

CS FOR HOUSE BILL NO. 83(JUD)(title am)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Amended: 4/7/99

Offered: 3/11/99

Sponsor(s): HOUSE LABOR AND COMMERCE COMMITTEE BY REQUEST

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to certain securities occupations and investment pools; relating,
2 with regard to the Alaska Securities Act, to federal covered securities, the
3 registration of securities, the general exemptions for securities and transactions,
4 Internet offers of securities and transactions, file confidentiality, petitions to
5 superior court by the administrator to reduce civil penalties to judgment, time
6 limits for bringing court actions for violations, administrator-established fees and
7 administrator-required reimbursements, consent to service, title, sales, purchases,
8 offers to sell, and offers to purchase; exempting certain violations of the Alaska
9 Securities Act from criminal penalties; amending or repealing certain current
10 definitions in the Alaska Securities Act; providing new Alaska Securities Act
11 definitions for certain securities occupations, for certain federal statutes, and for
12 the terms 'advisory client,' 'advisory fee,' 'advisory services,' 'clients who are

1 natural persons,' 'federal covered security,' 'investment advisory business,'
 2 'investment advisory contract,' 'NASDAQ,' 'notice filing,' 'place of business,'
 3 'principal place of business,' 'securities business,' 'substantial portion of the
 4 business,' and 'supervised person'; and providing for an effective date."

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

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

7 (1) "license"

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

12 (i) license relating to boxing or wrestling under
 13 AS 05.10;

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

16 (iii) teacher certificate under AS 14.20;

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

19 (v) asbestos worker certification under AS 18.31;

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

21 (vii) certificate of fitness under AS 18.62;

22 (viii) hazardous painting certification under AS 18.63;

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

25 (x) security guard license under AS 18.65.400 -
 26 18.65.490;

27 (xi) license relating to insurance under AS 21.27;

28 (xii) employment agency permit under AS 23.15.330 -
 29 23.15.520;

(xiii) registration as a broker-dealer, an agent, a state
 [OR] investment adviser, or an investment adviser representative
 under 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) a license issued under AS 47.35;

(iv) a business license issued under AS 43.70;

(v) an entry permit or interim-use permit issued under
 AS 16.43; or

(vi) a driver's license issued under AS 28.15;

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

(2) "license"

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

(i) license relating to boxing or wrestling under
 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

1 medical services;

2 (v) asbestos worker certification under AS 18.31;

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

4 (vii) certificate of fitness under AS 18.62;

5 (viii) hazardous painting certification under AS 18.63;

6 (ix) security guard license under AS 18.65.400 -
7 18.65.490;

8 (x) license relating to insurance under AS 21.27;

9 (xi) employment agency permit under AS 23.15.330 -
10 23.15.520;

11 (xii) registration as a broker-dealer, an agent, a state
12 [OR] investment adviser, or an investment adviser representative
13 under AS 45.55.030;

14 (xiii) certification as a pesticide applicator under
15 AS 46.03.320;

16 (xiv) certification as a storage tank worker or contractor
17 under AS 46.03.375;

18 (xv) certification as a water and wastewater works
19 operator under AS 46.30; and

20 (xvi) commercial crewmember fishing license under
21 AS 16.05.480 other than an entry permit or interim-use permit under
22 AS 16.43;

23 (B) does not include

24 (i) a vessel license issued under AS 16.05.490 or
25 16.05.530;

26 (ii) a license issued under AS 47.35;

27 (iii) a business license issued under AS 43.70;

28 (iv) an entry permit or interim-use permit issued under
29 AS 16.43; or

30 (v) a driver's license issued under AS 28.15;

31 * **Sec. 3.** AS 25.27.244(s)(2), as repealed and reenacted under sec. 148(c), ch. 87, SLA

1 1997, as amended by sec. 53, ch. 132, SLA 1998, is amended to read:

2 (2) "license"

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

7 (i) license relating to boxing or wrestling under
8 AS 05.10;

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

11 (iii) teacher certificate under AS 14.20;

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

14 (v) asbestos worker certification under AS 18.31;

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

16 (vii) certificate of fitness under AS 18.62;

17 (viii) hazardous painting certification under AS 18.63;

18 (ix) security guard license under AS 18.65.400 -
19 18.65.490;

20 (x) license relating to insurance under AS 21.27;

21 (xi) employment agency permit under AS 23.15.330 -
22 23.15.520;

23 (xii) registration as a broker-dealer, an agent, a state
24 [OR] investment adviser, or an investment adviser representative
25 under AS 45.55.030;

26 (xiii) certification as a pesticide applicator under
27 AS 46.03.320;

28 (xiv) certification as a storage tank worker or contractor
29 under AS 46.03.375; and

30 (xv) certification as a water and wastewater works
31 operator under AS 46.30;

- 1 (B) does not include
- 2 (i) a commercial fishing license under AS 16.05.480,
- 3 including a crewmember fishing license;
- 4 (ii) a vessel license issued under AS 16.05.490 or
- 5 16.05.530;
- 6 (iii) a license issued under AS 47.35;
- 7 (iv) a business license issued under AS 43.70;
- 8 (v) an entry permit or interim-use permit issued under
- 9 AS 16.43; or
- 10 (vi) a driver's license issued under AS 28.15;

11 * **Sec. 4.** AS 37.23.050 is amended to read:

12 **Sec. 37.23.050. Investment management.** The public entities participating

13 in an investment pool under this chapter shall provide for management of investments

14 in the pool by contracting for investment management and related services with

15 (1) a securities broker-dealer registered under AS 45.55.030 and under

16 15 U.S.C. 78o (Securities Exchange Act of 1934);

17 (2) a state [AN] investment adviser registered under AS 45.55.030 **or**

18 **a federal covered adviser that has made a notice filing under AS 45.55.040(h)**

19 [AND UNDER 15 U.S.C. 80b3 (INVESTMENT ADVISERS ACT OF 1940)];

20 (3) the Department of Revenue; or

21 (4) a financial institution that is a state or federally chartered

22 commercial or mutual bank, savings and loan association, or credit union if the

23 institution's accounts are insured through the appropriate federal insuring agency of the

24 United States [,] and if the institution has trust powers under state or federal law.

25 * **Sec. 5.** AS 45.55.010 is amended by adding a new subsection to read:

26 (b) A person may not rely on an exemption from registration under

27 AS 45.55.900 or on a security being a federal covered security to avoid the application

28 of (a) of this section.

29 * **Sec. 6.** AS 45.55.020(b) is amended to read:

30 (b) A state [AN] investment adviser may not enter into, extend, or renew an

31 investment advisory contract unless **the contract** [IT] provides in writing that

(1) the state investment adviser may not be compensated on the basis of a share of capital gains upon or capital appreciation of the funds or a portion of the funds of the client; and

(2) [AN ASSIGNMENT OF THE CONTRACT MAY NOT BE MADE BY THE INVESTMENT ADVISER WITHOUT THE CONSENT OF THE OTHER PARTY TO THE CONTRACT; AND

(3)] the state investment adviser, if a partnership, shall notify the other party to the contract of a change in the membership of the partnership within a reasonable time after the change.

* **Sec. 7.** AS 45.55.020(c) is amended to read:

(c) The provisions of (b)(1) of this section do not prohibit an investment advisory contract that provides for compensation based upon the total value of a fund averaged over a definite period, or as of definite dates or taken as of a definite date.

The administrator, on request, may waive the provisions of (b)(1) of this section for investment advisory contracts that conform to the limitations of 15 U.S.C. 80b-5 (Investment Advisers Act of 1940).

* **Sec. 8.** AS 45.55.020(e) is amended to read:

(e) A state [AN] investment adviser may not take or have custody of the securities or funds of a client if

(1) the administrator, by regulation, prohibits custody; [,] or

(2) in the absence of regulation, the state investment adviser fails to notify the administrator that the adviser has or may have custody.

* **Sec. 9.** AS 45.55 is amended by adding new sections to article 1 to read:

Sec. 45.55.023. Unethical business practices of state investment advisers, investment adviser representatives, and federal covered advisers. (a) A person who is a state investment adviser, investment adviser representative, or federal covered adviser is a fiduciary and has a duty to act primarily for the benefit of the client. The provisions of this section apply to federal covered advisers only to the extent that the conduct alleged is fraudulent or deceptive under AS 45.55.010(a) or 45.55.020(a), or to the extent otherwise provided by P.L. 104 - 290, 101 Stat. 3416 - 3440 (National Securities Markets Improvement Act of 1996). While the extent and nature of the duty

1 to act primarily for the benefit of the client varies according to the nature of the
2 relationship between an investment adviser and its clients and the circumstances of
3 each case, a state investment adviser, an investment adviser representative, or a federal
4 covered adviser may not engage in dishonest or unethical practices or conduct in the
5 investment advisory business under AS 45.55.060(a)(7), including

6 (1) recommending to a client to whom investment supervisory,
7 management, or consulting services are provided the purchase, sale, or exchange of a
8 security without reasonable grounds to believe that the transaction or recommendation
9 is suitable for the client on the basis of information furnished by the client after
10 reasonable inquiry concerning the client's investment objectives, financial situation and
11 needs, and other information known by the state investment adviser, investment adviser
12 representative, or federal covered adviser;

13 (2) exercising discretionary power in placing an order for the purchase
14 or sale of securities for a client without obtaining written discretionary authority from
15 the client within 10 business days after the date of the first transaction placed under
16 oral discretionary authority unless the discretionary power relates solely to the price
17 at which or the time when an order involving a definite amount of a specified security
18 will be executed, or both;

19 (3) in a client's account inducing trading that is excessive in size or
20 frequency in view of the financial resources, investment objectives, and character of
21 the account if the state investment adviser, investment adviser representative, or federal
22 covered adviser can directly benefit from the number of securities transactions effected
23 in a client's account;

24 (4) placing an order to purchase or sell a security for the account of a
25 client without authority to do so;

26 (5) placing an order to purchase or sell a security for the account of a
27 client upon the instruction of a third party without first having obtained a written third-
28 party trading authorization from the client;

29 (6) borrowing money or securities from a client unless the client is a
30 financial institution engaged in the business of loaning money or the client is an
31 affiliate of the state investment adviser or federal covered adviser borrowing the money

1 or securities;

2 (7) loaning money to a client unless the state investment adviser or
3 federal covered adviser loaning the money is a financial institution engaged in the
4 business of loaning money or the client is an affiliate of the state investment adviser
5 or federal covered adviser;

6 (8) misrepresenting to an advisory client or prospective advisory client
7 the qualifications of the state investment adviser, an employee of the state investment
8 adviser, the investment adviser representative, the federal covered adviser, or an
9 employee of the federal covered adviser; misrepresenting the nature of the advisory
10 services being offered or fees to be charged for a service; or omitting to state a
11 material fact necessary to make the statements made regarding qualifications, services,
12 or fees not misleading in light of the circumstances under which the statements are
13 made;

14 (9) providing a report or recommendation to an advisory client prepared
15 by someone other than the state investment adviser, the investment adviser
16 representative, or the federal covered adviser without disclosing that the report or
17 recommendation was prepared by someone else, except that this prohibition does not
18 apply to a situation where the state investment adviser, investment adviser
19 representative, or federal covered adviser uses published research reports or statistical
20 analyses to render advice or where a state investment adviser, an investment adviser
21 representative, or a federal covered adviser orders the research reports or statistical
22 analyses in the normal course of providing service;

23 (10) charging a client an unreasonable advisory fee;

24 (11) failing to disclose to a client in writing before any advice is
25 rendered a material conflict of interest relating to the state investment adviser, federal
26 covered adviser, an employee of the state investment adviser or federal covered
27 adviser, or the investment adviser representative that could reasonably be expected to
28 impair the rendering of unbiased and objective advice, including

29 (A) compensation arrangements connected with advisory
30 services to a client if the arrangements are in addition to compensation from
31 the client for those services; and

(B) charging a client an advisory fee for rendering advice when a commission for executing securities transactions according to that advice will be received by the adviser or the employees or investment adviser representatives of the adviser;

(12) guaranteeing a client that a specific investment result will be achieved with the advice given;

(13) publishing, circulating, or distributing an advertisement that does not comply with 17 C.F.R. 275.206(4) - 1 adopted under 15 U.S.C. 80b-1 - 80b-21 (Investment Advisers Act of 1940), as that regulation exists on or after the effective date of this Act;

(14) disclosing the identity, affairs, or investments of a client unless required by law or unless consented to by the client;

(15) taking action, directly or indirectly, with respect to securities or funds in which a client has a beneficial interest if the state investment adviser, federal covered adviser, or investment adviser representative has custody or possession of the securities or funds and the adviser's action does not comply with the requirements of 17 C.F.R. 275.206(4) - 2 adopted under 15 U.S.C. 80b-1 - 80b-2 (Investment Advisers Act of 1940), as that regulation exists on or after the effective date of this Act;

(16) entering into, extending, or renewing an investment advisory contract unless the contract is in writing and discloses in substance

(A) the services to be provided;

(B) the term of the contract;

(C) the advisory fee, the formula for computing the fee, whether the fee is negotiable, and the amount of the prepaid fee to be returned in the event of contract termination or nonperformance;

(D) whether the contract grants discretionary power to the adviser; and

(E) that an assignment of the contract may not be made by a state investment adviser without the consent of the other party to the contract; in this subparagraph, "assignment" includes a direct or indirect transfer or hypothecation of an investment advisory contract by the assignor or of a

controlling block of the assignor's outstanding voting securities by a security holder of the assignor, but, if the adviser is a partnership, an assignment of an investment advisory contract is not considered to result from the death or withdrawal of a minority of the partners of the adviser having only a minority interest in the business of the adviser, or from the admission to the adviser of one or more partners who, after admission, will be only a minority of the partners and will have only a minority interest in the business;

(17) failing, in violation of 15 U.S.C. 80b-4a (Investment Advisers Act of 1940), to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material nonpublic information;

(18) entering into, extending, or renewing an advisory contract that would violate 15 U.S.C. 80b-5 (Investment Advisers Act of 1940); this paragraph applies to all state investment advisers registered or required to be registered under this chapter and to all investment adviser representatives registered or required to be registered under this chapter, notwithstanding whether the adviser or representative would be exempt from federal registration under 15 U.S.C. 80b-3 (Investment Advisers Act of 1940);

(19) including in an advisory contract a condition, stipulation, or provision binding a person to waive compliance with a provision of this chapter or 15 U.S.C. 80b-1 - 80b-21 (Investment Advisers Act of 1940); or engaging in a practice that would violate 15 U.S.C. 80b-15 (Investment Advisers Act of 1940);

(20) engaging in an act, a practice, or a course of business that is fraudulent, deceptive, or manipulative in contravention of 15 U.S.C. 80b-6(4) (Investment Advisers Act of 1940) and the rules adopted under that act, notwithstanding the fact that the state investment adviser may not be registered or required to be registered under 15 U.S.C. 80b-3 (Investment Advisers Act of 1940);

(21) engaging in conduct or an act, either indirectly or through or by another person, that would be unlawful for the person to do directly under this chapter or a regulation adopted under this chapter;

(22) acting as principal for the person's own account, knowingly selling a security to or purchasing a security from a client, acting as broker for a person other

than the client, or knowingly effecting a sale or purchase of a security for the account of the client without disclosing to the client in writing before the completion of the transaction the capacity in which the person is acting and without obtaining the written consent of the client to the transaction; the prohibitions in this paragraph do not apply to a transaction with a customer of a broker-dealer if the broker-dealer is not acting as a state investment adviser or federal covered adviser in relation to the transaction.

(b) The conduct listed in (a) of this section is not the exclusive conduct prohibited by (a) of this section. Engaging in other similar conduct, including nondisclosure, incomplete disclosure, or a deceptive practice, is considered unethical practice or conduct under AS 45.55.060(a)(7). The federal statutory and regulatory provisions referred to in this section apply to a state investment adviser and a registered investment adviser representative of either a state investment adviser or a federal covered adviser, regardless of whether the federal provisions limits their application to state investment advisers or federal covered advisors subject to federal registration. With respect to a federal covered adviser, the provisions of this section apply only to the extent permitted under P.L. 104 - 290, 101 Stat. 3416 - 3440 (National Securities Markets Improvement Act of 1996) and only when the conduct proscribed involves fraud or deceit within the meaning of AS 45.55.010(a) and 45.55.020(a).

Sec. 45.55.025. Fraudulent, dishonest, and unethical business practices of broker-dealers and agents. A broker-dealer and an agent shall observe high standards of commercial honor and just and equitable principles of trade in the conduct of their business. The acts and practices that are contrary to those standards and principles, that constitute dishonest or unethical practices in the securities business under AS 45.55.060(a), and that are grounds for imposition of administrative fines, censure, denial, suspension, revocation of a registration, or other appropriate disciplinary action include

(1) engaging in a pattern of unreasonable and unjustifiable delays in the delivery of securities purchased by the broker-dealer's customers or in the payment upon request of free credit balances reflecting completed transactions of the broker-dealer's customers;

1 (2) inducing in a customer's account trading that is excessive in size
2 or frequency in view of the financial resources and character of the account;

3 (3) recommending to a customer the purchase, sale, or exchange of a
4 security without reasonable grounds to believe that the transaction or recommendation
5 is suitable for the customer based on reasonable inquiry concerning the customer's
6 investment objectives, financial situation, and needs, and other relevant information
7 known by the broker-dealer or agent;

8 (4) executing a transaction on behalf of a customer without
9 authorization to execute the transaction;

10 (5) exercising discretionary power in effecting a transaction for a
11 customer's account without first obtaining written discretionary authority from the
12 customer unless the discretionary power relates solely to the time or price for the
13 execution of orders;

14 (6) executing a transaction in a margin account without securing from
15 the customer a properly executed written margin agreement promptly after the initial
16 transaction in the account;

17 (7) failing to segregate a customer's free securities or securities held in
18 safekeeping;

19 (8) hypothecating a customer's securities without having a lien on the
20 securities unless the broker-dealer or agent receives from the customer a properly
21 executed written consent promptly after the initial transaction, except as permitted by
22 the rules of the United States Securities and Exchange Commission;

23 (9) entering into a transaction with or for a customer at a price not
24 reasonably related to the current market price of the securities or receiving an
25 unreasonable commission or profit;

26 (10) failing to furnish to a customer purchasing securities in a
27 registered offering a final or preliminary prospectus no later than the date of
28 confirmation of the transaction and, if the prospectus is preliminary, failing to furnish
29 a final prospectus within a reasonable time after the effective date of the offering;

30 (11) charging unreasonable or inequitable fees for services performed,
31 including fees for miscellaneous services, such as the collection of money due for

principal, dividends, or interest, the exchange or transfer of securities, appraisals, safekeeping, the custody of securities, and other services related to the broker-dealer's securities business;

(12) offering to buy from or sell to a person a security at a stated price unless the broker-dealer is prepared to purchase or sell at that price and under the conditions that are stated at the time of the offer to buy or sell;

(13) representing that a security is being offered to a customer at market price or at a price relevant to the market price unless the broker-dealer or agent knows or has reasonable grounds to believe that a market for the security exists other than that made, created, or controlled by

(A) the broker-dealer;

(B) a person for whom the broker-dealer is acting or with whom the broker-dealer is associated in the distribution of the security; or

(C) a person controlled by, controlling, or under common control with the broker-dealer;

(14) effecting a transaction in, or inducing the purchase or sale of, a security by means of a manipulative, deceptive, or fraudulent device, practice, plan, program, design, or contrivance, including

(A) effecting a transaction in a security that does not involve a change in the beneficial ownership;

(B) entering an order for the purchase or sale of a security with the knowledge that another order of substantially the same price for the sale of the same security has been or will be entered by or for the same or different parties for the purpose of creating a false or misleading appearance of active trading in the security or a false or misleading appearance with respect to the market for the security; nothing in this subparagraph prohibits a broker-dealer from entering a bona fide agency cross transaction for its customers as long as the cross transaction is noted on the confirmation and monthly account statements;

(C) effecting alone or with one or more other persons a series of transactions in a security creating actual or apparent active trading in the

1 security or raising or depressing the price of the security for the purpose of
 2 inducing the purchase or sale of the security by others;

3 (15) guaranteeing a customer against risk or loss in a securities account
 4 of the customer carried by the broker-dealer or in a securities transaction effected by
 5 the broker-dealer or agent with or for the customer;

6 (16) publishing or circulating or causing to be published or circulated
 7 a notice, a circular, an advertisement, a newspaper article, an investment service, or
 8 a communication of any kind that purports to

9 (A) report a transaction as a purchase or sale of a security
 10 unless the broker-dealer or agent believes that the transaction described was a
 11 bona fide purchase or sale of the security; or

12 (B) quote the bid price or asked price for a security unless the
 13 broker-dealer believes that the quotation represents a bona fide bid for, or offer
 14 of, the security;

15 (17) making a written or oral advertising or sales presentation that is
 16 in any manner deceptive or misleading, including

17 (A) distributing nonfactual data or material, or making a
 18 presentation that is based on conjecture or unfounded or unrealistic claims or
 19 assertions, in a brochure, flyer, or other display by words, pictures, graphs, or
 20 other method designed to supplement, detract from, supersede, or defeat the
 21 purpose or effect of a prospectus or disclosure;

22 (B) using supplementary material in connection with the offer
 23 of a particular security if the information in the material is not consistent with
 24 or adequately supported by the prospectus or is not filed as part of the
 25 registration statement;

26 (C) using supplementary material not authorized by the issuer
 27 in connection with the offer of a particular security when a prospectus or other
 28 offering document required to be delivered in connection with the offer
 29 specifically states that supplementary material is not authorized;

30 (18) failing to disclose that the broker-dealer or agent is affiliated with
 31 the issuer of a security before entering into a contract with or for a customer for the

1 purchase or sale of the security and, if the disclosure is made orally, failing to provide
2 to the customer written disclosure before the completion of the transaction;

3 (19) failing to make a bona fide offering of all of the securities allotted
4 to a broker-dealer for distribution, whether acquired as an underwriter or a selling
5 group member or from an underwriting or a selling group member participating in the
6 distribution as an underwriter or selling group member;

7 (20) failing or refusing to furnish to a customer, upon reasonable
8 request, information to which the person is entitled or failing or refusing to respond
9 to a formal written request, demand, or complaint;

10 (21) being found by a court or an administrative proceeding of
11 competent jurisdiction to have violated the anti-fraud or registration provisions of
12 federal securities laws or of the securities law of a state;

13 (22) marking an order ticket or confirmation as unsolicited when, in
14 fact, the transaction was solicited;

15 (23) in connection with the solicitation of a sale or purchase of an over-
16 the-counter non-NASDAQ security, failing to provide promptly the most current
17 prospectus or the most recent periodic report filed under 15 U.S.C. 78m (Securities
18 Exchange Act of 1934), when requested to do so by a customer;

19 (24) failing to provide to a customer for a month in which activity has
20 occurred in a customer's account, but in no event less than every three months, a
21 statement of account that contains a value for each over-the-counter non-NASDAQ
22 equity security based on the closing market bid on a certain date; this paragraph
23 applies only if the broker-dealer has been a market maker in that security at any time
24 during the month in which the monthly or quarterly statement is issued;

25 (25) failing to maintain lists of persons who have informed the broker-
26 dealer that the persons do not want to be solicited;

27 (26) conducting business by telephone at unreasonable times;

28 (27) failing to disclose to a person purchasing shares of an investment
29 company on the premises of an insured depository institution that the investment is not
30 covered by the Federal Deposit Insurance Corporation; or

31 (28) failing to comply with an applicable provision of the Conduct

Rules of the National Association of Securities Dealers, Inc., or applicable fair practices or ethical standards adopted by the United States Securities and Exchange Commission or by a self-regulatory organization approved by the United States Securities and Exchange Commission.

Sec. 45.55.027. Additional fraudulent, dishonest, and unethical business practices of agents. In addition to the acts and practices described in AS 45.55.025, the acts and practices of an agent that constitute dishonest or unethical practices in the securities business under AS 45.55.060(a), that are grounds for imposition of administrative fines, censure, denial, suspension, revocation of a registration, or other appropriate disciplinary action, and that are contrary to the high standards of commercial honor and just and equitable principles of trade to be observed by agents, include

(1) engaging in the practice of lending to or borrowing money or securities from a customer or acting as a custodian for money, securities, or an executed stock power of a customer;

(2) effecting securities transactions not recorded on the regular books and records of the broker-dealer that the agent represents unless the transactions are authorized in writing by the broker-dealer before execution of the transactions;

(3) establishing or maintaining an account containing fictitious information in order to execute transactions that would otherwise be prohibited;

(4) sharing directly or indirectly in profits and losses in the account of a customer without the written authorization of the customer and the broker-dealer that the agent represents;

(5) dividing or otherwise splitting the agent's commissions, profits, or other compensation from the purchase and sale of securities with a person who is not also registered in this state as an agent for the same broker-dealer or as a broker-dealer under direct or indirect common control of the broker-dealer or agent unless the person is not required to be registered in order to engage in the securities business in this state;

(6) failing to disclose to a customer or prospective customer at the time of the first contact with the customer or prospective customer the name of the

1 registered entity if different from the name under which the agent is doing business;

2 (7) contacting a person who has requested to be placed on a list of
3 persons who do not want to be contacted by the broker-dealer.

4 **Sec. 45.55.028. Practices of broker-dealers and agents considered**
5 **fraudulent or deceitful.** Acts and practices of broker-dealers or agents that are
6 considered fraudulent or deceitful acts, practices, or courses of business under
7 AS 45.55.010(a) include

8 (1) entering into a transaction with a customer with regard to a security
9 at an unreasonable price or at a price not reasonably related to the current market price
10 of the security, or receiving an unreasonable commission, markup, or profit;

11 (2) contradicting or negating the importance of information contained
12 in a prospectus or other offering material with the intent to deceive or mislead, or
13 using an advertising or sales presentation in a deceptive or misleading manner,
14 including using supplementary material that does not consistently reflect or is not
15 supported by information presented in prospectus or offering material required to be
16 delivered in connection with the offer;

17 (3) in connection with the offer, sale, or purchase of a security, falsely
18 misleading a customer to believe that the broker-dealer or agent possesses material,
19 nonpublic information that would affect the value of the security;

20 (4) in connection with the solicitation of a sale or purchase of a
21 security, engaging in a pattern or practice of making contradictory recommendations
22 to different investors with similar investment objectives for some to sell and others to
23 purchase the same security, at or about the same time, when not justified by the
24 particular circumstances of each investor;

25 (5) failing to make a bona fide public offering in accordance with an
26 underwriting agreement of all the securities allotted to a broker-dealer for distribution
27 by using methods such as

28 (A) transferring securities to a customer, another broker-dealer,
29 or a fictitious account with the understanding that the securities will be returned
30 to the broker-dealer or its nominees; or

31 (B) parking or withholding securities;

1 (6) with respect to transactions in securities sold in the over-the-counter
2 market other than those securities listed in the NASDAQ National Market System,

3 (A) conducting sales contests in a particular security;

4 (B) failing or refusing to promptly execute sell orders after a
5 solicited purchase by a customer;

6 (C) soliciting a secondary market transaction when there has not
7 been a bona fide distribution in the primary issuer market;

8 (D) engaging in a pattern of compensating an agent in different
9 amounts for effecting sales and purchases in the same security;

10 (7) effecting a transaction in or inducing the purchase or sale of a
11 security by means of any manipulative, deceptive, or other fraudulent device or
12 contrivance, including the use of boiler room tactics or the use of fictitious accounts;
13 in this paragraph, "boiler room tactics" includes high-pressure sales tactics that have
14 the effect of creating an artificially short period in which the investor must make a
15 decision or that are designed to overcome a customer's reluctance to make an
16 investment, including

17 (A) the use of intensive telephone campaigns or unsolicited calls
18 to persons who are not known by or who do not have an account with the
19 agent or broker-dealer and in which the person is encouraged to make a hasty
20 decision to buy without regard to the person's investment needs and objectives;

21 (B) the use of scripts designed to meet the customer's
22 objections;

23 (C) repeated phone calls;

24 (D) phone calls designed to entrap the customer;

25 (E) threatening tones on the telephone informing the customer
26 that there is little time within which to make a decision;

27 (8) failing to comply with a prospectus delivery requirement adopted
28 under federal law;

29 (9) making a false, misleading, deceptive, or exaggerated representation
30 or prediction in the solicitation or sale of a security, including a statement that

31 (A) the security will be resold or repurchased;

(B) the security will be listed or traded on an exchange or established market;

(C) purchasing the security will result in an assured, immediate, or extensive increase in value, future market price, or return on investment; or

(D) refers to the issuer's financial condition, anticipated earnings, potential growth, or success;

(10) failing to disclose to a customer that the broker-dealer or agent is acting as an agent for both the customer and another person; or

(11) effecting a transaction on terms and conditions other than those stated by the confirmation.

* **Sec. 10.** AS 45.55.030(c) is repealed and reenacted to read:

(c) A person may not transact business in this state as a state investment adviser or an investment adviser representative unless

(1) the person is registered as required under this chapter; or

(2) the person does not have a place of business in this state and

(A) the person's only clients in this state are investment companies as defined in 15 U.S.C. 80a-3 (Investment Company Act of 1940), other state investment advisers, federal covered advisers, broker-dealers, banks, trust companies, savings and loan associations, insurance companies, employee benefit plans with assets of not less than \$1,000,000, governmental agencies or instrumentalities whether acting for themselves or as trustees with investment control, or other institutional investors that are designated by regulation or order of the administrator; or

(B) during the preceding 12 months, the person has not had more than five clients who are residents of this state other than those specified in (A) of this paragraph; in this subparagraph, the number of the person's clients shall be determined under 17 C.F.R. 275.203(b)(3)-1 and 17 C.F.R. 275.222-2, as those regulations exist on or after the effective date of this Act.

* **Sec. 11.** AS 45.55.030(d) is amended to read:

(d) A [EVERY] registration or notice filing expires one year from its effective date unless renewed earlier.

1 *** Sec. 12.** AS 45.55.030 is amended by adding new subsections to read:

2 (e) Except with respect to a federal covered adviser whose only clients are
3 those described in (c)(2) of this section, a federal covered adviser may not conduct an
4 investment advisory business in this state unless the federal covered adviser complies
5 with AS 45.55.040(h).

6 (f) A person may not be registered concurrently as an agent of more than one
7 broker-dealer or issuer. The administrator may waive this restriction if the
8 administrator determines that the waiver would not interfere with effective supervision
9 of the agent by the broker-dealer or issuer and the waiver is in the public interest.

10 (g) A person who is registered or required to be registered as a state
11 investment adviser under this chapter may not employ an investment adviser
12 representative who provides advisory services in or emanating from this state unless
13 the investment adviser representative is registered under this chapter or is exempt from
14 registration, except that the registration of the investment adviser representative is
15 effective only when the representative is employed by a state investment adviser
16 registered under this chapter.

17 (h) A federal covered adviser who has filed notice under this chapter may not
18 employ, supervise, or associate with an investment adviser representative having a
19 place of business located in this state unless the investment adviser representative is
20 registered under this chapter or is exempt from registration, except that the registration
21 of the investment adviser representative is effective only when the representative is
22 employed by a federal covered adviser.

23 (i) If an investment adviser representative terminates employment with a state
24 investment adviser or federal covered adviser, the state investment adviser or federal
25 covered adviser shall promptly notify the administrator.

26 (j) A registered broker-dealer or agent is not considered to be soliciting,
27 offering, or negotiating for the sale of or selling advisory services if the registered
28 broker-dealer or agent refers, as part of a wrap fee, asset allocation, or market-timing
29 program, customers who are residents of this state to a state investment adviser or
30 federal covered adviser that is registered or has made a notice filing in this state.

31 *** Sec. 13.** AS 45.55 is amended by adding a new section to read:

1 **Sec. 45.55.035. Limited registration of Canadian broker-dealers and**
2 **agents.** (a) If a broker-dealer is registered under this section and its principal office
3 is located in a province or territory of Canada that provides at least equivalent
4 registration for a broker-dealer that is resident in the United States, a broker-dealer that
5 is resident in Canada and does not have an office or other physical presence in this
6 state may effect transactions in securities with or for or induce or attempt to induce
7 the purchase or sale of a security by a person from Canada who is
8 (1) temporarily resident in this state and with whom the Canadian
9 broker-dealer had a bona fide broker-dealer-client relationship before the person
10 entered the United States; or
11 (2) resident in this state and whose transactions are in a self-directed
12 tax-advantaged retirement plan in Canada of which the person is the holder or
13 contributor.
14 (b) An agent who represents a Canadian broker-dealer registered under this
15 section may, if the agent is registered under this section, effect transactions in
16 securities in this state as permitted for the broker-dealer under (a) of this section.
17 (c) Subject to the requirements of (a) of this section, a Canadian broker-dealer
18 may register under this section if the broker-dealer
19 (1) files an application in the form required by the jurisdiction in which
20 the broker-dealer has its principal office;
21 (2) files a written consent to service of process under AS 45.55.980(g);
22 (3) is registered as a broker or dealer in good standing in the
23 jurisdiction from which the broker-dealer is effecting transactions into this state and
24 files evidence of the registration; and
25 (4) is a member of a self-regulating organization or stock exchange in
26 Canada.
27 (d) An agent may register under this section in order to effect transactions in
28 securities in this state if the agent represents a Canadian broker-dealer that is registered
29 under this section, and the agent
30 (1) files an application in the form required by the jurisdiction in which
31 the broker-dealer has its principal office;

1 (2) files a written consent to service of process under AS 45.55.980(g);
 2 and

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

5 (e) Registration under this section becomes effective on the 30th day after an
 6 application is filed unless it is made effective earlier by the administrator or a denial
 7 order is in effect and a proceeding is pending under AS 45.55.060.

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

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

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

13 (3) inform the administrator promptly of any criminal action taken
 14 against the broker-dealer or of any finding or sanction imposed on the broker-dealer
 15 as a result of regulatory action, including that of a self-regulating organization,
 16 involving fraud, theft, deceit, misrepresentation, or similar conduct; and

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

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

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

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

25 (h) Renewal applications for Canadian broker-dealers and agents under this
 26 section must be filed before December 1 each year and may be made by filing the
 27 most recent renewal application, if any, filed in the jurisdiction in which the broker-
 28 dealer has its principal office or, if a renewal application is not required, the most
 29 recent application filed under (c)(1) or (d)(1) of this section.

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

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

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

(2) with or through

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

(B) other broker-dealers; or

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

(3) as otherwise permitted by this chapter.

(k) A Canadian broker-dealer or agent registered under this section and acting in accordance with the limitations in (j) of this section is exempt from all of the requirements of this chapter except the anti-fraud provisions under AS 45.55.010 and the requirements of this section. The registration of a Canadian broker-dealer or agent under this section may not be denied, suspended, or revoked except in accordance with the provisions of AS 45.55.060 for a breach of the anti-fraud provisions under AS 45.55.010 or the requirements of this section.

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

* **Sec. 14.** AS 45.55.040(a) is amended to read:

(a) A broker-dealer, agent, [OR] investment adviser **representative, or state investment adviser** may obtain an initial or renewal registration by filing with the administrator an application together with a consent to service of process under AS 45.55.980(g). The application **must** [SHALL BE ACCOMPANIED BY THE FINGERPRINTS AND A PHOTOGRAPH OF THE APPLICANT AND MUST] contain whatever information the administrator by regulation **may require** [REQUIRES] concerning such matters as

(1) the applicant's form and place of organization;

(2) the applicant's proposed method of doing business;

(3) the qualifications and business history of the applicant; in the case of a broker-dealer or state investment adviser, the qualifications and business history of a partner, officer, or director, any [A] person occupying a similar status or performing similar functions, or any [A] person directly or indirectly controlling the broker-dealer or state investment adviser; [AND, IN THE CASE OF AN INVESTMENT ADVISER, THE QUALIFICATIONS AND BUSINESS HISTORY OF AN EMPLOYEE;]

(4) an injunction or administrative order or conviction of a misdemeanor involving a security or any aspect of the securities business and any conviction of a felony; [AND]

(5) the applicant's financial condition and history; and

(6) if the applicant is a state investment adviser, any information to be furnished or disseminated to a client or prospective client.

* **Sec. 15.** AS 45.55.040(b) is amended to read:

(b) The administrator may by regulation or order require an applicant for initial registration to publish an announcement of the application in one or more specified newspapers published in this state. [IF NO DENIAL ORDER IS IN EFFECT AND NO PROCEEDING IS PENDING UNDER AS 45.55.060, REGISTRATION BECOMES EFFECTIVE AT NOON ON THE 30TH DAY AFTER AN APPLICATION IS FILED. THE ADMINISTRATOR MAY BY REGULATION OR ORDER SPECIFY AN EARLIER EFFECTIVE DATE, AND THE ADMINISTRATOR MAY BY ORDER DEFER THE EFFECTIVE DATE UNTIL NOON OF THE 30TH DAY AFTER THE FILING OF AN AMENDMENT.]

* **Sec. 16.** AS 45.55.040(c) is repealed and reenacted to read:

(c) A broker-dealer, an agent, an investment adviser representative, and a state investment adviser applicant for initial or renewal registration shall pay a registration fee established by the department by regulation. A person acting as a federal covered adviser in this state shall pay a fee for an initial and renewal notice filing under (h) of this section as required by the administrator by regulation.

* **Sec. 17.** AS 45.55.040(d) is repealed and reenacted to read:

(d) A registered broker-dealer, state investment adviser, or a federal covered

adviser who has filed notice under this chapter may file an application for registration or notice filing, as applicable, of a successor for the unexpired portion of the year regardless of whether the successor is then in existence. A broker-dealer may file a request to transfer from a previous broker-dealer an agent's unexpired portion of the registration if the provisions of AS 45.55.030(b) have been met. A state investment adviser may file an application to transfer from a predecessor state investment adviser or federal covered adviser the investment adviser representative's unexpired portion of the registration. The department shall establish by regulation the filing fee for filing applications under this subsection.

*** Sec. 18.** AS 45.55.040(e) is repealed and reenacted to read:

(e) The administrator may by regulation or order require a minimum level of capitalization for registered broker-dealers, subject to the limitations of 15 U.S.C. 78o (Securities Exchange Act of 1934), and establish minimum financial requirements for state investment advisers, subject to the limitations of 15 U.S.C. 80b-18a (Investment Advisers Act of 1940). The financial requirements may differ for those state investment advisers who have discretionary authority over or maintain custody of clients' funds or securities and those who do not.

*** Sec. 19.** AS 45.55.040(f) is repealed and reenacted to read:

(f) The administrator may by regulation or order require registered broker-dealers and agents to post a bond in an amount the administrator may prescribe subject to the limitations provided in 15 U.S.C. 78o (Securities Exchange Act of 1934). The administrator may determine the conditions of the bond. The administrator shall accept any appropriate deposit of cash or securities from a registered broker-dealer or agent in place of a required bond. A bond may not be required of a registrant whose net capital exceeds the amounts required by the administrator. A bond must provide for suit on it by a person who has a cause of action under AS 45.55.930 and, if required by the administrator by regulation, by a person who has a cause of action not arising under this chapter. A bond must provide that a suit may not be maintained to enforce a liability on the bond unless brought within three years after the sale or other act on which it is based.

*** Sec. 20.** AS 45.55.040(g) is amended to read:

(g) The administrator may permit initial and renewal registration **and notice** filings required **for state investment advisers, federal covered advisers, investment adviser representatives, broker-dealers, and agents** under this chapter to be filed with the **United States** Securities and Exchange Commission, the National Association of Securities Dealers, or other similar **authority** [AUTHORITIES]. The administrator may accept uniform securities examinations or other procedures designed to implement a uniform national securities regulatory system or facilitate common practices and procedures among the states, **including participation in joint, coordinated securities examinations with other states.**

* **Sec. 21.** AS 45.55.040 is amended by adding new subsections to read:

(h) Except with respect to federal covered advisers whose only clients are those described in AS 45.55.030(c)(2), before acting as a federal covered adviser in this state, a federal covered adviser shall file with the administrator those documents that have been filed with the United States Securities and Exchange Commission as the administrator, by regulation, by order, or otherwise, may require.

(i) The administrator shall by regulation or order specify procedures, fees, and an effective date for registrations, notice filings under this section, transfers of agents, and other registrations or notice filings allowed or required under this chapter.

(j) The administrator may by regulation or order require registered state investment advisers who have custody of or discretionary authority over clients' funds or securities to post a bond in an amount the administrator may establish subject to the limitations provided in 15 U.S.C. 80b-18a (Investment Advisers Act of 1940). The administrator may determine the conditions of the bond. The administrator shall accept any appropriate deposit of cash or securities in place of a required bond. A bond may not be required of a registered state investment adviser whose minimum financial condition, which may be defined by regulation, or net capital exceeds the amounts required by the administrator. A bond must provide for suit on it by a person who has a cause of action under AS 45.55.930 and, if required by the administrator by regulation, by a person who has a cause of action not arising under this chapter. A bond must provide that a suit may not be maintained to enforce a liability on the bond unless brought within three years after the sale or other act on which it is based.

1 * **Sec. 22.** AS 45.55.050(a) is amended to read:

2 (a) **Except as provided under 15 U.S.C. 78o (Securities Exchange Act of**
 3 **1934), a** [EVERY] registered broker-dealer [AND INVESTMENT ADVISER] shall
 4 make and keep the accounts, correspondence, memoranda, papers, books, and other
 5 records that the administrator **requires** [PRESCRIBES] by regulation **or order**. All
 6 **required** records [SO REQUIRED] shall be preserved for three years unless the
 7 administrator by regulation prescribes otherwise [FOR PARTICULAR TYPES OF
 8 RECORDS].

9 * **Sec. 23.** AS 45.55.050(b) is repealed and reenacted to read:

10 (b) Subject to 15 U.S.C. 78o (Securities Exchange Act of 1934), a registered
 11 broker-dealer shall file the financial reports the administrator requires.

12 * **Sec. 24.** AS 45.55.050(c) is amended to read:

13 (c) If the information contained in a document filed with the administrator is
 14 or becomes inaccurate or incomplete in a material respect, the **federal covered**
 15 **adviser, state investment adviser, broker-dealer, agent, or investment adviser**
 16 **representative who made the filing** [REGISTRANT] shall promptly file a correcting
 17 amendment unless notification of the correction is given under AS 45.55.030(b). **If**
 18 **the document is filed with respect to a federal covered adviser, the amendment**
 19 **shall be filed when it is required to be filed with the United States Securities and**
 20 **Exchange Commission unless notification of the correction is given under**
 21 **AS 45.55.030(b).**

22 * **Sec. 25.** AS 45.55.050(d) is amended to read:

23 (d) All the records referred to in [(a) OF] this section are subject **at any time**
 24 to reasonable periodic, special, or other examinations by representatives of the
 25 administrator, inside or outside this state, as the administrator considers necessary or
 26 appropriate in the public interest or for the protection of investors. For the purpose
 27 of avoiding unnecessary duplication of examinations, the administrator, insofar as the
 28 administrator considers it practicable in administering this subsection, may cooperate
 29 with the securities administrators of other states, the **United States** Securities and
 30 Exchange Commission, and any national securities exchange or national securities
 31 association registered under **15 U.S.C. 78a - 78ll** ([THE] Securities Exchange Act of

1 1934).

2 * **Sec. 26.** AS 45.55.050 is amended by adding new subsections to read:

3 (e) Subject to 15 U.S.C. 80b-18a (Investment Advisers Act of 1940), an
4 investment adviser representative or state investment adviser shall make and keep the
5 accounts, correspondence, memoranda, papers, books, and other records that the
6 administrator requires by regulation or order. All required records shall be preserved
7 for three years unless the administrator by regulation prescribes otherwise.

8 (f) The administrator may by regulation or order require that certain
9 information be furnished or disseminated by persons registered or required to be
10 registered as state investment advisers as necessary or appropriate in the public interest
11 or for the protection of investors and advisory clients. The administrator may
12 determine that certain information may be used in whole or partial satisfaction of this
13 requirement if the information complies with 15 U.S.C. 80b-1 - 80b-21 (Investment
14 Advisers Act of 1940) and the rules adopted under that act.

15 (g) Subject to 15 U.S.C. 80b-18a (Investment Advisers Act of 1940), a state
16 investment adviser shall file the financial reports the administrator requires by
17 regulation or order.

18 (h) A state investment adviser that has its principal place of business in a state
19 other than this state and the investment adviser representatives of that state investment
20 adviser are exempt from the requirements of (e) of this section if the state investment
21 adviser is registered as an investment adviser in the state where the state investment
22 adviser has its principal place of business and is in compliance with that state's
23 requirements relating to accounts and records.

24 (i) A broker-dealer and an agent of a broker-dealer shall file with the
25 administrator only the financial reports or other information required to be filed with
26 the United States Securities and Exchange Commission under 15 U.S.C. 78a - 78lll
27 (Securities Exchange Act of 1934).

28 (j) A state investment adviser that has its principal place of business in a state
29 other than this state and the investment adviser representatives of that state investment
30 adviser shall file with the administrator only the financial reports or other information
31 required by the state in which the state investment adviser maintains its principal place

1 of business if the state investment adviser is licensed in that state and is in compliance
2 with that state's reporting requirements.

3 (k) A broker-dealer shall comply with the supervision requirements set out in
4 Conduct Rule 3010 of the National Association of Securities Dealers, Inc.

5 * **Sec. 27.** AS 45.55.060(a) is amended to read:

6 (a) The administrator may by order deny, suspend, or revoke a registration if
7 the administrator finds that the order is in the public interest and that the applicant or
8 registrant or, in the case of a broker-dealer or state investment adviser, a partner,
9 officer, or director, a person occupying a similar status or performing similar functions,
10 or a person directly or indirectly controlling the broker-dealer or state investment
11 adviser

12 (1) has filed an application for registration that, as of its effective date,
13 or as of a date after filing in the case of an order denying effectiveness, was
14 incomplete in a material respect or contained a statement that was, in light of the
15 circumstances under which it was made, false or misleading with respect to a material
16 fact;

17 (2) has wilfully or repeatedly violated, or [WILFULLY] failed to
18 comply with, a provision of this chapter or a regulation or order under this chapter;

19 (3) has been convicted, within the past 10 years, of a misdemeanor
20 involving a security or an aspect of the securities business [,] or a felony; in this
21 paragraph, "convicted" includes a finding of guilt based on a verdict, judgment,
22 plea of guilty, or plea of nolo contendere, if the verdict, judgment, or plea has not
23 been reversed, set aside, or withdrawn, regardless of whether sentence has been
24 imposed;

25 (4) is permanently or temporarily enjoined by a court from engaging
26 in or continuing [A] conduct or a practice involving an aspect of the securities
27 business;

28 (5) is the subject of an order of the administrator denying, suspending,
29 or revoking registration as a broker-dealer, agent, state [OR] investment adviser, or
30 investment adviser representative;

31 (6) is the subject of an order entered within the past five years by the

securities administrator of another state or by the United States Securities and Exchange Commission denying or revoking registration as a broker-dealer, agent, state [OR] investment adviser, investment adviser representative, or the substantial equivalent of those terms as defined in this chapter, or is the subject of an order of the United States Securities and Exchange Commission suspending or expelling the person from a national securities exchange or national securities association registered under 15 U.S.C. 78a - 78III ([THE] Securities Exchange Act of 1934), or is the subject of a United States Postal Service [POST OFFICE] fraud order; but the administrator may not

(A) institute a revocation or suspension proceeding under this paragraph more than one year from the date of the order relied on; and

(B) enter an order under this paragraph on the basis of an order under another state act unless that order was based on facts that [WHICH] would currently constitute a ground for an order under this section;

(7) has engaged in dishonest or unethical practices or conduct in the securities or investment advisory business;

(8) is insolvent, [EITHER] in the sense that liabilities exceed assets, [OR IN THE SENSE] that [THE PERSON CANNOT MEET] obligations cannot be met as they mature, or that the business cannot be continued safely for the customers of the applicant or registrant, [;] but the administrator may not enter an order against a broker-dealer or state investment adviser under this paragraph [CLAUSE] without a finding of insolvency as to the broker-dealer or state investment adviser; [OR]

(9) is not qualified on the basis of such factors as training, experience, and knowledge of the securities business, except as otherwise provided in (d) of this section;

(10) has failed to comply with the requirements of AS 45.55.050 to make, keep, or produce records required by the administrator, or to file financial reports or other information the administrator by regulation or order may require; or

(11) 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.

* **Sec. 28.** AS 45.55.060(b) is amended to read:

(b) The administrator may by order deny, suspend, or revoke any registration if the administrator finds that the order is in the public interest and that the applicant or registrant

(1) has failed reasonably to supervise agents if the applicant or registrant is a broker-dealer, or **has failed reasonably to supervise** employees **and investment adviser representatives** if the applicant or registrant is **a state** [AN] investment adviser; or

(2) has failed to pay the proper filing fee; but the administrator may enter only a denial order under this **paragraph** [CLAUSE], and the administrator shall vacate the order when the deficiency is corrected.

* **Sec. 29.** AS 45.55.060(d) is amended to read:

(d) The following provisions govern the application of (a)(9) of this section:

(1) the administrator may not enter an order against a broker-dealer on the basis of the lack of qualification of a person other than

(A) the broker-dealer if the broker-dealer is an individual; or

(B) an agent of the broker-dealer;

(2) the administrator may not enter an order against **a state** [AN] investment adviser on the basis of the lack of qualification of **a** [ANY] person other than

(A) the **state** investment adviser if the **state** investment adviser is an individual; or

(B) **an investment adviser representative** [ANOTHER PERSON] who represents the **state** investment adviser in doing any of the acts **that** [WHICH] make the **state** investment adviser **a state** [AN] investment adviser;

(3) the administrator may not enter an order solely on the basis of lack of experience if the applicant or registrant is qualified by training or knowledge or both;

(4) the administrator shall consider that an agent who will work under

the supervision of a registered broker-dealer need not have the same qualifications as a broker-dealer;

(5) the administrator shall consider that a state [AN] investment adviser is not necessarily qualified solely on the basis of experience as a broker-dealer or agent; if [WHEN] the administrator finds that an applicant for initial or renewal registration as a broker-dealer is not qualified as a state [AN] investment adviser, the administrator may by order condition the applicant's registration as a broker-dealer upon the applicant's not transacting business in this state as a state [AN] investment adviser;

(6) the administrator may by regulation provide for an examination, which may be written or oral or both, to be taken by any class of or all applicants, including applicants for registration as investment adviser representatives; however, [AS WELL AS PERSONS WHO REPRESENT OR WILL REPRESENT AN INVESTMENT ADVISER IN DOING ANY OF THE ACTS WHICH MAKE THE INVESTMENT ADVISER AN INVESTMENT ADVISER, PROVIDED THAT] examinations required by this paragraph are not required of a registrant under this chapter who was doing business in this state and was a resident of this state on May 9, 1959.

* **Sec. 30.** AS 45.55.060(f) is amended to read:

(f) If the administrator finds that a registrant or applicant for registration no longer exists or has ceased to do business as a broker-dealer, agent, state investment adviser, or investment adviser representative, or is subject to an adjudication of mental incompetence or to the control of a committee, conservator, or guardian, or cannot be located after reasonable search, the administrator may by order cancel the registration or application.

* **Sec. 31.** AS 45.55.060(g) is amended to read:

(g) Withdrawal from registration as a broker-dealer, agent, state investment adviser, or investment adviser representative becomes effective 30 days after receipt of an application to withdraw or within a shorter period of time as the administrator may determine, unless a revocation or suspension proceeding is pending when the application is filed or a proceeding to revoke or suspend or to impose conditions upon

the withdrawal is instituted within 30 days after the application is filed. If a proceeding is pending or instituted, withdrawal becomes effective at the time and upon the conditions as the administrator by order determines. If a [NO] proceeding is not pending or instituted and withdrawal automatically becomes effective, the administrator may nevertheless institute a revocation or suspension proceeding under (a)(2) of this section within one year after withdrawal is effective and enter a revocation or suspension order as of the last date on which registration was effective.

* **Sec. 32.** AS 45.55.070 is amended to read:

Sec. 45.55.070. Registration requirement. A person may not offer or sell a security in this state unless

(1) it is registered under this chapter; [OR]

(2) the security or transaction is exempted under AS 45.55.900; or

(3) it is a federal covered security.

* **Sec. 33.** AS 45.55 is amended by adding a new section to read:

Sec. 45.55.075. Federal covered securities. (a) Unless otherwise exempt under AS 45.55.900, a security that is a federal covered security under 15 U.S.C. 77r(b)(2), (Securities Act of 1933), may only be offered for sale and sold into, from, or within the state upon the administrator's receipt of

(1) a copy of the registration statement filed by the issuer with the United States Securities and Exchange Commission or, in place of the registration statement, the Uniform Investment Company Notice Filing Form adopted by North American Securities Administrators Association, Inc., or a similar notice filing form;

(2) a consent to service of process signed by the issuer; and

(3) a notice filing fee as prescribed by the administrator for a notice filing under this section and, if necessary to compute the fee, a report of the value of the federal covered securities offered or sold in this state.

(b) A notice filing under this section may be renewed by filing, before the expiration of an effective notice filing, a renewal notice and filing fee as prescribed by the administrator and, if necessary to compute the fee, a report of the value of the federal covered securities offered or sold in this state. A renewal notice filing is effective on the expiration date of the previous notice filing.

(c) A notice filing under this section may be amended as provided by the administrator by regulation or order. A notice filing may be terminated by an issuer upon providing the administrator with notice of the termination.

(d) With respect to a security that is a covered security under 15 U.S.C. 77r(b)(4)(D) (Securities Act of 1933), the administrator, by regulation or order, may require the issuer to file a notice on United States Securities and Exchange Commission's Form D and a consent to service of process signed by the issuer no later than 15 days after the first sale of a covered security in this state and a fee established by the administrator for a notice filing under this section.

(e) The administrator, by regulation or order, may require the filing of any document filed with the United States Securities and Exchange Commission under 15 U.S.C. 77a - 77bbbb (Securities Act of 1933), with respect to a covered security under 15 U.S.C. 77r(b)(3) or (4) (Securities Act of 1933).

(f) The administrator may issue a stop order suspending the offer and sale of a federal covered security, except a federal covered security under 15 U.S.C. 77r(b)(1) (Securities Act of 1933), if the administrator finds that

(1) the stop order is in the public interest; and

(2) there is a failure to comply with a condition established under this section.

(g) The administrator, by regulation or order, may waive any or all of the provisions of this section.

* **Sec. 34.** AS 45.55.090(b) is amended to read:

(b) A registration statement under this section must contain the following information and be accompanied by the following documents in addition to the information specified in AS 45.55.110(c) and the consent to service of process required by AS 45.55.980(g):

(1) one copy of the latest form of prospectus filed under **15 U.S.C. 77a - 77bbbb** ([THE] Securities Act of 1933);

(2) if the administrator requires, copies of the articles of incorporation and bylaws, or their substantial equivalent, currently in effect; a copy of an agreement with or among underwriters; a copy of an indenture or other instrument governing the

1 issuance of the security to be registered; and a specimen or copy of the security;

2 (3) if the administrator requests, any other information, or copies of any
3 other documents, filed under 15 U.S.C. 77a - 77bbbb ([THE] Securities Act of 1933);
4 and

5 (4) an undertaking to forward all future amendments to the federal
6 prospectus, other than an amendment which merely delays the effective date of the
7 registration statement, promptly and in any event not later than the first business day
8 after the day they are forwarded to or filed with the United States Securities and
9 Exchange Commission, whichever first occurs.

10 * **Sec. 35.** AS 45.55.110(a) is amended to read:

11 (a) A registration statement or a notice filing under AS 45.55.075 may be
12 filed by the issuer, another person on whose behalf the offering is to be made, or a
13 registered broker-dealer.

14 * **Sec. 36.** AS 45.55.110(b) is amended to read:

15 (b) A [EVERY] person filing a registration statement or a notice filing under
16 AS 45.55.075 shall pay a filing fee and a registration or notice filing fee in amounts
17 established by the department by regulation. If [WHEN] a registration statement is
18 withdrawn before the effective date or a pre-effective stop order is entered under
19 AS 45.55.120, the administrator shall retain the filing fee. If a notice filing is
20 withdrawn before the effective date, the administrator shall retain the notice filing
21 fee.

22 * **Sec. 37.** AS 45.55.110(c) is amended to read:

23 (c) A [EVERY] registration statement must specify
24 (1) the amount of securities to be offered in this state;
25 (2) the states in which a registration statement or similar document in
26 connection with the offering has been or is to be filed; and
27 (3) an adverse order, judgment, or decree entered in connection with
28 the offering by the regulatory authorities in each state or by any court or the United
29 States Securities and Exchange Commission.

30 * **Sec. 38.** AS 45.55.110(d) is amended to read:

31 (d) A document filed under this chapter within five years preceding the filing

of a registration statement **or a notice filing under AS 45.55.075** may be incorporated by reference in the registration statement **or notice filing** to the extent that the document is currently accurate.

* **Sec. 39.** AS 45.55.110(e) is amended to read:

(e) The administrator may by regulation or **order** [OTHERWISE] permit the omission of an item of information or document from a registration statement **or a notice filing under AS 45.55.075**.

* **Sec. 40.** AS 45.55.110(i) is amended to read:

(i) **A notice filing under AS 45.55.075 is effective on receipt by the administrator. A** [EVERY] registration statement **or a notice filing under AS 45.55.075** is effective for one year from its effective date [,] or any longer period during which the security is being offered or distributed in a nonexempted transaction by or for the account of the issuer or other person on whose behalf the offering is being made or by an underwriter or broker-dealer who is still offering part of an unsold allotment or subscription taken by the underwriter or broker-dealer as a participant in the distribution, except during the time a stop order is in effect under AS 45.55.120. **The administrator may establish a different expiration date for purposes of coordination with a national registration or notice filing system. The administrator may by regulation provide for an automatic extension for one additional year of the effective date for notice filings under AS 45.55.075 if the extended expiration date is set at the same time the notice filing is made effective and the notice filing fee reflects the extension.** All outstanding securities of the same class as a registered security are considered to be registered for the purpose of any nonissuer transaction if the registration statement is effective and between the thirtieth day after the entry of a stop order suspending or revoking the effectiveness of the registration statement under AS 45.55.120, if the registration statement did not relate in whole or in part to a nonissuer distribution, and one year from the effective date of the registration statement. A registration statement may not be [WITH] withdrawn for one year from its effective date if any securities of the same class are outstanding. A registration statement may be withdrawn otherwise only in the discretion of the administrator.

* **Sec. 41.** AS 45.55.110(k) is amended to read:

(k) A **notice filing under AS 45.55.075** [REGISTRATION STATEMENT] relating to a security issued by a face-amount certificate company or a redeemable security issued by an open-end management company or unit investment trust, as those terms are defined in **15 U.S.C. 80a-1 - 80a-64** ([THE] Investment Company Act of 1940), may be amended after its effective date so as to increase the securities specified as proposed to be offered **if the notice filing was for a specified dollar amount of securities to be offered in this state and if the total fees were based on the dollar amount of securities to be offered.** An amendment becomes effective when the administrator so orders. **A** [EVERY] person filing [SUCH] an amendment shall pay a [FILING] fee, calculated in the manner specified in (b) of this section, with respect to the additional securities proposed to be offered.

* **Sec. 42.** AS 45.55.150 is amended to read:

Sec. 45.55.150. Sales [FILING OF SALES] and advertising literature. The administrator may by regulation or order **establish requirements for or** require the filing of a prospectus, **a** pamphlet, **a** circular, **a** form letter, **an** advertisement, or other sales literature [,] or advertising communication addressed or intended for distribution to prospective investors, [INCLUDING] clients, or prospective clients **by an issuer, a state investment adviser, a federal covered adviser, or a broker-dealer, unless**

(1) the security or transaction is exempt under AS 45.55.900 and the applicable provision of that section does not place a limitation on sales and advertising literature;

(2) the security is a federal covered security; or

(3) the broker-dealer, state investment adviser, or federal covered adviser is exempt or excluded from the requirements of this section under this chapter or federal law [OF AN INVESTMENT ADVISER].

* **Sec. 43.** AS 45.55.170(a) is amended to read:

(a) Neither the fact that an application for registration under AS 45.55.030 - 45.55.060, [OR] a registration statement under AS 45.55.070 - 45.55.120, **or a notice filing under AS 45.55.040(h) or 45.55.075** is filed nor the fact that a person or security is effectively registered constitutes a finding by the administrator that a

document filed under this chapter is true, complete, and not misleading. Neither the fact of filing nor the fact that an exemption or exception is available for a security or a transaction means that the administrator has passed in any way upon the merits or qualifications of, or recommended or given approval to, a person, security, or transaction.

* **Sec. 44.** AS 45.55.900(a) is amended to read:

(a) The following securities are exempted from AS 45.55.070 **and 45.55.075**:

(1) a security, including a revenue obligation, issued or guaranteed by the United States **or a territory of the United States, the District of Columbia**, a state, a political subdivision of a state **or territory**, or an agency or corporate or other instrumentality of one or more of the **entities described in this paragraph** [FOREGOING]; or a certificate of deposit for **one or more of the entities described in this paragraph** [ANY OF THE FOREGOING];

(2) a security issued or guaranteed by Canada, a Canadian province, a political subdivision of a Canadian province, an agency or corporate or other instrumentality of one or more of the **entities described in this paragraph** [FOREGOING], or a foreign government with which the United States currently maintains diplomatic relations, if the security is recognized as a valid obligation by the issuer or guarantor;

(3) a security issued [BY AND REPRESENTING AN INTEREST IN] or [A DEBT OF, OR] guaranteed by [,] a bank organized under the laws of the United States, or **by** a bank, savings institution, savings and loan association, building and loan association, or trust company organized and supervised under the laws of a state or of the United States, **or a security issued by or representing an interest in or a direct obligation of a federal reserve bank**;

(4) a commercial paper, **note, draft, bill of exchange, or banker's acceptance** that arises out of a current transaction or the proceeds of which have been or are to be used for current transactions [,] and that evidences an obligation to pay cash within nine months of the date of issuance, exclusive of days of grace, or **a** [ANY] renewal of the paper that is likewise limited, or a guarantee of the paper or of the renewal, if the commercial paper, **note, draft, bill of exchange, or banker's**

acceptance is of the type eligible for discount by a federal reserve bank;

(5) a security issued in connection with an employee's stock purchase, savings, pension, profit-sharing, or similar employee's benefit plan, **or a security issued by or an interest or participation in a church plan, company, or account that is excluded from the definition of an investment company under 15 U.S.C. 80a-3(c)(14) (Investment Company Act of 1940);**

(6) a security issued by and representing an interest in or a debt of, or guaranteed by, a federal savings and loan association, or a building and loan or similar association organized under the laws of a state and authorized to do business in this state;

(7) a security issued by and representing an interest in or a debt of, or guaranteed by, an insurance company organized under the laws of a state and authorized to do business in this state; but this exemption does not apply to an annuity contract, investment contract, or similar security under which the promised payments are not fixed in dollars but are substantially dependent upon the investment results of a segregated fund or account invested in securities; except that policies or annuity contracts of insurance companies admitted to do business in the state are not subject to this chapter;

(8) a security issued or guaranteed by a federal credit union or any credit union, industrial loan association, or similar association organized and supervised under the laws of this state;

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

(A) subject to the jurisdiction of the Interstate Commerce Commission **or its successor;**

(B) a registered holding company under **15 U.S.C. 79 - 79z-6** ([[THE] Public Utility Holding Company Act of 1935) or a subsidiary of the company within the meaning of **15 U.S.C. 79 - 79z-6** [THAT ACT];

(C) regulated in respect of its rates and charges by a governmental authority of the United States or a state; or

(D) regulated in respect of the issuance or guarantee of the

security by a governmental authority of the United States, a state, Canada, or a Canadian province;

(10) a security listed or approved for listing upon notice of issuance on the New York Stock Exchange, the American Stock Exchange, the **Chicago** [MIDWEST] Stock Exchange, the Pacific Coast Stock Exchange, **the Philadelphia Stock Exchange**, the Chicago Board **of** Options Exchange, or **another** [ANY OTHER] securities exchange designated by order of the administrator, or any security designated or approved for designation upon notice of issuance as a national market system security on the National Association of Securities Dealers Automated Quotation National Market System or on any other quotation system designated by order of the administrator, or any other security of the same issuer that is of senior or substantially equal rank; a security called for by subscription rights or warrants so listed or approved; or a warrant or right to purchase or subscribe to **an entity described in this paragraph** [ANY OF THE FOREGOING];

(11) a security issued by a person organized and operated not for **pecuniary** [PRIVATE] profit but exclusively for religious, educational, benevolent, charitable, fraternal, social, athletic, or reformatory purposes [,] or as a chamber of commerce or trade or professional association, **or a security of a fund that is excluded from the definition of an investment company under 15 U.S.C. 80a-3(c)(10)(B) (Investment Company Act of 1940)**;

(12) shares of membership stock in the Alaska Commercial Fishing and Agriculture Bank, and other securities issued by that bank to members or in connection with loans to members;

(13) an equity security issued in connection with the acquisition by a holding company of a bank under 12 U.S.C. 1842(a) (Bank Holding Company Act of 1956) or a savings association, as defined in 12 U.S.C. 1813(b) (Federal Deposit Insurance Act) and the deposits of which are insured by the Federal Deposit Insurance Corporation under 12 U.S.C. 1467(e) (Home Owners' Loan Act) if

(A) the acquisition occurs solely as part of a reorganization in which security holders exchange their shares of a bank or savings

association for shares of a newly formed holding company with no significant assets other than securities of the bank or savings association and the existing subsidiaries of the bank or savings association;

(B) the security holders receive after the reorganization substantially the same proportional interests in the holding company as they held in the bank or savings association except for nominal changes in shareholders' interests resulting from lawful elimination of fractional interests and the exercise of dissenting shareholders' rights under state or federal law;

(C) the rights and interests of security holders in the holding company are substantially the same as those in the bank or savings association before the transaction except as may be required by law; and

(D) the holding company has substantially the same assets and liabilities on a consolidated basis as the bank or savings association before the transaction.

* Sec. 45. AS 45.55.900(b) is amended to read:

(b) The following transactions are exempted from AS 45.55.070 and 45.55.075:

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

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

(3) a transaction by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator;

(4) an offer or sale to a bank, savings institution, trust company, insurance company, investment company as defined in 15 U.S.C. 80a-1 - 80a-64 ([THE] Investment Company Act of 1940), pension or profit-sharing trust, or other financial institution or institutional buyer, or to a broker-dealer, whether the purchaser

1 is acting for itself or in some fiduciary capacity;

2 (5) sales by an issuer

3 (A) to no more than 10 persons in this state other than those
4 designated in (4) of this subsection during a period of 12 consecutive months,
5 **regardless of** whether [OR NOT] the seller or any of the buyers is then present
6 in this state, if

7 (i) **a** [NO] commission or other remuneration is **not** paid
8 or given directly or indirectly for soliciting a prospective buyer in this
9 state;

10 (ii) [THE TOTAL DOLLAR AMOUNT INVESTED
11 DURING A PERIOD OF 12 CONSECUTIVE MONTHS DOES NOT
12 EXCEED \$100,000;

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

17 **(iii)** [(iv)] offers are made without public solicitation or
18 advertisement; and

19 **(iv)** [(v)] the issuer files with the administrator a notice
20 specifying the issuer, the security to be sold, and the terms of the offer
21 at least two days before any sales are made;

22 (B) to no more than 25 persons in this state other than those
23 designated in (4) of this subsection during a period of 12 consecutive months,
24 **regardless of** whether [OR NOT] the seller or any of the buyers is then present
25 in this state, if

26 (i) the sales are made solely in this state;

27 (ii) before **a** [ANY] sale, each prospective buyer is
28 furnished [ACCESS TO THE] information that **is sufficient to make**
29 **an informed investment decision** [WOULD BE PROVIDED TO A
30 PROSPECTIVE BUYER IN A REGISTRATION UNDER
31 AS 45.55.100], which information shall be furnished to the

1 administrator upon request; in this sub-subparagraph, "information
 2 that is sufficient to make an informed investment decision" includes
 3 a business plan, an income and expense statement, a balance sheet,
 4 a statement of risks, and a disclosure of any significant negative
 5 factors that may affect the outcome of the investment;

6 (iii) [THE TOTAL DOLLAR AMOUNT INVESTED
 7 DURING A PERIOD OF 12 CONSECUTIVE MONTHS DOES NOT
 8 EXCEED \$500,000;

9 (iv)] commissions or other remuneration meet the
 10 requirements of this chapter and are made only to persons registered
 11 under AS 45.55.040;

12 (iv) [(v)] a legend is placed on the certificate or other
 13 document evidencing ownership of the security, stating that the security
 14 is not registered under this chapter and cannot be resold without
 15 registration under this chapter or exemption from it;

16 (v) [(vi)] the issuer obtains a signed agreement from the
 17 buyer acknowledging that the buyer is buying for investment purposes
 18 and that the securities will not be resold without registration under this
 19 chapter;

20 (vi) [(vii)] offers are made without public solicitation or
 21 advertisement; and

22 (vii) [(viii)] the issuer files with the administrator a
 23 notice specifying the issuer, the security to be sold, and the terms of the
 24 offer at least two days before any sales are made;

25 (C) to no more than 10 persons who are to receive the initial
 26 issue of shares of a nonpublicly traded corporation, limited liability
 27 company, limited partnership, or limited liability partnership if the
 28 requirements of (B)(ii) - (iv) and (vi) of this paragraph are met;

29 (D) to the buyer of an enterprise or a business and the
 30 assets and liabilities of the enterprise or business if

31 (i) the transfer of stock to the buyer is solely

incidental to the sale of the enterprise or business and its assets and liabilities;

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

(iii) 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 it;

(6) an offer or sale of a preorganization certificate or subscription if

(A) a [NO] commission or other remuneration is **not** paid or given directly or indirectly for soliciting a prospective subscriber; [,]

(B) the number of subscribers does not exceed 10; [,] and

(C) a [NO] payment is **not** made by any subscriber;

(7) a transaction under an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, nontransferable warrants, or transferable warrants exercisable within not more than 90 days of their issuance, if

(A) a [NO] commission or other remuneration, other than a standby commission, is **not** paid or given directly or indirectly for soliciting a security holder in this state; [,] or

(B) the issuer first files a notice specifying the terms of the offer and the administrator does not by order disallow the exemption within the next five full business days;

(8) an offer, [(] but not a sale, [)] of a security for which registration statements have been filed under both this chapter and **15 U.S.C. 77a - 77bbbb**([THE] Securities Act of 1933) if a [NO] stop order or refusal order is **not** in effect and a [NO] public proceeding or examination looking toward an order is **not** pending under either **this chapter or 15 U.S.C. 77a - 77bbbb (Securities [THE] Act of 1933)**;

(9) an isolated nonissuer transaction, **regardless of** whether effected through a broker-dealer, **if the seller is** [OR] not **a promoter or controlling person as the administrator may define by regulation or order or if the administrator at**

the request of the seller waives the requirement that the seller not be a promoter or controlling person;

(10) [A NONISSUER DISTRIBUTION OF AN OUTSTANDING SECURITY IF

(A) A RECOGNIZED SECURITIES MANUAL CONTAINS THE NAMES OF THE ISSUER'S OFFICERS AND DIRECTORS, A BALANCE SHEET OF THE ISSUER AS OF A DATE WITHIN 18 MONTHS, AND A PROFIT AND LOSS STATEMENT FOR EITHER THE FISCAL YEAR PRECEDING THAT DATE OR THE MOST RECENT YEAR OF OPERATIONS, OR

(B) THE SECURITY HAS A FIXED MATURITY OR A FIXED INTEREST OR DIVIDEND PROVISION AND THERE HAS BEEN NO DEFAULT DURING THE CURRENT FISCAL YEAR OR WITHIN THE THREE PRECEDING FISCAL YEARS, OR DURING THE EXISTENCE OF THE ISSUER AND ANY PREDECESSORS IF LESS THAN THREE YEARS, IN THE PAYMENT OF PRINCIPAL, INTEREST, OR DIVIDENDS ON THE SECURITY;

(11)] a nonissuer transaction effected by or through a registered broker-dealer under an unsolicited order or offer to buy; however, the administrator may by regulation require that the customer acknowledge on [UPON] a specified form that the sale was unsolicited, and that a signed copy of each form be preserved by the broker-dealer for a specified period;

(11) [(12)] a transaction executed by a bona fide pledgee without **intending to evade** [ANY PURPOSE OF EVADING] this chapter;

(12) [(13)] a transaction incident to a right of conversion or a statutory or judicially approved reclassification, recapitalization, reorganization, quasi-reorganization, stock split, reverse stock split, merger, consolidation, or sale of assets [, IF]

(A) [NO COMMISSION OR OTHER REMUNERATION, OTHER THAN A STANDBY COMMISSION IS PAID OR GIVEN DIRECTLY OR INDIRECTLY FOR SOLICITING A SECURITY HOLDER

1 IN THIS STATE; AND

2 (B) THE ISSUER FILES A NOTICE IN THE FORM
3 SPECIFIED BY THE ADMINISTRATOR NOT LESS THAN 30 DAYS
4 BEFORE MAKING THE OFFER];

5 (13) [(14)] a stock dividend, **regardless of** whether the corporation
6 distributing the dividend is the issuer of the stock [OR NOT], if nothing of value is
7 given by stockholders for the dividend other than the surrender of a right to a cash or
8 property dividend when each stockholder may elect to take the dividend in cash or
9 property or in stock;

10 (14) [(15)] an act incident to a **statutory** [CLASS] vote by **security**
11 **holders** [STOCKHOLDERS, UNDER THE CERTIFICATE OF INCORPORATION
12 OR THE APPLICABLE CORPORATION STATUTE,] on a merger, consolidation,
13 reclassification of securities, or sale **of assets in consideration of the issuance** of
14 securities of another **issuer** [CORPORATION];

15 (15) [(16)] the offer or sale by a registered broker-dealer, acting either
16 as principal or agent, of securities previously sold and distributed to the public if **the**
17 **securities**

18 (A) [THE SECURITIES] are sold at prices reasonably related
19 to the current market price at the time of sale, and, if **the** broker-dealer is
20 acting as agent, the commission collected by the broker-dealer on account of
21 the sale is not in excess of usual and customary commissions collected with
22 respect to securities and transactions having comparable characteristics;

23 (B) [THE SECURITIES] do not constitute the whole or a part
24 of an unsold allotment to or subscription or participation by the broker-dealer
25 as an underwriter of the securities or as a participant in the distribution of the
26 securities by the issuer, by an underwriter, or by a person or group of persons
27 in substantial control of the issuer or of the outstanding securities of the class
28 being distributed; and

29 (C) [THE SECURITIES] have been lawfully sold and
30 distributed in this state under this chapter;

31 (16) [(17)] offers or sales of certificates of interest or participation in

oil, gas, or mining rights, titles, or leases, or in payments out of production under such rights, titles, or leases, if the purchasers

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

(B) have been found by the administrator upon written application to be substantially engaged in the business of exploring for, mining, producing, or refining oil, gas, or minerals so as not to require the protection provided by AS 45.55.070;

(17) a nonissuer transaction by a registered agent of a registered broker-dealer, and a resale transaction by a sponsor of a unit investment trust registered under 15 U.S.C. 80a-1 - 80a-64 (Investment Company Act of 1940), in a security of a class that has been outstanding in the hands of the public for at least 90 days if, at the time of the transaction,

(A) the issuer of the security is actually engaged in business and not in the organization stage or in bankruptcy or receivership and is not a blank check, blind pool, or shell company whose primary plan of business is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person or persons;

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

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

(D) a nationally recognized securities manual, which may be designated by rule or order of the administrator, or a document filed with the United States Securities and Exchange Commission that is publicly available through the United States Securities and Exchange Commission's electronic data gathering and retrieval system, contains

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

(ii) the names of the issuer's officers and directors, if any, or, in the case of an issuer not domiciled in the United States, the corporate equivalents of the issuer's officers and directors in the issuer's country of domicile;

(iii) an audited balance sheet of the issuer as of a date within 18 months or, in the case of a reorganization or merger where parties to the reorganization or merger had that audited balance sheet, a pro forma balance sheet; and

(iv) an audited income statement for each of the issuer's immediately preceding two fiscal years or for the period of existence of the issuer if the issuer has been in existence for less than two years or, in the case of a reorganization or merger where the parties to the reorganization or merger had that audited income statement, a pro forma income statement; and

(E) the issuer of the security has a class of equity securities listed on a national securities exchange registered under 15 U.S.C. 78a - 78lll (Securities Exchange Act of 1934) or designated for trading on the National Association of Securities Dealers Automated Quotation System, unless the issuer of the security

(i) is a unit investment trust registered under 15 U.S.C. 80a-1 - 80a-64 (Investment Company Act of 1940);

(ii) including predecessors, has been engaged in continuous business for at least three years; or

(iii) has total assets of at least \$2,000,000 based on an audited balance sheet as of a date within 18 months or, in the case of a reorganization or merger where parties to the reorganization or merger had that balance sheet, a pro forma balance sheet;

(18) an offer or a sale of a security by an issuer that has a specific business plan or purpose, is not in the development stage, and has not indicated that its business plan is to engage in a merger or acquisition with an unidentified company or other entity or person, under the following conditions:

1 (A) sales of securities are made only to persons who are or
2 the issuer reasonably believes are accredited investors as defined in
3 17 C.F.R. 230.501(a), as that regulation exists on or after the effective date
4 of this Act;

5 (B) the issuer reasonably believes that all purchasers are
6 purchasing for investment and not with the view to or for sale in
7 connection with a distribution of the security; a resale of a security sold in
8 reliance on this exemption within 12 months of sale is presumed to be with
9 a view to distribution and not for investment, except a resale under a
10 registration statement under AS 45.55.070 - 45.55.120 or to an accredited
11 investor under an exemption available under this chapter;

12 (C) the exemption in this paragraph is not available to an
13 issuer if the issuer, a predecessor of the issuer, an affiliated issuer, a
14 director, an officer, or a general partner of the issuer, a beneficial owner
15 of 10 percent or more of a class of the issuer's equity securities, a
16 promoter of the issuer presently connected with the issuer in any capacity,
17 an underwriter of the securities to be offered, or a partner, a director, or
18 an officer of the underwriter

19 (i) within the last five years has filed a registration
20 statement that is the subject of a currently effective registration
21 stop order entered by a state securities administrator or the United
22 States Securities and Exchange Commission;

23 (ii) within the last five years has been convicted of a
24 criminal offense in connection with the offer, purchase, or sale of
25 a security, of a criminal offense involving fraud or deceit, or of a
26 felony;

27 (iii) is currently subject to a state or federal
28 administrative enforcement order or judgment entered within the
29 last five years finding fraud or deceit in connection with the
30 purchase or sale of a security; or

31 (iv) is currently subject to an order, judgment, or

decree of a court of competent jurisdiction entered within the last five years, temporarily, preliminarily, or permanently restraining or enjoining the person from engaging in or continuing to engage in conduct or a practice involving fraud or deceit in connection with the purchase or sale of a security;

(D) the nonavailability of the exemption under (C) of this paragraph does not apply if

(i) the person subject to the disqualification is licensed or registered to conduct securities related business in the state in which the order, judgment, or decree creating the disqualification was entered against the person;

(ii) before the first offer under this exemption, the state securities administrator or the court or regulatory authority that entered the order, judgment, or decree waives the disqualification; or

(iii) the issuer establishes that it did not know and, in the exercise of reasonable care, based on a factual inquiry, could not have known that a disqualification existed under this paragraph;

(E) a general announcement of the proposed offering may be made by any means and may include only the following information unless the administrator specifically permits additional information:

(i) the name, address, and telephone number of the issuer of the security;

(ii) the name, a brief description, and the price, if known, of the security to be issued;

(iii) a brief description in 25 words or less of the business of the issuer;

(iv) the type, number, and aggregate amount of securities being offered;

(v) the name, address, and telephone number of the

1 person to contact for additional information;

2 (vi) a statement that sales will be made only to
3 accredited investors;

4 (vii) a statement that money or other consideration
5 is not being solicited or will not be accepted by way of this general
6 announcement; and

7 (viii) a statement that the securities have not been
8 registered with or approved by a state securities agency or the
9 United States Securities and Exchange Commission and are being
10 offered and sold under an exemption from registration;

11 (F) the issuer in connection with any offer may provide
12 information in addition to the general announcement under (E) of this
13 paragraph if the information is delivered

14 (i) through an electronic database that is restricted
15 to persons who have been prequalified as accredited investors; or

16 (ii) to a prospective purchaser that the issuer
17 reasonably believes is an accredited investor;

18 (G) a telephone solicitation is not permitted unless, before
19 placing the call, the issuer reasonably believes that the prospective
20 purchaser being solicited is an accredited investor;

21 (H) dissemination of the general announcement of the
22 proposed offering to persons who are not accredited investors does not
23 disqualify the issuer from claiming this exemption;

24 (I) the issuer shall file a notice of the transaction with the
25 administrator, a copy of the general announcement, and the fee for
26 exemption filings established by regulation within 15 days after the first
27 sale in this state;

28 (19) an offer to repay, under AS 45.55.930, the buyer of a security
29 if the offeror first files with the administrator a notice specifying the terms of the
30 offer at least two days before the offer is made;

31 (20) a transaction involving only family members who are related,

including related by adoption, within the fourth degree of affinity or consanguinity, or involving only those family members and the corporations, partnerships, limited liability companies, limited partnerships, limited liability partnerships, associations, joint-stock companies, or trusts that are organized, formed, or created by those family members or at the direction of those family members.

* **Sec. 46.** AS 45.55.900 is amended by adding new subsections to read:

(g) An offer on the Internet by an issuer is exempt from the registration provisions of AS 45.55.070 and the advertising regulations adopted under this chapter and does not preclude the issuer from relying on other available exemptions for offers provided under this chapter if

(1) the offer directly discloses, in a format and at a prominent place in the offer and in an advertisement of the offer on the Internet, that the securities are not being offered to persons in this state;

(2) the offer is not otherwise specifically directed to a person in this state by or on behalf of the issuer; and

(3) a sale of the issuer's securities is not made in this state as a result of the offer.

(h) 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 (b)(5) of this section.

* **Sec. 47.** AS 45.55.910 is amended by adding a new subsection to read:

(e) Notwithstanding AS 45.55.905(b), all investigative files are confidential, except that they must be disclosed by the administrator as required for discovery in an administrative or a judicial proceeding.

* **Sec. 48.** AS 45.55.915 is amended to read:

Sec. 45.55.915. Reimbursement of expenses incident to examination or investigation. (a) The administrator may require an [AN] issuer, broker-dealer, agent, investment adviser representative, federal covered adviser, or state investment adviser to [SHALL] reimburse the administrator for actual travel expenses and per diem incurred in connection with an examination or investigation [INCIDENT

TO A REGISTRATION] under this chapter.

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

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

(d) Failure of the issuer, broker-dealer, agent, **investment adviser representative,** or **state** investment adviser to pay fees and expenses under this section is a wilful violation of this chapter, and the violation falls within the provisions of AS 45.55.060, 45.55.120, 45.55.920, and 45.55.925.

* **Sec. 49.** AS 45.55.920 is amended by adding a new subsection to read:

(e) After an order issued by the administrator under (b) or (c) 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. 50.** 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 45.55.030(e), 45.55.040(h), 45.55.075, or 45.55.160** [AS 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 for 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 be imprisoned for the violation of a regulation or order if the individual proves that the individual had no knowledge of the regulation or order. An indictment or information may not be returned under this chapter more than five years after the alleged violation.

* **Sec. 51.** AS 45.55.930(a) is amended to read:

(a) A person is liable to the person buying the security from the person for the consideration paid for the security, together with interest at **eight percent** [SIX PER CENT] a year **or the stated rate of the security if the security has a stated, fixed rate less than eight percent,** from the date of payment, costs, and reasonable **attorney** [ATTORNEYS'] fees, less the amount of income received on the security, **on** [UPON] the tender of the security, or for damages if the **buyer** [SELLER] no longer owns the security, if the seller **offers or sells a security**

(1) **other than a federal covered security,** [OFFERS OR SELLS A SECURITY] in violation of AS 45.55.030(a), 45.55.070, or 45.55.170(b) or of a regulation or order under AS 45.55.150 that requires the filing of sales literature before it is used, or of a condition imposed under AS 45.55.100(d) or 45.55.110(g) or (h); [,] or

(2) [OFFERS OR SELLS A SECURITY] by means of an untrue statement of a material fact, or omits to state a material fact, the omission of which makes a statement misleading.

* **Sec. 52.** AS 44.55.930(b) is amended to read:

(b) Damages are the amount that would be recoverable **on** [UPON] a tender less the value of the security when the buyer disposed of it and interest at **eight percent** [SIX PER CENT] a year, **or the stated rate of the security if the security had a stated, fixed rate less than eight percent,** from the date of disposition.

* **Sec. 53.** AS 45.55.930(f) is amended to read:

(f) A person may not sue under this section more than three years after the contract of sale, **except as otherwise provided in this subsection. For a violation**

of (a)(2) of this section or AS 45.55.010, an action under this section may be brought within three years after the sale or two years after the person bringing the action discovered or should have discovered the facts on which the action is based, whichever is later. Failure to bring an action on a timely basis is an affirmative defense. A person may not sue under this section if the buyer received

(1) [IF THE BUYER RECEIVED] a written offer, before suit and at a time when the buyer owned the security, to refund the consideration paid together with interest at eight percent [SIX PER CENT] a year, or the stated rate of the security if the security has a stated, fixed rate less than eight percent, from the date of payment, less the amount of income received on the security, and the buyer failed to accept the offer within 30 days of its receipt; [,] or

(2) [IF THE BUYER RECEIVED] the offer before suit and at a time when the buyer did not own the security [,] unless the buyer rejected the offer in writing within 30 days of its receipt.

* **Sec. 54.** AS 45.55.930 is amended by adding new subsections to read:

(j) Notwithstanding the time limitation in (f) of this section, an action under this section may be started after receipt of a written offer described in (a) of this section if the buyer accepted the payment offer within 30 days after receipt of the offer and has not been paid the full amount offered.

(k) An offer to pay the buyer under this section involves the offer or sale of a security, and the transaction must be registered under this chapter or exempt from registration under AS 45.55.900.

* **Sec. 55.** AS 45.55.935(a) is amended to read:

(a) The administrator shall adopt regulations, consistent with the provisions of this chapter, governing administrative hearings conducted by the administrator or a designee of the administrator for the following:

(1) orders issued under AS 45.55.120, 45.55.900(d), or 45.55.920; in these instances, the administrator shall promptly send a notice of opportunity for hearing to the issuer of the securities and to all persons who have filed with the department a notice of intention to sell the securities; and

(2) orders issued under AS 45.55.060; before the administrator enters

an order under AS 45.55.060, the administrator shall send to the person involved a notice of opportunity for hearing; if the person involved is an agent **or investment adviser representative**, then the administrator shall, in addition, notify the employing broker-dealer, **state investment adviser, federal covered adviser** [ADVISOR], or issuer.

* **Sec. 56.** AS 45.55.970(b) is amended to read:

(b) The administrator shall keep a register of all applications for registration and registration statements **that** [WHICH] are or have ever been effective under this chapter, **all notice filings under this chapter**, and all denial, suspension, or revocation orders **that** [WHICH] have been entered under this chapter. The register **must** [SHALL] be open for public inspection.

* **Sec. 57.** AS 45.55.970(c) is amended to read:

(c) The information contained in or filed with a registration statement, application, **notice filing**, or report may be made available to the public under the regulations adopted by the administrator.

* **Sec. 58.** AS 45.55.970(e) is amended to read:

(e) The administrator may honor requests from interested persons for interpretative opinions **and may establish appropriate fees by regulation**.

* **Sec. 59.** AS 45.55.980(a) is amended to read:

(a) **Unless the persons are exempt elsewhere in this chapter**, AS 45.55.010, **45.55.025, 45.55.027, 45.55.028**, 45.55.030(a), **45.55.035**, 45.55.070, **45.55.075**, 45.55.170, and 45.55.930 apply to persons who sell or offer to sell when **an offer to**

(1) [AN OFFER TO] sell is made in this state; or

(2) [AN OFFER TO] buy is made and accepted in this state.

* **Sec. 60.** AS 45.55.980(b) is amended to read:

(b) **Unless the persons are exempt elsewhere in this chapter**, AS 45.55.010, **45.55.025, 45.55.027, 45.55.028**, 45.55.030(a), **45.55.035**, and 45.55.170 apply to persons who buy or offer to buy when **an offer to**

(1) [AN OFFER TO] buy is made in this state; or

(2) [AN OFFER TO] sell is made and accepted in this state.

* **Sec. 61.** AS 45.55.980(c) is amended to read:

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

(1) originates from this state;

(2) is directed by the offeror to this state and received at the place to which it is directed, or at a post office in this state in the case of a mailed offer;

(3) is for an interest or participation in an oil, gas, or mining right, title, or lease on land in the state, including submerged land, regardless of where the offer is made;

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

(5) is for an interest or participation in real property located in the state, or in a domestic corporation, **a domestic limited liability company**, [OR] a domestic limited partnership, **or a domestic limited liability partnership**; jurisdiction under this paragraph may be exercised only when the exercise is not inconsistent with the constitution of this state or of the United States.

* **Sec. 62.** AS 45.55.980(f) is amended to read:

(f) AS 45.55.020, **45.55.023**, 45.55.030(c), **45.55.030(e)**, **45.55.040(h)**, and 45.55.170, so far as **state** investment advisers, **federal covered advisers, and investment adviser representatives** are concerned, apply when any act instrumental in effecting prohibited conduct is done in this state, **regardless of** whether [OR NOT] either party is then present in this state.

* **Sec. 63.** AS 45.55.980(g) is amended to read:

(g) **An** [EVERY] applicant for registration under this chapter, **an** [AND EVERY] issuer that proposes to offer a security in this state through a person acting on an agency basis in the common law sense, **and a person making a notice filing under this chapter** shall file with the administrator, in the form that the administrator prescribes by regulation, an irrevocable consent appointing the administrator or a successor in office to be the applicant's or issuer's attorney to receive service of lawful process in a civil suit, **an** action, or **a** proceeding against the applicant or issuer or a successor executor or administrator **that** [WHICH] arises under this chapter or a

1 regulation or order under this chapter after the consent has been filed [,] with the same
 2 force and validity as if served personally on the person filing the consent. A person
 3 who **has filed a** [FILES THE] consent in connection with a previous registration **or**
 4 **notice filing** need not file another. Service may be made by leaving a copy of the
 5 process in the office of the administrator, but it is not effective unless

6 (1) the plaintiff, who may be the administrator in a suit, action, or
 7 proceeding instituted by the administrator, immediately sends notice of the service and
 8 a copy of the process by registered mail to the defendant or respondent at the last
 9 address on file with the administrator; and

10 (2) the plaintiff's affidavit of mailing is filed in the case on or before
 11 the return day of the process, if any, or within the further time **that** [WHICH] the
 12 court allows.

13 * **Sec. 64.** AS 45.55.990(2) is amended to read:

14 (2) "agent" means an individual other than a broker-dealer who
 15 represents a broker-dealer or **an** issuer in effecting or attempting to effect purchase or
 16 sale of securities; a partner, **an** officer, or **a** director of a broker-dealer or issuer, or a
 17 person occupying a similar status or performing similar functions, is an agent only if
 18 the person otherwise comes within this definition; "agent" does not include an
 19 individual who represents

20 **(A)** an issuer in effecting transactions

21 **(i)** [(A)] in a security exempted by **AS 45.55.900(a)**
 22 [AS 45.55.900(a)(1) - (5)];

23 **(ii)** [(B)] exempted by AS 45.55.900(b);

24 **(iii)** **in a covered security as described in 15 U.S.C.**
 25 **77r(b)(3) and (4)(D) (Securities Act of 1933);** or

26 **(iv)** [(C)] with existing employees, partners, or directors
 27 of the issuer if **a** [NO] commission or other remuneration is **not** paid
 28 or given directly or indirectly for soliciting any person in this state; **or**

29 **(B)** **a broker-dealer in effecting transactions in this state**
 30 **described in 15 U.S.C. 78o(h)(2) and (3) (Securities Exchange Act of 1934);**

31 * **Sec. 65.** AS 45.55.990(3) is amended to read:

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

(A) an agent;

(B) an issuer;

(C) a bank, savings institution, or trust company;

(D) a person who has no place of business in this state if the person effects transactions in this state exclusively with or through

(i) the issuers of the securities involved in the transactions;

(ii) other broker-dealers; or

(iii) banks, savings institutions, trust companies, insurance companies, investment companies as defined in 15 U.S.C. 80a-1 - 80a-64 ([THE] Investment Company Act of 1940), pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees; or

(E) a person who has no place of business in this state if, during a period of 12 consecutive months, the person does not effect more than 15 transactions at the initiation and direction of the customer and on behalf of residents of this state regardless of whether the residents are then present in this state and does not direct any [MORE THAN 15] offers initiated by the person to sell or buy into this state in any manner to persons other than those specified in (D) of this paragraph, regardless of whether [OR NOT] the offeror or any offeree is then present in this state;

* Sec. 66. AS 45.55.990(9) is amended to read:

(9) "person" means an individual, a corporation, a partnership, a limited liability company, a limited partnership, a limited liability partnership, an association, a joint-stock company, a trust in which [WHERE] the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government;

* Sec. 67. AS 45.55.990(11) is repealed and reenacted to read:

1 (11) "Securities Act of 1933" means 15 U.S.C. 77a - 77bbbb, as that
 2 act exists on or after the effective date of this Act;

3 * **Sec. 68.** AS 45.55.990(12) is amended to read:

4 (12) "security" means a note; stock; treasury stock; bond; debenture;
 5 evidence of indebtedness; certificate of interest or participation in any profit-sharing
 6 agreement; [A] limited liability company interest under AS 10.50, notwithstanding the
 7 limitations of AS 45.08.103(c); collateral-trust certificate [CERTIFICATES];
 8 preorganization certificate or subscription; transferable share; investment contract;
 9 voting-trust certificate; certificate of deposit for a security; [A] certificate of interest
 10 or participation in an oil, gas, or mining title or lease or in payments out of production
 11 under the title or lease or in any sale of or indenture or bond or contract for the
 12 conveyance of land or any interest in land; an option on a contract for the future
 13 delivery of agricultural or mineral commodities or any other commodity offered or sold
 14 to the public and not regulated by the Commodity Futures Trading Commission;
 15 however, the contract or option is not subject to the provisions of AS 45.55.070 if it
 16 is sold or purchased on the floor of a bona fide exchange or board of trade and offered
 17 or sold to the public by a broker-dealer or agent registered under this chapter;
 18 investment of money or money's worth including goods furnished or services
 19 performed in the risk capital of a venture with the expectation of some benefit to the
 20 investor where the investor has no direct control over the investment or policy decision
 21 of the venture; or, in general, any interest or instrument commonly known as a
 22 "security," or any certificate of interest or participation in, temporary or interim
 23 certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase,
 24 any of the foregoing; "security" does not include an insurance or endowment policy
 25 or annuity contract under which an insurance company promises to pay a fixed or
 26 variable sum of money either in a lump sum or periodically for life or for some other
 27 specified period;

28 * **Sec. 69.** AS 45.55.990 is amended by adding new paragraphs to read:

29 (14) "advisory client" means a person to whom services are provided
 30 under an investment advisory contract;

31 (15) "advisory fee" means the fee for providing services under an

1 investment advisory contract;

2 (16) "advisory services" means advising a person as to the value of
3 securities or their purchase or sale, whether through the issuance of analyses or reports
4 or otherwise;

5 (17) "Bank Holding Company Act of 1956" means 12 U.S.C. 1841 -
6 1850, as that act exists on or after the effective date of this Act;

7 (18) "clients who are natural persons" means natural persons who are
8 clients of a state investment adviser or federal covered adviser, except that natural
9 persons with at least \$750,000 under management with the state investment adviser or
10 federal covered adviser or with a net worth of at least \$1,500,000 at the time they
11 initially contract for services described in (23)(A)(i) of this section, and other natural
12 persons who may be designated by regulation or order of the administrator, are not
13 considered natural persons for the purpose of determining under (23)(A)(ii) of this
14 section if a supervised person provides the services described under (23)(A)(i) of this
15 section to natural persons;

16 (19) "federal covered adviser" means a person who is registered with
17 the United States Securities and Exchange Commission under 15 U.S.C. 80b-3
18 (Investment Advisers Act of 1940); "federal covered adviser" does not include a person
19 that is excluded from the definition of "state investment adviser" under (35)(B) of this
20 section;

21 (20) "federal covered security" means a security that is a covered
22 security under 15 U.S.C. 77r(b) (Securities Act of 1933), or regulations adopted under
23 that Act;

24 (21) "Federal Deposit Insurance Act" means 12 U.S.C. 1811 - 1835a,
25 as that act exists on or after the effective date of this Act;

26 (22) "Home Owners' Loan Act" means 12 U.S.C. 1461 - 1470, as that
27 act exists on or after the effective date of this Act;

28 (23) "investment adviser representative"

29 (A) means a natural person who

30 (i) makes a recommendation or otherwise renders advice
31 regarding securities; manages accounts or portfolios of clients;

determines which recommendation or advice regarding securities should be given; solicits, offers, or negotiates for the sale of or sells advisory services; or supervises employees who perform an activity described in this sub-subparagraph; and

(ii) is a supervised person of a state investment adviser that is registered or required to be registered under this chapter if a substantial portion of the business of the supervised person is providing to clients who are natural persons the services described in (i) of this subparagraph, or who is a supervised person of a federal covered adviser, has a place of business located in this state, and has six or more clients who are natural persons, if a substantial portion of the business of the supervised person is providing to clients who are natural persons the services described in (i) of this subparagraph;

(B) means other persons who are not otherwise covered by this paragraph but who are designated by regulation or order of the administrator;

(C) except persons covered by (37)(A)(ii) of this section, does not include a person that would not be defined as an investment adviser representative under 17 C.F.R. 275.203A-3 adopted under 15 U.S.C. 80b-3a (Investment Advisers Act of 1940), as that regulation exists on or after the effective date of this Act;

(24) "Investment Advisers Act of 1940" means 15 U.S.C. 80b-1 - 80b-21, as that act exists on or after the effective date of this Act;

(25) "investment advisory business" means a business in which a person receives compensation primarily for providing advisory services;

(26) "investment advisory contract" means a contract in which one person receives consideration from another person primarily for providing advisory services;

(27) "Investment Company Act of 1940" means 15 U.S.C. 80a-1 - 80a-64, as that act exists on or after the effective date of this Act;

(28) "NASDAQ" means National Association of Securities Dealers Automatic Quotation System;

1 (29) "National Securities Markets Improvement Act of 1996" means
 2 P.L. 104 - 290, 101 Stat. 3416 - 3440, as that act exists on or after the effective date
 3 of this Act;

4 (30) "notice filing" means a filing made under AS 45.55.040(h) or
 5 45.55.075 unless the context indicates otherwise;

6 (31) "place of business" of a state investment adviser, investment
 7 adviser representative, or federal covered adviser means

8 (A) an office at which the state investment adviser, federal
 9 covered adviser, or investment adviser representative regularly provides
 10 advisory services, solicits, meets with, or otherwise communicates with clients;
 11 and

12 (B) another location that is held out to the general public as a
 13 location at which the state investment adviser, federal covered adviser, or
 14 investment adviser representative provides advisory services, solicits, meets
 15 with, or otherwise communicates with clients;

16 (32) "principal place of business" of a state investment adviser,
 17 investment adviser representative, or federal covered adviser means the executive
 18 office of the state investment adviser, investment adviser representative, or federal
 19 covered adviser from which the officers, partners, or managers of the state investment
 20 adviser, investment adviser representative, or federal covered adviser direct, control,
 21 and coordinate the activities of the state investment adviser, investment adviser
 22 representative, or federal covered adviser;

23 (33) "Securities Exchange Act of 1934" means 15 U.S.C. 78a - 78lll,
 24 as that act exists on or after the effective date of this Act;

25 (34) "securities business" means a business that provides the services
 26 provided by

27 (A) state investment advisers, federal covered advisers, or
 28 investment adviser representatives; or

29 (B) broker-dealers, issuers, or agents of broker-dealers or
 30 issuers;

31 (35) "state investment adviser"

1 (A) means

2 (i) a person who, for compensation, engages in the
3 business of advising others, either directly or through publications or
4 writings, as to the value of securities or as to the advisability of
5 investing in, purchasing, or selling securities, or who, for compensation
6 and as a part of a regular business, issues or promulgates analyses or
7 reports concerning securities, or who, for compensation, engages in this
8 state in the business of managing an investment or trading account in
9 securities for other persons;

10 (ii) a financial planner or other person who, as an
11 integral component of other financially related services, provides the
12 services described in (i) of this subparagraph to others for compensation
13 and as part of a business or who holds out to provide the services
14 described in (i) of this subparagraph to others for compensation;

15 (B) does not include

16 (i) an investment adviser representative;

17 (ii) a savings institution, a trust company, a bank
18 holding company as defined in 12 U.S.C. 1841 (Bank Holding
19 Company Act of 1956), or a bank that is not an investment company;

20 (iii) a lawyer, an accountant, an engineer, or a teacher
21 whose performance of the services described in (A)(i) of this paragraph
22 is incidental to the practice of the person's profession;

23 (iv) a broker-dealer or its agent whose performance of
24 the services described in (A)(i) of this paragraph is incidental to the
25 conduct of business as a broker-dealer or an agent and who does not
26 receive special compensation for the services;

27 (v) a publisher of a bona fide newspaper, news column,
28 newsletter, news magazine, or business or financial publication or
29 service, whether communicated in hard copy form, by electronic means,
30 or otherwise, that does not consist of the rendering of advice on the
31 basis of the specific investment situation of each client;

- 1 (vi) a person that is a federal covered adviser;
- 2 (vii) a person whose sole clients are the person's spouse,
- 3 parents, children, or siblings by blood or adoption, and who does not
- 4 hold out to provide the services described in (A)(i) of this paragraph to
- 5 the general public;
- 6 (viii) other persons not within the intent of this
- 7 paragraph whom the administrator may designate by regulation or order;
- 8 (36) "substantial portion of the business" means that more than 10
- 9 percent of the clients of a supervised person during the preceding 12 months are clients
- 10 who are natural persons to whom the supervised person is providing the services
- 11 described in (23)(A)(i) of this section;
- 12 (37) "supervised person"
- 13 (A) means
- 14 (i) a partner, an officer, a director, or another person
- 15 occupying a similar status or performing similar functions, an employee
- 16 of a state investment adviser or federal covered adviser, or another
- 17 person who provides services described in (23)(A)(i) of this section to
- 18 clients on behalf of the state investment adviser or federal covered
- 19 adviser if the person is subject to the supervision and control of the
- 20 state investment adviser or federal covered adviser;
- 21 (ii) a third-party natural person employed primarily to
- 22 solicit, offer, or negotiate for the sale of or to sell the services described
- 23 in (23)(A)(i) of this section for a state investment adviser or federal
- 24 covered adviser, even if the person is not subject to the supervision or
- 25 control of the state investment adviser or federal covered adviser;
- 26 (B) does not include a person who
- 27 (i) does not on a regular basis solicit, meet with, or
- 28 otherwise communicate with clients of a state investment adviser or
- 29 federal covered adviser as a normal and ordinary part of the duties of
- 30 the person; or
- 31 (ii) provides the services described in (23)(A)(i) of this

1 section only by means of written material or oral statements that do not
2 claim to meet the objectives or needs of specific individuals or
3 accounts.

4 * **Sec. 70.** AS 45.55.995 is amended to read:

5 **Sec. 45.55.995. Short title.** This chapter may be cited as the Alaska Securities
6 Act [OF 1959].

7 * **Sec. 71.** AS 45.55.020(d) and 45.55.990(6) are repealed.

8 * **Sec. 72.** TRANSITION: REGULATIONS. Notwithstanding sec. 76 of this Act, the
9 Department of Commerce and Economic Development may immediately proceed to adopt
10 regulations necessary to implement the changes made by this Act. The regulations take effect
11 under AS 44.62 (Administrative Procedure Act), but not before the effective date of secs. 1 -
12 2 and 4 - 71 of this Act.

13 * **Sec. 73.** Section 3 of this Act takes effect only if AS 25.27.244(s)(2) is repealed and
14 reenacted under sec. 148(c), ch. 87, SLA 1997, as amended by sec. 53, ch. 132, SLA 1998.

15 * **Sec. 74.** Section 72 of this Act takes effect immediately under AS 01.10.070(c).

16 * **Sec. 75.** If sec. 3 of this Act takes effect, it takes effect on the effective date of the
17 repeal and reenactment of AS 25.27.244(s)(2) under sec. 148(c), ch. 87, SLA 1997, as
18 amended by sec. 53, ch. 132, SLA 1998.

19 * **Sec. 76.** Except as provided in secs. 74 and 75 of this Act, this Act takes effect
20 October 1, 1999.