mortgage, deed of trust, or agreement, together with all
19 the bonds or other evidence of indebtedness, secured under those documents, is
20 offered and sold as a unit;

21 (A) the note, bond, debenture, or other evidence of
22 indebtedness is offered and sold with the mortgage or other security agreement
23 as a unit;

24 (B) a general solicitation or general advertisement of the
25 transaction is not made; and

26 (C) a commission or other remuneration is not paid or given,
27 directly or indirectly, to a person not registered under this chapter as a broker-
28 dealer or as an agent;

29 (12) a transaction by an executor, administrator of an estate, sheriff,
30 marshal, receiver, trustee in bankruptcy, guardian, or conservator;

31 (13) a sale or offer to sell to

- (A) an institutional investor;
- (B) a federal covered investment adviser; or
- (C) any other person exempted by a regulation adopted or order issued under this chapter;

(14) a sale or offer to sell securities by or on behalf of an issuer if the transaction is part of a single issue in which

(A) not more than 25 purchasers in this state during any 12 consecutive months, other than a person designated in (13) of this section regardless of whether the seller or any of the buyers is then present in this state;

(B) a general solicitation or general advertising is not made in connection with the sale of or offer to sell the securities;

(C) a commission or other remuneration is not paid or given, directly or indirectly, to a person other than a broker-dealer registered under this chapter or an agent registered under this chapter for soliciting a prospective purchaser in this state;

(D) the issuer reasonably believes that all the purchasers in this state, other than those designated in (13) of this section, are purchasing for investment and not with a view to distribution;

(E) a legend is placed on the certificate or other document evidencing ownership of the security, stating that the security is not registered under this chapter and cannot be resold without registration under this chapter or exemption from this chapter; and

(F) before a sale, each prospective buyer is furnished information that is sufficient to make an informed investment decision, which information shall be furnished to the administrator upon request; in this subparagraph, "information that is sufficient to make an informed investment decision" includes a business plan, an income and expense statement, a balance sheet, a statement of risks, and a disclosure of any significant negative factors that may affect the outcome of the investment;

(15) a transaction under an offer to existing security holders of the

1 issuer, including persons that, at the date of the transaction, are holders of convertible
 2 securities, options, or warrants if a commission or other remuneration, other than a
 3 standby commission, is not paid or given, directly or indirectly, for soliciting a
 4 security holder in this state;

5 (16) an offer to sell, but not a sale of, a security not exempt from
 6 registration under 15 U.S.C. 77a - 77aa (Securities Act of 1933) if

7 (A) a registration, offering statement, or similar record as
 8 required under 15 U.S.C. 77a - 77aa (Securities Act of 1933) has been filed but
 9 is not effective, or the offer is made in compliance with 17 C.F.R. Part
 10 230.165, adopted under 15 U.S.C. 77a - 77aa (Securities Act of 1933); and

11 (B) a stop order of which the offeror is aware has not been
 12 issued against the offeror by the administrator or the Securities and Exchange
 13 Commission, and an audit, inspection, or proceeding that is public and that
 14 may culminate in a stop order is not known by the offeror to be pending;

15 (17) an offer to sell, but not a sale of, a security exempt from
 16 registration under 15 U.S.C. 77a - 77aa (Securities Act of 1933) if

17 (A) a registration statement has been filed under this chapter
 18 but is not effective;

19 (B) a solicitation of interest is provided in a record to offerees
 20 in compliance with a regulation adopted by the administrator under this
 21 chapter; and

22 (C) a stop order of which the offeror is aware has not been
 23 issued by the administrator under this chapter, and an audit, inspection, or
 24 proceeding that may culminate in a stop order is not known by the offeror to be
 25 pending;

26 (18) a transaction involving the distribution of the securities of an
 27 issuer to the security holders of another person in connection with a merger,
 28 consolidation, exchange of securities, sale of assets, or other reorganization to which
 29 the issuer or its parent or subsidiary and the other person or its parent or subsidiary are
 30 parties;

31 (19) a rescission offer, sale, or purchase under AS 45.56.665;

(20) an offer to sell or sale of a security to a person not a resident of this state and not present in this state if the offer or sale does not constitute a violation of the laws of this state or foreign jurisdiction in which the offeree or purchaser is present and is not part of an unlawful plan or scheme to evade this chapter;

(21) employees' stock purchase, savings, option, profit-sharing, pension, or similar benefit plan, including any securities, plan interests, and guarantees issued under a compensatory benefit plan or compensation contract, contained in a record, established by the issuer, the issuer's parent, the issuer's majority-owned subsidiary, or the majority-owned subsidiary of the issuer's parent for the participation of their employees, including offers to sell or sales of the securities to

(A) directors, general partners, trustees, managers, and members if the issuer is a limited liability company, if the issuer is a business trust, officers, consultants, and advisors;

(B) family members who acquire the securities from those persons through gifts or domestic relations orders;

(C) former employees, directors, general partners, trustees, officers, consultants, limited liability managers or members, and advisors if those individuals were employed by or providing services to the issuer when the securities were offered; and

(D) insurance agents who are exclusive insurance agents of the issuer or the issuer's subsidiary or parent or who derive more than 50 percent of their annual income from those organizations;

(22) a transaction involving

(A) a stock dividend or equivalent equity distribution, whether the corporation or other business organization distributing the dividend or equivalent equity distribution is the issuer or not, if nothing of value is given by stockholders or other equity holders for the dividend or equivalent equity distribution other than the surrender of a right to a cash or property dividend if each stockholder or other equity holder may elect to take the dividend or equivalent equity distribution in cash, property, or stock;

(B) a transaction incident to a right of conversion or judicially

approved reorganization in which a security is issued in exchange for one or more outstanding securities, claims, or property interests, or partly in exchange for one or more outstanding securities, claims, or property interests and partly for cash; or

(C) the solicitation of tenders of securities by an offeror in a tender offer in compliance with 17 C.F.R. Part 230.162, adopted under 15 U.S.C. 77a - 77aa (Securities Act of 1933);

(23) a nonissuer transaction in an outstanding security by or through a broker-dealer registered or exempt from registration under this chapter if the issuer is a reporting issuer in a foreign jurisdiction designated by this paragraph or by a regulation adopted or order issued under this chapter; the issuer has been subject to continuous reporting requirements in the foreign jurisdiction for not less than 180 days before the transaction; and the security is listed on the foreign jurisdiction's securities exchange that has been designated by this paragraph or by a regulation adopted or order issued under this chapter, or is a security of the same issuer that is of senior or substantially equal rank to the listed security or is a warrant or right to purchase or subscribe to any of the foregoing; for purposes of this paragraph, Canada, together with its provinces and territories, is a designated foreign jurisdiction, and TSX, Inc., formerly known as the Toronto Stock Exchange, Inc., is a designated securities exchange; after an administrative hearing in compliance with AS 45.56.650(c), the administrator, by a regulation adopted or order issued under this chapter, may revoke the designation of a securities exchange under this paragraph if the administrator finds that revocation is necessary or appropriate in the public interest and for the protection of investors;

(24) sales by an issuer to the buyer of an enterprise or a business and the assets and liabilities of the enterprise or business if

(A) the transfer of stock to the buyer is solely incidental to the sale of the enterprise or business and its assets and liabilities;

(B) the seller provides full access to the buyer the books and records of the enterprise or business; and

(C) a legend is placed on the certificate or other document

1 evidencing ownership of the security, stating that the security is not registered
2 under this chapter and cannot be resold without registration under this chapter
3 or exemption from it;

4 (25) offers or sales of certificates of interest or participation in oil, gas,
5 or mining rights, titles, or leases, or in payments out of production under the rights,
6 titles, or leases, if the purchasers

7 (A) are or have been during the preceding two years engaged
8 primarily in the business of exploring for, mining, producing, refining oil, gas,
9 or minerals; or

10 (B) have been found by the administrator upon written
11 application to be substantially engaged in the business of exploring for,
12 mining, producing, or refining oil, gas, or minerals so as not to require the
13 protection provided by this chapter;

14 (26) a transaction involving only family members who are related,
15 including related by adoption, within the fourth degree of affinity or consanguinity, or
16 involving only those family members and the corporations, partnerships, limited
17 liability companies, limited partnerships, limited liability partnerships, associations,
18 joint-stock companies, or trusts that are organized, formed, or created by those family
19 members or at the direction of those family members; or

20 (27) a security that is not part of an initial issue of stock covered by
21 AS 45.55.138, but that is issued by a corporation organized under Alaska law under 43
22 U.S.C. 1601 et seq. (Alaska Native Claims Settlement Act), if the corporation qualifies
23 for exempt status under 43 U.S.C. 1625(a).

24 **Sec. 45.56.220. Small intrastate securities offerings.** (a) An offer or sale of
25 securities conducted solely in this state to a person who has established residency in
26 this state, by an issuer in a transaction that meets the requirements of this section, is
27 exempted from the requirements of AS 45.56.105, 45.56.305 - 45.56.360, and
28 45.56.550 and is subject to the following limitations:

29 (1) the issuer of the security shall be a for-profit corporation or other
30 for-profit entity, or business cooperative with its principal place of business in this
31 state and licensed with the department;

(2) the transaction shall meet the requirements of the federal exemption for intrastate offerings in 15 U.S.C. 77c(a)(11) (Securities Act of 1933) and 17 C.F.R. Part 230.147; the securities must be offered to and sold only to persons who have established residency in this state at the time of purchase; before any offer or sale under this exemption, the seller shall obtain documentary evidence from each prospective purchaser that provides the seller with a reasonable basis to believe the investor has established residency in this state;

(3) the sum of all cash and other consideration to be received for all sales of the security in reliance on this exemption shall not exceed \$1,000,000, less the aggregate amount received for all sales of securities by the issuer within the 12 months before the first offer or sale made in reliance on this exemption;

(4) the issuer shall not accept more than \$5,000 from any single purchaser unless the purchaser is an accredited investor as defined by 17 C.F.R. Part 230.501;

(5) the issuer must reasonably believe that all purchasers of securities are purchasing for investment and not for sale in connection with a distribution of the security;

(6) a commission or remuneration shall not be paid or given, directly or indirectly, for any person's participation in the offer or sale of securities for the issuer unless the person is registered as a broker-dealer, agent, investment adviser representative, or investment adviser under AS 45.56.405 - 45.56.440;

(7) all funds received from investors shall be deposited into a bank or depository institution authorized to do business in this state, and all funds shall be used in accordance with representations made to investors;

(8) not less than 10 days before the use of any general solicitation or within 15 days after the first sale of the security under this exemption, provided no general solicitation has been used before the sale, whichever occurs first, the issuer shall provide a notice to the administrator as prescribed in regulations for this section; the notice shall specify that the issuer is conducting an offering in reliance upon this exemption and shall contain the names and addresses of

(A) the issuer;

(B) officers, directors, and any control person of the issuer;

(C) all persons who will be involved in the offer or sale of securities on behalf of the issuer; and

(D) the bank or other depository institution in which investor funds will be deposited;

(9) the issuer shall not be, either before or as a result of the offering

(A) an investment company as defined by 15 U.S.C. 80a-1 - 80a-64 (Investment Company Act of 1940), or subject to the reporting requirements of 15 U.S.C. 78m or 78o (Securities Exchange Act of 1934); or

(B) a broker-dealer, agent, investment adviser representative, or investment adviser as defined by AS 45.56.405 - 45.56.440;

(10) the issuer shall inform all purchasers that the securities have not been registered under AS 45.56.105, 45.56.305 - 45.56.360, and 45.56.550, and therefore, cannot be resold unless the securities are registered or qualify for an exemption from registration under AS 45.56.205, 45.56.210, or 45.56.240; in addition, the issuer shall make the disclosures required by 17 C.F.R. Part 230.147(f);

(11) the issuer shall require all purchasers to sign the following statement at the time of sale: "I acknowledge that I am investing in a high-risk, speculative business venture, that I may lose all of my investment and that I can afford the loss of my investment";

(12) this exemption shall not be used in conjunction with any other exemption under AS 45.56, except the exemption to institutional investors under AS 45.56.405 and 45.56.435 and for offers and sales to controlling persons of the issuer; sales to controlling persons shall not count toward the limitation in AS 45.56.220(a)(3);

(13) nothing in this exemption shall be construed to alleviate any person from the anti-fraud provisions under AS 45.56.505 - 45.56.560, nor shall the exemption be construed to provide relief from any other provisions of AS 45.56 other than as expressly stated:

(14) in this subsection, "residency" has the meaning given in AS 01.10.055.

(b) The administrator may by order deny or revoke the exemption specified in this section with respect to a specific security if it finds that the sale of the security would work or tend to work a fraud upon the purchasers of it. An order under this subsection may not operate retroactively. A person may be considered to have violated AS 45.56.205 - 45.56.250 by reason of any offer or sale effected after the entry of an order under this subsection if the person sustains the burden of proof that the person did not know and, in the exercise of reasonable care, could have not known of the order. In any proceeding under AS 45.56, the burden of proving an exemption is on the person claiming the exemption.

(c) Any person who makes application to the department for an exemption under AS 45.56.220 shall be assessed a filing fee as prescribed in regulations for this section.

Sec. 45.56.230. Disqualifier. A security or transaction exempted from registration under AS 45.56.205 - 45.56.250 shall not be available if the issuer, or any of its officers, controlling people, or promoters is subject to a disqualifier enumerated in 15 U.S.C. 78c(a)(39) (Dodd-Frank Wall Street Reform and Consumer Protection Act) as of the date of the transaction or offer.

Sec. 45.56.240. Waiver and modification. For any security or transaction or any type of security or transaction, the administrator may by order, waive, withdraw, or modify any of the requirements or conditions of AS 45.56.205 - 45.56.250.

Sec. 45.56.250. Denial, suspension, revocation, condition, or limitation of exemptions. (a) Except with respect to a federal covered security or a transaction involving a federal covered security, an order under this chapter may deny, suspend application of, condition, limit, or revoke an exemption created under AS 45.56.205(3)(C), (7), or (8) or 45.56.210 or 45.56.220, or an exemption or waiver created under AS 45.56.240 with respect to a specific security, transaction, or offer. An order under this subsection only may be issued under the procedures in AS 45.56.360(d) or 45.56.650 and only prospectively.

(b) A person does not violate AS 45.56.105, 45.56.305, 45.56.310, 45.56.320, 45.56.340, 45.56.360, 45.56.550, or 45.56.665 by an offer to sell, offer to purchase, sale, or purchase effected after the entry of an order issued under this section if the

1 person did not know, and in the exercise of reasonable care, could not have known, of
2 the order.

3 **Article 3. Registration of Securities and Notice Filing of Federal Covered Securities.**

4 **Sec. 45.56.305. Securities registration by coordination.** (a) A security for
5 which a registration statement has been filed under 15 U.S.C. 77a - 77aa (Securities
6 Act of 1933) in connection with the same offering may be registered by coordination
7 under this section.

8 (b) A registration statement and accompanying records under this section must
9 contain or be accompanied by the following records, in addition to the information
10 specified in AS 45.56.320, and a consent to service of process complying with
11 AS 45.56.630:

12 (1) a copy of the latest form of prospectus filed under 15 U.S.C. 77a -
13 77aa (Securities Act of 1933);

14 (2) if the administrator requires, a copy of the articles of incorporation
15 and bylaws or their substantial equivalents currently in effect; a copy of any other
16 information or any other records filed by the issuer under 15 U.S.C. 77a - 77aa
17 (Securities Act of 1933) requested by the administrator; and a copy of any agreement
18 with or among underwriters; a copy of any indenture or other instrument governing the
19 issuance of the security to be registered; and a specimen, copy, or description of the
20 security that is required by a regulation adopted or order issued under this chapter; and

21 (3) an undertaking to forward each amendment to the federal
22 prospectus, other than an amendment that delays the effective date of the registration
23 statement, promptly after it is filed with the Securities and Exchange Commission.

24 (c) A registration statement under this section becomes effective
25 simultaneously with or subsequent to the federal registration statement when all the
26 following conditions are satisfied:

27 (1) a stop order under (d) of this section or AS 45.56.360 or issued by
28 the Securities and Exchange Commission is not in effect, and a proceeding is not
29 pending against the issuer under AS 45.56.480; and

30 (2) the registration statement has been on file for at least 20 days or a
31 shorter period provided by a regulation adopted or order issued under this chapter.

(d) The registrant shall promptly notify the administrator in a record of the date when the federal registration statement becomes effective and the content of any price amendment and shall promptly file a record containing the price amendment. If the notice is not timely received, the administrator may issue a stop order, without prior notice or hearing, retroactively denying effectiveness to the registration statement or suspending its effectiveness until compliance with this section. The administrator shall promptly notify the registrant of an order by telephone or electronic means and promptly confirm this notice by a record. If the registrant subsequently complies with the notice requirements of this subsection, the stop order is void as of the date of its issuance.

(e) If the federal registration statement becomes effective before each of the conditions in this section is satisfied or is waived by the administrator, the registration statement is automatically effective under this chapter when all the conditions are satisfied or waived. If the registrant notifies the administrator of the date when the federal registration statement is expected to become effective, the administrator shall promptly notify the registrant by telephone or electronic means and promptly confirm this notice by a record, indicating whether all the conditions are satisfied or waived and whether the administrator intends the institution of a proceeding under AS 45.56.360. The notice by the administrator does not preclude the institution of a proceeding under AS 45.56.360.

Sec. 45.56.310. Securities registration by qualification. (a) A security may be registered by qualification under this section.

(b) A registration statement under this section must contain the information or records specified in AS 45.56.320, a consent to service of process complying with AS 45.56.630, and the following information or records:

(1) with respect to the issuer and any significant subsidiary, the name, address, and form of organization of the issuer and subsidiary; this state or foreign jurisdiction and date of organization of the issuer and subsidiary; the general character and location of the business of the issuer and subsidiary; a description of the physical properties and equipment of the issuer and subsidiary; and a statement of the general competitive conditions in the industry or business in which the issuer and subsidiary

are or will be engaged;

(2) with respect to each director and officer of the issuer and other person having a similar status or performing similar functions, the person's name, address, and principal occupation for the previous five years; the amount of securities of the issuer held by the person as of the 30th day before the filing of the registration statement; the amount of the securities covered by the registration statement to which the person has indicated an intention to subscribe; and a description of any material interest of the person in any material transaction with the issuer or a significant subsidiary effected within the previous three years or proposed to be effected;

(3) with respect to persons covered by (2) of this subsection, the aggregate sum of the remuneration paid to those persons during the previous 12 months and estimated to be paid during the next 12 months, directly or indirectly, by the issuer, and all predecessors, parents, subsidiaries, and affiliates of the issuer;

(4) with respect to a person owning of record or owning beneficially, if known, 10 percent or more of the outstanding shares of any class of equity security of the issuer, the information specified in (2) of this subsection, other than the person's occupation;

(5) with respect to a promoter, if the issuer was organized within the previous three years, the information or records specified in (2) of this subsection, any amount paid to the promoter within that period or intended to be paid to the promoter, and the consideration for the payment;

(6) with respect to a person on whose behalf any part of the offering is to be made in a nonissuer distribution, the person's name and address; the amount of securities of the issuer held by the person as of the date of the filing of the registration statement; a description of any material interest of the person in any material transaction with the issuer or any significant subsidiary effected within the previous three years or proposed to be effected; and a statement of the reasons for making the offering;

(7) the capitalization and long-term debt, on both a current and pro forma basis, of the issuer and any significant subsidiary, including a description of each security outstanding or being registered or otherwise offered, and a statement of

1 the amount and kind of consideration, whether in the form of cash, physical assets,
2 services, patents, goodwill, or anything else of value, for which the issuer or any
3 subsidiary has issued its securities within the previous two years or is obligated to
4 issue its securities;

5 (8) the kind and amount of securities to be offered; the proposed
6 offering price or the method by which the offering price is to be computed; any
7 variation at which a proportion of the offering is to be made to a person or class of
8 persons other than the underwriters, with a specification of the person or class; the
9 basis on which the offering is to be made if otherwise than for cash; the estimated
10 aggregate underwriting and selling discounts or commissions and finders' fees,
11 including separately cash, securities, contracts, or anything else of value to accrue to
12 the underwriters or finders in connection with the offering or, if the selling discounts
13 or commissions are variable, the basis of determining them and their maximum and
14 minimum amounts; the estimated amounts of other selling expenses, including legal,
15 engineering, and accounting charges; the name and address of each underwriter and
16 each recipient of a finder's fee; a copy of any underwriting or selling group agreement
17 under which the distribution is to be made, or the proposed form of an underwriting or
18 selling group agreement whose terms have not yet been determined; and a description
19 of the plan of distribution of any securities that are to be offered other than through an
20 underwriter;

21 (9) the estimated monetary proceeds to be received by the issuer from
22 the offering; the purposes for which the proceeds are to be used by the issuer; the
23 estimated amount to be used for each purpose; the order or priority in which the
24 proceeds will be used for the purposes stated; the amounts of any funds to be raised
25 from other sources to achieve the purposes stated; the sources of the funds; and, if a
26 part of the proceeds is to be used to acquire property, including goodwill, other than in
27 the ordinary course of business, the names and addresses of the vendors, the purchase
28 price, the names of any persons that have received commissions in connection with the
29 acquisition, and the amounts of the commissions and other expenses in connection
30 with the acquisition, including the cost of borrowing money to finance the acquisition;

31 (10) a description of any stock options or other security options

1 outstanding or to be created in connection with the offering, and the amount of those
2 options held or to be held by each person required to be named in (2), (4), (5), (6), or
3 (8) of this subsection and by any person that holds or will hold 10 percent or more in
4 the aggregate of those options;

5 (11) the dates of, parties to, and general effect, concisely stated, of
6 each managerial or other material contract made or to be made other than in the
7 ordinary course of business to be performed in whole or in part at or after the filing of
8 the registration statement or that was made within the previous two years, and a copy
9 of each contract;

10 (12) a description of any pending litigation, action, or proceeding to
11 which the issuer is a party and that materially affects the issuer's business or assets and
12 any litigation, action, or proceeding known to be contemplated by governmental
13 authorities;

14 (13) a copy of any prospectus, pamphlet, circular, form letter,
15 advertisement, or other sales literature intended as of the effective date of the
16 registration statement to be used in connection with the offering and any solicitation of
17 interest used in compliance with AS 45.56.210(17)(B);

18 (14) a specimen or copy of the security being registered, unless the
19 security is uncertificated; a copy of the issuer's articles of incorporation and bylaws or
20 their substantial equivalents, in effect; and a copy of any indenture or other instrument
21 covering the security to be registered;

22 (15) a signed or conformed copy of an opinion of counsel concerning
23 the legality of the security being registered, with an English translation if it is in a
24 language other than English, that states whether the security when sold will be validly
25 issued, fully paid, nonassessable and, if a debt security, a binding obligation of the
26 issuer;

27 (16) a signed or conformed copy of a consent of any accountant,
28 engineer, appraiser, or other person whose profession gives authority for a statement
29 made by the person if the person is named as having prepared or certified a report or
30 valuation, other than an official record, that is public, that is used in connection with
31 the registration statement;

(17) a balance sheet of the issuer as of a date within four months before the filing of the registration statement; a statement of income and a statement of cash flows for each of the three fiscal years preceding the date of the balance sheet and for any period between the close of the immediately previous fiscal year and the date of the balance sheet, or for the period of the issuer's and any predecessor's existence if less than three years; and, if any part of the proceeds of the offering is to be applied to the purchase of a business, the financial statements that would be required if that business were the registrant; and

(18) any additional information or records required by a regulation adopted or order issued under this chapter.

(c) A registration statement under this section becomes effective when the administrator so orders.

(d) A regulation adopted or order issued under this chapter may require as a condition of registration under this section that a prospectus containing a specified part of the information or record specified in (b) of this section be sent or given to each person to which an offer is made, before or concurrently, with the earliest of

(1) the first offer made in a record to the person other than by means of a public advertisement, by or for the account of the issuer or another person on whose behalf the offering is being made or by an underwriter or broker-dealer that is offering part of an unsold allotment or subscription taken by the person as a participant in the distribution;

(2) the confirmation of a sale made by or for the account of the person;

(3) payment under the sale; or

(4) delivery of the security under the sale.

Sec. 45.56.320. Securities registration filings. (a) A registration statement may be filed by the issuer, a person on whose behalf the offering is to be made, or a broker-dealer registered under this chapter.

(b) A person filing a registration statement shall pay a filing fee established by a regulation adopted under this chapter and consent to service of process as described under AS 45.56.630.

(c) A registration statement filed under AS 45.56.305 or 45.56.310 must

1 specify

2 (1) the amount of securities to be offered in this state;

3 (2) the states in which a registration statement or similar record in
4 connection with the offering has been or is to be filed; and

5 (3) any adverse order, judgment, or decree issued in connection with
6 the offering by a state securities regulator, the Securities and Exchange Commission,
7 or a court.

8 (d) A record filed under this chapter or former AS 45.55.010 - 45.55.120,
9 45.55.150, 45.55.155, 45.55.170, 45.55.900, 45.55.905(c), 45.55.915, 45.55.930,
10 45.55.935, and 45.55.960 - 45.55.995 within five years preceding the filing of a
11 registration statement may be incorporated by reference in the registration statement to
12 the extent that the record is currently accurate.

13 (e) In the case of a nonissuer distribution, information or a record may not be
14 required under (i) of this section or AS 45.56.310 unless it is known to the person
15 filing the registration statement or to the person on whose behalf the distribution is to
16 be made or unless it can be furnished by those persons without unreasonable effort or
17 expense.

18 (f) A regulation adopted or order issued under this chapter may require as a
19 condition of registration that a security issued within the previous five years or to be
20 issued to a promoter for a consideration substantially less than the public offering
21 price or to a person for a consideration other than cash be deposited in escrow and that
22 the proceeds from the sale of the registered security in this state be impounded until
23 the issuer receives a specified amount from the sale of the security, either in this state
24 or elsewhere. The conditions of any escrow or impoundment required under this
25 subsection may be established by a regulation adopted or order issued under this
26 chapter, but the administrator may not reject a depository institution solely because of
27 its location in another state.

28 (g) A regulation adopted or order issued under this chapter may require as a
29 condition of registration that a security registered under this chapter be sold only on a
30 specified form of subscription or sale contract and that a signed or conformed copy of
31 each contract be filed under this chapter or preserved for a period specified by the

1 regulation or order, not to exceed five years.

2 (h) Except while a stop order is in effect under AS 45.56.360, a registration
3 statement is effective for one year after the effective date of the registration statement
4 or for any longer period designated in an order under this chapter during which the
5 security is being offered or distributed in a nonexempted transaction by or for the
6 account of the issuer or other person on whose behalf the offering is being made or by
7 an underwriter or broker-dealer that is still offering part of an unsold allotment or
8 subscription taken as a participant in the distribution. For the purposes of a nonissuer
9 transaction, all outstanding securities of the same class identified in the registration
10 statement as a security registered under this chapter are considered to be registered
11 while the registration statement is effective. If any securities of the same class are
12 outstanding, a registration statement may not be withdrawn until one year after the
13 effective date of the registration statement. A registration statement may be withdrawn
14 only with the approval of the administrator.

15 (i) While a registration statement is effective, a regulation adopted or order
16 issued under this chapter may require the person that filed the registration statement to
17 file reports, not more often than quarterly, to keep the information or other record in
18 the registration statement reasonably current and to disclose the progress of the
19 offering.

20 (j) A registration statement may be amended after the effective date of the
21 registration statement. The post-effective amendment becomes effective when the
22 administrator so orders. If a post-effective amendment is made to increase the number
23 of securities specified to be offered or sold, the person filing the amendment shall pay
24 a registration fee established by a regulation adopted under this chapter. A post-
25 effective amendment relates back to the date of the offering of the additional securities
26 being registered if, within one year after the date of the sale, the amendment is filed
27 and the additional registration fee is paid.

28 **Sec. 45.56.330. Notice filing of federal covered securities.** (a) With respect to
29 a federal covered security, as defined in 15 U.S.C. 77r(b), that is not otherwise exempt
30 under AS 45.56.205 - 45.56.240, a regulation adopted or order issued under this
31 chapter may require the filing of any or all of the following records:

(1) before the initial offer of a federal covered security in this state, all records that are part of a federal registration statement filed with the Securities and Exchange Commission under 15 U.S.C. 77a - 77aa (Securities Act of 1933) and a consent to service of process complying with AS 45.56.630 signed by the issuer and the payment of a fee established in a regulation adopted under this chapter;

(2) after the initial offer of the federal covered security in this state, all records that are part of an amendment to a federal registration statement filed with the Securities and Exchange Commission under 15 U.S.C. 77a - 77aa (Securities Act of 1933); and

(3) to the extent necessary or appropriate to compute fees, a report of the value of the federal covered securities sold or offered to persons present in this state if the sales data are not included in records filed with the Securities and Exchange Commission and payment of a fee established in a regulation adopted under this chapter.

(b) A notice filing under (a) of this section is effective for one year commencing on the later of the notice filing or the effectiveness of the offering filed with the Securities and Exchange Commission. On or before expiration, the issuer may renew a notice filing by filing a copy of those records filed by the issuer with the Securities and Exchange Commission that are required by a regulation adopted or order issued under this chapter to be filed and by paying a renewal fee established in a regulation adopted under this chapter. A previously filed consent to service of process complying with AS 45.56.630 may be incorporated by reference in a renewal. A renewed notice filing becomes effective upon the expiration of the filing being renewed.

(c) With respect to a security that is a federal covered security under 15 U.S.C. 77r(b)(4)(D) (Securities Act of 1933), a regulation adopted under this chapter may require a notice filing by or on behalf of an issuer to include a copy of Form D, including the Appendix, as adopted by the Securities and Exchange Commission, and a consent to service of process complying with AS 45.56.630 signed by the issuer not later than 15 days after the first sale of the federal covered security in this state and the payment of a fee established in a regulation adopted under this chapter; and the

1 payment of a fee established in a regulation adopted under this chapter for any late
 2 filing.

3 (d) Except with respect to a federal security under 15 U.S.C. 77r(b)(1), if the
 4 administrator finds that there is a failure to comply with a notice or fee requirement of
 5 this section, the administrator may issue a stop order suspending the offer and sale of a
 6 federal covered security in this state. If the deficiency is corrected, the stop order is
 7 void as of the time of its issuance and a penalty may not be imposed by the
 8 administrator.

9 **Sec. 45.56.340. Viatical settlement interests.** (a) Before the sale of a viatical
 10 settlement interest, an issuer shall provide a prospective buyer with information that is
 11 sufficient to make an informed investment decision. The issuer shall also provide the
 12 information to the administrator upon request if the issuer is not otherwise required to
 13 file the information with the administrator. In this subsection, "information that is
 14 sufficient to make an informed investment decision" includes state-mandated
 15 disclosure forms and a disclosure of any significant factors that may affect the
 16 outcome of the investment.

17 (b) Except as may be required in the course of conduct of the responsibilities
 18 of the administrator, an issuer of a viatical settlement interest may not disclose to
 19 another person the identity of the viator or insured of the insurance policy that is the
 20 subject of the viatical settlement interest. The viator may waive this prohibition
 21 against disclosure if the waiver is in writing and signed by the viator.

22 (c) The administrator shall regulate transactions between a viatical settlement
 23 provider or person acting as an agent of a viatical settlement provider and a
 24 subsequent investor, while the authority of the director of the division of insurance
 25 extends to the regulation of viatical settlement contracts under AS 21.96.110.

26 **Sec. 45.56.350. Waiver and modification.** The administrator may waive or
 27 modify, in whole or in part, any or all of the requirements of AS 45.56.305 and
 28 45.56.320 or the requirement of any information or record in a registration statement
 29 or in a periodic report filed under AS 45.56.310(i).

30 **Sec. 45.56.360. Denial, suspension, and revocation of securities
 31 registration.** (a) The administrator may issue a stop order denying effectiveness to, or

1 suspending or revoking the effectiveness of, a registration statement if the
2 administrator finds that the order is in the public interest and that

3 (1) the registration statement as of the effective date of the registration
4 statement or before the effective date in the case of an order denying effectiveness, an
5 amendment under AS 45.56.320(j) as of the effective date of the amendment, or a
6 report under AS 45.56.320(i) is incomplete in a material respect or contains a
7 statement that, in the light of the circumstances under which it was made, was false or
8 misleading with respect to a material fact;

9 (2) this chapter or a regulation adopted or order issued under this
10 chapter or a condition imposed under this chapter has been wilfully violated in
11 connection with the offering by

- 12 (A) the person filing the registration statement;
- 13 (B) the issuer, a partner, officer, or director of the issuer or a
14 person having a similar status or performing a similar function;
- 15 (C) a promoter of the issuer;
- 16 (D) a person directly or indirectly controlling or controlled by
17 the issuer, but only if the person filing the registration statement is directly or
18 indirectly controlled by or acting for the issuer; or
- 19 (E) an underwriter;

20 (3) the security registered or sought to be registered is the subject of a
21 permanent or temporary injunction of a court of competent jurisdiction or an
22 administrative stop order or similar order issued under any federal, foreign, or state
23 law other than this chapter applicable to the offering; the administrator may not
24 institute a proceeding against an effective registration statement under this paragraph
25 more than one year after the date of the order or injunction on which it is based, and
26 the administrator may not issue an order under this paragraph on the basis of an order
27 or injunction issued under the securities act of another state unless the order or
28 injunction was based on conduct that would constitute, as of the date of the order, a
29 ground for a stop order under this section;

30 (4) the issuer's enterprise or method of business includes or would
31 include activities that are unlawful where performed;

(5) with respect to a security sought to be registered under AS 45.56.305, there has been a failure to comply with the undertaking required by AS 45.56.305(b)(3);

(6) the applicant or registrant has not paid the filing fee; the administrator shall void the order if the deficiency is corrected and the order was based solely on the nonpayment of the filing fee; or

(7) the offering

(A) will work or tend to work a fraud upon purchasers or would operate;

(B) has been or would be made with unreasonable amounts of underwriters' and sellers' discounts, commissions, or other compensation, or promoters' profits or participations, or unreasonable amounts or kinds of options; or

(C) is being made on terms that are unfair, unjust, or inequitable.

(b) To the extent practicable, the administrator shall, by a regulation adopted or order issued under this chapter, publish standards that provide notice of conduct that violates (a)(7) of this section.

(c) The administrator may not institute a stop order proceeding against an effective registration statement on the basis of conduct or a transaction known to the administrator when the registration statement became effective unless the proceeding is instituted within 30 days after the registration statement became effective.

(d) The administrator may summarily revoke, deny, postpone, or suspend the effectiveness of a registration statement pending final determination of an administrative proceeding. Upon the issuance of the order, the administrator shall promptly notify each person specified in (e) of this section that the order has been issued, the reasons for the revocation, denial, postponement, or suspension, and that, within 15 days after the receipt of a request in a record from the person, the matter will be scheduled for a hearing. If a hearing is not requested and none is ordered by the administrator, within 30 days after the date of service of the order, the order becomes final. If a hearing is requested or ordered, the administrator, after notice of and

1 opportunity for hearing for each person subject to the order, may modify or vacate the
2 order or extend the order until final determination.

3 (e) A stop order may not be issued under this section without

4 (1) appropriate notice to the applicant or registrant, the issuer, and the
5 person on whose behalf the securities are to be or have been offered;

6 (2) an opportunity for hearing conducted in the manner provided in
7 AS 45.56.650(c); and

8 (3) findings of fact and conclusions of law in a record.

9 (f) The administrator may modify or vacate a stop order issued under this
10 section if the administrator finds that the conditions that caused its issuance have
11 changed or that it is necessary or appropriate in the public interest or for the protection
12 of investors.

13 **Article 4. Broker-dealers, Agents, Investment Advisers, Investment Adviser
14 Representatives, and Federal Covered Investment Advisers.**

15 **Sec. 45.56.405. Broker-dealer registration requirement and exemptions.**

16 (a) A person may not transact business in this state as a broker-dealer unless the
17 person is registered under this chapter as a broker-dealer or is exempt from registration
18 as a broker-dealer under (b) of this section.

19 (b) The following persons are exempt from the registration requirement of (a)
20 of this section:

21 (1) a broker-dealer without a place of business in this state if the
22 broker-dealer's only transactions effected in this state are with

23 (A) the issuer of the securities involved in the transactions;

24 (B) a broker-dealer registered as a broker-dealer under this
25 chapter or not required to be registered as a broker-dealer under this chapter;

26 (C) an institutional investor;

27 (D) a nonaffiliated federal covered investment adviser with
28 investments under management in excess of \$100,000,000 acting for the
29 account of others under discretionary authority in a signed record;

30 (E) a bona fide preexisting customer whose principal place of
31 residence is not in this state and the person is registered as a broker-dealer

1 under 15 U.S.C. 78a - 78pp (Securities Exchange Act of 1934) or not required
2 to be registered under 15 U.S.C. 78a - 78ll (Securities Exchange Act of 1934)
3 and is registered under the securities act of the state in which the customer
4 maintains a principal place of residence;

5 (F) a bona fide preexisting customer whose principal place of
6 residence is in this state but who was not present in this state when the
7 customer relationship was established if

8 (i) the broker-dealer is registered under 15 U.S.C. 78a -
9 78pp (Securities Exchange Act of 1934) or not required to be registered
10 under 15 U.S.C. 78a - 78pp (Securities Exchange Act of 1934) and is
11 registered under the securities laws of the state in which the customer
12 relationship was established and where the customer had maintained a
13 principal place of residence; and

14 (ii) within 45 days after the customer's first transaction
15 in this state, the person files an application for registration as a broker-
16 dealer in this state and a further transaction is not effected more than 75
17 days after the date on which the application is filed, or, if earlier, the
18 date on which the administrator notifies the person that the
19 administrator has denied the application for registration or has stayed
20 the pendency of the application for good cause;

21 (G) not more than three customers in this state during the
22 previous 12 months, in addition to those customers specified in (A) - (F) of this
23 paragraph and under (H) of this paragraph if the broker-dealer is registered
24 under 15 U.S.C. 78a - 78pp (Securities Exchange Act of 1934) or not required
25 to be registered under 15 U.S.C. 78a - 78pp (Securities Exchange Act of 1934)
26 and is registered under the securities act of the state in which the broker-dealer
27 has its principal place of business; and

28 (H) any other person exempted by a regulation adopted or order
29 issued under this chapter; and

30 (2) a person that deals solely in United States government securities
31 and is supervised as a dealer in government securities by the Board of Governors of

1 the Federal Reserve System, the United States Comptroller of the Currency, the
 2 Federal Deposit Insurance Corporation, or the Office of Thrift Supervision, United
 3 States Department of the Treasury.

4 (c) A broker-dealer or an issuer engaged in offering, offering to purchase,
 5 purchasing, or selling securities in this state may not, directly or indirectly, employ or
 6 associate with an individual to engage in an activity related to securities transactions in
 7 this state if the registration of the individual is suspended or revoked or the individual
 8 is barred from employment or association with a broker-dealer, an issuer, an
 9 investment adviser, or a federal covered investment adviser by an order of the
 10 administrator under this chapter, the Securities and Exchange Commission, or a self-
 11 regulatory organization. A broker-dealer or issuer does not violate this subsection if
 12 the broker-dealer or issuer did not know and, in the exercise of reasonable care, could
 13 not have known of the suspension, revocation, or bar. Upon request from a broker-
 14 dealer or issuer and for good cause, an order under this chapter may modify or waive,
 15 in whole or in part, the application of the prohibitions of this subsection to the broker-
 16 dealer.

17 **Sec. 45.56.410. Limited registration of Canadian broker-dealers and**
 18 **agents.** (a) If a broker-dealer is registered under this section and its principal office is
 19 located in a province or territory of Canada that provides at least equivalent
 20 registration for a broker-dealer that is resident in the United States, a broker-dealer
 21 that is resident in Canada and does not have an office or other physical presence in this
 22 state may effect transactions in securities with or for or induce or attempt to induce the
 23 purchase or sale of a security by a person from Canada who is

24 (1) temporarily resident in this state and with whom the Canadian
 25 broker-dealer had a bona fide broker-dealer-client relationship before the person
 26 entered the United States; or

27 (2) resident in this state and whose transactions are in a self-directed
 28 tax-advantaged retirement plan in Canada of which the person is the holder or
 29 contributor.

30 (b) An agent who represents a Canadian broker-dealer registered under this
 31 section may, if the agent is registered under this section, effect transactions in

1 securities in this state as permitted for the broker-dealer under (a) of this section.

2 (c) Subject to the requirements of (a) of this section, a Canadian broker-dealer
3 may register under this section if the broker-dealer

4 (1) files an application in the form required by the jurisdiction in which
5 the broker-dealer has its principal office;

6 (2) files a written consent to service of process under AS 45.56.630;

7 (3) is registered as a broker or dealer in good standing in the
8 jurisdiction from which the broker-dealer is effecting transactions into this state and
9 files evidence of the registration; and

10 (4) is a member of a self-regulating organization or stock exchange in
11 Canada.

12 (d) An agent may register under this section in order to effect transactions in
13 securities in this state if the agent represents a Canadian broker-dealer that is
14 registered under this section, and the agent

15 (1) files an application in the form required by the jurisdiction in which
16 the broker-dealer has its principal office;

17 (2) files a written consent to service of process under AS 45.56.630;
18 and

19 (3) is registered and files evidence of good standing in the jurisdiction
20 from which the agent is effecting transactions into this state.

21 (e) Registration under this section becomes effective on the 30th day after an
22 application is filed unless it is made effective earlier by the administrator or a denial
23 order is in effect and a proceeding is pending under AS 45.56.480.

24 (f) A Canadian broker-dealer registered under this section shall

25 (1) maintain provincial or territorial registration and membership in
26 good standing in a self-regulating organization or stock exchange;

27 (2) provide the administrator on request with books and records
28 relating to its business in this state as a broker-dealer;

29 (3) inform the administrator promptly of any criminal action taken
30 against the broker-dealer or of any finding or sanction imposed on the broker-dealer as
31 a result of regulatory action, including that of a self-regulating organization, involving

1 fraud, theft, deceit, misrepresentation, or similar conduct; and

2 (4) disclose to its clients in this state that the broker-dealer and its
3 agents are not subject to the full regulatory requirements of this chapter.

4 (g) An agent of a Canadian broker-dealer registered under this section shall

5 (1) maintain provincial or territorial registration in good standing; and

6 (2) inform the administrator promptly of any criminal action taken
7 against the agent or of any finding or sanction imposed on the broker-dealer or agent
8 as a result of regulatory action, including that of a self-regulating organization,
9 involving fraud, theft, deceit, misrepresentation, or similar conduct.

10 (h) Renewal applications for Canadian broker-dealers and agents under this
11 section must be filed by midnight on December 31 of each year and may be made by
12 filing the most recent renewal application, if any, filed in the jurisdiction in which the
13 broker-dealer has its principal office or, if a renewal application is not required, the
14 most recent application filed under (c)(1) or (d)(1) of this section.

15 (i) An applicant for registration or renewal registration under this section shall
16 pay the fee for broker-dealers and agents required by this chapter.

17 (j) A Canadian broker-dealer or agent registered under this section may not
18 effect transactions in this state except

19 (1) as permitted under (a) or (b) of this section;

20 (2) with or through

21 (A) the issuers of the securities involved in the transactions;

22 (B) other broker-dealers; or

23 (C) banks, savings institutions, trust companies, insurance
24 companies, investment companies as defined in 15 U.S.C. 80a-3 (Investment
25 Company Act of 1940), pension or profit-sharing trusts, or other financial
26 institutions or institutional buyers, whether acting for themselves or as trustees;
27 or

28 (3) as otherwise permitted by this chapter.

29 (k) A Canadian broker-dealer or agent registered under this section and acting
30 in accordance with the limitations in (j) of this section is exempt from all of the
31 requirements of this chapter except the anti-fraud provisions under AS 45.56.505 and

1 the requirements of this section. The registration of a Canadian broker-dealer or agent
 2 under this section may not be denied, suspended, or revoked except in accordance with
 3 the provisions of AS 45.56.480 for a breach of the anti-fraud provisions under
 4 AS 45.56.505 or the requirements of this section.

5 (l) In this section, "Canadian broker-dealer" means a broker-dealer that has its
 6 principal office in a province or territory of Canada.

7 **Sec. 45.56.420. Registration exemption for merger and acquisition broker.**

8 (a) In general, except as provided in (b) and (d) of this section, a merger and
 9 acquisition broker shall be exempt from registration under AS 45.55.405.

10 (b) A merger and acquisition broker is not exempt from registration under
 11 AS 45.55.405 if the broker does any of the following:

12 (1) directly or indirectly, in connection with the transfer of ownership
 13 of an eligible privately held company, receives, holds, transmits, or has custody of the
 14 funds or securities to be exchanged by the parties to the transaction;

15 (2) engages on behalf of an issuer in a public offering of any class of
 16 securities that is registered, or is required to be registered, with the United States
 17 Securities and Exchange Commission under Section 12 of the Securities Exchange Act
 18 of 1934, 15 U.S.C. 78o(b) or with respect to which the issuer files, or is required to
 19 file, periodic information, documents, and reports under the Securities Exchange Act
 20 of 1934 Section 15(b) subsection (d), 15 U.S.C. 78o(d); or

21 (3) engages on behalf of any party in a transaction involving a public
 22 shell company.

23 (c) A merger and acquisition broker is not exempt from registration under
 24 AS 45.55.401 if the broker is subject to

25 (1) Suspension or revocation of registration under Section 15(b) of the
 26 Securities Exchange Act of 1934, 15 U.S.C. 78o(b)(4);

27 (2) a statutory disqualification described in Section 3(a)(39) of the
 28 Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(39);

29 (3) a disqualification under the rules adopted by the United States
 30 Securities and Exchange Commission under Section 926 of the Dodd-Frank Wall
 31 Street Reform and Consumer Protection Act (15 U.S.C. 77d note); or

(4) a final order described in paragraph (4)(H) of Section 15(b) of the Securities Exchange Act of 1934, 15 U.S.C. 78o(b)(4)(H).

(d) Nothing in this section shall be construed to limit any other authority of the department to exempt any person, or any class of persons, from any provision of this title, or from any provision of any rule or regulation thereunder.

(e) In this section,

(1) "control" means the power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise; there is a presumption of control for any person who

(A) is a director, general partner, member or manager of a limited liability company, or officer exercising executive responsibility, or has similar status or functions;

(B) has the right to vote 20 percent or more of a class of voting securities or the power to sell or direct the sale of 20 percent or more of a class of voting securities; or

(C) in the case of a partnership or limited liability company, has the right to receive upon dissolution, or has contributed, 20 percent or more of the capital;

(2) "eligible privately held company" means a company meeting both of the following conditions:

(A) the company does not have any class of securities registered, or required to be registered, with the United States Securities and Exchange Commission under Section 12 of the Securities Exchange Act of 1934, 15 U.S.C. 78o(b), or with respect to which the company files, or is required to file, periodic information, documents, and reports under subsection (d), 15 U.S.C. 78o(d); and

(B) in the fiscal year ending immediately before the fiscal year in which the services of the merger and acquisition broker are initially engaged with respect to the securities transaction, the company meets either or both of the following conditions, determined in accordance with the historical financial accounting records of the company:

(i) the earnings of the company before interest, taxes, depreciation, and amortization are less than \$25,000,000;

(ii) the gross revenues of the company are less than \$250,000,000;

(3) "merger and acquisition broker" means any broker and any person associated with a broker engaged in the business of effecting securities transactions solely in connection with the transfer of ownership of an eligible privately held company, regardless of whether that broker acts on behalf of a seller or buyer, through the purchase, sale, exchange, issuance, repurchase, or redemption of, or a business combination involving, securities or assets of the eligible privately held company, if the broker reasonably believes that

(A) upon consummation of the transaction, any person acquiring securities or assets of the eligible privately held company, acting alone or in concert, will control and, directly or indirectly, will be active in the management of the eligible privately held company or the business conducted with the assets of the eligible privately held company; and

(B) if any person is offered securities in exchange for securities or assets of the eligible privately held company, the person will, before becoming legally bound to consummate the transaction, receive or have reasonable access to the most recent fiscal year-end financial statements of the issuer of the securities as customarily prepared by its management in the normal course of operations and, if the financial statements of the issuer are audited, reviewed, or compiled, any related statement by the independent accountant; a balance sheet dated not more than 120 days before the date of the exchange offer; and information pertaining to the management, business, results of operations for the period covered by the foregoing financial statements, and any material loss contingencies of the issuer;

(4) "public shell company" means a company that, at the time of a transaction with an eligible privately held company,

(A) has any class of securities registered, or required to be registered, with the United States Securities and Exchange Commission under

Section 12, 15 U.S.C. 78o(b), or with respect to which the company files, or is required to file periodic information, documents, and reports under 15 U.S.C. 78o(d); and

(B) has no or nominal operations; and

(C) has

(i) no or nominal assets;

(ii) assets consisting solely of cash and cash

(iii) assets consisting of any amount of cash and cash and nominal other assets.

Sec. 45.56.430. Agent registration requirement and exemptions. (a) An individual may not transact business in this state as an agent unless the individual is registered under this chapter as an agent or is exempt from registration as an agent under (b) of this section.

(b) The following individuals are exempt from the registration requirement of (a) of this section:

(1) an individual who represents a broker-dealer in effecting transactions in this state limited to those described in 15 U.S.C. 78o(i);

(2) an individual who represents a broker-dealer that is exempt under AS 45.56.405(b) or AS 45.56.410;

(3) an individual who represents an issuer with respect to an offer or sale of the issuer's own securities or those of the issuer's parent or any of the issuer's subsidiaries, and who is not compensated in connection with the individual's participation by the payment of commissions or other remuneration based, directly or indirectly, on transactions in those securities;

(4) an individual who represents an issuer and who effects transactions in the issuer's securities exempted by AS 45.56.210, other than AS 45.56.210(11) and (14);

(5) an individual who represents an issuer that effects transactions solely in federal covered securities of the issuer, but an individual who effects transactions in a federal covered security under 15 U.S.C. 77r(b)(3) or (b)(4)(D) is not

1 exempt if the individual is compensated in connection with the agent's participation by
2 the payment of commissions or other remuneration based, directly or indirectly, on
3 transactions in those securities;

4 (6) an individual who represents a broker-dealer registered in this state
5 under AS 45.56.405(a) or exempt from registration under AS 45.56.405(b) in the offer
6 and sale of securities for an account of a nonaffiliated federal covered investment
7 adviser with investments under management in excess of \$100,000,000 acting for the
8 account of others under discretionary authority in a signed record;

9 (7) an individual who represents an issuer in connection with the
10 purchase of the issuer's own securities;

11 (8) an individual who represents an issuer and who restricts
12 participation to performing clerical or ministerial acts; or

13 (9) any other individual exempted by a regulation adopted or order
14 issued under this chapter.

15 (c) The registration of an agent is effective only while the agent is employed
16 by or associated with a broker-dealer registered under this chapter or an issuer that is
17 offering, selling, or purchasing the issuer's securities in this state.

18 (d) A broker-dealer or an issuer engaged in offering, selling, or purchasing
19 securities in this state may not employ or associate with an agent who transacts
20 business in this state on behalf of broker-dealers or issuers unless the agent is
21 registered under (a) of this section or exempt from registration under (b) of this
22 section.

23 (e) An individual may not act as an agent for more than one broker-dealer or
24 one issuer at a time, unless the broker-dealer or the issuer for which the agent acts is
25 affiliated by direct or indirect common control or is authorized by a regulation or order
26 issued under this chapter.

27 **Sec. 45.56.435. Investment adviser registration requirement and**
28 **exemptions.** (a) A person may not transact business in this state as an investment
29 adviser unless the person is registered under this chapter as an investment adviser or is
30 exempt from registration as an investment adviser under (b) of this section.

31 (b) The following persons are exempt from the registration requirement in (a)

1 of this section:

2 (1) a person without a place of business in this state that is registered
3 under the securities act of the state in which the person has the person's principal place
4 of business if the person's only clients in this state are

5 (A) federal covered investment advisers, investment advisers
6 registered under this chapter, or broker-dealers registered under this chapter;

7 (B) institutional investors;

8 (C) bona fide preexisting clients whose principal places of
9 residence are not in this state if the investment adviser is registered under the
10 securities act of the state in which the clients maintain principal places of
11 residence; or

12 (D) exempt by regulation adopted or order issued under this
13 chapter;

14 (2) a person without a place of business in this state if the person has
15 had, during the preceding 12 months, not more than five clients that are resident in this
16 state in addition to those specified under (1) of this subsection; or

17 (3) any other person exempted by a regulation adopted or order issued
18 under this chapter.

19 (c) An investment adviser may not, directly or indirectly, employ or associate
20 with an individual to engage in an activity related to investment advice in this state if
21 the registration of the individual is suspended or revoked or the individual is barred
22 from employment or association with an investment adviser, federal covered
23 investment adviser, or broker-dealer by an order under this chapter, the Securities and
24 Exchange Commission, or a self-regulatory organization, unless the investment
25 adviser did not know, and, in the exercise of reasonable care could not have known, of
26 the suspension, revocation, or bar. Upon request from the investment adviser and for
27 good cause, the administrator may by order, waive, in whole or in part, the application
28 of the prohibitions of this subsection to the investment adviser.

29 (d) An investment adviser may not employ or associate with an individual
30 required to be registered under this chapter as an investment adviser representative
31 who transacts business in this state on behalf of the investment adviser unless the

1 individual is registered under AS 45.56.440(a) or is exempt from registration under
2 AS 45.56.440(b).

3 **Sec. 45.56.440. Investment adviser representative registration requirement**
4 **and exemptions.** (a) An individual may not transact business in this state as an
5 investment adviser representative unless the individual is registered under this chapter
6 as an investment adviser representative or is exempt from registration as an investment
7 adviser representative under (b) of this section.

8 (b) The following individuals are exempt from the registration requirement of
9 (a) of this section:

10 (1) an individual who is employed by or associated with an investment
11 adviser that is exempt from registration under AS 45.56.435(b) or a federal covered
12 investment adviser that is excluded from the notice filing requirements of
13 AS 45.56.445; and

14 (2) any other individual exempted by a regulation adopted or order
15 issued under this chapter.

16 (c) The registration of an investment adviser representative is not effective
17 while the investment adviser representative is not employed by or associated with an
18 investment adviser registered under this chapter or a federal covered investment
19 adviser that has made or is required to make a notice filing under AS 45.56.445.

20 (d) An individual may transact business as an investment adviser
21 representative for more than one investment adviser or federal covered investment
22 adviser unless a regulation adopted or order issued under this chapter prohibits or
23 limits an individual from acting as an investment adviser representative for more than
24 one investment adviser or federal covered investment adviser.

25 (e) An individual acting as an investment adviser representative may not,
26 directly or indirectly, conduct business in this state on behalf of an investment adviser
27 or a federal covered investment adviser if the registration of the individual as an
28 investment adviser representative is suspended or revoked or the individual is barred
29 from employment or association with an investment adviser or a federal covered
30 investment adviser by an order under this chapter, the Securities and Exchange
31 Commission, or a self-regulatory organization. Upon request from a federal covered

1 investment adviser and for good cause, the administrator may by order, waive, in
 2 whole or in part, the application of the requirements of this subsection to the federal
 3 covered investment adviser.

4 (f) An investment adviser registered under this chapter, a federal covered
 5 investment adviser that has filed a notice under AS 45.56.445, or a broker-dealer
 6 registered under this chapter is not required to employ or associate with an individual
 7 as an investment adviser representative if the only compensation paid to the individual
 8 for a referral of investment advisory clients is paid to an investment adviser registered
 9 under this chapter, a federal covered investment adviser who has filed a notice under
 10 AS 45.56.445, or a broker-dealer registered under this chapter with which the
 11 individual is employed or associated as an investment adviser representative.

12 **Sec. 45.56.445. Federal covered investment adviser notice filing
 13 requirement.** (a) Except with respect to a federal covered investment adviser
 14 described in (b) of this section, a federal covered investment adviser may not transact
 15 business in this state as a federal covered investment adviser unless the federal
 16 covered investment adviser complies with (c) of this section.

17 (b) The following federal covered investment advisers are not required to
 18 comply with (c) of this section:

19 (1) a federal covered investment adviser without a place of business in
 20 this state if the only clients of the federal covered investment adviser in this state are

21 (A) federal covered investment advisers, investment advisers
 22 registered under this chapter, and broker-dealers registered under this chapter;

23 (B) institutional investors;

24 (C) bona fide preexisting clients whose principal places of
 25 residence are not in this state; or

26 (D) other clients specified by a regulation adopted or order
 27 issued under this chapter;

28 (2) a federal covered investment adviser without a place of business in
 29 this state if the person has had, during the preceding 12 months, not more than five
 30 clients that are resident in this state in addition to those specified under (1) of this
 31 subsection; and

(3) any other person excluded by a regulation adopted or order issued under this chapter.

(c) A person acting as a federal covered investment adviser not excluded under (b) of this section shall file a notice, a consent to service of process complying with AS 45.56.630, and the records that have been filed with the Securities and Exchange Commission under 15 U.S.C. 80b-1 - 80b-21 (Investment Advisers Act of 1940) required by a regulation adopted or order issued under this chapter and shall pay the fees specified by regulation adopted under AS 45.56.470.

(d) The notice under (c) of this section becomes effective upon filing.

Sec. 45.56.450. Registration by broker-dealer, agent, investment adviser, and investment adviser representative. (a) A person shall register as a broker-dealer, agent, investment adviser, or investment adviser representative by filing an application and a consent to service of process complying with AS 45.56.630 and paying the fee specified in AS 45.56.470 and any reasonable fees charged by the designee of the administrator for processing the filing. The application must contain

(1) the information or record required for the filing of a uniform application; and

(2) upon request by the administrator, any other financial or other information or record that the administrator determines is appropriate.

(b) If the information or record contained in an application filed under (a) of this section is or becomes inaccurate or incomplete in a material respect, the registrant shall promptly file a correcting amendment.

(c) If an order is not in effect, and a proceeding is not pending under AS 45.56.480, and the administrator has not initiated an investigation, registration becomes effective at noon on the 45th day after a completed application is filed, unless the registration is denied. A regulation adopted or order issued under this chapter may set an earlier effective date or may defer the effective date until noon on the 45th day after the filing of any amendment completing the application.

(d) A registration is effective until midnight on December 31 of the year for which the application for registration is filed. Unless an order is in effect under AS 45.56.480, a registration may be automatically renewed each year by filing the

1 records required by a regulation adopted or order issued under this chapter, by paying
 2 the fee specified in AS 45.56.470, and by paying costs charged by the designee of the
 3 administrator for processing the filings.

4 (e) A regulation adopted or order issued under this chapter may impose other
 5 conditions, not inconsistent with 15 U.S.C. 77b - 77c, 77e - 77f, 77r, 77z-3, 77ddd,
 6 78a - 78d, 78g - 78h, 78n - 78o, 78q, 78bb, 78ee, 78kk, 78mm, 80a-2 - 80a-3, 80a-6,
 7 80a-12, 80a-24, 80a-26 - 80a-27, 80a-29 - 80a-30, 80a-34, 80a-51, 80a-54, 80a-60,
 8 80a-63, 80b-2 - 80b-3a, 80b-5, 80b-10, 80b-18a, 80b-20, and 29 U.S.C. 1002 (P.L.
 9 104-290) (National Securities Markets Improvement Act of 1996). An order issued
 10 under this chapter may waive, in whole or in part, specific requirements in connection
 11 with registration that are in the public interest and for the protection of investors.

12 **Sec. 45.56.455. Succession and change in registration of broker-dealer or**
 13 **investment adviser.** (a) A broker-dealer or investment adviser may succeed to the
 14 current registration of another broker-dealer or investment adviser or a notice filing of
 15 a federal covered investment adviser, and a federal covered investment adviser may
 16 succeed to the current registration of an investment adviser or notice filing of another
 17 federal covered investment adviser, by filing as a successor an application for
 18 registration under AS 45.56.405 or 45.56.435 or a notice under AS 45.56.445 for the
 19 unexpired portion of the current registration or notice filing.

20 (b) A broker-dealer or investment adviser that changes its form of
 21 organization or state of incorporation or organization may continue its registration by
 22 filing an amendment to its registration if the change does not involve a material
 23 change in its financial condition or management. The amendment becomes effective
 24 when filed or on a date designated by the registrant in its filing. The new organization
 25 is a successor to the original registrant for the purposes of this chapter. If there is a
 26 material change in financial condition or management, the broker-dealer or investment
 27 adviser shall file a new application for registration. A predecessor registered under this
 28 chapter shall stop conducting its securities business other than winding down
 29 transactions and shall file for withdrawal of broker-dealer or investment adviser
 30 registration within 45 days after filing its amendment to effect succession.

31 (c) A broker-dealer or investment adviser that changes its name may continue

1 its registration by filing an amendment to its registration. The amendment becomes
2 effective when filed or on a date designated by the registrant.

3 (d) A change of control of a broker-dealer or investment adviser may be made
4 in accordance with a regulation adopted or order issued under this chapter.

5 **Sec. 45.56.460. Termination of employment or association of agent and**
6 **investment adviser representative and transfer of employment or association.** (a)
7 If an agent registered under this chapter terminates employment by or association with
8 a broker-dealer or issuer, or if an investment adviser representative registered under
9 this chapter terminates employment by or association with an investment adviser or
10 federal covered investment adviser, or if either registrant terminates activities that
11 require registration as an agent or investment adviser representative, the broker-dealer,
12 issuer, investment adviser, or federal covered investment adviser shall promptly file a
13 notice of termination. The registrant may file the notice of termination if the registrant
14 learns that the broker-dealer, issuer, investment adviser, or federal covered investment
15 adviser has not filed the notice.

16 (b) If an agent registered under this chapter terminates employment by or
17 association with a broker-dealer registered under this chapter and begins employment
18 by or association with another broker-dealer registered under this chapter, or if an
19 investment adviser representative registered under this chapter terminates employment
20 by or association with an investment adviser registered under this chapter or a federal
21 covered investment adviser that has filed a notice under AS 45.56.445 and begins
22 employment by or association with another investment adviser registered under this
23 chapter or a federal covered investment adviser that has filed a notice under
24 AS 45.56.445, then, within 30 days after the termination, upon the filing by or on
25 behalf of the registrant of an application for registration that complies with the
26 requirement of AS 45.56.450(a) and payment of the filing fee required under
27 AS 45.56.470, the registration of the agent or investment adviser representative is

28 (1) immediately effective as of the date of the completed filing, if the
29 agent's record or successor record in the Central Registration Depository operated by
30 the Financial Industry Regulatory Authority or the investment adviser representative's
31 record or successor record in the Investment Adviser Registration Depository operated

1 by the Financial Industry Regulatory Authority does not contain a new or amended
2 disciplinary disclosure within the previous 12 months; or

3 (2) temporarily effective as of the date of the completed filing, if the
4 agent's record or successor record in the Central Registration Depository operated by
5 the Financial Industry Regulatory Authority or the investment adviser representative's
6 record or successor record in the Investment Adviser Registration Depository operated
7 by the Financial Industry Regulatory Authority contains a new or amended
8 disciplinary disclosure within the preceding 12 months.

9 (c) The administrator may withdraw a temporary registration if there are or
10 were grounds for discipline as specified in AS 45.56.480 and the administrator does so
11 within 30 days after the filing of the application. If the administrator does not
12 withdraw the temporary registration within the 30-day period, registration becomes
13 automatically effective on the 31st day after filing.

14 (d) The administrator may prevent the effectiveness of a transfer of an agent
15 or investment adviser representative under (b)(1) or (2) of this section based on the
16 public interest and the protection of investors.

17 (e) If the administrator determines that a registrant or applicant for registration
18 is no longer in existence, has ceased to act as a broker-dealer, agent, investment
19 adviser, or investment adviser representative, is the subject of an adjudication of
20 incapacity, is subject to the control of a committee, conservator, or guardian, or cannot
21 reasonably be located, a regulation adopted or order issued under this chapter may
22 require the registration be canceled or terminated or the application denied. The
23 administrator may reinstate a canceled or terminated registration, with or without
24 hearing, and may make the registration retroactive.

25 **Sec. 45.56.465. Withdrawal of registration of broker-dealer, agent,
26 investment adviser, and investment adviser representative.** Withdrawal of
27 registration by a broker-dealer, agent, investment adviser, or investment adviser
28 representative becomes effective 60 days after the filing of the application to withdraw
29 or within any shorter period as provided by a regulation adopted or order issued under
30 this chapter unless a revocation or suspension proceeding is pending when the
31 application is filed. If a proceeding is pending, withdrawal becomes effective when

1 and upon the conditions required by a regulation adopted or order issued under this
2 chapter. The administrator may institute a revocation or suspension proceeding under
3 AS 45.56.480 within one year after the withdrawal became effective automatically and
4 issue a revocation or suspension order as of the last date on which registration was
5 effective if a proceeding is not pending.

6 **Sec. 45.56.470. Filing fees.** (a) The administrator shall establish fees by
7 regulation for

8 (1) an initial filing of an application as a broker-dealer and renewal of
9 an application by a broker-dealer for registration;

10 (2) an application for registration as an agent and renewal of
11 registration as an agent;

12 (3) an application for registration as an investment adviser and renewal
13 of registration as an investment adviser;

14 (4) an application for registration as an investment adviser
15 representative, a renewal of registration as an investment adviser representative, and a
16 change of registration as an investment adviser representative; and

17 (5) an initial fee and annual notice fee for a federal covered investment
18 adviser required to file a notice under AS 45.56.445.

19 (b) A person required to pay a filing or notice fee under this section may
20 transmit the fee through or to a designee as provided by a regulation adopted or order
21 issued under this chapter.

22 **Sec. 45.56.475. Post registration requirements.** (a) Subject to 15 U.S.C.
23 780(i) or 80b-18a, a regulation adopted or order issued under this chapter may
24 establish minimum financial requirements for broker-dealers registered or required to
25 be registered under this chapter and investment advisers registered or required to be
26 registered under this chapter.

27 (b) Subject to 15 U.S.C. 780(i) or 80b-18a, a broker-dealer registered or
28 required to be registered under this chapter and an investment adviser registered or
29 required to be registered under this chapter shall file the financial reports required by a
30 regulation adopted or order issued under this chapter. If the information contained in a
31 record filed under this subsection is or becomes inaccurate or incomplete in a material

1 respect, the registrant shall promptly file a correcting amendment.

2 (c) Subject to 15 U.S.C. 78o(i) or 80b-18a,

3 (1) a broker-dealer registered or required to be registered under this
4 chapter and an investment adviser registered or required to be registered under this
5 chapter shall make and maintain the accounts, correspondence, memoranda, papers,
6 books, and other records required by a regulation adopted or order issued under this
7 chapter;

8 (2) broker-dealer records required to be maintained under (1) of this
9 subsection may be maintained in any form of data storage acceptable under 15 U.S.C.
10 78q(a) if they are readily accessible to the administrator; and

11 (3) investment adviser records required to be maintained under (1) of
12 this subsection may be maintained in any form of data storage required by a regulation
13 adopted or order issued under this chapter.

14 (d) The records of a broker-dealer registered or required to be registered under
15 this chapter and of an investment adviser registered or required to be registered under
16 this chapter are subject to the reasonable periodic, special, or other audits or
17 inspections by a representative of the administrator, in or outside this state, that the
18 administrator considers necessary or appropriate in the public interest and for the
19 protection of investors. An audit or inspection may be made at any time and without
20 prior notice. The administrator may copy and remove for audit or inspection copies of
21 all records the administrator reasonably considers necessary or appropriate to conduct
22 the audit or inspection. The administrator may assess a reasonable charge for
23 conducting an audit or inspection under this subsection.

24 (e) Subject to 15 U.S.C. 78o(i) or 80b-18a, a regulation adopted or order
25 issued under this chapter may require a broker-dealer or investment adviser that has
26 custody of or discretionary authority over funds or securities of a customer or client to
27 obtain insurance or post a bond or other satisfactory form of security in an amount
28 established by a regulation adopted under this chapter. The administrator may
29 determine the requirements of the insurance, bond, or other satisfactory form of
30 security. Insurance or a bond or other satisfactory form of security may not be required
31 of a broker-dealer registered under this chapter whose net capital exceeds, or of an

1 investment adviser registered under this chapter whose minimum financial
2 requirements exceed, the amounts required by a regulation adopted or order issued
3 under this chapter. The insurance, bond, or other satisfactory form of security must
4 permit an action by a person to enforce any liability on the insurance, bond, or other
5 satisfactory form of security if instituted within the time limitations in
6 AS 45.56.660(j)(2).

7 (f) Subject to 15 U.S.C. 78o(i) or 80b-18a, an agent may not have custody of
8 funds or securities of a customer except under the supervision of a broker-dealer and
9 an investment adviser representative may not have custody of funds or securities of a
10 client except under the supervision of an investment adviser or a federal covered
11 investment adviser. A regulation adopted or order issued under this chapter may
12 prohibit, limit, or impose conditions on a broker-dealer regarding custody of funds or
13 securities of a customer and on an investment adviser regarding custody of securities
14 or funds of a client.

15 (g) With respect to an investment adviser registered or required to be
16 registered under this chapter, a regulation adopted or order issued under this chapter
17 may require that information or other records be furnished or disseminated to clients
18 or prospective clients in this state as necessary or appropriate in the public interest and
19 for the protection of investors and advisory clients.

20 (h) A regulation adopted or order issued under this chapter may require an
21 individual registered under AS 45.56.430 or 45.56.440 to participate in a continuing
22 education program approved by the Securities and Exchange Commission and
23 administered by a self-regulatory organization, or, in the absence of a continuing
24 education program, a regulation adopted or order issued under this chapter may
25 require continuing education for an individual registered under AS 45.56.440.

26 **Sec. 45.56.480. Denial, revocation, suspension, withdrawal, restriction,
27 condition, or limitation of registration.** (a) If the administrator finds that the order is
28 in the public interest and (d) of this section authorizes the action, an order issued under
29 this chapter may deny an application, or may condition or limit registration of an
30 applicant to be a broker-dealer, agent, investment adviser, or investment adviser
31 representative, and, if the applicant is a broker-dealer or investment adviser, of a

1 partner, officer, director, or person having a similar status or performing similar
2 functions, or a person directly or indirectly in control, of the broker-dealer or
3 investment adviser.

4 (b) If the administrator finds that the order is in the public interest and (d) of
5 this section authorizes the action, an order issued under this chapter may revoke,
6 suspend, condition, or limit the registration of a registrant, and, if the registrant is a
7 broker-dealer or investment adviser, of a partner, officer, director, or person having a
8 similar status or performing similar functions, or a person directly or indirectly in
9 control, of the broker-dealer or investment adviser. However, the administrator may
10 not

11 (1) institute a revocation or suspension proceeding under this
12 subsection based on an order issued under a law of another state that is reported to the
13 administrator or a designee of the administrator more than three years after the date of
14 the order on which it is based; or

15 (2) under (d)(5)(A) and (B) of this section, issue an order on the basis
16 of an order issued under the securities act of another state unless the other order was
17 based on conduct for which (d) of this section would authorize the action had the
18 conduct occurred in this state.

19 (c) If the administrator finds that the order is in the public interest and (d)(1) -
20 (6), (8) - (10), (12), or (13) of this section authorize the action, an order under this
21 chapter may censure, impose a bar, or impose a civil penalty of not more than
22 \$100,000 for a single violation, on a registrant, and, if the registrant is a broker-dealer
23 or investment adviser, a partner, officer, director, or person having a similar status or
24 performing similar functions, or a person directly or indirectly in control, of the
25 broker-dealer or investment adviser.

26 (d) A person may be disciplined under (a) - (c) of this section if the person

27 (1) has filed an application for registration in this state under this
28 chapter or former AS 45.55.010 - 45.55.120, 45.55.150, 45.55.155, 45.55.170,
29 45.55.900, 45.55.905(c), 45.55.915, 45.55.935, and 45.55.960 - 45.55.995, as of the
30 effective date of registration or as of any date after filing in the case of an order
31 denying effectiveness, was incomplete in any material respect or contained a statement

1 that, in light of the circumstances under which it was made, was false or misleading
2 with respect to a material fact;

3 (2) wilfully violated or wilfully failed to comply with this chapter or
4 former AS 45.55.010 - 45.55.120, 45.55.150, 45.55.155, 45.55.170, 45.55.900,
5 45.55.905(c), 45.55.915, 45.55.935, and 45.55.960 45.55.930 - 45.55.995 or a
6 regulation adopted or order issued under this chapter or former AS 45.55.010 -
7 45.55.120, 45.55.150, 45.55.155, 45.55.170, 45.55.900, 45.55.905(c), 45.55.915,
8 45.55.930, 45.55.935, and 45.55.960 - 45.55.995;

9 (3) has been convicted of a felony or within the previous 10 years has
10 been convicted of a misdemeanor involving a security, a commodity future or option
11 contract, or an aspect of a business involving securities, commodities, investments,
12 franchises, insurance, banking, or finance;

13 (4) is enjoined or restrained by a court of competent jurisdiction in an
14 action instituted by the administrator under this chapter or former AS 45.55.010 -
15 45.55.120, 45.55.150, 45.55.155, 45.55.170, 45.55.900, 45.55.905(c), 45.55.915,
16 45.55.930, 45.55.935, and 45.55.960 - 45.55.995, a state, the Securities and Exchange
17 Commission, or the United States from engaging in or continuing an act, practice, or
18 course of business involving an aspect of a business involving securities, commodities,
19 investments, franchises, insurance, banking, or finance;

20 (5) is the subject of an order, issued after notice and opportunity for
21 hearing by

22 (A) the securities or other financial services regulator of a state
23 or the Securities and Exchange Commission or other federal agency denying,
24 revoking, barring, or suspending registration as a broker-dealer, agent,
25 investment adviser, federal covered investment adviser, or investment adviser
26 representative;

27 (B) the securities regulator of a state or the Securities and
28 Exchange Commission against a broker-dealer, agent, investment adviser,
29 investment adviser representative, or federal covered investment adviser;

30 (C) the Securities and Exchange Commission or a self-
31 regulatory organization suspending or expelling the registrant from

membership in the self-regulatory organization;

(D) a court adjudicating a United States Postal Service fraud order;

(E) the insurance regulator of a state denying, suspending, or revoking registration as an insurance agent; or

(F) a depository institution or financial services regulator suspending or barring the person from the depository institution or other financial services business;

9 (6) is the subject of an adjudication or determination, after notice and
10 opportunity for hearing, by the Securities and Exchange Commission, the Commodity
11 Futures Trading Commission, the Federal Trade Commission, a federal depository
12 institution regulator, or a depository institution, insurance, or other financial services
13 regulator of a state that the person wilfully violated 15 U.S.C. 77a - 77aa (Securities
14 Act of 1933), 15 U.S.C. 78a - 78pp (Securities Exchange Act of 1934), 15 U.S.C. 80b-
15 1 - 80b-21 (Investment Advisers Act of 1940), 15 U.S.C. 80a-1 - 80a-64 (Investment
16 Company Act of 1940), or 7 U.S.C. 1 - 27 (Commodity Exchange Act), the securities
17 or commodities law of a state, or a federal or state law under which a business
18 involving investments, franchises, insurance, banking, or finance is regulated;

(7) is insolvent, either because the person's liabilities exceed the person's assets or because the person cannot meet the person's obligations as they mature, but the administrator may not enter an order against an applicant or registrant under this paragraph without a finding of insolvency as to the applicant or registrant;

23 (8) refuses to allow or otherwise impedes the administrator from
24 conducting an audit or inspection under AS 45.56.475(d) or refuses access to a
25 registrant's office to conduct an audit or inspection under AS 45.56.475(d);

1 45.55.120, 45.55.150, 45.55.155, 45.55.170, 45.55.900, 45.55.905(c), 45.55.915,
2 45.55.930, 45.55.935, and 45.55.960 - 45.55.995;

3 (10) has not paid the proper filing fee within 30 days after having been
4 notified by the administrator of a deficiency, but the administrator shall vacate an
5 order under this paragraph when the deficiency is corrected;

6 (11) after notice and opportunity for a hearing, has been found

7 (A) by a court of competent jurisdiction to have wilfully
8 violated the laws of a foreign jurisdiction under which the business of
9 securities, commodities, investment, franchises, insurance, banking, or finance
10 is regulated;

11 (B) to have been the subject of an order of a securities regulator
12 of a foreign jurisdiction denying, revoking, or suspending the right to engage
13 in the business of securities as a broker-dealer, agent, investment adviser,
14 investment adviser representative, or similar person; or

15 (C) to have been suspended or expelled from membership by or
16 participation in a securities exchange or securities association operating under
17 the securities laws of a foreign jurisdiction;

18 (12) is the subject of a cease and desist order issued by the Securities
19 and Exchange Commission or issued under the securities, commodities, investment,
20 franchise, banking, finance, or insurance laws of a state;

21 (13) has engaged in dishonest or unethical practices in the securities,
22 commodities, investment, franchise, banking, finance, or insurance business;

23 (14) is not qualified on the basis of factors that may include training,
24 experience, and knowledge of the securities business; however, in the case of an
25 application by an agent for a broker-dealer that is a member of a self-regulatory
26 organization or by an individual for registration as an investment adviser
27 representative, a denial order may not be based on this paragraph if the individual has
28 successfully completed all examinations required by (e) of this section; the
29 administrator may require an applicant for registration under AS 45.56.430 or
30 45.56.440 who has not been registered in a state within the two years preceding the
31 filing of an application in this state to successfully complete an examination; or

(15) is a person whose license renewal is denied under AS 14.43.148 or whose license issuance or renewal is denied under AS 25.27.244.

(e) A regulation adopted or order issued under this chapter may require that an examination, including an examination developed or approved by an organization of securities regulators, be successfully completed by a class of individuals or all individuals. An order issued under this chapter may waive, in whole or in part, an examination as to an individual and a regulation adopted under this chapter may waive, in whole or in part, an examination as to a class of individuals if the administrator determines that the examination is not necessary or appropriate in the public interest and for the protection of investors.

(f) The administrator may suspend or deny an application summarily; restrict, condition, limit, or suspend a registration; or censure, bar, or impose a civil penalty on a registrant before final determination of an administrative proceeding. Upon the issuance of an order, the administrator shall promptly notify each person subject to the order that the order has been issued, the reasons for the action, and that, within 15 days after the receipt of a request in a record from the person, the matter will be scheduled for a hearing. If a hearing is not requested and none is ordered by the administrator within 30 days after the date of service of the order, the order becomes final by operation of law. If a hearing is requested or ordered, the administrator, after notice of and opportunity for hearing to each person subject to the order, may modify or vacate the order or extend the order until final determination.

(g) An order may not be issued under this section, except under (f) of this section, without appropriate notice to the applicant or registrant, and an opportunity for hearing under AS 45.56.650(c).

(h) A person that controls, directly or indirectly, a person not in compliance with this section may be disciplined by order of the administrator under (a) - (c) of this section to the same extent as the noncomplying person, unless the controlling person did not know, and in the exercise of reasonable care could not have known, of the existence of conduct that is a ground for discipline under this section.

(i) The administrator may not institute a proceeding under (a) - (c) of this section based solely on material facts actually known by the administrator unless an

1 investigation or the proceeding is instituted within one year after the administrator
 2 actually acquires knowledge of the material facts.

3 **Article 5. Fraud and Liabilities.**

4 **Sec. 45.56.505. General fraud.** A person may not, in connection with the
 5 offer, sale, or purchase of a security, directly or indirectly,

- 6 (1) employ a device, scheme, or artifice to defraud;
- 7 (2) make an untrue statement of a material fact or omit to state a
 8 material fact necessary in order to make the statements made, in light of the
 9 circumstances under which they were made, not misleading; or
- 10 (3) engage in an act, practice, or course of business that operates or
 11 would operate as a fraud or deceit upon another person.

12 **Sec. 45.56.510. Prohibited conduct in providing investment advice.** (a) A
 13 person that advises others for compensation, either directly or indirectly or through
 14 publications or writings, as to the value of securities or the advisability of investing in,
 15 purchasing, or selling securities or that, for compensation and as part of a regular
 16 business, issues or adopts analyses or reports relating to securities may not

- 17 (1) employ a device, scheme, or artifice to defraud another person; or
- 18 (2) engage in an act, practice, or course of business that operates or
 19 would operate as a fraud or deceit upon another person.

20 (b) A regulation adopted under this chapter may define an act, practice, or
 21 course of business of an investment adviser or an investment adviser representative,
 22 other than a supervised person of a federal covered investment adviser, as fraudulent,
 23 deceptive, or manipulative and may prescribe means reasonably designed to prevent
 24 investment advisers and investment adviser representatives, other than supervised
 25 persons of a federal covered investment adviser, from engaging in acts, practices, and
 26 courses of business defined as fraudulent, deceptive, or manipulative.

27 (c) A regulation adopted under this chapter may specify the contents of an
 28 investment advisory contract entered into, extended, or renewed by an investment
 29 adviser.

30 **Sec. 45.56.520. Misleading filings.** A person may not, in a document filed
 31 with the administrator or in a proceeding under this chapter, make or cause to be made

1 an untrue statement of a material fact or omit to state a material fact necessary in order
2 to make the statements made, in the light of the circumstances under which they are
3 made, not misleading.

4 **Sec. 45.56.530. Misrepresentations concerning registration or exemption.**

5 The filing of an application for registration, a registration statement, a notice filing
6 under this chapter, the registration of a person, the notice filing by a person, or the
7 registration of a security under this chapter does not constitute a finding by the
8 administrator that a record filed under this chapter is true, complete, and not
9 misleading. The filing or registration or the availability of an exemption, exception,
10 preemption, or exclusion for a security or a transaction does not mean that the
11 administrator has passed upon the merits or qualifications of, or recommended or
12 given approval to, a person, security, or transaction. A person may not make, or cause
13 to be made, to a purchaser, customer, client, or prospective customer or client a
14 representation inconsistent with this section.

15 **Sec. 45.56.540. Evidentiary burden.** (a) In a civil action or administrative

16 proceeding under this chapter, a person claiming an exemption, exception,
17 preemption, or exclusion has the burden to prove the applicability of the claim.

18 (b) In a criminal proceeding under this chapter, a person claiming an

19 exemption, exception, preemption, or exclusion has the burden of going forward with
20 evidence of the claim.

21 **Sec. 45.56.550. Filing of sales and advertising literature.** (a) Except as

22 otherwise provided in (b) of this section, a regulation adopted or order issued under
23 this chapter may require the filing of a prospectus, pamphlet, circular, form letter,
24 advertisement, sales literature, or other advertising record relating to a security or
25 investment advice, addressed or intended for distribution to prospective investors,
26 including clients or prospective clients of a person registered or required to be
27 registered as an investment adviser under this chapter.

28 (b) This section does not apply to sales and advertising literature specified in

29 (a) of this section that relates to a federal covered security, a federal covered
30 investment adviser, or a security or transaction exempted by AS 45.56.205, 45.56.210,
31 45.56.220, or 45.56.240, except as required under AS 45.56.205(7).

(c) The administrator may by regulation or order prohibit the publication, circulation, or use of any advertising deemed false or misleading.

Sec. 45.56.560. Qualified immunity. A broker-dealer, agent, investment adviser, federal covered investment adviser, or investment adviser representative is not liable to another broker-dealer, agent, investment adviser, federal covered investment adviser, or investment adviser representative for defamation relating to a statement that is contained in a record required by the administrator, or designee of the administrator, the Securities and Exchange Commission, or a self-regulatory organization, unless the person knew, or should have known at the time the statement was made, that it was false in a material respect or the person acted in reckless disregard of the statement's truth or falsity.

Article 6. Administration and Judicial Review.

Sec. 45.56.605. Administration. (a) The Department of Commerce, Community, and Economic Development shall administer this chapter.

(b) The administrator or an officer, employee, or designee of the administrator may not use for personal benefit or the benefit of others records or other information obtained by or filed with the administrator that is not public under AS 45.56.615(b). This chapter does not authorize the administrator or an officer, employee, or designee of the administrator to disclose the record or information, except in accordance with AS 45.56.615(c), 45.56.604, 45.56.645.

(c) This chapter does not create or diminish a privilege or exemption that exists at common law, by statute or regulation, or otherwise.

(d) The administrator may develop and implement investor education initiatives to inform the public about investing in securities, with particular emphasis on the prevention and detection of securities fraud. In developing and implementing these initiatives, the administrator may collaborate with public and nonprofit organizations with an interest in investor education. The administrator may accept a grant or donation from a person that is not affiliated with the securities industry or from a nonprofit organization, regardless of whether the organization is affiliated with the securities industry, to develop and implement investor education initiatives. This subsection does not authorize the administrator to require participation or monetary

1 contributions of a registrant in an investor education program.

2 (e) The securities investor education and training fund is created as a special
3 fund in the general fund to provide funds for the purposes specified in (d) of this
4 section. Thirty-three percent of the money received by this state by reason of civil
5 penalties under this chapter shall be deposited in the fund. The legislature may
6 appropriate amounts from the fund to the administrator for securities investor
7 education and training. Nothing in this subsection exempts money deposited into the
8 fund from the requirements of AS 37.07 (Executive Budget Act) or dedicates money
9 for a specific purpose.

10 (f) In addition to the requirements applicable to a variable annuity transaction
11 under AS 21, a variable annuity transaction between a broker-dealer, agent,
12 investment adviser, investment advisor representative, or federal covered investment
13 advisor and an investor is subject to the applicable requirements under AS 45.56.

14 **Sec. 45.56.610. Administrative files and opinions.** (a) The administrator shall
15 maintain, or designate a person to maintain, a register of applications for registration
16 of securities; registration statements; notice filings; applications for registration of
17 broker-dealers, agents, investment advisors, and investment adviser representatives;
18 notice filings by federal covered investment advisors that are or have been effective
19 under this chapter or former AS 45.55.010 - 45.55.120, 45.55.150, 45.55.155,
20 45.55.170, 45.55.900, 45.55.905(c), 45.55.915, 45.55.930, 45.55.935, and 45.55.960 -
21 45.55.995; notices of claims of exemption from registration or notice filing
22 requirements contained in a record; orders issued under this chapter or former
23 AS 45.55.010 - 45.55.120, 45.55.150, 45.55.155, 45.55.170, 45.55.900, 45.55.905(c),
24 45.55.915, 45.55.930, 45.55.935, and 45.55.960 - 45.55.995; and interpretative
25 opinions or no action determinations issued under this chapter. The register will be
26 kept according to the existing retention schedule mandated by the department.

27 (b) The administrator shall make all regulations, forms, interpretative
28 opinions, and orders available to the public.

29 (c) The administrator shall furnish a copy of a record that is a public record or
30 a certification that the public record does not exist to a person upon request. A copy of
31 the record certified or a certificate by the administrator of a record's nonexistence is

1 prima facie evidence of a record or its nonexistence.

2 **Sec. 45.56.615. Public records; confidentiality.** (a) Except as otherwise
3 provided in (b) of this section, records obtained by the administrator or filed under this
4 chapter, including a record contained in or filed with a registration statement,
5 application, notice filing, or report are public records and are available for public
6 examination under AS 40.25.100 - 40.25.295 (Alaska Public Records Act).

7 (b) The following records are not public records under AS 40.25.100 -
8 40.25.295 (Alaska Public Records Act) and are not available for public examination
9 under (a) of this section:

10 (1) a record obtained by the administrator in connection with an audit,
11 examination or inspection under AS 45.56.475(d) or an investigation under
12 AS 45.56.645;

13 (2) a part of a record filed in connection with a registration statement
14 under AS 45.56.105 and 45.56.305 - 45.56.320 or a record under AS 45.56.475(d) that
15 contains trade secrets or confidential information if the person filing the registration
16 statement or report has asserted a claim of confidentiality or privilege that is
17 authorized by law;

18 (3) a record that is not required to be provided to the administrator or
19 filed under this chapter and is provided to the administrator only on the condition that
20 the record may not be subject to public examination or disclosure;

21 (4) a nonpublic record received from a person specified in
22 AS 45.56.620(a); and

23 (5) any social security number, residential address unless used as a
24 business address, and residential telephone number unless used as a business
25 telephone number, contained in a record that is filed.

26 (c) If disclosure is for the purpose of a civil, administrative, or criminal
27 investigation, action, or proceeding or to a person specified in AS 45.56.620(a), the
28 administrator may disclose a record obtained in connection with an audit or inspection
29 under AS 45.56.475(d) or a record obtained in connection with an investigation under
30 AS 45.56.645.

31 **Sec. 45.56.620. Uniformity and cooperation with other agencies.** (a) The

1 administrator may cooperate, coordinate, consult, and, subject to AS 45.56.615, share
2 records and information with the securities regulator of another state, Canada, a
3 Canadian province or territory, a foreign jurisdiction, the Securities and Exchange
4 Commission, the United States Department of Justice, the Commodity Futures
5 Trading Commission, the Federal Trade Commission, the Securities Investor
6 Protection Corporation, a self-regulatory organization, a national or international
7 organization of securities regulators, a federal or state banking and insurance
8 regulator, and a governmental law enforcement agency to bring about greater
9 uniformity in securities matters among the federal government, self-regulatory
10 organizations, states, and foreign governments.

11 (b) In cooperating, coordinating, consulting, and sharing records and
12 information under this section and in acting by regulation, order, or waiver under this
13 chapter, the administrator may take into consideration in carrying out the public
14 interest the following general policies:

15 (1) maximizing effectiveness of regulation for the protection of
16 investors;

17 (2) maximizing uniformity in federal and state regulatory standards;
18 and

19 (3) minimizing burdens on the business of capital formation, without
20 adversely affecting essentials of investor protection.

21 (c) The cooperation, coordination, consultation, and sharing of records and
22 information authorized by this section includes

23 (1) establishing or employing one or more designees as a central
24 depository for registration and notice filings under this chapter and for records
25 required or allowed to be maintained under this chapter;

26 (2) developing and maintaining uniform forms;

27 (3) conducting a joint examination or investigation;

28 (4) holding a joint administrative hearing;

29 (5) instituting and prosecuting a joint civil or administrative
30 proceeding;

31 (6) sharing and exchanging personnel;

(7) coordinating registrations under AS 45.56.105 and 45.56.405 - 45.56.440 and exemptions under AS 45.56.240;

(8) sharing and exchanging records, subject to AS 45.56.615;

(9) formulating regulations, statements of policy, guidelines, forms, and interpretative opinions and releases;

(10) formulating common systems and procedures;

(11) notifying the public of proposed regulations, forms, statements of policy, and guidelines;

(12) attending conferences and other meetings among securities regulators, that may include representatives of governmental and private sector organizations involved in capital formation, considered necessary or appropriate to promote or achieve uniformity; and

(13) developing and maintaining a uniform exemption from registration for small issuers and taking other steps to reduce the burden of raising investment capital by small businesses.

Sec. 45.56.625. Jurisdiction. (a) AS 45.56.105, 45.56.320, 45.56.405(a), 45.56.430(a), 45.56.435(a), 45.56.440(a), 45.56.505, 45.56.530, 45.56.660, and 45.56.665 do not apply to a person that sells or offers to sell a security unless the offer to sell or the sale is made in this state or the offer to purchase or the purchase is made and accepted in this state.

(b) AS 45.56.405(a), 45.56.430(a), 45.56.435(a), 45.56.440(a), 45.56.505, 45.56.530, 45.56.660, and 45.56.665 do not apply to a person that purchases or offers to purchase a security unless the offer to purchase or the purchase is made in this state or the offer to sell or the sale is made and accepted in this state.

(c) For the purpose of this section, an offer to sell or to purchase a security is made in this state, whether or not either party is then present in this state, if the offer

(1) originates from within this state; or

(2) is directed by the offeror to a place in this state and received at the place to which it is directed.

(d) For the purpose of this section, an offer to purchase or to sell is accepted in this state, whether or not either party is then present in this state, if the acceptance

(1) is communicated to the offeror in this state and the offeree reasonably believes the offeror to be present in this state and the acceptance is received at the place in this state to which it is directed; and

(2) has not previously been communicated to the offeror, orally or in a record, outside this state.

(e) An offer to sell or to purchase is not made in this state when a publisher circulates or there is circulated on the publisher's behalf in this state a bona fide newspaper or other publication of general, regular, and paid circulation that is not published in this state, or that is published in this state but has had more than two-thirds of its circulation outside this state during the previous 12 months, or when a radio or television program or other electronic communication originating outside this state is received in this state. A radio or television program or other electronic communication is considered as having originated in this state if either the broadcast studio or the originating source of transmission is located in this state, unless

(1) the program or communication is syndicated and distributed from outside this state for redistribution to the general public in this state;

(2) the program or communication is supplied by a radio, television, or other electronic network with the electronic signal originating from outside this state for redistribution to the general public in this state;

(3) the program or communication is an electronic communication that originates outside this state and is captured for redistribution to the general public in this state by a community antenna or cable, radio, cable television, or other electronic system; or

(4) the program or communication consists of an electronic communication that originates in this state, but that is not intended for distribution to the general public in this state.

(f) AS 45.56.435(a), 45.56.440(a), 45.56.445(a), 45.56.510, 45.56.520, and 45.56.530 apply to a person if the person engages in an act, practice, or course of business instrumental in effecting prohibited or actionable conduct in this state, whether or not either party is then present in this state.

Sec. 45.56.630. Service of process. (a) A consent to service of process

1 complying with this section required by this chapter shall be signed and filed in the
2 form required by a regulation adopted or order issued under this chapter. A consent
3 appointing the administrator the person's agent for service of process in a noncriminal
4 action or proceeding against the person or the person's successor or personal
5 representative under this chapter or a regulation adopted or order issued under this
6 chapter after the consent is filed has the same force and validity as if the service were
7 made personally on the person filing the consent. A person that has filed a consent
8 under this subsection in connection with a previous application for registration or
9 notice filing need not file an additional consent.

10 (b) If a person, including a nonresident of this state, engages in an act,
11 practice, or course of business prohibited or made actionable by this chapter or a
12 regulation adopted or order issued under this chapter and the person has not filed a
13 consent to service of process under (a) of this section, the act, practice, or course of
14 business constitutes the appointment of the administrator as the person's agent for
15 service of process in a noncriminal action or proceeding against the person or the
16 person's successor or personal representative.

17 (c) Service under (a) or (b) of this section may be made by providing a copy of
18 the process to the office of the administrator, but the service is not effective unless

19 (1) the plaintiff, which may be the administrator, promptly sends
20 notice of the service and a copy of the process, return receipt requested, to the
21 defendant or respondent at the address set out in the consent to service of process or, if
22 a consent to service of process has not been filed, at the last known address, or takes
23 other reasonable steps to give notice; and

24 (2) the plaintiff files an affidavit of compliance with this subsection in
25 the action or proceeding on or before the return day of the process, if any, or within
26 the time that the court, or the administrator in a proceeding before the administrator,
27 allows.

28 (d) Service under (c) of this section may be used in a proceeding before the
29 administrator or by the administrator in a civil action in which the administrator is the
30 moving party.

31 (e) If process is served under (c) of this section, the court, or the administrator

1 in a proceeding before the administrator, shall order continuances as are necessary or
2 appropriate to afford the defendant or respondent reasonable opportunity to defend.

3 (f) Unless the persons are exempt elsewhere in this chapter, AS 45.56 applies
4 to person who sell or offer to sell when an offer to

5 (1) sell is made in this state; or
6 (2) buy is made and accepted in this state.

7 **Sec. 45.56.635. Applicability of the chapter.** (a) Unless the persons are
8 exempt elsewhere in this chapter, AS 45.56 applies to persons who buy or offer to buy
9 when an offer to

10 (1) buy is made in this state; or
11 (2) sell is made and accepted in this state.

12 (b) For the purpose of this section, an offer to sell or to buy is made in this
13 state, whether or not either party is then present in this state, when the offer

14 (1) originates from this state;
15 (2) is directed by the offeror to this state and received at the place to
16 which it is directed or at a post office in this state in the case of a mailed offer;
17 (3) is for an interest or participation in an oil, gas, or mining right, title,
18 or lease on land in this state, including submerged land, regardless of where the offer
19 is made;

20 (4) is for an interest or participation in payments out of production
21 under an oil, gas, or mining right, title, or lease on land in this state, including
22 submerged land, regardless of where the offer is made;

23 (5) is for an interest or participation in real property located in this
24 state, or in a corporation, a partnership, a limited liability company, a limited
25 partnership, a limited liability partnership, an association, a joint-stock company;
26 jurisdiction under this paragraph may be exercised only when the exercise is not
27 inconsistent with the constitution of this state or of the United States.

28 (c) For the purpose of this section, an offer to buy or to sell is accepted in this
29 state when acceptance is communicated to the offeror in this state and has not
30 previously been communicated to the offeror, orally or in writing, outside this state.
31 Acceptance is communicated to the offeror in this state, whether or not either party is

1 then present in this state, when the offeree directs it to the offeror in this state
 2 reasonably believing the offeror to be in this state and it is received at the place to
 3 which it is directed or at a post office in this state in the case of a mailed acceptance.

4 (d) AS 45.56 applies to investment advisers, federal covered advisers, and
 5 investment adviser representatives when any act instrumental in effecting prohibited
 6 conduct is done in this state, regardless of whether either party is then present in this
 7 state.

8 **Sec. 45.56.640. Regulations, forms, orders, interpretative opinions, and**
 9 **hearings.** (a) The administrator may

10 (1) issue forms and orders; after notice and comment, adopt and amend
 11 regulations necessary or appropriate to carry out this chapter; and repeal regulations,
 12 including regulations and forms governing registration statements, applications, notice
 13 filings, reports, and other records;

14 (2) by regulation, define terms, whether or not used in this chapter, but
 15 those definitions may not be inconsistent with this chapter; and

16 (3) by regulation, classify securities, persons, and transactions and
 17 adopt different requirements for different classes.

18 (b) Under this chapter, a regulation or form may not be adopted or amended,
 19 or an order issued or amended, unless the administrator finds that the regulation, form,
 20 order, or amendment is necessary or appropriate in the public interest or for the
 21 protection of investors and is consistent with the purposes intended by this chapter. In
 22 adopting, amending, and repealing regulations and forms, AS 45.56.620 applies in
 23 order to achieve uniformity among the states and coordination with federal laws in the
 24 form and content of registration statements, applications, reports, and other records,
 25 including the adoption of uniform rules, forms, and procedures.

26 (c) Subject to 15 U.S.C. 78o(i) and 80b-18a, the administrator may require
 27 that a financial statement filed under this chapter be prepared in accordance with
 28 generally accepted accounting principles in the United States and comply with other
 29 requirements specified by regulation adopted or order issued under this chapter. A
 30 regulation adopted or order issued under this chapter may establish

31 (1) subject to 15 U.S.C. 78o(i) and 80b-18a, the form and content of

1 financial statements required under this chapter;

2 (2) whether unconsolidated financial statements must be filed; and

3 (3) whether required financial statements must be audited by an
4 independent certified public accountant.

5 (d) The administrator may provide interpretative opinions or issue
6 determinations that the administrator will not institute a proceeding or an action under
7 this chapter against a specified person for engaging in a specified act, practice, or
8 course of business if the determination is consistent with this chapter. A regulation
9 adopted or order issued under this chapter may establish a reasonable charge for
10 interpretative opinions or determinations that the administrator will not institute an
11 action or a proceeding under this chapter.

12 (e) A hearing in an administrative proceeding under this chapter must be
13 conducted in public unless the administrative law judge or the administrator for good
14 cause consistent with this chapter determines that the hearing may not be conducted in
15 public.

16 **Sec. 45.56.645. Investigations and subpoenas.** (a) The administrator may

17 (1) conduct public or private investigations in or outside of this state
18 that the administrator considers necessary or appropriate to determine whether a
19 person has violated, is violating, or is about to violate this chapter or a regulation
20 adopted or order issued under this chapter, or to aid in the enforcement of this chapter
21 or in the adoption of regulations and forms under this chapter;

22 (2) require or permit a person to testify, file a statement, or produce a
23 record, under oath or otherwise as the administrator determines, as to all the facts and
24 circumstances concerning a matter to be investigated or about which an action or
25 proceeding is to be instituted; and

26 (3) publish a record concerning an action, proceeding, or an
27 investigation under, or a violation of, this chapter or a regulation adopted or order
28 issued under this chapter if the administrator determines it is necessary or appropriate
29 in the public interest and for the protection of investors.

30 (b) For the purpose of an investigation under this chapter, the administrator or
31 the designated officer of the administrator may administer oaths and affirmations,

1 subpoena witnesses, seek compulsion of attendance, take evidence, require the filing
2 of statements, and require the production of any records that the administrator
3 considers relevant or material to the investigation.

4 (c) If a person does not appear or refuses to testify, file a statement, produce
5 records, or otherwise obey a subpoena as required by the administrator under this
6 chapter, the administrator may refer the matter to the attorney general, who may bring
7 an action in the superior court or a court of another state to enforce compliance. The
8 court may

- 9 (1) hold the person in contempt;
- 10 (2) order the person to appear before the administrator;
- 11 (3) order the person to testify about the matter under investigation or in
12 question;
- 13 (4) order the production of records;
- 14 (5) grant injunctive relief, including restricting or prohibiting the offer
15 or sale of securities or the providing of investment advice;
- 16 (6) impose a civil penalty of not more than \$100,000 for a single
17 violation; and
- 18 (7) grant any other necessary or appropriate relief.

19 (d) This section does not preclude a person from applying to the superior court
20 or a court of another state for relief from a request to appear, testify, file a statement,
21 produce records, or obey a subpoena.

22 (e) A person is not excused from attending, testifying, filing a statement,
23 producing a record or other evidence, or obeying a subpoena of the administrator
24 under this chapter or in an action or proceeding instituted by the administrator under
25 this chapter on the ground that the required testimony, statement, record, or other
26 evidence, directly or indirectly, may tend to incriminate the individual or subject the
27 individual to a criminal fine, penalty, or forfeiture. If the person refuses to testify, file
28 a statement, or produce a record or other evidence on the basis of the individual's
29 privilege against self-incrimination, the administrator may apply to the superior court
30 to compel the testimony, the filing of the statement, the production of the record, or
31 the giving of other evidence. The testimony, record, or other evidence compelled

1 under an order of the superior court may not be used, directly or indirectly, against the
2 individual in a criminal case, except in a prosecution for perjury or contempt or
3 otherwise failing to comply with the order.

4 (f) At the request of the securities regulator of another state or a foreign
5 jurisdiction, the administrator may provide assistance if the requesting regulator states
6 that it is conducting an investigation to determine whether a person has violated, is
7 violating, or is about to violate a law or regulation of the other state or foreign
8 jurisdiction relating to securities matters that the requesting regulator administers or
9 enforces. The administrator may provide the assistance by using the authority to
10 investigate and the powers conferred by this section as the administrator determines is
11 necessary or appropriate. The assistance may be provided without regard to whether
12 the conduct described in the request would also constitute a violation of this chapter or
13 other law of this state if occurring in this state. In deciding whether to provide the
14 assistance, the administrator may consider whether the requesting regulator is
15 permitted and has agreed to provide assistance reciprocally within its state or foreign
16 jurisdiction to the administrator on securities matters when requested, whether
17 compliance with the request would violate or prejudice the public policy of this state,
18 and the availability of resources and employees of the administrator to carry out the
19 request for assistance.

20 **Sec. 45.56.650. Administrative enforcement.** (a) If the administrator
21 determines that a person has engaged, is engaging, or is about to engage in an act,
22 practice, or course of business constituting a violation of this chapter or a regulation
23 adopted or order issued under this chapter or that a person has materially aided, is
24 materially aiding, or is about to materially aid an act, practice, or course of business
25 constituting a violation of this chapter or a regulation adopted or order issued under
26 this chapter, the administrator may issue an order

27 (1) directing the person to cease and desist from engaging in the act,
28 practice, or course of business or to take other action necessary or appropriate to
29 comply with this chapter;

30 (2) denying, suspending, revoking, or conditioning the exemptions for
31 a broker-dealer under AS 45.56.405(b)(1)(D) or (F) or an investment adviser under

1 AS 45.56.435(b)(1)(C); or

2 (3) denying, suspending, conditioning, or limiting an exemption as
3 provided under AS 45.56.250.

4 (b) An order under (a) of this section is effective on the date of issuance. Upon
5 issuance of the order, the administrator shall promptly serve each person subject to the
6 order with a copy of the order and a notice that the order has been entered. The order
7 must include a statement of any civil penalty, restitution, or costs of investigation the
8 administrator will seek, a statement of the reasons for the order, and notice that, within
9 15 days after receipt of a request in a record from the person, the matter will be
10 scheduled for a hearing. If a person subject to the order does not request a hearing and
11 none is ordered by the administrator within 30 days after the date of service of the
12 order, the order, including the imposition of a civil penalty, the imposition of
13 restitution, or requirement for payment of the costs of investigation sought in a
14 statement in the order, becomes final as to that person by operation of law. If a hearing
15 is requested or ordered, the administrator, after notice of and opportunity for hearing
16 to each person subject to the order, may modify or vacate the order or extend it until
17 final determination.

18 (c) If a hearing is requested or ordered under (b) of this section, a hearing must
19 be conducted by the office of administrative hearings (AS 44.64.010) and
20 AS 44.64.040 - 44.64.200 shall apply and govern.

21 (d) In a final order under (b) of this section, the administrator may impose a
22 civil penalty of not more than \$100,000 for a single violation, unless the violation of
23 this chapter is against an older Alaskan. In addition to a civil penalty imposed under
24 this subsection, a person or entity who engages in any conduct prohibited by the
25 provisions of this chapter against an older Alaskan, may be liable for an additional
26 civil penalty of treble statutory damages. In determining whether to impose a
27 supplemental civil penalty under this subsection, the administrator shall consider, in
28 addition to other appropriate factors, the extent to which the following factors are
29 present:

30 (1) whether the respondent knew that the respondent's conduct was
31 directed to an older Alaskan;

(2) whether the respondent's conduct caused an older Alaskan to suffer severe loss or encumbrance of a primary residence, principal employment or source of income, substantial loss of property set aside for retirement or for personal and family care and maintenance; or

(3) whether the respondent's conduct caused substantial loss of payments received under a pension or retirement plan or a government benefits program.

(e) In a final order under (b) of this section, the administrator may

(1) impose restitution to any person in interest for any monies or property, real or personal, that may have been acquired or transferred in violation of this chapter;

(2) charge the actual cost of an investigation or proceeding for a violation of this chapter or a regulation adopted or order issued under this chapter; and

(3) deny the violator of the use of any exemptions listed under this chapter.

(f) The administrator may petition the superior court to enter a judgment against a person who is a respondent in the order for the amount of the civil penalty levied against the person. Subject to AS 44.62.570, the filing of the petition for a judgment does not reopen the final order to further substantive review unless the court orders otherwise. A judgment entered under this subsection may be executed on and levied under in the manner provided in AS 09.35.

(g) If a person does not comply with an order under this section, the administrator may petition a court of competent jurisdiction to enforce the order. The court may not require the administrator to post a bond in an action or proceeding under this section. If the court finds, after service and opportunity for hearing, that the person was not in compliance with the order, the court may adjudge the person in civil contempt of the order. The court may impose a further civil penalty against the person for contempt in an amount not less than \$5,000 but not greater than \$100,000 for each violation and may grant any other relief the court determines is just and proper in the circumstances.

Sec. 45.56.655. Civil enforcement. (a) If the administrator believes that a

1 person has engaged, is engaging, or is about to engage in an act, practice, or course of
2 business constituting a violation of this chapter or a regulation adopted or order issued
3 under this chapter, or that a person has, is, or is about to engage in an act, practice, or
4 course of business that materially aids a violation of this chapter or a regulation
5 adopted or order issued under this chapter, the administrator may maintain an action in
6 the superior court to enjoin the act, practice, or course of business and to enforce
7 compliance with this chapter or a regulation adopted or order issued under this
8 chapter.

9 (b) In an action under this section and on a proper showing, the court may

10 (1) issue a permanent or temporary injunction, restraining order, or
11 declaratory judgment;

12 (2) order other appropriate or ancillary relief, which may include

13 (A) an asset freeze, accounting, writ of attachment, writ of
14 general or specific execution, and appointment of a receiver or conservator that
15 may be the administrator for the defendant or the defendant's assets;

16 (B) ordering the administrator to take charge and control of a
17 defendant's property, including investment accounts and accounts in a
18 depository institution, rents, and profits; to collect debts; and to acquire and
19 dispose of property;

20 (C) imposing a civil penalty of not more than \$100,000 for a
21 single violation, unless the violation of this chapter is against an older Alaskan;
22 in determining whether to impose a supplemental civil penalty for a violation
23 of this chapter against an older Alaskan, the court shall consider, in addition to
24 other appropriate factors, the extent to which the following factors are present:

25 (i) whether the respondent knew that the respondent's
26 conduct was directed to an older Alaskan;

27 (ii) whether the respondent's conduct caused an older
28 Alaskan to suffer severe loss or encumbrance of a primary residence,
29 principal employment or source of income, substantial loss of property
30 set aside for retirement or for personal and family care and
31 maintenance, or

(iii) whether the respondent's conduct caused substantial loss of payments received under a pension or retirement plan or a government benefits program;

(D) imposing an order of rescission, or disgorgement directed to a person that has engaged in an act, practice, or course of business constituting a violation of this chapter or former AS 45.55.010 - 45.55.120, 45.55.150, 45.55.155, 45.55.170, 45.55.900, 45.55.905(c), 45.55.915, 45.55.930, 45.55.935, and 45.55.960 - 45.55.995 or a regulation adopted or order issued under this chapter or former AS 45.55.010 - 45.55.120, 45.55.150, 45.55.155, 45.55.170, 45.55.900, 45.55.905(c), 45.55.915, 45.55.930, 45.55.935, and 45.55.960 - 45.55.995;

(E) imposing an order of restitution to any person in interest for any monies or property, real or personal, that may have been acquired or transferred in violation of this chapter; and

(F) ordering the payment of prejudgment and post judgment interest; or

(3) order other relief that the court considers appropriate.

(c) The administrator may not be required to post a bond in an action or proceeding under this chapter.

(d) After an order issued by the court under (b) of this section becomes final and all rights of appeal are exhausted, the administrator may petition the superior court to enter a judgment against a person who is a respondent in the order for the amount of the civil penalty levied against the person. Subject to AS 44.62.570, the filing of the petition for a judgment does not reopen the final order to further substantive review unless the court orders otherwise. A judgment entered under this subsection may be executed on and levied under in the manner provided in AS 09.35.

Sec. 45.56.660. Civil liability. (a) Enforcement of civil liability under this section is subject to P.L. 105-353 (Securities Litigation Uniform Standards Act of 1998).

(b) A person is liable to the purchaser if the person sells a security in violation of AS 45.56.105, or by means of an untrue statement of a material fact or an omission

1 to state a material fact necessary in order to make the statement made, in light of the
2 circumstances under which it is made, not misleading, the purchaser not knowing the
3 untruth or omission and the seller not sustaining the burden of proof that the seller did
4 not know and, in the exercise of reasonable care, could not have known of the untruth
5 or omission. An action under this subsection is governed by the following:

6 (1) the purchaser may maintain an action to recover the consideration
7 paid for the security, less the amount of any income received on the security, and
8 interest at the legal rate of interest under AS 09.30.070 from the date of the purchase,
9 costs, and reasonable attorney fees determined by the court, upon the tender of the
10 security, or for actual damages as provided in (3) of this subsection;

11 (2) the tender referred to in (1) of this subsection may be made any
12 time before entry of judgment; tender requires only notice in a record of ownership of
13 the security and willingness to exchange the security for the amount specified; a
14 purchaser that no longer owns the security may recover actual damages as provided in
15 (3) of this subsection;

16 (3) actual damages in an action arising under this subsection are the
17 amount that would be recoverable upon a tender less the value of the security when the
18 purchaser disposed of it and interest at the legal rate of interest under AS 09.30.070
19 from the date of the purchase, costs, and reasonable attorney fees determined by the
20 court.

21 (c) A person is liable to the seller if the person buys a security by means of an
22 untrue statement of a material fact or omission to state a material fact necessary in
23 order to make the statement made, in light of the circumstances under which it is
24 made, not misleading, the seller not knowing of the untruth or omission, and the
25 purchaser not sustaining the burden of proof that the purchaser did not know and, in
26 the exercise of reasonable care, could not have known of the untruth or omission. An
27 action under this subsection is governed by the following:

28 (1) the seller may maintain an action to recover the security and any
29 income received on the security, costs, and reasonable attorney fees determined by the
30 court, upon the tender of the purchase price, or for actual damages as provided in (3)
31 of this subsection;

(2) the tender referred to in (1) of this subsection may be made any time before entry of judgment; tender requires only notice in a record of the present ability to pay the amount tendered and willingness to take delivery of the security for the amount specified; if the purchaser no longer owns the security, the seller may recover actual damages as provided in (3) of this subsection;

(3) actual damages in an action arising under this subsection are the difference between the price at which the security was sold and the value the security would have had at the time of the sale in the absence of the purchaser's conduct causing liability and interest at the legal rate of interest under AS 09.30.070 from the date of the sale of the security, costs, and reasonable attorney fees determined by the court.

(d) A person acting as a broker-dealer or agent that sells or buys a security in violation of AS 45.56.405(a), 45.56.435(a), or 45.56.530 is liable to the customer. The customer, if a purchaser, may maintain an action for recovery of actual damages as specified in (b)(1) - (3) of this section or, if a seller, for a remedy as specified in (c)(1) - (3) of this section.

(e) A person acting as an investment adviser or investment adviser representative that provides investment advice for compensation in violation of AS 45.56.435(a), 45.56.440(a), or 45.56.530 is liable to the client. The client may maintain an action to recover the consideration paid for the advice, interest at the legal rate of interest under AS 09.30.070 from the date of payment, costs, and reasonable attorney fees determined by the court.

(f) A person that receives, directly or indirectly, any consideration for providing investment advice to another person and that employs a device, scheme, or artifice to defraud the other person or engages in an act, practice, or course of business that operates or would operate as a fraud or deceit on the other person is liable to the other person. An action under this subsection is governed by the following:

(1) the person defrauded may maintain an action to recover the consideration paid for the advice and the amount of any actual damages caused by the fraudulent conduct, interest at the legal rate of interest under AS 09.30.070 from the date of the fraudulent conduct, costs, and reasonable attorney fees determined by the

1 court, less the amount of any income received as a result of the fraudulent conduct;

2 (2) this subsection does not apply to a broker-dealer or its agents if the
3 investment advice provided is solely incidental to transacting business as a broker-
4 dealer and special compensation is not received for the investment advice.

5 (g) The following persons are liable jointly and severally with and to the same
6 extent as persons liable under (b) - (f) of this section:

7 (1) a person that directly or indirectly controls a person liable under (b)
8 - (f) of this section, unless the controlling person sustains the burden of proof that the
9 person did not know and, in the exercise of reasonable care, could not have known of
10 the existence of conduct by reason of which the liability is alleged to exist;

11 (2) an individual who is a managing partner, executive officer, or
12 director of a person liable under (b) - (f) of this section, including an individual having
13 a similar status or performing similar functions, unless the individual sustains the
14 burden of proof that the individual did not know and, in the exercise of reasonable
15 care, could not have known of the existence of conduct by reason of which the liability
16 is alleged to exist;

17 (3) an individual who is an employee of or associated with a person
18 liable under (b) - (f) of this section and who materially aids the conduct giving rise to
19 the liability, unless the individual sustains the burden of proof that the individual did
20 not know and, in the exercise of reasonable care, could not have known of the
21 existence of conduct by reason of which the liability is alleged to exist; and

22 (4) a person that is a broker-dealer, agent, investment adviser, or
23 investment adviser representative that materially aids the conduct giving rise to the
24 liability under (b) - (f) of this section, unless the person sustains the burden of proof
25 that the person did not know and, in the exercise of reasonable care, could not have
26 known of the existence of conduct by reason of which liability is alleged to exist.

27 (h) A person liable under this section has a right of contribution as in cases of
28 contract against any other person liable under this section for the same conduct.

29 (i) A cause of action under this section survives the death of an individual who
30 might have been a plaintiff or defendant.

31 (j) A person may not obtain relief under (b) of this section

(1) for a violation of AS 45.56.105, or under (d) or (e) of this section, unless the action is instituted within three years after the violation occurred; or

(2) other than for violation of AS 45.56.105, or under (c) or (f) of this section, unless the action is instituted within the earlier of two years after discovery of the facts constituting the violation or five years after the violation.

(k) A person that has made, or has engaged in the performance of, a contract in violation of this chapter or a regulation adopted or order issued under this chapter or that has acquired a purported right under the contract with knowledge of conduct by reason of which its making or performance was in violation of this chapter may not base an action on the contract.

(l) A condition, stipulation, or provision binding a person purchasing or selling a security or receiving investment advice to waive compliance with this chapter or a regulation adopted or order issued under this chapter is void.

(m) The rights and remedies provided by this chapter are in addition to any other rights or remedies that may exist, but this chapter does not create a cause of action not specified in this section or AS 45.56.475(e).

Sec. 45.56.665. Rescission offers. (a) A purchaser, seller, or recipient of investment advice may not maintain an action under AS 45.56.660 if

(1) the purchaser, seller, or recipient of investment advice receives, in a record, before the action is instituted,

(A) an offer stating the respect in which liability under AS 45.56.660 may have arisen and fairly advising the purchaser, seller, or recipient of investment advice of that person's rights in connection with the offer and any financial or other information necessary to correct all material misrepresentations or omissions in the information that was required by this chapter to be furnished to that person at the time of the purchase, sale, or investment advice;

(B) if the basis for relief under this section may have been a violation of AS 45.56.660(b), an offer to repurchase the security for cash, payable on delivery of the security, equal to the consideration paid, and interest at the legal rate of interest under AS 09.30.070 from the date of the purchase,

1 less the amount of any income received on the security, or, if the purchaser no
2 longer owns the security, an offer to pay the purchaser, upon acceptance of the
3 offer, damages in an amount that would be recoverable upon a tender, less the
4 value of the security when the purchaser disposed of it, and interest at the legal
5 rate of interest under AS 09.30.070 from the date of the purchase in cash equal
6 to the damages computed in the manner provided in this subparagraph;

7 (C) if the basis for relief under this section may have been a
8 violation of AS 45.56.660(c), an offer to tender the security, on payment by the
9 seller of an amount equal to the purchase price paid, less income received on
10 the security by the purchaser and interest at the legal rate of interest under
11 AS 09.30.070 from the date of the sale, or, if the purchaser no longer owns the
12 security, an offer to pay the seller, upon acceptance of the offer, in cash,
13 damages in the amount of the difference between the price at which the
14 security was purchased and the value the security would have had at the time
15 of the purchase in the absence of the purchaser's conduct that may have caused
16 liability and interest at the legal rate of interest in AS 09.30.070 from the date
17 of the sale;

18 (D) if the basis for relief under this section may have been a
19 violation of AS 45.56.660(d); and if the customer is a purchaser, an offer to
20 pay as specified in (B) of this paragraph; or, if the customer is a seller, an offer
21 to tender or to pay as specified in (C) of this paragraph;

22 (E) if the basis for relief under this section may have been a
23 violation of AS 45.56.660(e), an offer to reimburse in cash the consideration
24 paid for the advice and interest at the legal rate of interest under AS 09.30.070
25 from the date of payment; or

26 (F) if the basis for relief under this section may have been a
27 violation of AS 45.56.660(f), an offer to reimburse in cash the consideration
28 paid for the advice, the amount of any actual damages that may have been
29 caused by the conduct, and interest at the legal rate of interest under
30 AS 09.30.070 from the date of the violation causing the loss;

31 (2) the offer under (1) of this subsection states that it must be accepted

1 by the purchaser, seller, or recipient of investment advice within 30 days after the date
2 of its receipt by the purchaser, seller, or recipient of investment advice or any shorter
3 period of not less than three days that the administrator, by order, specifies;

4 (3) the offeror has the present ability to pay the amount offered or to
5 tender the security under (1) of this subsection;

6 (4) the offer under (1) of this subsection is delivered to the purchaser,
7 seller, or recipient of investment advice or sent in a manner that ensures receipt by the
8 purchaser, seller, or recipient of investment advice; and

9 (5) the purchaser, seller, or recipient of investment advice that accepts
10 the offer under (1) of this subsection, in a record, within the period specified under (2)
11 of this subsection, is paid in accordance with the terms of the offer.

12 (b) The offer under this section must be filed with the administrator 10
13 business days before the offering and conform in form and content with a regulation
14 adopted under this chapter.

15 **Sec. 45.56.670. Criminal enforcement.** (a) A person who knowingly violates
16 this chapter, a regulation adopted under this chapter, or an order issued under this
17 chapter, except AS 45.56.550 or the notice filing requirements of AS 45.56.330 or
18 45.56.445, or that wilfully violates AS 45.56.520 knowing the statement made to be
19 false or misleading in a material respect is guilty of a class C felony punishable by
20 imprisonment under AS 12.55.125 or punishable by a fine of not more than \$100,000,
21 or both. A person convicted of violating a regulation or order issued under this chapter
22 may be fined, but may not be imprisoned, if the person did not know of the regulation
23 or order.

24 (b) A person who violates a regulation under this chapter or an order issued
25 under this chapter without knowledge of the regulation or order commits a class A
26 misdemeanor. A person convicted of violating this subsection is punishable by a fine
27 of not more than \$100,000.

28 (c) A person who knowingly alters, destroys, shreds, mutilates, or conceals a
29 record, document, or other object, or attempts to do so, with the intent to alter or
30 impair the record, document, or object for use in an official proceeding under this
31 chapter, is guilty of a class C felony under AS 12.55.125. A person convicted of

1 violating this subsection is punishable by imprisonment as provided in AS 12.55.125,
 2 a fine of not more than \$500,000, or by both.

3 (d) The attorney general, with or without a reference from the administrator,
 4 may institute criminal proceedings under this chapter.

5 (e) This chapter does not limit the power of this state to punish a person for
 6 conduct that constitutes a crime under other laws of this state.

7 **Sec. 45.56.675. Judicial review.** (a) Judicial review by the superior court of a
 8 final order issued by the administrator under this chapter may be had by filing a notice
 9 of appeal in accordance with the applicable rules of court governing appeals in civil
 10 matters. The notice of appeal shall be filed within 30 days after the order becomes
 11 final under AS 44.64.060.

12 (b) A regulation adopted under this chapter is subject to judicial review under
 13 AS 44.62.300.

14 **Article 7. Miscellaneous and Additional General Provisions.**

15 **Sec. 45.56.710. Reimbursement of expenses incident to examination or**
 16 **investigation.** (a) The administrator may require an issuer, broker-dealer, agent,
 17 investment adviser representative, federal covered adviser, or investment adviser to
 18 reimburse the administrator for actual travel expenses and per diem incurred in
 19 connection with an examination or investigation under this chapter.

20 (b) The administrator may by regulation or order adopt a schedule of charges
 21 for annual examination and investigation of issuers, broker-dealers, agents, investment
 22 adviser representatives, federal covered advisers, and investment advisers.

23 (c) If an issuer, broker-dealer, agent, investment adviser representative, federal
 24 covered adviser, or investment adviser fails to pay the fees and expenses provided for
 25 in this section, the fees and expenses shall be paid out of funds of the administrator in
 26 the same manner as other disbursements made by the administrator. The amounts paid
 27 from the funds of the administrator are a lien on all of the assets and property of the
 28 issuer, broker-dealer, agent, investment adviser representative, federal covered
 29 adviser, or investment adviser, and the amount may be recovered by the attorney
 30 general on behalf of this state.

31 (d) Failure of the issuer, broker-dealer, agent, investment adviser

1 representative, federal covered adviser, or investment adviser to pay fees and expenses
 2 under this section is a willful violation of this chapter, and the violation falls within
 3 the provisions of AS 45.56.350, 45.56.440, and 45.56.615.

4 **Sec. 45.56.720. Electronic records and signatures.** This chapter modifies,
 5 limits, and supersedes 15 U.S.C. 7001 - 7031 (Electronic Signatures in Global and
 6 National Commerce Act), but does not modify, limit, or supersede 15 U.S.C. 7001(c)
 7 or authorize electronic delivery of any of the notices described in 15 U.S.C. 7003(b).
 8 This chapter authorizes the filing of records and signatures, when specified by
 9 provisions of this chapter or by a regulation adopted or order issued under this chapter,
 10 in a manner consistent with 15 U.S.C. 7004(a).

11 **Sec. 45.56.730. References to federal statutes.** 15 U.S.C. 77a - 77aa
 12 (Securities Act of 1933), 15 U.S.C. 78a - 78pp (Securities Exchange Act of 1934), 42
 13 U.S.C. 16451 et seq. (Energy Policy Act of 2005) , 15 U.S.C. 80a-1 - 80a-64
 14 (Investment Company Act of 1940), 15 U.S.C. 80b-1 - 80b-21 (Investment Advisers
 15 Act of 1940), 29 U.S.C. 1001 - 1461 (Employee Retirement Income Security Act of
 16 1974), 12 U.S.C. 1701 - 1749aaa (National Housing Act), 7 U.S.C. 1 - 27 (Commodity
 17 Exchange Act), 26 U.S.C. (Internal Revenue Code), 15 U.S.C. 78a - 78pp (Securities
 18 Exchange Act of 1934), 15 U.S.C. 77b, 77k, 77m, 77p, 77r, 77v, 77z-1 - 77z-3, 77aa,
 19 77ccc - 77ddd, 77mmm, 77sss, 78a, 78c - 78d, 78g, 78n, 78o, 78o-4 - 78o-5, 78s, 78t -
 20 78u, 78u-4, 78z, 78bb, 78ee, 78kk, 78ll, 80a-2 - 80a-3, 80a-12, 80a-18, 80a-29 - 80a-
 21 30, 80b-3, 80b-18a, (Securities Litigation Uniform Standards Act of 1998), 15 U.S.C.
 22 661 - 697g (Small Business Investment Act of 1958), and 15 U.S.C. 7001 - 7031
 23 (Electronic Signatures in Global and National Commerce Act) mean those statutes and
 24 the rules and regulations adopted under those statutes, as in effect on the date of
 25 enactment of this chapter, or as later amended.

26 **Sec. 45.56.740. References to federal agencies.** A reference in this chapter to
 27 an agency or department of the United States is also a reference to a successor agency
 28 or department.

29 **Sec. 45.56.900. Definitions.** In this chapter, unless the context otherwise
 30 requires,

31 (1) "administrator" means the commissioner of commerce, community,

1 and economic development or a designee of the commissioner;

2 (2) "agent" means an individual, other than a broker-dealer, who
3 represents a broker-dealer in effecting or attempting to effect purchases or sales of
4 securities or represents an issuer in effecting or attempting to effect purchases or sales
5 of the issuer's securities; however, a partner, officer, or director of a broker-dealer or
6 issuer, or an individual having a similar status or performing similar functions is an
7 agent only if the individual otherwise comes within the term; "agent" does not include
8 an individual excluded by regulation adopted or order issued under this chapter;

9 (3) "bank" means

10 (A) a banking institution organized under the laws of the
11 United States;

12 (B) a member bank of the Federal Reserve System;

13 (C) any other banking institution, whether incorporated or not,
14 doing business under the laws of a state or of the United States, a substantial
15 portion of the business of which consists of receiving deposits or exercising
16 fiduciary powers similar to those permitted to be exercised by national banks
17 under the authority of the United States Comptroller of the Currency under 12
18 U.S.C. 92a, that is supervised and examined by a state or federal agency
19 having supervision over banks, and that is not operated for the purpose of
20 evading this chapter; and

21 (D) a receiver, conservator, or other liquidating agent of any
22 institution or firm included in (A), (B), or (C) of this paragraph;

23 (4) "broker-dealer" means a person engaged in the business of
24 effecting transactions in securities for the accounts of others or for the person's own
25 account; the term does not include

26 (A) an agent;

27 (B) an issuer;

28 (C) a bank, trust company organized or chartered under the
29 laws of this state, or savings institution if its activities as a broker-dealer are
30 limited to those specified in 15 U.S.C. 78c(a)(4)(B)(i) - (vi), (viii) - (x), and
31 (xi) if limited to unsolicited transactions, or 15 U.S.C. 78c(a)(5)(B) and (C), or

1 a bank that satisfies the conditions described in 15 U.S.C. 78c(a)(4);
2 (D) an international banking institution; or
3 (E) a person excluded by a regulation adopted or order issued
4 under this chapter;

5 (5) "depository institution" means

6 (A) a bank; or
7 (B) a savings institution, trust company, credit union, or similar
8 institution that is organized or chartered under the laws of a state or of the
9 United States, authorized to receive deposits and supervised and examined by
10 an official or agency of a state or the United States if its deposits or share
11 accounts are insured to the maximum amount authorized by statute by the
12 Federal Deposit Insurance Corporation, the National Credit Union Share
13 Insurance Fund, or a successor authorized by federal law; the term does not
14 include

15 (i) an insurance company or other organization
16 primarily engaged in the business of insurance;

17 (ii) a Morris Plan bank; or

18 (iii) an industrial loan company that is not an "insured
19 depository institution" as defined in 12 U.S.C. 1813(c)(2), or any
20 successor federal statute;

21 (6) "disqualifier" means a disqualifying event as described in the
22 regulations adopted in accordance with 15 U.S.C. 78c(a)(39) (Dodd-Frank Wall Street
23 Reform and Consumer Protection Act).

24 (7) "federal covered investment adviser" means a person registered
25 under 15 U.S.C. 80b-1 - 80b-21 (Investment Advisers Act of 1940);

26 (8) "federal covered security" means a security that is, or upon
27 completion of a transaction will be, a covered security under 15 U.S.C. 77r(b) or rules
28 or regulations adopted under that provision;

29 (9) "filing" means the receipt under this chapter of a record by the
30 administrator or a designee of the administrator;

31 (10) "fraud," "deceit," and "defraud" include common law deceit;

(11) "guaranteed" means guaranteed as to payment of all principal and all interest;

(12) "institutional investor" means any of the following, whether acting for itself or for others in a fiduciary capacity:

(A) a depository institution, a trust company organized or chartered under the laws of this state, or international banking institution;

(B) an insurance company;

(C) a separate account of an insurance company;

(D) an investment company as defined in 15 U.S.C. 80a-1 -
ment Company Act of 1940);

(E) a broker-dealer registered under 15 U.S.C. 78a – 78pp (Securities Exchange Act of 1934);

(E) 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 29 U.S.C. 1102(a)(2) (Employee Retirement Income Security Act of 1974), that is a broker-dealer registered under 15 U.S.C. 78a - 78pp (Securities Exchange Act of 1934), an investment adviser registered or exempt from registration under 15 U.S.C. 80b-1 - 80b-21 (Investment Advisers Act of 1940), an investment adviser registered under this chapter, 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 legally designated public official or by a named fiduciary, as defined in 29 U.S.C. 1102(a)(2), that is a broker-dealer registered under 15 U.S.C. 78a - 78pp (Securities Exchange Act of 1934), an investment adviser registered or exempt from registration under 15 U.S.C. 80b-1 - 80b-21 (Investment Advisers Act of 1940), an investment adviser registered under this chapter, a depository institution, or an insurance company;

(H) a trust if that trust has total assets in excess of \$10,000,000.

1 the trustee of the trust is a depository institution, and the participants in the
2 trust are exclusively plans of the types identified in (F) or (G) of this
3 paragraph, regardless of the size of their assets, except a trust that includes as
4 participants self-directed individual retirement accounts or similar self-directed
5 plans;

6 (I) an organization described in 26 U.S.C. 501(c)(3),
7 corporation, Massachusetts trust or similar business trust, limited liability
8 company, or partnership, not formed for the specific purpose of acquiring the
9 securities offered, with total assets in excess of \$10,000,000;

10 (J) a small business investment company licensed by the
11 United States Small Business Administration under 15 U.S.C. 681(c) with total
12 assets in excess of \$10,000,000;

13 (K) a private business development company as defined in 15
14 U.S.C. 80b-2(a)(22) with total assets in excess of \$10,000,000;

15 (L) a federal covered investment adviser acting for its own
16 account;

17 (M) a qualified institutional buyer, as defined in 17 C.F.R.
18 230.144A, other than 17 C.F.R. 230.144A(a)(1)(i)(H), adopted under 15
19 U.S.C. 77a - 77aa (Securities Act of 1933);

20 (N) a major United States institutional investor, as defined in
21 17 C.F.R. 240.15a-6(b)(4)(i), adopted under 15 U.S.C. 78a - 78pp (Securities
22 Exchange Act of 1934);

23 (O) any other person, other than an individual, of institutional
24 character with total assets in excess of \$10,000,000 not organized for the
25 specific purpose of evading this chapter; or

26 (P) any other person specified by regulation adopted or order
27 issued under this chapter;

28 (13) "insurance company" means a company organized as an insurance
29 company whose primary business is writing insurance or reinsuring risks underwritten
30 by insurance companies and that is subject to supervision by the insurance
31 commissioner or a similar official or agency of a state;

(14) "insured" means insured as to payment of all principal and all interest;

(15) "international banking institution" means an international financial institution of which the United States is a member and whose securities are exempt from registration under 15 U.S.C. 77a - 77aa (Securities Act of 1933);

(16) "investment adviser" means a person that, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or the advisability of investing in, purchasing, or selling securities or that, for compensation and as a part of a regular business, issues or produces analyses or reports concerning securities; the term includes a financial planner or other person that, as an integral component of other financially related services, provides investment advice to others for compensation as part of a business or that holds itself out as providing investment advice to others for compensation; the term does not include

(A) an investment adviser representative;

(B) a lawyer, accountant, engineer, or teacher whose performance of investment advice is solely incidental to the practice of the person's profession;

(C) a broker-dealer or its agents whose performance of investment advice is solely incidental to the conduct of business as a broker-dealer and that does not receive special compensation for the investment advice;

(D) a publisher of a bona fide newspaper, news magazine, or business or financial publication of general and regular circulation;

(E) a federal covered investment adviser;

(F) a bank, a trust company organized or chartered under the laws of this state, or savings institution;

(G) any other person that is excluded by 15 U.S.C. 80b-1 - 80b-21 (Investment Advisers Act of 1940) from the definition of investment adviser; or

(H) any other person excluded by a regulation adopted or order

1 issued under this chapter;

2 (17) "investment adviser representative" means an individual
3 employed by or associated with an investment adviser or federal covered investment
4 adviser and who makes any recommendations or otherwise gives investment advice
5 regarding securities, manages accounts or portfolios of clients, determines which
6 recommendation or advice regarding securities should be given, provides investment
7 advice or offers to provide investment advice, receives compensation to solicit, offer,
8 or negotiate for the sale of or for selling investment advice, or supervises employees
9 who perform any of the foregoing; the term does not include an individual who

10 (A) performs only clerical or ministerial acts;

11 (B) is an agent whose performance of investment advice is
12 solely incidental to the individual's acting as an agent and who does not receive
13 special compensation for investment advisory services;

14 (C) is employed by or associated with a federal covered
15 investment adviser, unless the individual has a place of business in this state, as
16 that term is defined by rule adopted under 15 U.S.C. 80b-3a and is

17 (i) an investment adviser representative, as that term is
18 defined by rule adopted under 15 U.S.C. 80b-3a; or

19 (ii) not a supervised person, as that term is defined in 15
20 U.S.C. 80b-2(a)(25); or

21 (D) is excluded by a regulation adopted or order issued under
22 this chapter;

23 (18) "issuer" means a person that issues or proposes to issue a security,
24 subject to the following:

25 (A) the issuer of a voting trust certificate, collateral trust
26 certificate, certificate of deposit for a security, or share in an investment
27 company without a board of directors or individuals performing similar
28 functions is the person performing the acts and assuming the duties of
29 depositor or manager under the trust or other agreement or instrument under
30 which the security is issued;

31 (B) the issuer of an equipment trust certificate or similar

1 security serving the same purpose is the person by which the property is or will
2 be used or to which the property or equipment is or will be leased or
3 conditionally sold or that is otherwise contractually responsible for ensuring
4 payment of the certificate;

5 (C) the issuer of a fractional undivided interest in an oil, gas, or
6 other mineral lease or in payments out of production under a lease, right, or
7 royalty is the owner of an interest in the lease or in payments out of production
8 under a lease, right, or royalty, whether whole or fractional, that creates
9 fractional interests for the purpose of sale;

10 (19) "nonissuer transaction" or "nonissuer distribution" means a
11 transaction or distribution not directly or indirectly for the benefit of the issuer;

12 (20) "offer to purchase" includes an attempt or offer to obtain, or
13 solicitation of an offer to sell, a security or interest in a security for value; the term
14 does not include a tender offer that is subject to 15 U.S.C. 78n(d);

15 (21) "older Alaskan" means a person residing in this state who is 60
16 years of age or older;

17 (22) "person" means an individual, a corporation, a partnership, a
18 limited liability company, a limited partnership, a limited liability partnership, an
19 association, a joint-stock company, a trust in which the interests of the beneficiaries
20 are evidenced by a security, an unincorporated organization, a government, or a
21 political subdivision of a government;

22 (23) "place of business" of a broker-dealer, an investment adviser, or a
23 federal covered investment adviser means

24 (A) an office at which the broker-dealer, investment adviser, or
25 federal covered investment adviser regularly provides brokerage or investment
26 advice or solicits, meets with, or otherwise communicates with customers or
27 clients; or

28 (B) any other location that is held out to the general public as a
29 location at which the broker-dealer, investment adviser, or federal covered
30 investment adviser provides brokerage or investment advice or solicits, meets
31 with, or otherwise communicates with customers or clients;

(24) "price amendment" means the amendment to a registration statement filed under 15 U.S.C. 77a - 77aa (Securities Act of 1933) or, if an amendment is not filed, the prospectus or prospectus supplement filed under 15 U.S.C. 77a - 77aa (Securities Act of 1933) that includes a statement of the offering price, underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call prices, and other matters dependent upon the offering price;

(25) "principal place of business" of a broker-dealer or an investment adviser means the executive office of the broker-dealer or investment adviser from which the officers, partners, or managers of the broker-dealer or investment adviser direct, control, and coordinate the activities of the broker-dealer or investment adviser;

(26) "record," except in the phrases "of record," "official record," and "public record," means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form;

(27) "sale" includes every contract of sale, contract to sell, or disposition of a security or interest in a security for value, and "offer to sell" includes every attempt or offer to dispose of, or solicitation of an offer to purchase, a security or interest in a security for value; both terms include

(A) a security given or delivered with, or as a bonus on account of, a purchase of securities or any other thing constituting part of the subject of the purchase and having been offered and sold for value;

(B) a gift of assessable stock involving an offer and sale; and

(C) a sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer and a sale or offer of a security that gives the holder a present or future right or privilege to convert the security into another security of the same or another issuer, including an offer of the other security;

(28) "Securities and Exchange Commission" means the United States Securities and Exchange Commission;

(29) "securities business" means a business that provides the services provided by

(A) investment advisers, federal covered investment advisers,

1 or investment adviser representatives; or

2 (B) broker-dealers, issuers, or agents of broker-dealers or
3 issuers;

4 (30) "security" means a note; stock; treasury stock; security future;
5 bond; debenture; evidence of indebtedness; certificate of interest or participation in a
6 profit-sharing agreement; collateral trust certificate; preorganization certificate or
7 subscription; transferable share; investment contract; voting trust certificate; certificate
8 of deposit for a security; viatical settlement; variable annuity; fractional undivided
9 interest in oil, gas, or other mineral rights; put, call, straddle, option, or privilege on a
10 security, certificate of deposit, or group or index of securities, including an interest or
11 based on the value of a put, call, straddle, option, or privilege on a security, certificate
12 of deposit, or group or index of securities; put, call, straddle, option, or privilege
13 entered into on a national securities exchange relating to foreign currency; or, in
14 general, an interest or instrument commonly known as a "security"; or a certificate of
15 interest or participation in, temporary or interim certificate for, receipt for, guarantee
16 of, or warrant or right to subscribe to or purchase any of the foregoing; the term

17 (A) includes both a certificated and an uncertificated security;

18 (B) does not include a participation agreement entered under
19 AS 14.40.802 or an insurance or endowment policy subject to Title 21, except
20 for a variable annuity;

21 (C) does not include an interest in a contributory or
22 noncontributory pension or welfare plan subject to 29 U.S.C. 1001 - 1461
23 (Employee Retirement Income Security Act of 1974);

24 (D) includes an investment in a common enterprise with the
25 expectation of profits to be derived primarily from the efforts of a person other
26 than the investor; in this subparagraph, "common enterprise" means an
27 enterprise in which the fortunes of the investor are interwoven with those of
28 either the person offering the investment, a third party, or other investors;

29 (E) includes as an investment contract, among other contracts,
30 an interest in a limited partnership and a limited liability company, and an
31 investment in a viatical settlement or similar agreement; and

1 (F) includes a viatical settlement interest;

2 (31) "self-regulatory organization" means a national securities
 3 exchange registered under 15 U.S.C. 78a - 78pp (Securities Exchange Act of 1934), a
 4 national securities association of broker-dealers registered under 15 U.S.C. 78a - 78pp
 5 (Securities Exchange Act of 1934), a clearing agency registered under 15 U.S.C. 78a -
 6 78pp (Securities Exchange Act of 1934), or the Municipal Securities Rulemaking
 7 Board established under 15 U.S.C. 78o-4;

8 (32) "sign" means, with present intent to authenticate or adopt a
 9 record,

10 (A) to execute or adopt a tangible symbol; or

11 (B) to attach or logically associate with the record an electronic
 12 symbol, sound, or process;

13 (33) "state" means a state of the United States, the District of
 14 Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular
 15 possession subject to the jurisdiction of the United States;

16 (34) "viatical settlement interest"

17 (A) means the entire interest or any fractional interest in a life
 18 insurance policy or in the death benefit under a life insurance policy that is the
 19 subject of a viatical settlement contract;

20 (B) does not include the initial purchase from the viator by a
 21 viatical settlement provider;

22 (35) "viator" means the owner of a life insurance policy insuring the
 23 life of an individual who enters or seeks to enter a viatical settlement contract.

24 **Sec. 45.56.735. Short title.** This chapter may be cited as the Alaska Securities
 25 Act.

26 * **Sec. 2.** AS 06.05.340 is amended to read:

27 **Sec. 06.05.340. Certain remuneration prohibited.** A bank may not pay
 28 directly or indirectly a fee, commission, or bonus of any kind for its promotion and
 29 organization or for securing a subscription to the original capital or to any increase in
 30 capital. However, this section does not prohibit the payment of reasonable
 31 compensation for legal, accounting, and econometric services, or payments to a

1 securities broker-dealer registered under **AS 45.56** [AS 45.55] for services that have
 2 been performed in connection with the sale of bank securities.

3 * **Sec. 3.** AS 06.26.020(a) is amended to read:

4 (a) Notwithstanding any other provision of this chapter, a person does not act
 5 as a fiduciary under this chapter if the person

6 (1) is licensed to practice law in this state, the person is acting within
 7 the scope of the license, and the person and any law firm of the person are not trustees
 8 of more trusts than the number established for the person and law firm by the
 9 department by regulation or order; in this paragraph, "law firm" means a partnership, a
 10 professional corporation organized under AS 10.45, or another association organized
 11 for the practice of law and in which the person practices law;

12 (2) acts as trustee under a deed of trust delivered only as security for
 13 the payment of money or for the performance of another act;

14 (3) receives and distributes on behalf of a principal rents and proceeds
 15 of sales as a real estate broker or other licensee under AS 08.88;

16 (4) engages in securities business activity [OR INVESTMENT
 17 ADVISORY BUSINESS ACTIVITY] as a registered broker-dealer, a broker-dealer
 18 agent, an [A STATE] investment adviser, or an investment adviser representative, or
 19 as a federal covered **investment** adviser who has made a notice filing under
 20 **AS 45.56.445(c)** [AS 45.55.040(h)], the person is acting within the scope of the
 21 person's registration or notice filing, and the activity is regulated by the department
 22 under **AS 45.56** [AS 45.55] or by the United States Securities and Exchange
 23 Commission; in this paragraph, "agent," "broker-dealer," "federal covered **investment**
 24 adviser," "investment adviser representative," and ["INVESTMENT ADVISORY
 25 BUSINESS,"] "securities business [,]" [AND "STATE INVESTMENT ADVISER"]
 26 have the meanings given in **AS 45.56.900** [AS 45.55.990];

27 (5) engages in the sale and administration of an insurance product as
 28 an insurance company licensed under AS 21 or an insurance producer licensed under
 29 AS 21 and is acting within the scope of that license;

30 (6) handles escrow transactions and is a title insurance company that
 31 has a certificate of authority issued under AS 21.09, a title insurance limited producer

1 that is licensed as required by AS 21.66.270, or an employee of the title insurance
2 company or title insurance producer when acting in the scope of the employee's
3 employment; in this paragraph,

4 (A) "escrow transaction" has the meaning given in
5 AS 34.80.090;

6 (B) "title insurance company" has the meaning given in
7 AS 21.66.480;

8 (C) "title insurance limited producer" has the meaning given in
9 AS 21.66.480;

10 (7) is a cemetery association organized and acting under AS 10.30;

11 (8) is a trustee for a voting trust under AS 10.06 and is acting in that
12 capacity;

13 (9) has a certified public accountant license issued under AS 08.04.105
14 or 08.04.195, the person is acting within the scope of the license, and the person and
15 any accounting firm of the person are not trustees of more trusts than the number
16 established for the person and accounting firm by the department by regulation or
17 order; in this paragraph, "accounting firm" means a partnership, a professional
18 corporation organized under AS 10.45, or another association organized for the
19 practice of public accounting and in which the person practices public accounting;

20 (10) holds real property in trust for the primary purpose of subdivision,
21 development, or sale or to facilitate a business transaction with respect to the real
22 property;

23 (11) serves as a trustee of a trust created by the person's family
24 members;

25 (12) holds money or other assets as a homeowners' association or
26 similar organization to pay maintenance and other related costs for commonly owned
27 property; in this paragraph, "homeowners' association" includes an association of
28 apartment owners under AS 34.07.450 and a unit owners' association or master
29 association under AS 34.08.990;

30 (13) holds money or other assets in connection with the collection of
31 debts or payments on loans by a person acting solely as the agent or representative at

1 the sole direction of the person to whom the debt or payment is owed, including
 2 engaging in the business of an escrow agent;

3 (14) acts as a conservator if the person is appointed by a court of this
 4 or another state or is qualified to act as a conservator under AS 13.26.320;

5 (15) acts as a personal representative if the person is appointed a
 6 personal representative by a court of this or another state or is qualified to act as a
 7 personal representative under AS 13.21.035;

8 (16) acts as a guardian or receiver if the person is appointed as a
 9 guardian or receiver by a court of this or another state;

10 (17) is a business partner acting with regard to the business, or a co-
 11 owner of property acting with regard to the co-owned property;

12 (18) serves as a trustee of one or more trusts in which the settlor is not
 13 a family member of the person, except that the person may not at any one time serve
 14 as a trustee for trusts that cumulatively have more than 10 different settlors; however,
 15 the department may change by regulation or order the maximum number of settlors
 16 allowed for this exemption; in this paragraph, a husband and wife who create a joint
 17 trust are considered to be one settlor.

18 * **Sec. 4.** AS 06.26.990(a)(21) is amended to read:

19 (21) "issuer" has the meaning given in **AS 45.56.900** [AS 45.55.990];

20 * **Sec. 5.** AS 12.62.400(a)(17) is amended to read:

21 (17) registration as a broker-dealer, agent, investment adviser
 22 representative, or [STATE] investment adviser under **AS 45.56.405 - 45.56.440**
 23 [AS 45.55.030 - 45.55.060].

24 * **Sec. 6.** AS 14.43.148(h)(1) is amended to read:

25 (1) "license"

26 (A) means, except as provided in (B) of this paragraph, a
 27 license, certificate, permit, registration, or other authorization that, at the time
 28 of issuance, will be valid for more than 150 days and that may be acquired
 29 from a state agency to perform an occupation, including the following:

30 (i) license relating to boxing or wrestling under

31 AS 05.10;

(ii) authorization to perform an occupation regulated under AS 08;

(iii) teacher certificate under AS 14.20;

(iv) authorization under AS 18.08 to perform emergency medical services;

(v) asbestos worker certification under AS 18.31;

(vi) boiler operator's license under AS 18.60.395;

(vii) certificate of fitness under AS 18.62;

(viii) hazardous painting certification under AS 18.63;

(ix) certification as a municipal correctional, correctional, probation, or parole officer under AS 18.65.245;

(x) security guard license under AS 18.65.400 - 18.65.490;

(xi) license relating to insurance under AS 21.27;

(xii) employment agency permit under AS 23.15.330 - 23.15.520;

(xiii) registration as a broker-dealer, an agent, an [A STATE] investment adviser, or an investment adviser representative under AS 45.56.405 - 45.56.440 [AS 45.55.030];

(xiv) certification as a pesticide applicator under AS 46.03.320;

(xv) certification as a storage tank worker or contractor under AS 46.03.375;

(xvi) certification as a water and wastewater works operator under AS 46.30; and

(B) does not include

(i) a commercial fishing license under AS 16.05.480, including a crewmember fishing license;

(ii) a vessel license issued under AS 16.05.490 or 16.05.530;

(iii) [REPEALED]

1 (iv)] a business license issued under AS 43.70;
 2 **(iv)** [(v)] an entry permit or interim-use permit issued
 3 under AS 16.43; or
 4 **(v)** [(vi)] a driver's license issued under AS 28.15;

5 * **Sec. 7.** AS 21.42.315(k) is amended to read:

6 (k) **Except as provided in AS 45.56.605(f), the** [THE] director has sole
 7 authority to regulate the issuance and sale of variable contracts, to examine and license
 8 agents to sell variable contracts, and to adopt regulations considered appropriate to
 9 carry out the purposes and provisions of this section.

10 * **Sec. 8.** AS 21.96.110(a) is amended to read:

11 (a) The director shall regulate the transaction of viatical settlement contracts
 12 for the protection of viators, insureds, and insurers. The authority of the director under
 13 this subsection extends to the regulation of transactions between a viator and a viatical
 14 settlement provider and between a viator and a person acting as an agent in viaticating
 15 a life insurance policy, while the authority of the commissioner extends to the
 16 regulation of viatical settlement investments as provided under **AS 45.56**
 17 [AS 45.55.905(c)].

18 * **Sec. 9.** AS 25.27.244(s)(2) is amended to read:

19 (2) "license"

20 (A) means, except as provided in (B) of this paragraph, a
 21 license, certificate, permit, registration, or other authorization that, at the time
 22 of issuance, will be valid for more than 150 days and that may be acquired
 23 from a state agency to perform an occupation, including the following:

24 (i) license relating to boxing or wrestling under
 25 AS 05.10;
 26 (ii) authorization to perform an occupation regulated
 27 under AS 08;
 28 (iii) teacher certificate under AS 14.20;
 29 (iv) authorization under AS 18.08 to perform
 30 emergency medical services;
 31 (v) asbestos worker certification under AS 18.31;

- (vi) boiler operator's license under AS 18.60.395;
- (vii) certificate of fitness under AS 18.62;
- (viii) hazardous painting certification under AS 18.63;
- (ix) security guard license under AS 18.65.400 - 18.65.490;
- (x) license relating to insurance under AS 21.27;
- (xi) employment agency permit under AS 23.15.330 - 23.15.520;
- (xii) registration as a broker-dealer, an agent, an [A STATE] investment adviser, or an investment adviser representative under **AS 45.56.405 - 45.56.440** [AS 45.55.030];
- (xiii) certification as a pesticide applicator under AS 46.03.320;
- (xiv) certification as a storage tank worker or contractor under AS 46.03.375;
- (xv) certification as a water and wastewater works operator under AS 46.30;
- (xvi) commercial crewmember fishing license under AS 16.05.480 other than an entry permit or interim-use permit under AS 16.43;
- (xvii) fish transporter permit under AS 16.05.671;
- (xviii) sport fishing operator license under AS 16.40.260;
- (xix) sport fishing guide license under AS 16.40.270;

(B) does not include

- (i) a vessel license issued under AS 16.05.490 or 16.05.530;
- (ii) [REPEALED
- (iii)] a business license issued under AS 43.70;
- (iii)** [(iv)] an entry permit or interim-use permit issued under AS 16.43; or

(iv) [(v)] a driver's license issued under AS 28.15;

* **Sec. 10.** AS 34.08.570 is amended to read:

Sec. 34.08.570. Common interest community securities. If an interest in a common interest community is currently registered with the Securities and Exchange Commission of the United States, a declarant satisfies each requirement relating to the preparation of a public offering statement of this chapter if the declarant delivers to the purchaser a copy of the public offering statement filed with the Securities and Exchange Commission. An interest in a common interest community is not subject to the registration requirements of **AS 45.56** [AS 45.55].

* **Sec. 11.** AS 37.23.010(c) is amended to read:

(c) The registration requirements of AS 45.56 [AS 45.55] do not apply to an investment pool formed under this chapter or to participating public entities with respect to activities of the pool.

* **Sec. 12.** AS 37.23.050 is amended to read:

Sec. 37.23.050. Investment management. The public entities participating in an investment pool under this chapter shall provide for management of investments in the pool by contracting for investment management and related services with

(1) a securities broker-dealer registered under AS 45.56.405 [AS 45.55.030] and under 15 U.S.C. 78o (Securities Exchange Act of 1934);

(2) an [A STATE] investment adviser registered under AS 45.56.435 [AS 45.55.030] or a federal covered investment adviser that has made a notice filing under AS 45.56.445(c) [AS 45.55.040(h)];

(3) the Department of Revenue; or

(4) a financial institution that is a state or federally chartered commercial or mutual bank, savings and loan association, or credit union if the institution's accounts are insured through the appropriate federal insuring agency of the United States and if the institution has trust powers under state or federal law.

* **Sec. 13.** AS 40.25.120(a) is amended to read:

(a) Every person has a right to inspect a public record in the state, including public records in recorders' offices, except

(1) records of vital statistics and adoption proceedings, which shall be

1 treated in the manner required by AS 18.50;

2 (2) records pertaining to juveniles unless disclosure is authorized by
3 law;

4 (3) medical and related public health records;

5 (4) records required to be kept confidential by a federal law or
6 regulation or by state law;

7 (5) to the extent the records are required to be kept confidential under
8 20 U.S.C. 1232g and the regulations adopted under 20 U.S.C. 1232g in order to secure
9 or retain federal assistance;

10 (6) records or information compiled for law enforcement purposes, but
11 only to the extent that the production of the law enforcement records or information

12 (A) could reasonably be expected to interfere with enforcement
13 proceedings;

14 (B) would deprive a person of a right to a fair trial or an
15 impartial adjudication;

16 (C) could reasonably be expected to constitute an unwarranted
17 invasion of the personal privacy of a suspect, defendant, victim, or witness;

18 (D) could reasonably be expected to disclose the identity of a
19 confidential source;

20 (E) would disclose confidential techniques and procedures for
21 law enforcement investigations or prosecutions;

22 (F) would disclose guidelines for law enforcement
23 investigations or prosecutions if the disclosure could reasonably be expected to
24 risk circumvention of the law; or

25 (G) could reasonably be expected to endanger the life or
26 physical safety of an individual;

27 (7) names, addresses, and other information identifying a person as a
28 participant in the Alaska Higher Education Savings Trust under AS 14.40.802 or the
29 advance college tuition savings program under AS 14.40.803 - 14.40.817;

30 (8) public records containing information that would disclose or might
31 lead to the disclosure of a component in the process used to execute or adopt an

1 electronic signature if the disclosure would or might cause the electronic signature to
2 cease being under the sole control of the person using it;

3 (9) reports submitted under AS 05.25.030 concerning certain
4 collisions, accidents, or other casualties involving boats;

5 (10) records or information pertaining to a plan, program, or
6 procedures for establishing, maintaining, or restoring security in the state, or to a
7 detailed description or evaluation of systems, facilities, or infrastructure in the state,
8 but only to the extent that the production of the records or information

9 (A) could reasonably be expected to interfere with the
10 implementation or enforcement of the security plan, program, or procedures;

11 (B) would disclose confidential guidelines for investigations or
12 enforcement and the disclosure could reasonably be expected to risk
13 circumvention of the law; or

14 (C) could reasonably be expected to endanger the life or
15 physical safety of an individual or to present a real and substantial risk to the
16 public health and welfare;

17 (11) the written notification regarding a proposed regulation provided
18 under AS 24.20.105 to the Department of Law and the affected state agency and
19 communications between the Legislative Affairs Agency, the Department of Law, and
20 the affected state agency under AS 24.20.105;

21 (12) records that are

22 (A) proprietary, privileged, or a trade secret in accordance with
23 AS 43.90.150 or 43.90.220(e);

24 (B) applications that are received under AS 43.90 until notice is
25 published under AS 43.90.160;

26 (13) information of the Alaska Gasline Development Corporation
27 created under AS 31.25.010 or a subsidiary of the Alaska Gasline Development
28 Corporation that is confidential by law or under a valid confidentiality agreement;

29 (14) information under AS 38.05.020(b)(11) that is subject to a
30 confidentiality agreement under AS 38.05.020(b)(12);

31 **(15) records that are**

(A) investigative files under AS 45.55.910; or
(B) confidential under AS 45.56.615.

* **Sec. 14.** AS 43.70.105(a) is amended to read:

(a) This chapter does not apply to

(1) a fisheries business;

(2) the sale of liquor under a license issued under AS 04.11;

(3) an insurance business;

(4) a mining business;

(5) supplying services as an employee;

(6) furnishing goods or services by a person who does not represent to

be regularly engaged in furnishing goods or services;

(7) the activities of an investment club; in this paragraph,

(A) "investment club" means a group of individuals, incorporated or otherwise organized, that engages primarily in investing in securities, that does not sell investment services to another person, that does not advertise, and the primary purpose of which is educational;

(B) "security" has the meaning given in **AS 45.56.900**

[AS 45.55.990].

* Sec. 15. AS 44.64.030(a)(39) is repealed and reenacted to read:

(39) AS 45.56 (Alaska Securities Act);

* **Sec. 16.** AS 45.55.138 is amended to read:

Sec. 45.55.138. Application to Alaska Native Claims Settlement Act

corporations. The initial issue of stock of a corporation organized under Alaska law

under [PURSUANT TO] 43 U.S.C. 1601 et seq. (Alaska Native Claims Settlement

Act) is not a sale of a sec-

* Sec. 17. AS 45.55.139 is amended to read:

Sec. 45.55.139. Reports of corporations. A copy of all annual reports, consents or authorizations, proxy statements, and other materials relating to solicitations distributed, published, or made available by any person to at least 500 Alaska resident shareholders of a corporation **organized under Alaska law under**

1 **43 U.S.C. 1601 et. seq. (Alaska Native Claims Settlement Act)** that has total assets
 2 exceeding \$1,000,000 and a class of equity security held of record by 500 or more
 3 persons [AND WHICH IS EXEMPTED FROM THE REGISTRATION
 4 REQUIREMENTS OF AS 45.55.070 BY 45.55.138], shall be filed with the
 5 administrator concurrently with its distribution to shareholders.

6 * **Sec. 18.** AS 45.55.905(b) is amended to read:

7 (b) The administrator or an officer or employee of the administrator may not
 8 use for personal benefit information that is filed with or obtained by the administrator
 9 and that is not made public. A [NO] provision of this chapter **does not authorize**
 10 [AUTHORIZES] the administrator or an officer or employee of the administrator to
 11 disclose the information except among themselves or when necessary or appropriate in
 12 a proceeding or investigation under this chapter. A [NO] provision of this chapter **does**
 13 **not** either **create or derogate** [CREATES OR DEROGATES] from any privilege that
 14 exists at common law or otherwise when documentary or other evidence is sought
 15 under a subpoena directed to the administrator or an officer or employee of the
 16 administrator.

17 * **Sec. 19.** AS 45.55.920(a) is amended to read:

18 (a) If it appears to the administrator that a person has engaged or is about to
 19 engage in an act or practice in violation of a provision of this chapter or regulation or
 20 order under this chapter, the administrator may

21 (1) in the public interest [OR FOR THE PROTECTION OF
 22 INVESTORS,] issue an order

23 (A) directing the person to cease and desist from continuing the
 24 act or practice;

25 (B) directing the person, for a period not to exceed three years,
 26 to file the annual reports, proxies, consents or authorizations, proxy statements,
 27 or other materials relating to proxy solicitations required under AS 45.55.139
 28 with the administrator for examination and review 10 working days before a
 29 distribution to shareholders; and

30 (C) voiding the proxies obtained by a person required to file
 31 under AS 45.55.139, including their future exercise or actions resulting from

their past exercise, if the proxies were solicited by means of an untrue or misleading statement prohibited under AS 45.55.160; or

(2) bring an action in the superior court to enjoin the acts or practices and to enforce compliance with this chapter or regulation or order under this chapter, and upon a proper showing, the appropriate remedy must be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets; the court may not require the administrator to post a bond.

* **Sec. 20.** AS 45.55.920(b) is amended to read:

(b) The administrator may issue an order against **a person** [AN APPLICANT, REGISTERED PERSON, OR OTHER PERSON] who knowingly or intentionally violates this chapter or a regulation or order of the administrator under this chapter, imposing a civil penalty of not more than \$2,500 for a single violation, or not more than \$25,000 for multiple violations, in a single proceeding or a series of related proceedings.

* **Sec. 21.** AS 45.55.920(c) is amended to read:

(c) For violations not covered by (b) of this section, the administrator may issue an order against **a person** [AN APPLICANT, REGISTERED PERSON, OR OTHER PERSON] who violates this chapter or a regulation or order of the administrator under this chapter, imposing a civil penalty of not more than \$500 for a single violation, or not more than \$5,000 for multiple violations, in a single proceeding or a series of related proceedings.

* **Sec. 22.** AS 45.55.925(a) is amended to read:

(a) In addition to the civil penalties assessed under AS 45.55.920, a person who wilfully violates a provision of this chapter except **AS 45.55.160** [AS 45.55.030(e), 45.55.040(h), 45.55.075, or 45.55.160], or who wilfully violates a regulation or order under this chapter, or who wilfully violates AS 45.55.160 knowing the statement made to be false or misleading in a material respect or the omission to be misleading by any material respect, upon conviction, is punishable by a fine of not more than \$5,000, or by imprisonment of not less than one year nor more than five years, or both. Upon conviction of an individual for a felony under this chapter, imprisonment for not less than one year is mandatory. However, an individual may not

1 be imprisoned for the violation of a regulation or order if the individual proves that the
 2 individual had no knowledge of the regulation or order. An indictment or information
 3 may not be returned under this chapter more than five years after the alleged violation.

4 * **Sec. 23.** AS 45.55.950(a) is amended to read:

5 (a) The administrator may make, adopt, amend, and rescind the regulations,
 6 forms, and orders that are necessary to carry out this chapter [,INCLUDING
 7 REGULATIONS AND FORMS GOVERNING REGISTRATION STATEMENTS,
 8 APPLICATIONS, AND REPORTS, AND DEFINING TERMS, WHETHER OR
 9 NOT USED IN THIS CHAPTER INSOFAR AS THE DEFINITIONS ARE NOT
 10 INCONSISTENT WITH THIS CHAPTER. FOR THE PURPOSE OF
 11 REGULATIONS AND FORMS, THE ADMINISTRATOR MAY CLASSIFY
 12 SECURITIES, PERSONS, AND MATTERS WITHIN THE JURISDICTION OF
 13 THE ADMINISTRATOR, AND PRESCRIBE DIFFERENT REQUIREMENTS FOR
 14 DIFFERENT CLASSES].

15 * **Sec. 24.** AS 45.55.950(b) is amended to read:

16 (b) A regulation, form, or order may not be made, adopted, amended, or
 17 rescinded unless the administrator finds that the action is necessary or appropriate in
 18 the public interest [OR FOR THE PROTECTION OF INVESTORS AND
 19 CONSISTENT WITH THE PURPOSES FAIRLY INTENDED BY THE POLICY
 20 AND PROVISIONS OF THIS CHAPTER. IN ADOPTING REGULATIONS AND
 21 FORMS THE ADMINISTRATOR MAY COOPERATE WITH THE SECURITIES
 22 ADMINISTRATORS OF THE OTHER STATES AND THE SECURITIES AND
 23 EXCHANGE COMMISSION WITH A VIEW TO EFFECTUATING THE POLICY
 24 OF THIS SECTION TO ACHIEVE MAXIMUM UNIFORMITY IN THE FORM
 25 AND CONTENT OF REGISTRATION STATEMENTS, APPLICATIONS, AND
 26 REPORTS WHEREVER PRACTICABLE].

27 * **Sec. 25.** AS 45.55 is amended by adding a new section to read:

28 **Sec. 45.55.985. Definitions.** In this chapter, unless the context otherwise
 29 requires, "administrator" means the commissioner of commerce, community, and
 30 economic development or a designee of the commissioner.

31 * **Sec. 26.** AS 45.63.080(a) is amended to read:

(a) AS 45.63.010, 45.63.015, 45.63.020, and AS 45.63.030(c) and (d) do not apply to a sale or attempted sale

(1) of a security regulated under **AS 45.56** [AS 45.55] or a security that is exempted by **AS 45.56.205** [AS 45.55.900] from regulation under **AS 45.56** [AS 45.55];

(2) by a person registered with the United States Securities and Exchange Commission when acting within the scope of the person's Securities and Exchange Commission license;

(3) by an issuer, or a subsidiary of an issuer, of a class of securities that is

(A) subject to 15 U.S.C. 78a - 78pp [15 U.S.C. 78a – 78lll] (Securities Exchange Act of 1934); and

(B) either registered under 15 U.S.C. 78a - 78pp [15 U.S.C. 78a - 78*lll*] (Securities Exchange Act of 1934) or exempt from registration under 15 U.S.C. 78*l*(g)(2)(A) - (C) or (E) - (H);

(4) by a real estate broker, associate real estate broker, or real estate salesperson licensed under AS 08.88 and acting in a capacity covered by the license;

(5) by a person who has a certificate of registration under AS 08.18 to operate as a contractor and is acting in a capacity covered by the certificate of registration;

(6) by an embalmer or funeral director licensed under AS 08.42 and acting in a capacity covered by the license;

(7) by an insurance agent, general agent, broker, solicitor, or adjuster licensed under AS 21.27 and acting in a capacity covered by the license;

(8) by a person who is primarily soliciting the sale of a subscription to, or advertising in, a newspaper of general circulation;

(9) by a charitable organization or paid solicitor if the organization or solicitor is registered to make charitable solicitations under AS 45.68 and is acting in a capacity that is covered by the registration;

(10) by a person who is primarily soliciting the sale of a sound recording or book

- (A) if the person
 - (i) has no minimum purchase requirements;
 - (ii) provides written notice of the buyer's right to cancel at any time; and
 - (iii) allows the buyer to return the sound recording or book and obtain a full refund; or
- (B) through a membership in a book or record club
 - (i) where the club provides the buyer with a form that the buyer may use to instruct the club not to ship the offered merchandise; and
 - (ii) that is regulated by the Federal Trade Commission as a negative option plan under 16 C.F.R. 425;

(11) by a publisher, or a publisher's agent operating under a written agreement between a publisher and the agent, who is soliciting the sale of a publisher's magazine or periodical

- (A) the buyer has the right to review the magazine and cancel the subscription for the magazine within seven days after receipt of the magazine or at the time the invoice is received by the buyer, whichever is later; cancellation request is timely if the request is mailed, properly addressed and stamped, postage prepaid, within seven days after receipt of the magazine;
- (B) the right of cancellation and refund is fully disclosed in writing to the buyer before or at the time the initial invoice is received by the buyer;

(12) of services provided by a cable television system operating under contract with a municipality;

(13) by a person who is soliciting for a business, or for an affiliate of a business, that is regulated by the Regulatory Commission of Alaska;

(14) by a person whose solicitation is solely for telephone answering services provided by the person or the person's employer;

(15) of property from a mail order catalog that is published on a periodic basis and that describes or pictures the items for sale and prominently displays the price of the items.

1 provides the specific price of each item;

2 (16) by a supervised financial institution or the parent, subsidiary, or
3 affiliate of a supervised financial institution; in this paragraph, "supervised financial
4 institution" means a commercial bank, savings bank, mutual savings bank, trust
5 company, savings and loan association, credit union, industrial loan company,
6 personal property broker, consumer finance lender, commercial finance lender, or
7 other financial institution if the financial institution is subject to regulation by this
8 state or the United States;

9 (17) by an insurer or the parent, subsidiary, or affiliate of an insurer;

10 (18) by a person who solicits a sale by a contact by telephonic means
11 without intending to complete the sales presentation during the contact, who does not
12 complete the sales presentation during the contact, and who only completes the sales
13 presentation at a later meeting in person, unless at the later meeting the solicitor
14 attempts to collect payment for property or services delivered before the later meeting;

15 (19) of an item of personal property, including a food product, that is made by hand by an individual, if the sale or attempted sale of the item is made by the individual who made the item; in this paragraph, "made by hand" includes the use of ordinary household devices if the majority of the value of the item is added by the labor of the individual.

20 * **Sec. 27.** AS 45.66.220 is amended to read:

21 **Sec. 45.66.220. Exemptions.** This chapter does not apply to a sale of or an offer to sell

22 (1) a business opportunity if the total amount of the payments to be made by the buyer under the contract is less than \$250;

23 (2) a franchise under 16 C.F.R. 436;

24 (3) an ongoing business operated by the seller that is to be sold in its entirety;

25 (4) a business opportunity to an ongoing business if the seller will provide products, equipment, supplies, or services that are to be sold by the buyer in connection with the buyer's ongoing business;

26 (5) sales demonstration equipment, materials, or samples for use in

1 sales demonstrations and not for resale, or product inventory sold to the buyer at a
2 bona fide wholesale price;

3 (6) a business opportunity by an executor, an administrator, a marshal,
4 a receiver, a trustee in bankruptcy, or a guardian or conservator, or under a judicial
5 sale;

6 (7) a security registered under **AS 45.56** [AS 45.55] or a security that
7 is exempted by **AS 45.56.205** [AS 45.55.900] from registration under **AS 45.56**
8 [AS 45.55];

9 (8) a business opportunity if the sale or offer is made by a person
10 registered with the United States Securities and Exchange Commission when acting
11 within the scope of the person's Securities and Exchange Commission license or by a
12 person registered by the state under **AS 45.56** [AS 45.55] when acting within the
13 scope of registration;

14 (9) a business opportunity by an issuer or a subsidiary of an issuer of a
15 class of securities that is

16 (A) subject to **15 U.S.C. 78a - 78pp** [15 U.S.C. 78a - 78III]
17 (Securities Exchange Act of 1934); and

18 (B) registered under **15 U.S.C. 78a - 78pp** [15 U.S.C. 78a -
19 78III] (Securities Exchange Act of 1934) unless exempt from registration under
20 15 U.S.C. 78l (g)(2)(A) - (C) or (E) - (H);

21 (10) a business opportunity in which the buyer is

22 (A) a bank, savings and loan association, trust company,
23 insurance company, credit union, or investment company under 15 U.S.C. 80a-
24 1 - 80a-64 (Investment Company Act of 1940), pension or profit sharing trust,
25 or other financial institution or institutional buyer; or

26 (B) a broker-dealer registered under **AS 45.56.405** [AS 45.55];

27 (11) a business opportunity that involves a marketing plan made in
28 conjunction with the registration of a trademark or service mark under 15 U.S.C. 1051
29 - 1127 (Trademark Act of 1946) if the seller has a minimum net worth of \$1,000,000
30 as determined on the basis of the seller's most recent audited financial statement
31 prepared within 13 months of the first offer to sell in this state; net worth may be

1 determined on a consolidated basis if one person owns at least 80 percent of the seller
 2 and that one person expressly guarantees the obligations of the seller that arise under
 3 the sale or offer claimed to be exempt under this paragraph; or

4 (12) a business opportunity in which either the seller or the buyer is
 5 licensed as a real estate broker, associate real estate broker, or real estate salesperson
 6 under AS 08.88 and the sale or offer is regulated by AS 08.88.

7 * **Sec. 28.** AS 45.66.900(11) is amended to read:

8 (11) "securities or investment laws" means **AS 45.56** [AS 45.55]
 9 (Alaska Securities Act) or a substantially similar statute of another jurisdiction, **15**
 10 **U.S.C. 77a - 77aa** [15 U.S.C. 77a - 77bbbb] (Securities Exchange Act of 1933), **15**
 11 **U.S.C. 78a - 78pp** [15 U.S.C. 78a - 78lll] (Securities Exchange Act of 1934), or 15
 12 U.S.C. 80a-1 - 80b-21 (Investment Company Act of 1940/Investment Advisers Act of
 13 1940);

14 * **Sec. 29.** AS 45.55.010, 45.55.020, 45.55.023, 45.55.025, 45.55.027, 45.55.028, 45.55.030,
 15 45.55.035, 45.55.040, 45.55.050, 45.55.060, 45.55.070, 45.55.075, 45.55.080, 45.55.090,
 16 45.55.100, 45.55.110, 45.55.120, 45.55.150, 45.55.155, 45.55.170, 45.55.900, 45.55.905(c),
 17 45.55.915, 45.55.930, 45.55.935, 45.55.960, 45.55.970, 45.55.980, 45.55.990, and 45.55.995
 18 are repealed.

19 * **Sec. 30.** The uncodified law of the State of Alaska is amended by adding a new section to
 20 read:

21 INDIRECT COURT RULE AMENDMENTS. (a) The provisions of AS 45.56.630(c)
 22 - (e), enacted by sec. 1 of this Act, have the effect of changing Rules 4 and 5, Alaska Rules of
 23 Civil Procedure, by allowing service on the administrator in certain cases.

24 (b) The provisions of AS 45.56.650(f), enacted by sec. 1 of this Act, have the effect of
 25 changing Rule 54, Alaska Rules of Civil Procedure, by expanding the definition of judgments
 26 to include final judgments of the administrator issued under AS 45.56.650.

27 (c) The provisions of AS 45.56.655(c), enacted by sec. 1 of this Act, have the effect
 28 of changing Rule 65, Alaska Rules of Civil Procedure, by changing the procedure for
 29 injunctions in certain cases.

30 (d) The provisions of AS 45.56.650(g), enacted by sec. 1 of this Act, have the effect
 31 of changing Rule 90, Alaska Rules of Civil Procedure, by changing the contempt procedure in

1 certain cases.

2 * **Sec. 31.** The uncodified law of the State of Alaska is amended by adding a new section to
3 read:

4 TRANSITION: REGULATIONS. The Department of Commerce, Community, and
5 Economic Development may proceed to adopt regulations necessary to implement AS 45.56,
6 enacted by secs. 1 and 16 - 25 of this Act. The regulations take effect under AS 44.62
7 (Administrative Procedure Act), but not before the effective date of secs. 1 and 16 - 25 of this
8 Act.

9 * **Sec. 32.** The uncodified law of the State of Alaska is amended by adding a new section to
10 read:

11 TRANSITION: APPLICATION OF ACT TO EXISTING PROCEEDINGS AND
12 EXISTING RIGHTS AND DUTIES. (a) Former AS 45.55.010 - 45.55.120, 45.55.150,
13 45.55.155, 45.55.170, 45.55.900, 45.55.905(c), 45.55.915, 45.55.930, 45.55.935, and
14 45.55.960 - 45.55.995 exclusively governs all actions or proceedings that are pending on the
15 effective date of sec. 1 of this Act or may be instituted on the basis of conduct occurring
16 before the effective date of sec. 1 of this Act, but a civil action may not be maintained to
17 enforce any liability under former AS 45.55.010 - 45.55.120, 45.55.150, 45.55.155,
18 45.55.170, 45.55.900, 45.55.905(c), 45.55.915, 45.55.930, 45.55.935, and 45.55.960 -
19 45.55.995 unless instituted within any period of limitation that applied when the cause of
20 action accrued or within five years after the effective date of this Act, whichever is earlier.

21 (b) All effective registrations under former AS 45.55.010 - 45.55.120, 45.55.150,
22 45.55.155, 45.55.170, 45.55.900, 45.55.905(c), 45.55.915, 45.55.930, 45.55.935, and
23 45.55.960 - 45.55.995, all administrative orders relating to the registrations, regulations,
24 statements of policy, interpretative opinions, declaratory rulings, no action determinations,
25 and conditions imposed on the registrations under former AS 45.55.010 - 45.55.120,
26 45.55.150, 45.55.155, 45.55.170, 45.55.900, 45.55.905(c), 45.55.915, 45.55.930, 45.55.935,
27 and 45.55.960 - 45.55.995 remain in effect while they would have remained in effect if this
28 Act had not been enacted. They are considered to have been filed, issued, or imposed under
29 this Act, but are exclusively governed by former AS 45.55.010 - 45.55.120, 45.55.150,
30 45.55.155, 45.55.170, 45.55.900, 45.55.905(c), 45.55.915, 45.55.930, 45.55.935, and
31 45.55.960 - 45.55.995 unless removed or replaced by the administrator.

1 (c) Former AS 45.55.010 - 45.55.120, 45.55.150, 45.55.155, 45.55.170, 45.55.900,
2 45.55.905(c), 45.55.915, 45.55.930, 45.55.935, and 45.55.960 - 45.55.995 exclusively applies
3 to an offer or sale made within one year after the effective date of sec. 1 of this Act under an
4 offering made in good faith before the effective date of sec. 1 of this Act on the basis of an
5 exemption available under former AS 45.55.010 - 45.55.120, 45.55.150, 45.55.155,
6 45.55.170, 45.55.900, 45.55.905(c), 45.55.915, 45.55.930, 45.55.935, and 45.55.960 -
7 45.55.995.

8 * **Sec. 33.** The uncodified law of the State of Alaska is amended by adding a new section to
9 read:

10 REVISOR'S INSTRUCTION. The Revisor of Statutes is requested to change the
11 chapter heading of AS 45.55 from "Alaska Securities Act" to "Alaska Native Claims
12 Settlement Act Corporations Proxy Solicitations."

13 * **Sec. 34.** The uncodified law of the State of Alaska is amended by adding a new section to
14 read:

15 **CONDITIONAL EFFECT.** AS 45.56.630(c) - (e), 45.56.650(f) and (g), and
16 45.56.655(c), enacted by sec. 1 of this Act, take effect only if sec. 29 of this Act receives the
17 two-thirds majority vote of each house required by art. IV, sec. 15, Constitution of the State of
18 Alaska.

19 * Sec. 35. This Act takes effect July 1, 2015.