

CS FOR HOUSE BILL NO. 486(L&C) am S
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTIETH LEGISLATURE - SECOND SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE

Amended: 5/8/98

Offered: 4/28/98

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

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the Alaska Securities Act; and providing for an effective**
2 **date."**

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

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

5 (1) "license" [MEANS,]

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

10 (i) license relating to boxing or wrestling under
11 AS 05.10;

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

14 (iii) teacher certificate under AS 14.20;

- 1 (iv) authorization under AS 18.08 to perform emergency
 2 medical services;
- 3 (v) asbestos worker certification under AS 18.31;
 4 (vi) boiler operator's license under AS 18.60.395;
 5 (vii) certificate of fitness under AS 18.62;
 6 (viii) hazardous painting certification under AS 18.63;
 7 (ix) certification as a correctional, probation, or parole
 8 officer under AS 18.65.245;
- 9 (x) security guard license under AS 18.65.400 -
 10 18.65.490;
- 11 (xi) license relating to insurance under AS 21.27;
 12 (xii) employment agency permit under AS 23.15.330 -
 13 23.15.520;
- 14 (xiii) registration as a broker-dealer, **an** agent, **a state**
 15 **[OR] investment adviser, or an investment adviser representative**
 16 under AS 45.55.030;
- 17 (xiv) certification as a pesticide applicator under
 18 AS 46.03.320;
- 19 (xv) certification as a storage tank worker or contractor
 20 under AS 46.03.375;
- 21 (xvi) certification as a water and wastewater works
 22 operator under AS 46.30; and
- 23 (B) does not include
- 24 (i) a commercial fishing license under AS 16.05.480,
 25 including a crewmember fishing license;
- 26 (ii) a vessel license issued under AS 16.05.490 or
 27 16.05.530;
- 28 (iii) a license issued under AS 47.35;
 29 (iv) a business license issued under AS 43.70;
 30 (v) an entry permit or interim-use permit issued under
 31 AS 16.43; or

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

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

3 (2) "license"

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

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

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

12 (iii) teacher certificate under AS 14.20;

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

15 (v) asbestos worker certification under AS 18.31;

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

17 (vii) certificate of fitness under AS 18.62;

18 (viii) hazardous painting certification under AS 18.63;

19 (ix) security guard license under AS 18.65.400 -
20 18.65.490;

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

22 (xi) employment agency permit under AS 23.15.330 -
23 23.15.520;

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

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

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

31 (xv) certification as a water and wastewater works

1 operator under AS 46.30; and

2 (xvi) commercial crewmember fishing license under
3 AS 16.05.480 other than an entry permit or interim-use permit under
4 AS 16.43;

5 (B) does not include

6 (i) a vessel license issued under AS 16.05.490 or
7 16.05.530;

8 (ii) a license issued under AS 47.35;

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

10 (iv) an entry permit or interim-use permit issued under
11 AS 16.43; or

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

13 * **Sec. 3.** AS 25.27.244(s)(2), as repealed and reenacted under sec. 148(c), ch. 87, SLA
14 1997, is amended to read:

15 (2) "license"

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

20 (i) license relating to boxing or wrestling under
21 AS 05.10;

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

24 (iii) teacher certificate under AS 14.20;

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

27 (v) asbestos worker certification under AS 18.31;

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

29 (vii) certificate of fitness under AS 18.62;

30 (viii) hazardous painting certification under AS 18.63;

31 (ix) security guard license under AS 18.65.400 -

- 1 18.65.490;
- 2 (x) license relating to insurance under AS 21.27;
- 3 (xi) employment agency permit under AS 23.15.330 -
- 4 23.15.520;
- 5 (xii) registration as a broker-dealer, an agent, a state
- 6 [OR] investment adviser, or an investment adviser representative
- 7 under AS 45.55.030;
- 8 (xiii) certification as a pesticide applicator under
- 9 AS 46.03.320;
- 10 (xiv) certification as a storage tank worker or contractor
- 11 under AS 46.03.375; and
- 12 (xv) certification as a water and wastewater works
- 13 operator under AS 46.30;
- 14 (B) does not include
- 15 (i) a commercial fishing license under AS 16.05.480,
- 16 including a crewmember fishing license;
- 17 (ii) a vessel license issued under AS 16.05.490 or
- 18 16.05.530;
- 19 (iii) a license issued under AS 47.35;
- 20 (iv) a business license issued under AS 43.70;
- 21 (v) an entry permit or interim-use permit issued under
- 22 AS 16.43; or
- 23 (vi) a driver's license issued under AS 28.15;

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

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

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

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

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

29 15 U.S.C. 78o (Securities Exchange Act of 1934);

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

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

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

2 (3) the Department of Revenue; or

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

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

9 (b) A person may not rely on an exemption from registration under
10 AS 45.55.900 or on a security being a federal covered security to avoid the application
11 of (a) of this section.

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

13 (b) **A state** [AN] investment adviser may not enter into, extend, or renew an
14 investment advisory contract unless **the contract** [IT] provides in writing that

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

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

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

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

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

28 **The administrator, on request, may waive the provisions of (b)(1) of this section**
29 **for investment advisory contracts that conform to the limitations of 15 U.S.C. 80b-**
30 **5 (Investment Advisers Act of 1940).**

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

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

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

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

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

7 **Sec. 45.55.023. Unethical business practices of state investment advisers,**
8 **investment adviser representatives, and federal covered advisers.** (a) A person
9 who is a state investment adviser, investment adviser representative, or federal covered
10 adviser is a fiduciary and has a duty to act primarily for the benefit of the client. The
11 provisions of this section apply to federal covered advisers only to the extent that the
12 conduct alleged is fraudulent or deceptive under AS 45.55.010(a) or AS 45.55.020(a),
13 or to the extent otherwise provided by P.L. 104 - 290, 101 Stat. 3416 - 3440 (National
14 Securities Markets Improvement Act of 1996). While the extent and nature of the duty
15 to act primarily for the benefit of the client varies according to the nature of the
16 relationship between an investment adviser and its clients and the circumstances of
17 each case, a state investment adviser, an investment adviser representative, or a federal
18 covered adviser may not engage in dishonest or unethical business practices in the
19 investment advisory business under AS 45.55.060(a)(7), including

20 (1) recommending to a client to whom investment supervisory,
21 management, or consulting services are provided, the purchase, sale, or exchange of
22 a security without reasonable grounds to believe that the recommendation is suitable
23 for the client on the basis of information furnished by the client after reasonable
24 inquiry concerning the client's investment objectives, financial situation and needs, and
25 other information known to the state investment adviser, investment adviser
26 representative, or federal covered adviser;

27 (2) exercising discretionary power in placing an order for the purchase
28 or sale of securities for a client without obtaining written discretionary authority from
29 the client within 10 business days after the date of the first transaction placed under
30 oral discretionary authority unless the discretionary power relates solely to the price
31 at which or the time when an order involving a definite amount of a specified security

1 will be executed, or both;

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

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

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

12 (6) borrowing money or securities from a client unless the client is a
13 financial institution engaged in the business of loaning money or the client is an
14 affiliate of the state investment adviser or federal covered adviser borrowing the money
15 or securities;

16 (7) loaning money to a client unless the state investment adviser or
17 federal covered adviser loaning the money is a financial institution engaged in the
18 business of loaning money or the client is an affiliate of the state investment adviser
19 or federal covered adviser;

20 (8) misrepresenting to an advisory client or prospective advisory client
21 the qualifications of the state investment adviser, an employee of the state investment
22 adviser, the investment adviser representative, the federal covered adviser, or an
23 employee of the federal covered adviser; misrepresenting the nature of the advisory
24 services being offered or fees to be charged for a service; or omitting to state a
25 material fact necessary to make the statements made regarding qualifications, services,
26 or fees not misleading in light of the circumstances under which the statements are
27 made;

28 (9) providing a report or recommendation to an advisory client prepared
29 by someone other than the state investment adviser, the investment adviser
30 representative, or the federal covered adviser without disclosing that the report or
31 recommendation was prepared by someone else, except that this prohibition does not

1 apply to a situation where the state investment adviser, investment adviser
2 representative, or federal covered adviser uses published research reports or statistical
3 analyses to render advice or where a state investment adviser, an investment adviser
4 representative, or a federal covered adviser orders the research reports or statistical
5 analyses in the normal course of providing service;

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

7 (11) failing to disclose to clients in writing before any advice is
8 rendered a material conflict of interest relating to the state investment adviser, federal
9 covered adviser, an employee of the state investment adviser or federal covered
10 adviser, or the investment adviser representative that could reasonably be expected to
11 impair the rendering of unbiased and objective advice, including

12 (A) compensation arrangements connected with advisory
13 services to a client if the arrangements are in addition to compensation from
14 the client for those services; and

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

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

21 (13) publishing, circulating, or distributing an advertisement that does
22 not comply with 17 C.F.R. 275.206(4) - 1 adopted under 15 U.S.C. 80b-1 - 80b-21
23 (Investment Advisers Act of 1940);

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

26 (15) taking action, directly or indirectly, with respect to securities or
27 funds in which a client has a beneficial interest if the state investment adviser or
28 federal covered adviser has custody or possession of the securities or funds and the
29 adviser's action does not comply with the requirements of 17 C.F.R. 275.206(4) - 2
30 adopted under 15 U.S.C. 80b-1 - 80b-2 (Investment Advisers Act of 1940);

31 (16) entering into, extending, or renewing an investment advisory

1 contract unless the contract is in writing and discloses in substance

2 (A) the services to be provided;

3 (B) the term of the contract;

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

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

9 (E) that an assignment of the contract may not be made by a
10 state investment adviser without the consent of the other party to the contract;
11 in this subparagraph, "assignment" includes a direct or indirect transfer or
12 hypothecation of an investment advisory contract by the assignor or of a
13 controlling block of the assignor's outstanding voting securities by a security
14 holder of the assignor, but, if the adviser is a partnership, an assignment of an
15 investment advisory contract is not considered to result from the death or
16 withdrawal of a minority of the partners of the adviser having only a minority
17 interest in the business of the adviser, or from the admission to the adviser of
18 one or more partners who, after admission, will be only a minority of the
19 partners and will have only a minority interest in the business;

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

23 (18) entering into, extending, or renewing an advisory contract that
24 would violate 15 U.S.C. 80b-5 (Investment Advisers Act of 1940); this paragraph
25 applies to all advisers registered or required to be registered under this chapter,
26 notwithstanding whether the adviser would be exempt from federal registration under
27 15 U.S.C. 80b-3 (Investment Advisers Act of 1940);

28 (19) including in an advisory contract a condition, stipulation, or
29 provision binding a person to waive compliance with a provision of this chapter or
30 15 U.S.C. 80b-1 - 80b-21 (Investment Advisers Act of 1940); or engaging in a practice
31 that would violate 15 U.S.C. 80b-15 (Investment Advisers Act of 1940);

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

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

9 (22) acting as principal for the person's own account, knowingly selling
10 a security to or purchasing a security from a client, acting as broker for a person other
11 than the client, or knowingly effecting a sale or purchase of a security for the account
12 of the client without disclosing to the client in writing before the completion of the
13 transaction the capacity in which the person is acting and without obtaining the written
14 consent of the client to the transaction; the prohibitions in this paragraph do not apply
15 to a transaction with a customer of a broker or dealer if the broker or dealer is not
16 acting as a state investment adviser or federal covered adviser in relation to the
17 transaction.

18 (b) The conduct prohibited by (a) of this section is not exclusive. Engaging
19 in other similar conduct, including nondisclosure, incomplete disclosure, or a deceptive
20 practice, is considered an unethical business practice. With respect to a state
21 investment adviser and a registered investment adviser representative of either a state
22 investment adviser or a federal covered adviser, the federal statutory and regulatory
23 provisions referred to in this section apply to the state investment adviser and the
24 registered investment adviser representative regardless of whether the federal provision
25 limits its application to state investment advisers or federal covered advisors subject
26 to federal registration. With respect to a federal covered adviser, the provisions of this
27 section apply only to the extent permitted under P.L. 104 - 290, 101 Stat. 3416 - 3440
28 (National Securities Markets Improvement Act of 1996) and only when the conduct
29 proscribed involves fraud or deceit within the meaning of AS 45.55.010(a) and
30 45.55.020(a).

31 **Sec. 45.55.025. Fraudulent, dishonest, and unethical business practices of**

1 **broker-dealers.** A broker-dealer shall observe high standards of commercial honor
2 and just and equitable principles of trade in the conduct of its business. The acts and
3 practices that are contrary to those standards and principles, that constitute dishonest
4 or unethical practices in the securities business under AS 45.55.060(a), and that are
5 grounds for imposition of administrative fines, censure, denial, suspension, revocation
6 of a registration, or other appropriate disciplinary action include

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

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

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

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

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

24 (6) executing a transaction in a margin account without securing from
25 the customer a properly executed written margin agreement promptly after the initial
26 transaction in the account;

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

29 (8) hypothecating a customer's securities without having a lien on the
30 securities unless the broker-dealer receives from the customer a properly executed
31 written consent promptly after the initial transaction, except as permitted by the rules

1 of the United States Securities and Exchange Commission;

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

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

9 (11) charging unreasonable or inequitable fees for services performed,
10 including fees for miscellaneous services, such as the collection of money due for
11 principal, dividends, or interest, the exchange or transfer of securities, appraisals,
12 safekeeping, the custody of securities, and other services related to the broker-dealer's
13 securities business;

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

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

21 (A) the broker-dealer;

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

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

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

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

31 (B) entering an order for the purchase or sale of security with

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

9 (C) effecting alone or with one or more other persons a series
10 of transactions in a security creating actual or apparent active trading in the
11 security or raising or depressing the price of the security for the purpose of
12 inducing the purchase or sale of the security by others;

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

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

19 (A) report a transaction as a purchase or sale of a security
20 unless the broker-dealer believes that the transaction described was a bona fide
21 purchase or sale of the security; or

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

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

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

1 (B) using supplementary material in connection with the offer
2 of a particular security if the information in the material is not consistent with
3 or adequately supported by the prospectus or is not filed as part of the
4 registration statement;

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

9 (18) failing to disclose that the broker-dealer is affiliated with the issuer
10 of a security before entering into a contract with or for a customer for the purchase or
11 sale of the security and, if the disclosure is made orally, failing to provide to the
12 customer written disclosure before the completion of the transaction;

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

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

20 (21) being found by a court or an administrative proceeding of
21 competent jurisdiction to have violated the anti-fraud or registration provisions of
22 federal or any state's securities laws;

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

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

29 (24) failing to provide to a customer for a month in which activity has
30 occurred in a customer's account, but in no event less than every three months, a
31 statement of account that contains a value for each over-the-counter non-NASDAQ

1 equity security based on the closing market bid on a certain date; this paragraph
 2 applies only if the broker-dealer has been a market maker in that security at any time
 3 during the month in which the monthly or quarterly statement is issued;

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

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

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

10 (28) failing to comply with an applicable provision of the Conduct
 11 Rules of the National Association of Securities Dealers, Inc., or applicable fair
 12 practices or ethical standards adopted by the United States Securities and Exchange
 13 Commission or by a self-regulatory organization approved by the United States
 14 Securities and Exchange Commission.

15 **Sec. 45.55.027. Fraudulent, dishonest, and unethical business practices of**
 16 **agents.** An agent shall observe high standards of commercial honor and just and
 17 equitable principles of trade in the conduct of the agent's business. The acts and
 18 practices that are contrary to those standards and principles, that constitute dishonest
 19 or unethical practices in the securities business under AS 45.55.060(a), and that are
 20 grounds for imposition of administrative fines, censure, denial, suspension, revocation
 21 of a registration, or other appropriate disciplinary action include

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

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

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

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

1 the agent represents;

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

8 (6) failing to disclose to a customer or prospective customer at the time
9 of the first contact with the customer or prospective customer the name of the principal
10 if different from the name under which the agent is doing business;

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

13 (8) conducting business by telephone at unreasonable times.

14 **Sec. 45.55.028. Fraudulent, dishonest, and unethical business practices of**
15 **broker-dealers and agents.** Acts and practices of broker-dealers or agents that are
16 considered fraudulent or deceitful acts, practices, or courses of business under
17 AS 45.55.010(a) include

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

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

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

30 (4) in connection with the solicitation of a sale or purchase of a
31 security, engaging in a pattern or practice of making contradictory recommendations

1 to different investors with similar investment objectives for some to sell and others to
2 purchase the same security, at or about the same time, when not justified by the
3 particular circumstances of each investor;

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

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

10 (B) parking or withholding securities;

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

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

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

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

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

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

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

31 (B) the use of scripts designed to meet the customer's

- 1 objections;
- 2 (C) repeated phone calls;
- 3 (D) phone calls designed to entrap the customer;
- 4 (E) threatening tones on the telephone informing the customer
- 5 that there is little time within which to make a decision;
- 6 (8) failing to comply with a prospectus delivery requirement adopted
- 7 under federal law;
- 8 (9) making a false, misleading, deceptive, or exaggerated representation
- 9 or prediction in the solicitation or sale of a security, including a statement that
- 10 (A) the security will be resold or repurchased;
- 11 (B) the security will be listed or traded on an exchange or
- 12 established market;
- 13 (C) purchasing the security will result in an assured, immediate,
- 14 or extensive increase in value, future market price, or return on investment; or
- 15 (D) refers to the issuer's financial condition, anticipated
- 16 earnings, potential growth, or success;
- 17 (10) failing to disclose a dual agency capacity; or
- 18 (11) effecting a transaction on terms and conditions other than those
- 19 stated by the confirmation.

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

- 21 (c) A person may not transact business in this state as a state investment
- 22 adviser or an investment adviser representative unless
- 23 (1) the person is registered as required under this chapter; or
- 24 (2) the person does not have a place of business in this state and
- 25 (A) the person's only clients in this state are investment
- 26 companies as defined in 15 U.S.C. 80a-3 (Investment Company Act of 1940),
- 27 other state investment advisers, federal covered advisers, broker-dealers, banks,
- 28 trust companies, savings and loan associations, insurance companies, employee
- 29 benefit plans with assets of not less than \$1,000,000, governmental agencies or
- 30 instrumentalities whether acting for themselves or as trustees with investment
- 31 control, or other institutional investors that are designated by regulation or

1 order of the administrator; or

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

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

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

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

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

14 (f) A person may not be registered concurrently as an agent of more than one
15 broker-dealer or issuer. The administrator may waive this requirement if the
16 administrator determines that it would not interfere with effective supervision of the
17 agent by the broker-dealer or issuer and the waiver is in the public interest.

18 (g) A person who is registered or required to be registered as a state
19 investment adviser under this chapter may not employ an investment adviser
20 representative who provides advisory services in or emanating from this state unless
21 the investment adviser representative is registered under this chapter or is exempt from
22 registration, except that the registration of the investment adviser representative is not
23 effective during any period when the representative is not employed by a state
24 investment adviser registered under this chapter.

25 (h) A federal covered adviser who has filed notice under this chapter may not
26 employ, supervise, or associate with an investment adviser representative having a
27 place of business located in this state unless the investment adviser representative is
28 registered under this chapter or is exempt from registration, except that the registration
29 of the investment adviser representative is not effective during any period when the
30 representative is not employed by a federal covered adviser.

31 (i) If an investment adviser representative terminates employment with a state

1 investment adviser or federal covered adviser, the state investment adviser or federal
2 covered adviser shall promptly notify the administrator.

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

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

9 **Sec. 45.55.035. Limited registration of Canadian broker-dealers and**
10 **agents.** (a) If a broker-dealer is registered under this section and its principal office
11 is located in a province or territory of Canada that provides at least equivalent
12 registration for a broker-dealer that is resident in the United States, a broker-dealer that
13 is resident in Canada and does not have an office or other physical presence in this
14 state may effect transactions in securities with or for or induce or attempt to induce
15 the purchase or sale of a security by a person from Canada who is

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

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

22 (b) An agent who represents a Canadian broker-dealer registered under this
23 section may, if the agent is registered under this section, effect transactions in
24 securities in this state as permitted for the broker-dealer under (a) of this section.

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

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

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

30 (3) is registered as a broker or dealer in good standing in the
31 jurisdiction from which the broker-dealer is effecting transactions into this state and

1 files evidence of the registration; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 involving fraud, theft, deceit, misrepresentation, or similar conduct.

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

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

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

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

12 (2) with or through

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

14 (B) other broker-dealers; or

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

20 (3) as otherwise permitted by this chapter.

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

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

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

31 (a) A broker-dealer, agent, [OR] investment adviser representative, or state

1 **investment adviser** may obtain an initial or renewal registration by filing with the
 2 administrator **or the administrator's designee** an application together with a consent
 3 to service of process under AS 45.55.980(g). The application **must** [SHALL BE
 4 ACCOMPANIED BY THE FINGERPRINTS AND A PHOTOGRAPH OF THE
 5 APPLICANT AND MUST] contain whatever information the administrator by
 6 regulation **may require** [REQUIRES] concerning such matters as

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 (f) The administrator may by regulation or order require registered broker-
28 dealers and agents to post a bond in an amount the administrator may prescribe subject
29 to the limitations provided in 15 U.S.C. 78o (Securities Exchange Act of 1934). The
30 administrator may determine the conditions of the bond. Any appropriate deposit of
31 cash or securities shall be accepted in place of a required bond. A bond may not be

1 required of a registrant whose net capital exceeds the amounts required by the
 2 administrator. A bond must provide for suit on it by a person who has a cause of
 3 action under AS 45.55.930 and, if required by the administrator by regulation, by a
 4 person who has a cause of action not arising under this chapter. A bond must provide
 5 that a suit may not be maintained to enforce a liability on the bond unless brought
 6 within three years after the sale or other act on which it is based.

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

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

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

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

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

26 (j) The administrator may by regulation or order require registered state
 27 investment advisers who have custody of or discretionary authority over clients' funds
 28 or securities to post a bond in an amount the administrator may establish subject to the
 29 limitations provided in 15 U.S.C. 80b-18a (Investment Advisers Act of 1940). The
 30 administrator may determine the conditions of the bond. Any appropriate deposit of
 31 cash or securities shall be accepted in place of a required bond. A bond may not be

1 required of a registrant whose minimum financial condition, which may be defined by
 2 regulation, or net capital exceeds the amounts required by the administrator. A bond
 3 must provide for suit on it by a person who has a cause of action under AS 45.55.930
 4 and, if required by the administrator by regulation, by a person who has a cause of
 5 action not arising under this chapter. A bond must provide that a suit may not be
 6 maintained to enforce a liability on the bond unless brought within three years after
 7 the sale or other act on which it is based.

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

9 (a) **Except as provided under 15 U.S.C. 78o (Securities Exchange Act of**
 10 **1934), a** [EVERY] registered broker-dealer [AND INVESTMENT ADVISER] shall
 11 make and keep the accounts, correspondence, memoranda, papers, books, and other
 12 records that the administrator **establishes** [PRESCRIBES BY REGULATION]. All
 13 **required** records [SO REQUIRED] shall be preserved for three years unless the
 14 administrator by regulation prescribes otherwise [FOR PARTICULAR TYPES OF
 15 RECORDS].

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

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

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

20 (c) If the information contained in a document filed with the administrator is
 21 or becomes inaccurate or incomplete in a material respect, the **person who made the**
 22 **filing** [REGISTRANT] shall promptly file a correcting amendment unless notification
 23 of the correction is given under AS 45.55.030(b). **If the document is filed with**
 24 **respect to a federal covered adviser, the amendment shall be filed when it is**
 25 **required to be filed with the United States Securities and Exchange Commission**
 26 **unless notification of the correction is given under AS 45.55.030(b).**

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

28 (d) All the records referred to in [(a) OF] this section are subject **at any time**
 29 to reasonable periodic, special, or other examinations by representatives of the
 30 administrator, inside or outside this state, as the administrator considers necessary or
 31 appropriate in the public interest or for the protection of investors. For the purpose

1 of avoiding unnecessary duplication of examinations, the administrator, insofar as the
2 administrator considers it practicable in administering this subsection, may cooperate
3 with the securities administrators of other states, the United States Securities and
4 Exchange Commission, and any national securities exchange or national securities
5 association registered under 15 U.S.C. 78a - 78III ([THE] Securities Exchange Act of
6 1934).

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

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

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

20 (g) Subject to 15 U.S.C. 80b-18a (Investment Advisers Act of 1940), a state
21 investment adviser shall file the financial reports the administrator prescribes.

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

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

1 (j) A state investment adviser that has its principal place of business in a state
 2 other than this state and the investment adviser representatives of that state investment
 3 adviser shall file with the administrator only the financial reports or other information
 4 required by the state in which the state investment adviser maintains its principal place
 5 of business if the state investment adviser is licensed in that state and is in compliance
 6 with that state's reporting requirements.

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

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

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

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

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

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

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

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

4 (6) is the subject of an order entered within the past five years by the
 5 securities administrator of another state or by the United States Securities and
 6 Exchange Commission denying or revoking registration as a broker-dealer, agent, state
 7 [OR] investment adviser, investment adviser representative, or the substantial
 8 equivalent of those terms as defined in this chapter, or is the subject of an order of the
 9 United States Securities and Exchange Commission suspending or expelling the
 10 person from a national securities exchange or national securities association registered
 11 under 15 U.S.C. 78a - 78lll ([THE] Securities Exchange Act of 1934), or is the
 12 subject of a United States Post Office fraud order; but the administrator may not

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

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

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

20 (8) is insolvent, [EITHER] in the sense that liabilities exceed assets,
 21 [OR IN THE SENSE] that the person cannot meet obligations as they mature, or that
 22 the person cannot continue in business safely for the customers of the applicant
 23 or registrant, [;] but the administrator may not enter an order against a broker-dealer
 24 or state investment adviser under this paragraph [CLAUSE] without a finding of
 25 insolvency as to the broker-dealer or state investment adviser; [OR]

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

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

1 require; or

2 **(11) is a person whose license renewal is denied under AS 14.43.148**
 3 **or whose license issuance or renewal is denied under AS 25.27.244.**

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

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

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

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

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

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

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

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

20 (B) an agent of the broker-dealer;

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

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

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

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

1 both;

2 (4) the administrator shall consider that an agent who will work under
3 the supervision of a registered broker-dealer need not have the same qualifications as
4 a broker-dealer;

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

12 (6) the administrator may by regulation provide for an examination,
13 which may be written or oral or both, to be taken by any class of or all applicants,
14 **including applicants for registration as investment adviser representatives, if** [AS
15 WELL AS PERSONS WHO REPRESENT OR WILL REPRESENT AN
16 INVESTMENT ADVISER IN DOING ANY OF THE ACTS WHICH MAKE THE
17 INVESTMENT ADVISER AN INVESTMENT ADVISER, PROVIDED THAT]
18 examinations required by this paragraph are not required of a registrant under this
19 chapter who was doing business in this state and was a resident of this state on May 9,
20 1959.

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

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

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

29 (g) Withdrawal from registration as a broker-dealer, agent, **state investment**
30 **adviser**, or investment adviser **representative** becomes effective 30 days after receipt
31 of an application to withdraw or within a shorter period of time as the administrator

1 may determine, unless a revocation or suspension proceeding is pending when the
 2 application is filed or a proceeding to revoke or suspend or to impose conditions upon
 3 the withdrawal is instituted within 30 days after the application is filed. If a proceeding
 4 is pending or instituted, withdrawal becomes effective at the time and upon the
 5 conditions as the administrator by order determines. If a [NO] proceeding is not
 6 pending or instituted and withdrawal automatically becomes effective, the administrator
 7 may nevertheless institute a revocation or suspension proceeding under (a)(2) of this
 8 section within one year after withdrawal is effective and enter a revocation or
 9 suspension order as of the last date on which registration was effective.

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

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

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

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

15 (3) it is a federal covered security.

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

17 **Sec. 45.55.075. Federal covered securities.** (a) Unless otherwise exempt
 18 under AS 45.55.900, a security that is a federal covered security under 15 U.S.C.
 19 77r(b)(2), as amended (Securities Act of 1933), may only be offered for sale and sold
 20 into, from, or within the state upon the administrator's receipt of

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

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

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

29 (b) A notice filing under this section may be renewed by filing, before the
 30 expiration of an effective notice filing, a renewal notice and filing fee as prescribed
 31 by the administrator, and, if necessary to compute the fee, a report of the value of the

1 federal covered securities offered or sold in this state. A renewal notice filing is
2 effective on the expiration date of the previous notice filing.

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

6 (d) With respect to a security that is a covered security under 15 U.S.C.
7 77r(b)(4)(D), as amended (Securities Act of 1933), the administrator, by regulation or
8 otherwise, may require the issuer to file a notice on United States Securities and
9 Exchange Commission's Form D and a consent to service of process signed by the
10 issuer no later than 15 days after the first sale of a covered security in this state and
11 a fee established by the administrator for a notice filing under this section.

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

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

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

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

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

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

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

29 (1) one copy of the latest form of prospectus filed under **15 U.S.C. 77a**
30 **- 77bbbb** ([THE] Securities Act of 1933);

31 (2) if the administrator requires, copies of the articles of incorporation

1 and bylaws, or their substantial equivalent, currently in effect; a copy of an agreement
 2 with or among underwriters; a copy of an indenture or other instrument governing the
 3 issuance of the security to be registered; and a specimen or copy of the security;

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

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

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

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

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

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

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

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

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

2 (d) A document filed under this chapter within five years preceding the filing
3 of a registration statement **or a notice filing under AS 45.55.075** may be incorporated
4 by reference in the registration statement **or notice filing** to the extent that the
5 document is currently accurate.

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

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

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

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

1 outstanding. A registration statement may be withdrawn otherwise only in the
2 discretion of the administrator.

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

4 (k) A **notice filing under AS 45.55.075** [REGISTRATION STATEMENT]
5 relating to a security issued by a face-amount certificate company or a redeemable
6 security issued by an open-end management company or unit investment trust, as those
7 terms are defined in **15 U.S.C. 80a-1 - 80a-64** ([THE] Investment Company Act of
8 1940), may be amended after its effective date so as to increase the securities specified
9 as proposed to be offered **if the notice filing was for a specified dollar amount of**
10 **securities to be offered in this state and if the total fees were based on the dollar**
11 **amount of securities to be offered**. An amendment becomes effective when the
12 administrator so orders. **A** [EVERY] person filing [SUCH] an amendment shall pay
13 a [FILING] fee, calculated in the manner specified in (b) of this section, with respect
14 to the additional securities proposed to be offered.

15 * **Sec. 42.** AS 45.55.139 is amended to read:

16 **Sec. 45.55.139. Reports of corporations.** A copy of all annual reports,
17 proxies, consents, [OR] authorizations, proxy statements, and other materials relating
18 to proxy solicitations distributed, published, or made available by any person to at least
19 30 Alaska resident shareholders of a corporation that has total assets exceeding
20 \$1,000,000 and a class of equity security held of record by 500 or more persons and
21 **that** [WHICH] is exempted from the registration requirements of AS 45.55.070 by
22 AS 45.55.138 [,] shall be filed with the administrator **or the administrator's designee**
23 concurrently with its distribution to shareholders.

24 * **Sec. 43.** AS 45.55.139 is amended by adding a new subsection to read:

25 (b) The administrator or the administrator's designee may by regulation
26 establish and by order enforce requirements relating to disclosure and form of proxies,
27 consents, authorizations, proxy statements, and other materials relating to proxy
28 solicitations described in (a) of this section. Regulations adopted under this section
29 should recognize the social and economic circumstances of shareholders and encourage
30 maximum participation consistent with the requirements of AS 45.55.160.

31 * **Sec. 44.** AS 45.55.150 is amended to read:

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

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

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

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

14 * **Sec. 45.** AS 45.55.170 is amended to read:

15 **Sec. 45.55.170. Unlawful representations concerning filing, registration,**
 16 **notice, or exemption.** (a) Neither the fact that an application for registration under
 17 AS 45.55.030 - 45.55.060, [OR] a registration statement under AS 45.55.070 -
 18 45.55.120, **a notice filing under AS 45.55.040(h) or 45.55.075, or proxy material**
 19 **under AS 45.55.139** is filed nor the fact that a person or security is effectively
 20 registered constitutes a finding by the administrator that a document filed under this
 21 chapter is true, complete, and not misleading. Neither the fact of filing nor the fact
 22 that an exemption or exception is available for a security or a transaction means that
 23 the administrator has passed in any way upon the merits or qualifications of, or
 24 recommended or given approval to, a person, security, or transaction.

25 (b) A person may not make, or cause to be made, to a prospective purchaser,
 26 customer, [OR] client, **or shareholder of a corporation described in AS 45.55.139**
 27 **a** [ANY] representation inconsistent with (a) of this section.

28 * **Sec. 46.** AS 45.55.900(a) is amended to read:

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

30 (1) a security, including a revenue obligation, issued or guaranteed by
 31 the United States **or a territory of the United States, the District of Columbia,** a

1 state, a political subdivision of a state **or territory**, or an agency or corporate or other
 2 instrumentality of one or more of the **entities described in this paragraph**
 3 **[FOREGOING]**; or a certificate of deposit for **one or more of the entities described**
 4 **in this paragraph** **[ANY OF THE FOREGOING]**;

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

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

17 (4) a commercial paper, **note, draft, bill of exchange, or banker's**
 18 **acceptance** that arises out of a current transaction or the proceeds of which have been
 19 or are to be used for current transactions [,] and that evidences an obligation to pay
 20 cash within nine months of the date of issuance, exclusive of days of grace, or **a**
 21 **[ANY]** renewal of the paper that is likewise limited, or a guarantee of the paper or of
 22 the renewal, if the commercial paper, **note, draft, bill of exchange, or banker's**
 23 **acceptance** is of the type eligible for discount by a federal reserve bank;

24 (5) a security issued in connection with an employee's stock purchase,
 25 savings, pension, profit-sharing, or similar employee's benefit plan, **or a security**
 26 **issued by or an interest or participation in a church plan, company, or account**
 27 **that is excluded from the definition of an investment company under 15 U.S.C.**
 28 **80a-3(c)(14) (Investment Company Act of 1940);**

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

1 state;

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

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

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

15 (A) subject to the jurisdiction of the Interstate Commerce
 16 Commission;

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

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

22 (D) regulated in respect of the issuance or guarantee of the
 23 security by a governmental authority of the United States, a state, Canada, or
 24 a Canadian province;

25 (10) a security listed or approved for listing upon notice of issuance on
 26 the New York Stock Exchange, the American Stock Exchange, the Chicago
 27 [MIDWEST] Stock Exchange, the Pacific Coast Stock Exchange, the Philadelphia
 28 Stock Exchange, the Chicago Board of Options Exchange, or another [ANY OTHER]
 29 securities exchange designated by order of the administrator, or any security designated
 30 or approved for designation upon notice of issuance as a national market system
 31 security on the National Association of Securities Dealers Automated Quotation

1 National Market System or on any other quotation system designated by order of the
2 administrator, or any other security of the same issuer that is of senior or substantially
3 equal rank; a security called for by subscription rights or warrants so listed or
4 approved; or a warrant or right to purchase or subscribe to **an entity described in this**
5 **paragraph** [ANY OF THE FOREGOING];

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

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

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

21 (A) **the acquisition occurs solely as part of a reorganization**
22 **in which security holders exchange their shares of a bank or savings**
23 **association for shares of a newly formed holding company with no**
24 **significant assets other than securities of the bank or savings association**
25 **and the existing subsidiaries of the bank or savings association;**

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

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

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

7 * **Sec. 47.** AS 45.55.900(b) is amended to read:

8 (b) The following transactions are exempted from AS 45.55.070 **and**
 9 **45.55.075:**

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

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

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

19 (4) an offer or sale to a bank, savings institution, trust company,
 20 insurance company, investment company as defined in **15 U.S.C. 80a-1 - 80a-64** (
 21 [THE] Investment Company Act of 1940), pension or profit-sharing trust, or other
 22 financial institution or institutional buyer, or to a broker-dealer, whether the purchaser
 23 is acting for itself or in some fiduciary capacity;

24 (5) sales by an issuer

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

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

1 (ii) the total dollar amount invested during a period of
2 12 consecutive months does not exceed \$150,000 [\$100,000];

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

7 (iv) offers are made without public solicitation or
8 advertisement; and

9 (v) the issuer files with the administrator a notice
10 specifying the issuer, the security to be sold, and the terms of the offer
11 at least two days before any sales are made;

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

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

17 (ii) before **a** [ANY] sale, each prospective buyer is
18 furnished access to the information that would be provided to a
19 prospective buyer in a registration under AS 45.55.100, which
20 information shall be furnished to the administrator upon request;

21 (iii) the total dollar amount invested during a period of
22 12 consecutive months does not exceed \$750,000 [\$500,000];

23 (iv) commissions or other remuneration meet the
24 requirements of this chapter and are made only to persons registered
25 under AS 45.55.040;

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

30 (vi) the issuer obtains a signed agreement from the
31 buyer acknowledging that the buyer is buying for investment purposes

1 and that the securities will not be resold without registration under this
2 chapter;

3 (vii) offers are made without public solicitation or
4 advertisement; and

5 (viii) the issuer files with the administrator a notice
6 specifying the issuer, the security to be sold, and the terms of the offer
7 at least two days before any sales are made;

8 **(C) to 10 or fewer persons who are to receive the initial**
9 **issue of shares of a nonpublicly traded corporation, limited liability**
10 **company, limited partnership, or limited liability partnership if the**
11 **requirements of (B)(ii), (iv), (v), and (vii) of this paragraph are met;**

12 **(D) to the buyer of an enterprise or a business and the**
13 **assets and liabilities of the enterprise or business if**

14 **(i) the transfer of stock to the buyer is solely**
15 **incidental to the sale of the enterprise or business and its assets and**
16 **liabilities;**

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

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

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

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

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

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

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

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

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

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

12 (9) an isolated nonissuer transaction, regardless of whether effected
 13 through a broker-dealer, if the seller is [OR] not a promoter or controlling person
 14 as the administrator may define by regulation or order or if the administrator at
 15 the request of the seller waives the requirement that the seller not be a promoter
 16 or controlling person;

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

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

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

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

6 (11) [(12)] a transaction executed by a bona fide pledgee without
 7 intending to evade [ANY PURPOSE OF EVADING] this chapter;

8 (12) [(13)] a transaction incident to a right of conversion or a statutory
 9 or judicially approved reclassification, recapitalization, reorganization, quasi-
 10 reorganization, stock split, reverse stock split, merger, consolidation, or sale of assets
 11 [,] if

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

15 (B) the issuer files a notice in the form specified by the
 16 administrator not less than 30 days before making the offer;

17 (13) [(14)] a stock dividend, regardless of whether the corporation
 18 distributing the dividend is the issuer of the stock [OR NOT], if nothing of value is
 19 given by stockholders for the dividend other than the surrender of a right to a cash or
 20 property dividend when each stockholder may elect to take the dividend in cash or
 21 property or in stock;

22 (14) [(15)] an act incident to a class vote by stockholders, under the
 23 certificate of incorporation or the applicable corporation statute, on a merger,
 24 consolidation, reclassification of securities, or sale of securities of another corporation;

25 (15) [(16)] the offer or sale by a registered broker-dealer, acting either
 26 as principal or agent, of securities previously sold and distributed to the public if the
 27 securities

28 (A) [THE SECURITIES] are sold at prices reasonably related
 29 to the current market price at the time of sale, and, if the broker-dealer is
 30 acting as agent, the commission collected by the broker-dealer on account of
 31 the sale is not in excess of usual and customary commissions collected with

1 respect to securities and transactions having comparable characteristics;

2 (B) [THE SECURITIES] do not constitute the whole or a part
3 of an unsold allotment to or subscription or participation by the broker-dealer
4 as an underwriter of the securities or as a participant in the distribution of the
5 securities by the issuer, by an underwriter, or by a person or group of persons
6 in substantial control of the issuer or of the outstanding securities of the class
7 being distributed; and

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

10 (16) [(17)] offers or sales of certificates of interest or participation in
11 oil, gas, or mining rights, titles, or leases, or in payments out of production under such
12 rights, titles, or leases, if the purchasers

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

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

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

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

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

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

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

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

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

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

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

25 (E) the issuer of the security has a class of equity securities
26 listed on a national securities exchange registered under 15 U.S.C. 78a -
27 78lll (Securities Exchange Act of 1934) or designated for trading on the
28 National Association of Securities Dealers Automated Quotation System,
29 unless the issuer of the security

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

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

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

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

11 (A) sales of securities are made only to persons who are or
12 the issuer reasonably believes are accredited investors as defined in
13 17 C.F.R. 230.501(a);

14 (B) the issuer reasonably believes that all purchasers are
15 purchasing for investment and not with the view to or for sale in
16 connection with a distribution of the security; a resale of a security sold in
17 reliance on this exemption within 12 months of sale is presumed to be with
18 a view to distribution and not for investment, except a resale under a
19 registration statement under AS 45.55.070 - 45.55.120 or to an accredited
20 investor under an exemption available under this chapter;

21 (C) the exemption in this paragraph is not available to an
22 issuer if the issuer, a predecessor of the issuer, an affiliated issuer, a
23 director, an officer, or a general partner of the issuer, a beneficial owner
24 of 10 percent or more of a class of the issuer's equity securities, a
25 promoter of the issuer presently connected with the issuer in any capacity,
26 an underwriter of the securities to be offered, or a partner, a director, or
27 an officer of the underwriter

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

1 (ii) within the last five years has been convicted of a
2 criminal offense in connection with the offer, purchase, or sale of
3 a security, of a criminal offense involving fraud or deceit, or of a
4 felony;

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

9 (iv) is currently subject to an order, judgment, or
10 decree of a court of competent jurisdiction entered within the last
11 five years, temporarily, preliminarily, or permanently restraining
12 or enjoining the party from engaging in or continuing to engage in
13 conduct or a practice involving fraud or deceit in connection with
14 the purchase or sale of a security;

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

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

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

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

29 (E) a general announcement of the proposed offering may
30 be made by any means and may include only the following information
31 unless additional information is specifically permitted by the

1 **administrator:**

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

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

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

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

10 **(v) the name, address, and telephone number of the**
11 **person to contact for additional information;**

12 **(vi) a statement that sales will be made only to**
13 **accredited investors;**

14 **(vii) a statement that money or other consideration**
15 **is not being solicited or will not be accepted by way of this general**
16 **announcement; and**

17 **(viii) a statement that the securities have not been**
18 **registered with or approved by a state securities agency or the**
19 **United States Securities and Exchange Commission and are being**
20 **offered and sold under an exemption from registration;**

21 **(F) the issuer in connection with any offer may provide**
22 **information in addition to the general announcement under (E) of this**
23 **paragraph if the information is delivered**

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

26 **(ii) to a prospective purchaser that the issuer**
27 **reasonably believes is an accredited investor;**

28 **(G) a telephone solicitation is not permitted unless, before**
29 **placing the call, the issuer reasonably believes that the prospective**
30 **purchaser being solicited is an accredited investor;**

31 **(H) dissemination of the general announcement of the**

1 proposed offering to persons who are not accredited investors will not
 2 disqualify the issuer from claiming this exemption;

3 (I) the issuer must file a notice of the transaction with the
 4 administrator, a copy of the general announcement, and the fee for
 5 exemption filings established by regulation within 15 days after the first
 6 sale in this state;

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

10 (20) a transaction involving only family members who are related,
 11 including related by adoption, within the fourth degree of affinity or
 12 consanguinity.

13 * **Sec. 48.** AS 45.55.900 is amended by adding a new subsection to read:

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

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

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

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

25 * **Sec. 49.** AS 45.55.910 is amended by adding a new subsection to read:

26 (e) All investigative files are confidential, except that they must be disclosed
 27 by the administrator as required for discovery in an administrative or a judicial
 28 proceeding.

29 * **Sec. 50.** AS 45.55.915 is amended to read:

30 **Sec. 45.55.915. Reimbursement of expenses incident to examination or**
 31 investigation. (a) The administrator may require an [AN] issuer, broker-dealer,

1 agent, **investment adviser representative, federal covered adviser, or state**
 2 investment adviser **to** [SHALL] reimburse the administrator for actual travel expenses
 3 and per diem incurred in connection with an examination **or investigation** [INCIDENT
 4 TO A REGISTRATION] under this chapter.

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

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

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

21 * **Sec. 51.** AS 45.55.925(a) is amended to read:

22 (a) In addition to the civil penalties assessed under AS 45.55.920, a person
 23 who wilfully violates a provision of this chapter except **AS 45.55.030(e), 45.55.040(h),**
 24 **45.55.075, or 45.55.160** [AS 45.55.160], or who wilfully violates a regulation or order
 25 under this chapter, or who wilfully violates AS 45.55.160 knowing the statement made
 26 to be false or misleading in a material respect or the omission to be misleading by any
 27 material respect, upon conviction, is punishable by a fine of not more than \$5,000, or
 28 by imprisonment for not less than one year nor more than five years, or both. Upon
 29 conviction of an individual for a felony under this chapter, imprisonment for not less
 30 than one year is mandatory. However, an individual may not be imprisoned for the
 31 violation of a regulation or order if the individual proves that the individual had no

1 knowledge of the regulation or order. An indictment or information may not be
2 returned under this chapter more than five years after the alleged violation.

3 * **Sec. 52.** AS 45.55.930(a) is amended to read:

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

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

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

19 * **Sec. 53.** AS 44.55.930(b) is amended to read:

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

24 * **Sec. 54.** AS 45.55.930(f) is amended to read:

25 (f) A person may not sue under this section more than three years after the
26 contract of sale, **except as otherwise provided in this subsection. For a violation**
27 **of (a)(2) of this section or AS 45.55.010, an action under this section may be**
28 **started within three years after the sale or two years after the person bringing the**
29 **action discovered or should have discovered the facts on which the action is based,**
30 **whichever is later. Failure to start an action on a timely basis is an affirmative**
31 **defense.** A person may not sue under this section **if the buyer received**

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

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

10 * **Sec. 55.** AS 45.55.930(g) is amended to read:

11 (g) A person who makes or engages in the performance of a contract in
 12 violation of a provision of this chapter or a regulation or an order under this chapter,
 13 or who acquires a purported right under the contract with knowledge of the facts by
 14 reason of which its making or performance is in violation of this chapter, may not
 15 base a suit on the contract.

16 * **Sec. 56.** AS 45.55.930 is amended by adding new subsections to read:

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

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

24 * **Sec. 57.** AS 45.55.935(a) is amended to read:

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

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

1 **the order if the order deals with something other than securities**; and

2 (2) orders issued under AS 45.55.060; before the administrator enters
3 an order under AS 45.55.060, the administrator shall send to the person involved a
4 notice of opportunity for hearing; if the person involved is an agent **or investment**
5 **adviser representative**, then the administrator shall, in addition, notify the employing
6 broker-dealer, **state investment adviser, federal covered adviser** [ADVISOR], or
7 issuer.

8 * **Sec. 58.** AS 45.55.950(a) is amended to read:

9 (a) The administrator may make, adopt, amend, and rescind the regulations,
10 forms, **policies**, and orders that are necessary to carry out this chapter, including
11 regulations, **policies**, and forms governing registration statements, applications, **notice**
12 **filings**, and reports, and defining terms **regardless of** [,] whether **the terms are** [OR
13 NOT] used in this chapter **if** [INSOFAR AS] the definitions **of the terms** are not
14 inconsistent with this chapter. For the purpose of regulations and forms, the
15 administrator may classify securities, persons, and matters within the jurisdiction of the
16 administrator [,] and prescribe different requirements for different classes.

17 * **Sec. 59.** AS 45.55.950(b) is amended to read:

18 (b) A regulation, form, **policy**, or order may not be made, adopted, amended,
19 **waived**, or rescinded unless the administrator finds that the action is necessary or
20 appropriate in the public interest or for the protection of investors and consistent with
21 the purposes fairly intended by the policy and provisions of this chapter. In adopting,
22 **amending, rescinding, or waiving** regulations, **policies**, and forms, the administrator
23 may cooperate with the securities administrators of the other states, **self-regulatory**
24 **organizations**, and the **United States** Securities and Exchange Commission with a
25 view to **carrying out** [EFFECTUATING] the policy of this section to achieve
26 maximum uniformity in the form, [AND] content, **examination, and processing** of
27 registration statements, applications, **notice filings**, and reports wherever practicable,
28 **including participating in joint coordinated securities examinations with other**
29 **states**.

30 * **Sec. 60.** AS 45.55.950(c) is amended to read:

31 (c) All financial statements **required to be filed** shall be prepared in

1 accordance with generally accepted accounting practices. The administrator may by
2 regulation or order prescribe

3 (1) the form and content of financial statements required under this
4 chapter;

5 (2) the circumstances under which consolidated financial statements
6 shall be filed; and

7 (3) whether any required financial statements shall be certified by
8 independent or certified public accountants.

9 * **Sec. 61.** AS 45.55.950(d) is amended to read:

10 (d) A provision of this chapter imposing liability does not apply to an act done
11 or omitted in good faith in conformity with a regulation, form, **policy**, or order of the
12 administrator, notwithstanding that the regulation, form, **policy**, or order may be later
13 amended or rescinded or be determined by judicial or other authority to be invalid.

14 * **Sec. 62.** AS 45.55.970(b) is amended to read:

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

20 * **Sec. 63.** AS 45.55.970(c) is amended to read:

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

24 * **Sec. 64.** AS 45.55.970(e) is amended to read:

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

27 * **Sec. 65.** AS 45.55.980(a) is amended to read:

28 (a) **Unless the persons are exempt elsewhere in this chapter**, AS 45.55.010,
29 **45.55.025, 45.55.027, 45.55.028,** 45.55.030(a), **45.55.035,** 45.55.070, **45.55.075,**
30 45.55.170, and 45.55.930 apply to persons who sell or offer to sell when **an offer to**

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

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

2 * **Sec. 66.** AS 45.55.980(b) is amended to read:

3 (b) **Unless the persons are exempt elsewhere in this chapter,** AS 45.55.010,
4 **45.55.025, 45.55.027, 45.55.028,** 45.55.030(a), **45.55.035,** and 45.55.170 apply to
5 persons who buy or offer to buy when **an offer to**

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

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

8 * **Sec. 67.** AS 45.55.980(c) is amended to read:

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

11 (1) originates from this state;

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

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

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

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

25 * **Sec. 68.** AS 45.55.980(f) is amended to read:

26 (f) AS 45.55.020, **45.55.023,** 45.55.030(c), **45.55.030(e), 45.55.040(h),** and
27 45.55.170, so far as **state** investment advisers, **federal covered advisers, and**
28 **investment adviser representatives** are concerned, apply when any act instrumental
29 in effecting prohibited conduct is done in this state, **regardless of** whether [OR NOT]
30 either party is then present in this state.

31 * **Sec. 69.** AS 45.55.980(g) is amended to read:

1 (g) An [EVERY] applicant for registration under this chapter, an [AND
 2 EVERY] issuer that proposes to offer a security in this state through a person acting
 3 on an agency basis in the common law sense, and a person making a notice filing
 4 under this chapter shall file with the administrator, in the form that the administrator
 5 prescribes by regulation, an irrevocable consent appointing the administrator or a
 6 successor in office to be the applicant's or issuer's attorney to receive service of lawful
 7 process in a civil suit, an action, or a proceeding against the applicant or issuer or a
 8 successor executor or administrator that [WHICH] arises under this chapter or a
 9 regulation or order under this chapter after the consent has been filed [,] with the same
 10 force and validity as if served personally on the person filing the consent. A person
 11 who has filed a [FILES THE] consent in connection with a previous registration or
 12 notice filing need not file another. Service may be made by leaving a copy of the
 13 process in the office of the administrator, but it is not effective unless

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

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

21 * **Sec. 70.** AS 45.55.990(2) is amended to read:

22 (2) "agent" means an individual other than a broker-dealer who
 23 represents a broker-dealer or an issuer in effecting or attempting to effect purchase or
 24 sale of securities; a partner, an officer, or a director of a broker-dealer or issuer, or a
 25 person occupying a similar status or performing similar functions, is an agent only if
 26 the person otherwise comes within this definition; "agent" does not include an
 27 individual who represents

28 (A) an issuer in effecting transactions

29 (i) [(A)] in a security exempted by AS 45.55.900(a)
 30 [AS 45.55.900(a)(1) - (5)];

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

1 (iii) in a covered security as described in 15 U.S.C.
 2 78r(b)(3) and (4)(D) (Securities Act of 1933); or
 3 (iv) [(C)] with existing employees, partners, or directors
 4 of the issuer if a [NO] commission or other remuneration is **not** paid
 5 or given directly or indirectly for soliciting any person in this state; **or**
 6 (B) a broker-dealer in effecting transactions in this state
 7 described in 15 U.S.C. 78o(h)(2) and (3) (Securities Exchange Act of 1934);

8 * Sec. 71. AS 45.55.990(3) is amended to read:

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

12 (A) an agent;

13 (B) an issuer;

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

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

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

19 (ii) other broker-dealers; or

20 (iii) banks, savings institutions, trust companies,
 21 insurance companies, investment companies as defined in 15 U.S.C.
 22 80a-1 - 80a-64 ([THE] Investment Company Act of 1940), pension or
 23 profit-sharing trusts, or other financial institutions or institutional
 24 buyers, whether acting for themselves or as trustees; or

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

1 NOT] the offeror or any offeree is then present in this state;

2 * **Sec. 72.** AS 45.55.990(9) is amended to read:

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

8 * **Sec. 73.** AS 45.55.990(11) is repealed and reenacted to read:

9 (11) "Securities Act of 1933" means 15 U.S.C. 77a - 77bbbb;

10 * **Sec. 74.** AS 45.55.990(12) is amended to read:

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

1 or annuity contract under which an insurance company promises to pay a fixed or
 2 variable sum of money either in a lump sum or periodically for life or for some other
 3 specified period;

4 * **Sec. 75.** AS 45.55.990 is amended by adding new paragraphs to read:

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

7 (15) "advisory fee" means the fee for providing services under an
 8 investment advisory contract;

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

12 (17) "Bank Holding Company Act of 1956" means 12 U.S.C. 1841 -
 13 1850;

14 (18) "clients who are natural persons" means natural persons who are
 15 clients of a state investment adviser or federal covered adviser, except that natural
 16 persons with at least \$500,000 under management with the state investment adviser or
 17 federal covered adviser or with a net worth of at least \$1,000,000 at the time they
 18 initially contract for services described in (23)(A)(i) of this section are not considered
 19 natural persons for the purpose of determining under (23)(A)(ii) if a supervised person
 20 provides the services described under (23)(A)(i) of this section to natural persons;

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

26 (20) "federal covered security" means a security that is a covered
 27 security under 15 U.S.C. 77r(b), as amended (Securities Act of 1933), or regulations
 28 adopted under that Act;

29 (21) "Federal Deposit Insurance Act" means 12 U.S.C. 1811 - 1835a;

30 (22) "Home Owners' Loan Act" means 12 U.S.C. 1461 - 1470;

31 (23) "investment adviser representative"

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(A) means a natural person who

(i) makes a recommendation or otherwise renders advice 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 service described in (i) of this subparagraph, or who has a place of business located in this state and is a supervised person of a federal covered adviser 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);

(24) "Investment Advisers Act of 1940" means 15 U.S.C. 80b-1 - 80b-21;

(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;

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

3 (29) "National Securities Markets Improvement Act of 1996" means
4 P.L. 104 - 290, 101 Stat. 3416 - 3440;

5 (30) "notice filing" means a filing made under AS 45.55.040(h) or
6 45.55.075 unless the context indicates otherwise;

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

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

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

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

24 (33) "Securities Exchange Act of 1934" means 15 U.S.C. 78a - 78lll;

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"

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(A) means

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

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

(B) does not include

(i) an investment adviser representative;

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

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

(iv) a broker-dealer or its agent whose performance of the services described in (A)(i) of this paragraph is incidental to the conduct of business as a broker-dealer or an agent and who receives no special compensation for the services;

(v) a publisher of a bona fide newspaper, news column, newsletter, news magazine, or business or financial publication or service, whether communicated in hard copy form, by electronic means, or otherwise, that does not consist of the rendering of advice on the 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. 76.** 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. 77.** AS 45.55.020(d) and 45.55.990(6) are repealed.

8 * **Sec. 78.** TRANSITION: REGULATIONS. Notwithstanding sec. 82 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 November 1, 1998.

12 * **Sec. 79.** Section 3 of this Act takes effect only if AS 25.27.244(s)(2) is repealed and
13 reenacted under sec. 148(c), ch. 87, SLA 1997.

14 * **Sec. 80.** Section 78 of this Act takes effect immediately under AS 01.10.070(c).

15 * **Sec. 81.** If sec. 3 of this Act takes effect, it takes effect on the effective date of the
16 repeal and reenactment of AS 25.27.244(s)(2) under sec. 148(c), ch. 87, SLA 1997.

17 * **Sec. 82.** Except as provided in secs. 80 and 81 of this Act, this Act takes effect
18 November 1, 1998.