

HOUSE BILL NO. 302

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Introduced: 5/4/05

Referred: Labor and Commerce, Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 **"An Act adopting the Uniform Securities Act; and providing for an effective date."**

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

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

4 **Chapter 56. Uniform Securities Act.**

5 **Article 1. General Provisions.**

6 **Sec. 45.56.105. Electronic records and signatures.** This chapter modifies,
7 limits, and supersedes 15 U.S.C. 7001 - 7031 (Electronic Signatures in Global and
8 National Commerce Act), but does not modify, limit, or supersede 15 U.S.C. 7001(c)
9 or authorize electronic delivery of any of the notices described in 15 U.S.C. 7003(b).
10 This chapter authorizes the filing of records and signatures, when specified by
11 provisions of this chapter or by a regulation adopted or order issued under this chapter,
12 in a manner consistent with 15 U.S.C. 7004(a).

13 **Article 2. Exemptions from Registration of Securities.**

14 **Sec. 45.56.201. Exempt securities.** The following securities are exempt from
15 the requirements of AS 45.56.301 - 45.56.306 and 45.56.504:

1 (1) a security, including a revenue obligation or a separate security, as
 2 defined in 17 C.F.R. 230.131 adopted under 15 U.S.C. 77a - 77aa (Securities Act of
 3 1933), issued, insured, or guaranteed by the United States; by a state; by a political
 4 subdivision of a state; by a public authority, agency, or instrumentality of one or more
 5 states; by a political subdivision of one or more states; or by a person controlled or
 6 supervised by and acting as an instrumentality of the United States under authority
 7 granted by the United States Congress; or a certificate of deposit for any of the
 8 foregoing;

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

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

15 (A) an international banking institution;

16 (B) a banking institution organized under the laws of the
 17 United States; a member bank of the Federal Reserve System; or a depository
 18 institution a substantial portion of the business of which consists or will consist
 19 of receiving deposits or share accounts that are insured to the maximum
 20 amount authorized by statute by the Federal Deposit Insurance Corporation,
 21 the National Credit Union Share Insurance Fund, or a successor authorized by
 22 federal law or exercising fiduciary powers that are similar to those permitted
 23 for national banks under the authority of the United States Comptroller of
 24 Currency under 12 U.S.C. 92a; or

25 (C) any other depository institution, unless, by a regulation or
 26 order, the administrator proceeds under AS 45.56.204;

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

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

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

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

6 (C) a public utility holding company registered under 15
7 U.S.C. 79 - 79z-6 (Public Utility Holding Company Act of 1935) or a
8 subsidiary of the registered holding company within the meaning of that Act;

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

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

1 scope of the exemption and the grounds for denial or suspension, and requiring an
2 issuer

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

8 (B) to file a request for exemption authorization for which a
9 regulation adopted under this chapter may specify the scope of the exemption,
10 the requirement of an offering statement, the filing of sales and advertising
11 literature, the filing of consent to service of process complying with
12 AS 45.56.611, and grounds for denial or suspension of the exemption; or

13 (C) to register under AS 45.56.304;

14 (8) a member's or owner's interest in, or a retention certificate or like
15 security given in lieu of a cash patronage dividend issued by, a cooperative organized
16 and operated as a nonprofit membership cooperative under the cooperative laws of a
17 state, but not a member's or owner's interest, retention certificate, or like security sold
18 to persons other than bona fide members of the cooperative;

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

23 (10) shares of membership stock in the Alaska Commercial Fishing
24 and Agriculture Bank, and other securities issued by that bank to members or in
25 connection with loans to members.

26 **Sec. 45.56.202. Exempt transactions.** The following transactions are exempt
27 from the requirements of AS 45.56.301 - 45.56.306 and 45.56.504:

28 (1) an isolated nonissuer transaction, whether effected by or through a
29 broker-dealer or not;

30 (2) a nonissuer transaction by or through a broker-dealer registered or
31 exempt from registration under this chapter and a resale transaction by a sponsor of a

1 unit investment trust registered under 15 U.S.C. 80a-1 - 80a-64 (Investment Company
2 Act of 1940) in a security of a class that has been outstanding in the hands of the
3 public for at least 90 days if, at the date of the transaction,

4 (A) the issuer of the security is engaged in business, the issuer
5 is not in the organizational stage or in bankruptcy or receivership, and the
6 issuer is not a blank check, blind pool, or shell company that does not have a
7 specific business plan or purpose or has indicated that its primary business plan
8 is to engage in a merger or combination of the business with or an acquisition
9 of an unidentified person;

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

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

15 (D) a nationally recognized securities manual or its electronic
16 equivalent designated by a regulation adopted or order issued under this
17 chapter or a record filed with the Securities and Exchange Commission that is
18 publicly available contains

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

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

23 (iii) an audited balance sheet of the issuer as of a date
24 within 18 months before the date of the transaction or, in the case of a
25 reorganization or merger when the parties to the reorganization or
26 merger each had an audited balance sheet, a pro forma balance sheet for
27 the combined organization; and

28 (iv) an audited income statement for each of the issuer's
29 two immediately previous fiscal years or for the period of existence of
30 the issuer, whichever is shorter, or, in the case of a reorganization or
31 merger when each party to the reorganization or merger had audited

1 income statements, a pro forma income statement; and

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

3 (i) the issuer of the security has a class of equity
4 securities listed on a national securities exchange registered under 15
5 U.S.C. 78f or designated for trading on the National Association of
6 Securities Dealers Automated Quotation System;

7 (ii) the issuer of the security is a unit investment trust
8 registered under 15 U.S.C. 80a-1 - 80a-64 (Investment Company Act of
9 1940);

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

13 (iv) the issuer of the security has total assets of at least
14 \$2,000,000 based on an audited balance sheet as of a date within 18
15 months before the date of the transaction or, in the case of a
16 reorganization or merger when the parties to the reorganization or
17 merger each had an audited balance sheet, a pro forma balance sheet for
18 the combined organization;

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

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

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

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

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

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

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

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

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

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

22 (9) a transaction in a security, whether or not the security or
23 transaction is otherwise exempt, in exchange for one or more bona fide outstanding
24 securities, claims, or property interests, or partly in exchange for one or more bona
25 fide outstanding securities, claims, or property interests and partly for cash if the terms
26 and conditions of the issuance and exchange or the delivery and exchange and the
27 fairness of the terms and conditions have been approved by the administrator after a
28 hearing;

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

31 (11) a transaction in a note, bond, debenture, or other evidence of

1 indebtedness secured by a mortgage or other security agreement if

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

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

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

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

12 (13) a sale or offer to sell to

13 (A) an institutional investor;

14 (B) a federal covered investment adviser; or

15 (C) any other person exempted by a regulation adopted or order
16 issued under this chapter;

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

19 (A) not more than 25 purchasers are present in this state during
20 any 12 consecutive months, other than a person designated in (13) of this
21 section;

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

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

28 (D) the issuer reasonably believes that all the purchasers in this
29 state, other than those designated in (13) of this section, are purchasing for
30 investment;

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

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

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

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

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

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

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

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

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

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

31 (19) a rescission offer, sale, or purchase under AS 45.56.510;

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

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

11 (A) directors, general partners, trustees if the issuer is a
12 business trust, officers, consultants, and advisors;

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

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

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

21 (22) a transaction involving

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

29 (B) an act incident to a judicially approved reorganization in
30 which a security is issued in exchange for one or more outstanding securities,
31 claims, or property interests, or partly in exchange for one or more outstanding

1 securities, claims, or property interests and partly for cash; or

2 (C) the solicitation of tenders of securities by an offeror in a
3 tender offer in compliance with 17 C.F.R. 230.162, adopted under 15 U.S.C.
4 77a - 77aa (Securities Act of 1933); or

5 (23) a nonissuer transaction in an outstanding security by or through a
6 broker-dealer registered or exempt from registration under this chapter if the issuer is a
7 reporting issuer in a foreign jurisdiction designated by this paragraph or by a
8 regulation adopted or order issued under this chapter; the issuer has been subject to
9 continuous reporting requirements in the foreign jurisdiction for not less than 180 days
10 before the transaction; and the security is listed on the foreign jurisdiction's securities
11 exchange that has been designated by this paragraph or by a regulation adopted or
12 order issued under this chapter, or is a security of the same issuer that is of senior or
13 substantially equal rank to the listed security or is a warrant or right to purchase or
14 subscribe to any of the foregoing; for purposes of this paragraph, Canada, together
15 with its provinces and territories, is a designated foreign jurisdiction, and TSX, Inc.
16 (formerly known as the Toronto Stock Exchange, Inc.) is a designated securities
17 exchange; after an administrative hearing in compliance with AS 44.62.330 -
18 44.62.630 (Administrative Procedure Act), the administrator, by a regulation adopted
19 or order issued under this chapter, may revoke the designation of a securities exchange
20 under this paragraph if the administrator finds that revocation is necessary or
21 appropriate in the public interest and for the protection of investors.

22 **Sec. 45.56.203. Additional exemptions and waivers.** A regulation adopted
23 or order issued under this chapter may exempt a security, transaction, or offer; a
24 regulation adopted under this chapter may exempt a class of securities, transactions, or
25 offers from any or all of the requirements of AS 45.56.301 - 45.56.306 and 45.56.504;
26 and an order issued under this chapter may waive, in whole or in part, any or all of the
27 conditions for an exemption or offer under AS 45.56.201 and 45.56.202.

28 **Sec. 45.56.204. Denial, suspension, revocation, condition, or limitation of**
29 **exemptions.** (a) Except with respect to a federal covered security or a transaction
30 involving a federal covered security, an order under this chapter may deny, suspend
31 application of, condition, limit, or revoke an exemption created under

1 AS 45.56.201(3)(C), (7), or (8) or 45.56.202 or an exemption or waiver created under
 2 AS 45.56.203 with respect to a specific security, transaction, or offer. An order under
 3 this subsection may be issued only under the procedures in AS 45.56.306(d) or
 4 45.56.604 and only prospectively.

5 (b) A person does not violate AS 45.56.301, 45.56.303 - 45.56.306, 45.56.504,
 6 or 45.56.510 by an offer to sell, offer to purchase, sale, or purchase effected after the
 7 entry of an order issued under this section if the person did not know, and in the
 8 exercise of reasonable care could not have known, of the order.

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

10 **Sec. 45.56.301. Securities registration requirement.** A person may not offer
 11 or sell a security in the state unless

12 (1) the security is a federal covered security;

13 (2) the security, transaction, or offer is exempted from registration
 14 under AS 45.56.201 - 45.56.203; or

15 (3) the security is registered under this chapter.

16 **Sec. 45.56.302. Notice filing.** (a) With respect to a federal covered security,
 17 as defined in 15 U.S.C. 77r(b)(2), that is not otherwise exempt under AS 45.56.201 -
 18 45.56.203, a regulation adopted or order issued under this chapter may require the
 19 filing of any or all of the following records:

20 (1) before the initial offer of a federal covered security in the state, all
 21 records that are part of a federal registration statement filed with the Securities and
 22 Exchange Commission under 15 U.S.C. 77a - 77aa (Securities Act of 1933) and a
 23 consent to service of process complying with AS 45.56.611 signed by the issuer and
 24 the payment of a fee established in a regulation adopted under this chapter;

25 (2) after the initial offer of the federal covered security in the state, all
 26 records that are part of an amendment to a federal registration statement filed with the
 27 Securities and Exchange Commission under 15 U.S.C. 77a - 77aa (Securities Act of
 28 1933); and

29 (3) to the extent necessary or appropriate to compute fees, a report of
 30 the value of the federal covered securities sold or offered to persons present in the
 31 state if the sales data are not included in records filed with the Securities and

1 Exchange Commission and payment of a fee established in a regulation adopted under
2 this chapter.

3 (b) A notice filing under (a) of this section is effective for one year
4 commencing on the later of the notice filing or the effectiveness of the offering filed
5 with the Securities and Exchange Commission. On or before expiration, the issuer
6 may renew a notice filing by filing a copy of those records filed by the issuer with the
7 Securities and Exchange Commission that are required by a regulation adopted or
8 order issued under this chapter to be filed and by paying a renewal fee established in a
9 regulation adopted under this chapter. A previously filed consent to service of process
10 complying with AS 45.56.611 may be incorporated by reference in a renewal. A
11 renewed notice filing becomes effective upon the expiration of the filing being
12 renewed.

13 (c) With respect to a security that is a federal covered security under 15 U.S.C.
14 77r(b)(4)(D), a regulation adopted under this chapter may require a notice filing by or
15 on behalf of an issuer to include a copy of Form D, including the Appendix, as
16 adopted by the Securities and Exchange Commission, and a consent to service of
17 process complying with AS 45.56.611 signed by the issuer not later than 15 days after
18 the first sale of the federal covered security in the state and the payment of a fee
19 established in a regulation adopted under this chapter; and the payment of a fee
20 established in a regulation adopted under this chapter for any late filing.

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

27 **Sec. 45.56.303. Securities registration by coordination.** (a) A security for
28 which a registration statement has been filed under 15 U.S.C. 77a - 77aa (Securities
29 Act of 1933) in connection with the same offering may be registered by coordination
30 under this section.

31 (b) A registration statement and accompanying records under this section must

1 contain or be accompanied by the following records in addition to the information
 2 specified in AS 45.56.305 and a consent to service of process complying with
 3 AS 45.56.611:

4 (1) a copy of the latest form of prospectus filed under 15 U.S.C. 77a -
 5 77aa (Securities Act of 1933);

6 (2) a copy of the articles of incorporation and bylaws or their
 7 substantial equivalents currently in effect; a copy of any agreement with or among
 8 underwriters; a copy of any indenture or other instrument governing the issuance of
 9 the security to be registered; and a specimen, copy, or description of the security that
 10 is required by a regulation adopted or order issued under this chapter;

11 (3) copies of any other information or any other records filed by the
 12 issuer under 15 U.S.C. 77a - 77aa (Securities Act of 1933) requested by the
 13 administrator; and

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

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

20 (1) a stop order under (d) of this section or AS 45.56.306 or issued by
 21 the Securities and Exchange Commission is not in effect, and a proceeding is not
 22 pending against the issuer under AS 45.56.306; and

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

25 (d) The registrant shall promptly notify the administrator in a record of the
 26 date when the federal registration statement becomes effective and the content of any
 27 price amendment and shall promptly file a record containing the price amendment. If
 28 the notice is not timely received, the administrator may issue a stop order, without
 29 prior notice or hearing, retroactively denying effectiveness to the registration
 30 statement or suspending its effectiveness until compliance with this section. The
 31 administrator shall promptly notify the registrant of an order by telegram, telephone,

1 or electronic means and promptly confirm this notice by a record. If the registrant
 2 subsequently complies with the notice requirements of this section, the stop order is
 3 void as of the date of its issuance.

4 (e) If the federal registration statement becomes effective before each of the
 5 conditions in this section is satisfied or is waived by the administrator, the registration
 6 statement is automatically effective under this chapter when all the conditions are
 7 satisfied or waived. If the registrant notifies the administrator of the date when the
 8 federal registration statement is expected to become effective, the administrator shall
 9 promptly notify the registrant by telegram, telephone, or electronic means and
 10 promptly confirm this notice by a record, indicating whether all the conditions are
 11 satisfied or waived and whether the administrator intends the institution of a
 12 proceeding under AS 45.56.306. The notice by the administrator does not preclude
 13 the institution of a proceeding under AS 45.56.306.

14 **Sec. 45.56.304. Securities registration by qualification.** (a) A security may
 15 be registered by qualification under this section.

16 (b) A registration statement under this section must contain the information or
 17 records specified in AS 45.56.305, a consent to service of process complying with
 18 AS 45.56.611, and, if required by a regulation adopted under this chapter, the
 19 following information or records:

20 (1) with respect to the issuer and any significant subsidiary, the name,
 21 address, and form of organization of the issuer and subsidiary; the state or foreign
 22 jurisdiction and date of organization of the issuer and subsidiary; the general character
 23 and location of the business of the issuer and subsidiary; a description of the physical
 24 properties and equipment of the issuer and subsidiary; and a statement of the general
 25 competitive conditions in the industry or business in which the issuer and subsidiary
 26 are or will be engaged;

27 (2) with respect to each director and officer of the issuer and other
 28 person having a similar status or performing similar functions, the person's name,
 29 address, and principal occupation for the previous five years; the amount of securities
 30 of the issuer held by the person as of the 30th day before the filing of the registration
 31 statement; the amount of the securities covered by the registration statement to which

1 the person has indicated an intention to subscribe; and a description of any material
2 interest of the person in any material transaction with the issuer or a significant
3 subsidiary effected within the previous three years or proposed to be effected;

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

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

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

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

23 (7) the capitalization and long-term debt, on both a current and pro
24 forma basis, of the issuer and any significant subsidiary, including a description of
25 each security outstanding or being registered or otherwise offered, and a statement of
26 the amount and kind of consideration, whether in the form of cash, physical assets,
27 services, patents, goodwill, or anything else of value, for which the issuer or any
28 subsidiary has issued its securities within the previous two years or is obligated to
29 issue its securities;

30 (8) the kind and amount of securities to be offered; the proposed
31 offering price or the method by which the offering price is to be computed; any

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

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

25 (10) a description of any stock options or other security options
26 outstanding or to be created in connection with the offering, and the amount of those
27 options held or to be held by each person required to be named in (2), (4), (5), (6), or
28 (8) of this subsection and by any person that holds or will hold 10 percent or more in
29 the aggregate of those options;

30 (11) the dates of, parties to, and general effect, concisely stated, of
31 each managerial or other material contract made or to be made other than in the

1 ordinary course of business to be performed in whole or in part at or after the filing of
2 the registration statement or that was made within the previous two years, and a copy
3 of each contract;

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

8 (13) a copy of any prospectus, pamphlet, circular, form letter,
9 advertisement, or other sales literature intended as of the effective date of the
10 registration statement to be used in connection with the offering and any solicitation of
11 interest used in compliance with AS 45.56.202(17)(B);

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

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

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

26 (17) a balance sheet of the issuer as of a date within four months
27 before the filing of the registration statement; a statement of income and a statement of
28 cash flows for each of the three fiscal years preceding the date of the balance sheet and
29 for any period between the close of the immediately previous fiscal year and the date
30 of the balance sheet, or for the period of the issuer's and any predecessor's existence if
31 less than three years; and, if any part of the proceeds of the offering is to be applied to

1 the purchase of a business, the financial statements that would be required if that
2 business were the registrant; and

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

5 (c) A registration statement under this section becomes effective 30 days, or
6 any shorter period provided by a regulation adopted or order issued under this chapter,
7 after the date the registration statement or the last amendment other than a price
8 amendment is filed if

9 (1) a stop order is not in effect and a proceeding is not pending under
10 AS 45.56.306;

11 (2) the administrator has not issued an order under AS 45.56.306
12 delaying effectiveness; or

13 (3) the applicant or registrant has not requested that effectiveness be
14 delayed.

15 (d) The administrator may delay effectiveness once for not more than 90 days
16 if the administrator determines the registration statement is not complete in all
17 material respects and promptly notifies the applicant or registrant of that
18 determination. The administrator may also delay effectiveness for a further period of
19 not more than 30 days if the administrator determines that the delay is necessary or
20 appropriate.

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

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

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

31 (3) payment under the sale; or

1 (4) delivery of the security under the sale.

2 **Sec. 45.56.305. Securities registration filings.** (a) A registration statement
3 may be filed by the issuer, a person on whose behalf the offering is to be made, or a
4 broker-dealer registered under this chapter.

5 (b) A person filing a registration statement shall pay a filing fee established by
6 a regulation adopted under this chapter. If a registration statement is withdrawn
7 before the effective date of the registration statement or a preeffective stop order is
8 issued under AS 45.56.306, the administrator shall retain an amount of the fee
9 established by a regulation adopted under this chapter.

10 (c) A registration statement filed under AS 45.56.303 or 45.56.304 must
11 specify

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

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

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

18 (d) A record filed under this chapter or former AS 45.55 within five years
19 preceding the filing of a registration statement may be incorporated by reference in the
20 registration statement to the extent that the record is currently accurate.

21 (e) In the case of a nonissuer distribution, information or a record may not be
22 required under (i) of this section or AS 45.56.304 unless it is known to the person
23 filing the registration statement or to the person on whose behalf the distribution is to
24 be made or unless it can be furnished by those persons without unreasonable effort or
25 expense.

26 (f) A regulation adopted or order issued under this chapter may require as a
27 condition of registration that a security issued within the previous five years or to be
28 issued to a promoter for a consideration substantially less than the public offering
29 price or to a person for a consideration other than cash be deposited in escrow and that
30 the proceeds from the sale of the registered security in the state be impounded until the
31 issuer receives a specified amount from the sale of the security, either in the state or

1 elsewhere. The conditions of any escrow or impoundment required under this
2 subsection may be established by a regulation adopted or order issued under this
3 chapter, but the administrator may not reject a depository institution solely because of
4 its location in another state.

5 (g) A regulation adopted or order issued under this chapter may require as a
6 condition of registration that a security registered under this chapter be sold only on a
7 specified form of subscription or sale contract and that a signed or conformed copy of
8 each contract be filed under this chapter or preserved for a period specified by the
9 regulation or order, not to exceed five years.

10 (h) Except while a stop order is in effect under AS 45.56.306, a registration
11 statement is effective for one year after the effective date of the registration statement
12 or for any longer period designated in an order under this chapter during which the
13 security is being offered or distributed in a nonexempted transaction by or for the
14 account of the issuer or other person on whose behalf the offering is being made or by
15 an underwriter or broker-dealer that is still offering part of an unsold allotment or
16 subscription taken as a participant in the distribution. For the purposes of a nonissuer
17 transaction, all outstanding securities of the same class identified in the registration
18 statement as a security registered under this chapter are considered to be registered
19 while the registration statement is effective. If any securities of the same class are
20 outstanding, a registration statement may not be withdrawn until one year after the
21 effective date of the registration statement. A registration statement may be
22 withdrawn only with the approval of the administrator.

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

28 (j) A registration statement may be amended after the effective date of the
29 registration statement. The posteffective amendment becomes effective when the
30 administrator so orders. If a posteffective amendment is made to increase the number
31 of securities specified to be offered or sold, the person filing the amendment shall pay

1 a registration fee established by a regulation adopted under this chapter. A
 2 posteffective amendment relates back to the date of the offering of the additional
 3 securities being registered if, within one year after the date of the sale, the amendment
 4 is filed and the additional registration fee is paid.

5 **Sec. 45.56.306. Denial, suspension, and revocation of securities**
 6 **registration.** (a) The administrator may issue a stop order denying effectiveness to,
 7 or suspending or revoking the effectiveness of, a registration statement if the
 8 administrator finds that the order is in the public interest and that

9 (1) the registration statement as of the effective date of the registration
 10 statement or before the effective date in the case of an order denying effectiveness, an
 11 amendment under AS 45.56.305(j) as of the effective date of the amendment, or a
 12 report under AS 45.56.305(i) is incomplete in a material respect or contains a
 13 statement that, in the light of the circumstances under which it was made, was false or
 14 misleading with respect to a material fact;

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

18 (A) the person filing the registration statement;

19 (B) the issuer, a partner, officer, or director of the issuer or a
 20 person having a similar status or performing a similar function;

21 (C) a promoter of the issuer;

22 (D) a person directly or indirectly controlling or controlled by
 23 the issuer, but only if the person filing the registration statement is directly or
 24 indirectly controlled by or acting for the issuer; or

25 (E) an underwriter;

26 (3) the security registered or sought to be registered is the subject of a
 27 permanent or temporary injunction of a court of competent jurisdiction or an
 28 administrative stop order or similar order issued under any federal, foreign, or state
 29 law other than this chapter applicable to the offering; the administrator may not
 30 institute a proceeding against an effective registration statement under this paragraph
 31 more than one year after the date of the order or injunction on which it is based, and

1 the administrator may not issue an order under this paragraph on the basis of an order
 2 or injunction issued under the securities act of another state unless the order or
 3 injunction was based on conduct that would constitute, as of the date of the order, a
 4 ground for a stop order under this section;

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

7 (5) with respect to a security sought to be registered under
 8 AS 45.56.303, there has been a failure to comply with the undertaking required by
 9 AS 45.56.303(b)(4);

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

13 (7) the offering

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

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

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

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

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

29 (d) The administrator may summarily revoke, deny, postpone, or suspend the
 30 effectiveness of a registration statement pending final determination of an
 31 administrative proceeding. Upon the issuance of the order, the administrator shall

1 promptly notify each person specified in (e) of this section that the order has been
 2 issued, the reasons for the revocation, denial, postponement, or suspension, and that,
 3 within 15 days after the receipt of a request in a record from the person, the matter will
 4 be scheduled for a hearing. If a hearing is not requested and none is ordered by the
 5 administrator, within 30 days after the date of service of the order, the order becomes
 6 final. If a hearing is requested or ordered, the administrator, after notice of and
 7 opportunity for hearing for each person subject to the order, may modify or vacate the
 8 order or extend the order until final determination.

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

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

12 (2) an opportunity for hearing; and

13 (3) findings of fact and conclusions of law in a record under
 14 AS 44.62.330 - 44.62.630 (Administrative Procedure Act).

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

19 **Sec. 45.56.307. Waiver and modification.** The administrator may waive or
 20 modify, in whole or in part, any or all of the requirements of AS 45.56.302, 45.56.303,
 21 and 45.56.304(b) or the requirement of any information or record in a registration
 22 statement or in a periodic report filed under AS 45.56.305(i).

23 **Article 4. Broker-dealers, Agents, Investment Advisers, Investment Adviser**

24 **Representatives, and Federal Covered Investment Advisers.**

25 **Sec. 45.56.401. Broker-dealer registration requirement and exemptions.**

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

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

31 (1) a broker-dealer without a place of business in the state if the

1 broker-dealer's only transactions effected in the state are with

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

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

5 (C) an institutional investor;

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

9 (E) a bona fide preexisting customer whose principal place of
10 residence is not in the state and the person is registered as a broker-dealer
11 under 15 U.S.C. 78a - 78lll (Securities Exchange Act of 1934) or not required
12 to be registered under 15 U.S.C. 78a - 78lll (Securities Exchange Act of 1934)
13 and is registered under the securities act of the state in which the customer
14 maintains a principal place of residence;

15 (F) a bona fide preexisting customer whose principal place of
16 residence is in the state but who was not present in the state when the customer
17 relationship was established if

18 (i) the broker-dealer is registered under 15 U.S.C. 78a -
19 78lll (Securities Exchange Act of 1934) or not required to be registered
20 under 15 U.S.C. 78a - 78lll (Securities Exchange Act of 1934) and is
21 registered under the securities laws of the state in which the customer
22 relationship was established and where the customer had maintained a
23 principal place of residence; and

24 (ii) within 45 days after the customer's first transaction
25 in the state, the person files an application for registration as a broker-
26 dealer in the state and a further transaction is not effected more than 75
27 days after the date on which the application is filed, or, if earlier, the
28 date on which the administrator notifies the person that the
29 administrator has denied the application for registration or has stayed
30 the pendency of the application for good cause;

31 (G) not more than three customers in the state during the

1 previous 12 months, in addition to those customers specified in (A) - (F) of this
 2 paragraph and under (H) of this paragraph if the broker-dealer is registered
 3 under 15 U.S.C. 78a - 78lll (Securities Exchange Act of 1934) or not required
 4 to be registered under 15 U.S.C. 78a - 78lll (Securities Exchange Act of 1934)
 5 and is registered under the securities act of the state in which the broker-dealer
 6 has its principal place of business; and

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

9 (2) a person that deals solely in United States government securities
 10 and is supervised as a dealer in government securities by the Board of Governors of
 11 the Federal Reserve System, the United States Comptroller of the Currency, the
 12 Federal Deposit Insurance Corporation, or the Office of Thrift Supervision, United
 13 States Department of the Treasury.

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

27 (d) A regulation adopted or order issued under this chapter may permit

28 (1) a broker-dealer that is registered in Canada or another foreign
 29 jurisdiction and that does not have a place of business in the state to effect transactions
 30 in securities with or for or attempt to effect the purchase or sale of any securities by

31 (A) an individual from Canada or another foreign jurisdiction

1 who is temporarily present in the state and with whom the broker-dealer had a
2 bona fide customer relationship before the individual entered the United States;

3 (B) an individual from Canada or another foreign jurisdiction
4 who is present in the state and whose transactions are in a self-directed tax
5 advantaged retirement plan of which the individual is the holder or contributor
6 in that foreign jurisdiction; or

7 (C) an individual who is present in the state, with whom the
8 broker-dealer customer relationship arose while the individual was temporarily
9 or permanently resident in Canada or the other foreign jurisdiction; and

10 (2) an agent who represents a broker-dealer that is exempt under this
11 subsection to effect transactions in securities or attempt to effect the purchase or sale
12 of securities in the state as permitted for a broker-dealer described in (1) of this
13 subsection.

14 **Sec. 45.56.402. Agent registration requirement and exemptions.** (a) An
15 individual may not transact business in the state as an agent unless the individual is
16 registered under this chapter as an agent or is exempt from registration as an agent
17 under (b) of this section.

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

20 (1) an individual who represents a broker-dealer in effecting
21 transactions in the state limited to those described in 15 U.S.C. 78o(h)(2);

22 (2) an individual who represents a broker-dealer that is exempt under
23 AS 45.56.401(b) or (d);

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

29 (4) an individual who represents an issuer and who effects transactions
30 in the issuer's securities exempted by AS 45.56.202, other than AS 45.56.202(11) and
31 (14);

1 (5) an individual who represents an issuer that effects transactions
2 solely in federal covered securities of the issuer, but an individual who effects
3 transactions in a federal covered security under 15 U.S.C. 77r(b)(3) or (b)(4)(D) is not
4 exempt if the individual is compensated in connection with the agent's participation by
5 the payment of commissions or other remuneration based, directly or indirectly, on
6 transactions in those securities;

7 (6) an individual who represents a broker-dealer registered in the state
8 under AS 45.56.401(a) or exempt from registration under AS 45.56.401(b) in the offer
9 and sale of securities for an account of a nonaffiliated federal covered investment
10 adviser with investments under management in excess of \$100,000,000 acting for the
11 account of others under discretionary authority in a signed record;

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

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

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

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

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

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

30 **Sec. 45.56.403. Investment adviser registration requirement and**
31 **exemptions.** (a) A person may not transact business in the state as an investment

1 adviser unless the person is registered under this chapter as an investment adviser or is
2 exempt from registration as an investment adviser under (b) of this section.

3 (b) The following persons are exempt from the registration requirement in (a)
4 of this section:

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

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

10 (B) institutional investors;

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

15 (D) any other client exempted by regulation adopted or order
16 issued under this chapter;

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

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

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

1 (d) An investment adviser may not employ or associate with an individual
 2 required to be registered under this chapter as an investment adviser representative
 3 who transacts business in the state on behalf of the investment adviser unless the
 4 individual is registered under AS 45.56.404(a) or is exempt from registration under
 5 AS 45.56.404(b).

6 **Sec. 45.56.404. Investment adviser representative registration**
 7 **requirement and exemptions.** (a) An individual may not transact business in the
 8 state as an investment adviser representative unless the individual is registered under
 9 this chapter as an investment adviser representative or is exempt from registration as
 10 an investment adviser representative under (b) of this section.

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

13 (1) an individual who is employed by or associated with an investment
 14 adviser that is exempt from registration under AS 45.56.403(b) or a federal covered
 15 investment adviser that is excluded from the notice filing requirements of
 16 AS 45.56.405; and

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

19 (c) The registration of an investment adviser representative is not effective
 20 while the investment adviser representative is not employed by or associated with an
 21 investment adviser registered under this chapter or a federal covered investment
 22 adviser that has made or is required to make a notice filing under AS 45.56.405.

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

28 (e) An individual acting as an investment adviser representative may not,
 29 directly or indirectly, conduct business in the state on behalf of an investment adviser
 30 or a federal covered investment adviser if the registration of the individual as an
 31 investment adviser representative is suspended or revoked or the individual is barred

1 from employment or association with an investment adviser or a federal covered
 2 investment adviser by an order under this chapter, the Securities and Exchange
 3 Commission, or a self-regulatory organization. Upon request from a federal covered
 4 investment adviser and for good cause, the administrator may, by order, waive, in
 5 whole or in part, the application of the requirements of this subsection to the federal
 6 covered investment adviser.

7 (f) An investment adviser registered under this chapter, a federal covered
 8 investment adviser that has filed a notice under AS 45.56.405, or a broker-dealer
 9 registered under this chapter is not required to employ or associate with an individual
 10 as an investment adviser representative if the only compensation paid to the individual
 11 for a referral of investment advisory clients is paid to an investment adviser registered
 12 under this chapter, a federal covered investment adviser who has filed a notice under
 13 AS 45.56.405, or a broker-dealer registered under this chapter with which the
 14 individual is employed or associated as an investment adviser representative.

15 **Sec. 45.56.405. Federal covered investment adviser notice filing**
 16 **requirement.** (a) Except with respect to a federal covered investment adviser
 17 described in (b) of this section, a federal covered investment adviser may not transact
 18 business in the state as a federal covered investment adviser unless the federal covered
 19 investment adviser complies with (c) of this section.

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

22 (1) a federal covered investment adviser without a place of business in
 23 the state if the only clients of the federal covered investment adviser in the state are

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

26 (B) institutional investors;

27 (C) bona fide preexisting clients whose principal places of
 28 residence are not in the state; or

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

31 (2) a federal covered investment adviser without a place of business in

1 the state if the person has had, during the preceding 12 months, not more than five
 2 clients that are resident in the state in addition to those specified under (1) of this
 3 subsection; and

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

6 (c) A person acting as a federal covered investment adviser not excluded
 7 under (b) of this section shall file a notice, a consent to service of process complying
 8 with AS 45.56.611, and the records that have been filed with the Securities and
 9 Exchange Commission under 15 U.S.C. 80b-1 - 80b-21 (Investment Advisers Act of
 10 1940) required by a regulation adopted or order issued under this chapter and shall pay
 11 the fees specified in AS 45.56.410.

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

13 **Sec. 45.56.406. Registration by broker-dealer, agent, investment adviser,**
 14 **and investment adviser representative.** (a) A person shall register as a broker-
 15 dealer, agent, investment adviser, or investment adviser representative by filing an
 16 application and a consent to service of process complying with AS 45.56.611 and
 17 paying the fee specified in AS 45.56.410 and any reasonable fees charged by the
 18 designee of the administrator for processing the filing. The application must contain

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

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

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

26 (c) If an order is not in effect and a proceeding is not pending under
 27 AS 45.56.412, registration becomes effective at noon on the 45th day after a
 28 completed application is filed, unless the registration is denied. A regulation adopted
 29 or order issued under this chapter may set an earlier effective date or may defer the
 30 effective date until noon on the 45th day after the filing of any amendment completing
 31 the application.

1 (d) A registration is effective until midnight on December 31 of the year for
2 which the application for registration is filed. Unless an order is in effect under
3 AS 45.56.412, a registration may be automatically renewed each year by filing the
4 records required by a regulation adopted or order issued under this chapter, by paying
5 the fee specified in AS 45.56.410, and by paying costs charged by the designee of the
6 administrator for processing the filings.

7 (e) A regulation adopted or order issued under this chapter may impose other
8 conditions, not inconsistent with P.L. 104-290 (National Securities Markets
9 Improvement Act of 1996). An order issued under this chapter may waive, in whole
10 or in part, specific requirements in connection with registration that are in the public
11 interest and for the protection of investors.

12 **Sec. 45.56.407. Succession and change in registration of broker-dealer or**
13 **investment adviser.** (a) A broker-dealer or investment adviser may succeed to the
14 current registration of another broker-dealer or investment adviser or a notice filing of
15 a federal covered investment adviser, and a federal covered investment adviser may
16 succeed to the current registration of an investment adviser or notice filing of another
17 federal covered investment adviser, by filing as a successor an application for
18 registration under AS 45.56.401 or 45.56.403 or a notice under AS 45.56.405 for the
19 unexpired portion of the current registration or notice filing.

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

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

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

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

5 **Sec. 45.56.408. Termination of employment or association of agent and**
6 **investment adviser representative and transfer of employment or association.** (a)

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

16 (b) If an agent registered under this chapter terminates employment by or
17 association with a broker-dealer registered under this chapter and begins employment
18 by or association with another broker-dealer registered under this chapter, or if an
19 investment adviser representative registered under this chapter terminates employment
20 by or association with an investment adviser registered under this chapter or a federal
21 covered investment adviser that has filed a notice under AS 45.56.405 and begins
22 employment by or association with another investment adviser registered under this
23 chapter or a federal covered investment adviser that has filed a notice under
24 AS 45.56.405, then, within 30 days after the termination, upon the filing by or on
25 behalf of the registrant of an application for registration that complies with the
26 requirement of AS 45.56.406(a) and payment of the filing fee required under
27 AS 45.56.410, the registration of the agent or investment adviser representative is

28 (1) immediately effective as of the date of the completed filing, if the
29 agent's record or successor record in the Central Registration Depository operated by
30 the National Association of Securities Dealers, Inc., or the investment adviser
31 representative's record or successor record in the Investment Adviser Registration

1 Depository operated by the National Association of Securities Dealers, Inc., does not
2 contain a new or amended disciplinary disclosure within the previous 12 months; or

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

9 (c) The administrator may withdraw a temporary registration if there are or
10 were grounds for discipline as specified in AS 45.56.412 and the administrator does so
11 within 30 days after the filing of the application. If the administrator does not
12 withdraw the temporary registration within the 30-day period, registration becomes
13 automatically effective on the 31st day after filing.

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

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

25 **Sec. 45.56.409. Withdrawal of registration of broker-dealer, agent,**
26 **investment adviser, and investment adviser representative.** Withdrawal of
27 registration by a broker-dealer, agent, investment adviser, or investment adviser
28 representative becomes effective 60 days after the filing of the application to withdraw
29 or within any shorter period as provided by a regulation adopted or order issued under
30 this chapter unless a revocation or suspension proceeding is pending when the
31 application is filed. If a proceeding is pending, withdrawal becomes effective when

1 and upon the conditions required by a regulation adopted or order issued under this
 2 chapter. The administrator may institute a revocation or suspension proceeding under
 3 AS 45.56.412 within one year after the withdrawal became effective automatically and
 4 issue a revocation or suspension order as of the last date on which registration was
 5 effective if a proceeding is not pending.

6 **Sec. 45.56.410. Filing fees.** (a) The administrator shall establish fees by
 7 regulation under AS 44.62.010 - 44.62.320 (Administrative Procedure Act) for

8 (1) an initial filing of an application as a broker-dealer and renewal of
 9 an application by a broker-dealer for registration, but, if the filing results in a denial or
 10 withdrawal, the administrator shall retain an amount of the fee established by the
 11 administrator by regulation;

12 (2) an application for registration as an agent and renewal of
 13 registration as an agent, but, if the filing results in a denial or withdrawal, the
 14 administrator shall retain an amount of the fee established by the administrator by
 15 regulation;

16 (3) an application for registration as an investment adviser and renewal
 17 of registration as an investment adviser, but, if the filing results in a denial or
 18 withdrawal, the administrator shall retain an amount of the fee established by the
 19 administrator by regulation;

20 (4) an application for registration as an investment adviser
 21 representative, a renewal of registration as an investment adviser representative, and a
 22 change of registration as an investment adviser representative, but, if the filing results
 23 in a denial or withdrawal, the administrator shall retain an amount of the fee
 24 established by the administrator by regulation; and

25 (5) an initial fee and annual notice fee for a federal covered investment
 26 adviser required to file a notice under AS 45.56.405.

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

30 (c) An investment adviser representative who is registered as an agent under
 31 AS 45.56.402 and who represents a person that is both registered as a broker-dealer

1 under AS 45.56.401 and registered as an investment adviser under AS 45.56.403 or
2 required, as a federal covered investment adviser, to make a notice filing under
3 AS 45.56.405 is not required to pay an initial or annual registration fee for registration
4 as an investment adviser representative.

5 **Sec. 45.56.411. Postregistration requirements.** (a) Subject to 15 U.S.C.
6 78o(h) or 15 U.S.C. 80b-18a, a regulation adopted or order issued under this chapter
7 may establish minimum financial requirements for broker-dealers registered or
8 required to be registered under this chapter and investment advisers registered or
9 required to be registered under this chapter.

10 (b) Subject to 15 U.S.C. 78o(h) or 15 U.S.C. 80b-18a, a broker-dealer
11 registered or required to be registered under this chapter and an investment adviser
12 registered or required to be registered under this chapter shall file the financial reports
13 required by a regulation adopted or order issued under this chapter. If the information
14 contained in a record filed under this subsection is or becomes inaccurate or
15 incomplete in a material respect, the registrant shall promptly file a correcting
16 amendment.

17 (c) Subject to 15 U.S.C. 78o(h) (Securities Exchange Act of 1934) or 15
18 U.S.C. 80b-18a,

19 (1) a broker-dealer registered or required to be registered under this
20 chapter and an investment adviser registered or required to be registered under this
21 chapter shall make and maintain the accounts, correspondence, memoranda, papers,
22 books, and other records required by a regulation adopted or order issued under this
23 chapter;

24 (2) broker-dealer records required to be maintained under (1) of this
25 subsection may be maintained in any form of data storage acceptable under 15 U.S.C.
26 78q(a) if they are readily accessible to the administrator; and

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

30 (d) The records of a broker-dealer registered or required to be registered under
31 this chapter and of an investment adviser registered or required to be registered under

1 this chapter are subject to the reasonable periodic, special, or other audits or
2 inspections by a representative of the administrator, within or without the state, that
3 the administrator considers necessary or appropriate in the public interest and for the
4 protection of investors. An audit or inspection may be made at any time and without
5 prior notice. The administrator may copy, and remove for audit or inspection copies
6 of, all records the administrator reasonably considers necessary or appropriate to
7 conduct the audit or inspection. The administrator may assess a reasonable charge for
8 conducting an audit or inspection under this subsection.

9 (e) Subject to 15 U.S.C. 78o(h) or 15 U.S.C. 80b-18a, a regulation adopted or
10 order issued under this chapter may require a broker-dealer or investment adviser that
11 has custody of or discretionary authority over funds or securities of a customer or
12 client to obtain insurance or post a bond or other satisfactory form of security in an
13 amount established by a regulation adopted under this chapter. The administrator may
14 determine the requirements of the insurance, bond, or other satisfactory form of
15 security. Insurance or a bond or other satisfactory form of security may not be
16 required of a broker-dealer registered under this chapter whose net capital exceeds, or
17 of an investment adviser registered under this chapter whose minimum financial
18 requirements exceed, the amounts required by a regulation adopted or order issued
19 under this chapter. The insurance, bond, or other satisfactory form of security must
20 permit an action by a person to enforce any liability on the insurance, bond, or other
21 satisfactory form of security if instituted within the time limitations in
22 AS 45.56.509(j)(2).

23 (f) Subject to 15 U.S.C. 78o(h) or 15 U.S.C. 80b-18a, an agent may not have
24 custody of funds or securities of a customer except under the supervision of a broker-
25 dealer and an investment adviser representative may not have custody of funds or
26 securities of a client except under the supervision of an investment adviser or a federal
27 covered investment adviser. A regulation adopted or order issued under this chapter
28 may prohibit, limit, or impose conditions on a broker-dealer regarding custody of
29 funds or securities of a customer and on an investment adviser regarding custody of
30 securities or funds of a client.

31 (g) With respect to an investment adviser registered or required to be

1 registered under this chapter, a regulation adopted or order issued under this chapter
 2 may require that information or other records be furnished or disseminated to clients
 3 or prospective clients in the state as necessary or appropriate in the public interest and
 4 for the protection of investors and advisory clients.

5 (h) A regulation adopted or order issued under this chapter may require an
 6 individual registered under AS 45.56.402 or 45.56.404 to participate in a continuing
 7 education program approved by the Securities and Exchange Commission and
 8 administered by a self-regulatory organization, or, in the absence of a continuing
 9 education program, a regulation adopted or order issued under this chapter may
 10 require continuing education for an individual registered under AS 45.56.404.

11 **Sec. 45.56.412. Denial, revocation, suspension, withdrawal, restriction,**
 12 **condition, or limitation of registration.** (a) If the administrator finds that the order
 13 is in the public interest and (d) of this section authorizes the action, an order issued
 14 under this chapter may deny an application, or may condition or limit registration of
 15 an applicant to be a broker-dealer, agent, investment adviser, or investment adviser
 16 representative, and, if the applicant is a broker-dealer or investment adviser, of a
 17 partner, officer, director, or person having a similar status or performing similar
 18 functions, or a person directly or indirectly in control, of the broker-dealer or
 19 investment adviser.

20 (b) If the administrator finds that the order is in the public interest and (d) of
 21 this section authorizes the action, an order issued under this chapter may revoke,
 22 suspend, condition, or limit the registration of a registrant, and, if the registrant is a
 23 broker-dealer or investment adviser, of a partner, officer, director, or person having a
 24 similar status or performing similar functions, or a person directly or indirectly in
 25 control, of the broker-dealer or investment adviser. However, the administrator may
 26 not

27 (1) institute a revocation or suspension proceeding under this
 28 subsection based on an order issued under a law of another state that is reported to the
 29 administrator or a designee of the administrator more than one year after the date of
 30 the order on which it is based; or

31 (2) under (d)(5)(A) or (B) of this section, issue an order on the basis of

1 an order issued under the securities act of another state unless the other order was
 2 based on conduct for which (d) of this section would authorize the action had the
 3 conduct occurred in this state.

4 (c) If the administrator finds that the order is in the public interest and (d)(1),
 5 (2), (3), (4), (5), (6), (8), (9), (10), or (12) and (13) of this section authorize the action,
 6 an order under this chapter may censure, impose a bar, or impose a civil penalty of not
 7 more than \$2,500 for a single violation or not more than \$100,000 for more than one
 8 violation, on a registrant, and, if the registrant is a broker-dealer or investment adviser,
 9 a partner, officer, director, or person having a similar status or performing similar
 10 functions, or a person directly or indirectly in control, of the broker-dealer or
 11 investment adviser.

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

13 (1) has filed an application for registration in the state under this
 14 chapter or former AS 45.55 within the previous 10 years that, as of the effective date
 15 of registration or as of any date after filing in the case of an order denying
 16 effectiveness, was incomplete in any material respect or contained a statement that, in
 17 light of the circumstances under which it was made, was false or misleading with
 18 respect to a material fact;

19 (2) wilfully violated or wilfully failed to comply with this chapter or
 20 former AS 45.55 or a regulation adopted or order issued under this chapter or former
 21 AS 45.55 within the previous 10 years;

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

26 (4) is enjoined or restrained by a court of competent jurisdiction in an
 27 action instituted by the administrator under this chapter or former AS 45.55, a state,
 28 the Securities and Exchange Commission, or the United States from engaging in or
 29 continuing an act, practice, or course of business involving an aspect of a business
 30 involving securities, commodities, investments, franchises, insurance, banking, or
 31 finance;

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

3 (A) the securities or other financial services regulator of a state
4 or the Securities and Exchange Commission or other federal agency denying,
5 revoking, barring, or suspending registration as a broker-dealer, agent,
6 investment adviser, federal covered investment adviser, or investment adviser
7 representative;

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

11 (C) the Securities and Exchange Commission or a self-
12 regulatory organization suspending or expelling the registrant from
13 membership in the self-regulatory organization;

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

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

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

21 (6) is the subject of an adjudication or determination, after notice and
22 opportunity for hearing, by the Securities and Exchange Commission, the Commodity
23 Futures Trading Commission, the Federal Trade Commission, a federal depository
24 institution regulator, or a depository institution, insurance, or other financial services
25 regulator of a state that the person wilfully violated 15 U.S.C. 77a - 77aa (Securities
26 Act of 1933), 15 U.S.C. 78a - 78lll (Securities Exchange Act of 1934), 15 U.S.C. 80b-
27 1 - 80b-21 (Investment Advisers Act of 1940), 15 U.S.C. 80a-1 - 80a-64 (Investment
28 Company Act of 1940), or 7 U.S.C. 1 - 27f (Commodity Exchange Act), the securities
29 or commodities law of a state, or a federal or state law under which a business
30 involving investments, franchises, insurance, banking, or finance is regulated;

31 (7) is insolvent, either because the person's liabilities exceed the

1 person's assets or because the person cannot meet the person's obligations as they
 2 mature, but the administrator may not enter an order against an applicant or registrant
 3 under this paragraph without a finding of insolvency as to the applicant or registrant;

4 (8) refuses to allow or otherwise impedes the administrator from
 5 conducting an audit or inspection under AS 45.56.411(d) or refuses access to a
 6 registrant's office to conduct an audit or inspection under AS 45.56.411(d);

7 (9) has failed to reasonably supervise an agent, investment adviser
 8 representative, or other individual, if the agent, investment adviser representative, or
 9 other individual was subject to the person's supervision and committed a violation of
 10 this chapter or former AS 45.55 or a regulation adopted or order issued under this
 11 chapter or former AS 45.55 within the previous 10 years;

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

15 (11) after notice and opportunity for a hearing, has been found within
 16 the previous 10 years

17 (A) by a court of competent jurisdiction to have wilfully
 18 violated the laws of a foreign jurisdiction under which the business of
 19 securities, commodities, investment, franchises, insurance, banking, or finance
 20 is regulated;

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

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

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

31 (13) has engaged in dishonest or unethical practices in the securities,

1 commodities, investment, franchise, banking, finance, or insurance business within the
2 previous 10 years; or

3 (14) is not qualified on the basis of factors that may include training,
4 experience, and knowledge of the securities business; however, in the case of an
5 application by an agent for a broker-dealer that is a member of a self-regulatory
6 organization or by an individual for registration as an investment adviser
7 representative, a denial order may not be based on this paragraph if the individual has
8 successfully completed all examinations required by (e) of this section; the
9 administrator may require an applicant for registration under AS 45.56.402 or
10 45.56.404 who has not been registered in a state within the two years preceding the
11 filing of an application in this state to successfully complete an examination.

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

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

31 (g) An order may not be issued under this section, except under (f) of this

1 section, without

- 2 (1) appropriate notice to the applicant or registrant;
 3 (2) opportunity for hearing; and
 4 (3) findings of fact and conclusions of law in a record in accordance
 5 with AS 44.62.330 - 44.62.630 (Administrative Procedure Act).

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

11 (i) The administrator may not institute a proceeding under (a), (b), or (c) of
 12 this section based solely on material facts actually known by the administrator unless
 13 an investigation or the proceeding is instituted within one year after the administrator
 14 actually acquires knowledge of the material facts.

15 **Article 5. Fraud and Liabilities.**

16 **Sec. 45.56.501. General fraud.** A person may not, in connection with the
 17 offer, sale, or purchase of a security, directly or indirectly,

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

24 **Sec. 45.56.502. Prohibited conduct in providing investment advice.** (a) A
 25 person that advises others for compensation, either directly or indirectly or through
 26 publications or writings, as to the value of securities or the advisability of investing in,
 27 purchasing, or selling securities or that, for compensation and as part of a regular
 28 business, issues or adopts analyses or reports relating to securities may not

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

1 (b) A regulation adopted under this chapter may define an act, practice, or
 2 course of business of an investment adviser or an investment adviser representative,
 3 other than a supervised person of a federal covered investment adviser, as fraudulent,
 4 deceptive, or manipulative and may prescribe means reasonably designed to prevent
 5 investment advisers and investment adviser representatives, other than supervised
 6 persons of a federal covered investment adviser, from engaging in acts, practices, and
 7 courses of business defined as fraudulent, deceptive, or manipulative.

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

11 **Sec. 45.56.503. Evidentiary burden.** (a) In a civil action or administrative
 12 proceeding under this chapter, a person claiming an exemption, exception,
 13 preemption, or exclusion has the burden to prove the applicability of the claim.

14 (b) In a criminal proceeding under this chapter, a person claiming an
 15 exemption, exception, preemption, or exclusion has the burden of going forward with
 16 evidence of the claim.

17 **Sec. 45.56.504. Filing of sales and advertising literature.** (a) Except as
 18 otherwise provided in (b) of this section, a regulation adopted or order issued under
 19 this chapter may require the filing of a prospectus, pamphlet, circular, form letter,
 20 advertisement, sales literature, or other advertising record relating to a security or
 21 investment advice, addressed or intended for distribution to prospective investors,
 22 including clients or prospective clients of a person registered or required to be
 23 registered as an investment adviser under this chapter.

24 (b) This section does not apply to sales and advertising literature specified in
 25 (a) of this section that relates to a federal covered security, a federal covered
 26 investment adviser, or a security or transaction exempted by AS 45.56.201, 45.56.202,
 27 or 45.56.203 except as required under AS 45.56.201(7).

28 **Sec. 45.56.505. Misleading filings.** A person may not make or cause to be
 29 made, in a record that is used in an action or proceeding or filed under this chapter, a
 30 statement that, at the time and in the light of the circumstances under which it is made,
 31 is false or misleading in a material respect, or, in connection with the statement, omit

1 to state a material fact necessary to make the statement made, in the light of the
2 circumstances under which it was made, not false or misleading.

3 **Sec. 45.56.506. Misrepresentations concerning registration or exemption.**

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

14 **Sec. 45.56.507. Qualified immunity.** A broker-dealer, agent, investment

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

23 **Sec. 45.56.508. Criminal penalties.** (a) A person that wilfully violates this

24 chapter or a regulation adopted or order issued under this chapter, except
25 AS 45.56.504 or the notice filing requirements of AS 45.56.302 or 45.56.405, or that
26 wilfully violates AS 45.56.505 knowing the statement made to be false or misleading
27 in a material respect, upon conviction, shall be fined not more than \$25,000 or
28 imprisoned for not less than one year or more than five years, or both. An individual
29 convicted of violating a regulation or order issued under this chapter may be fined, but
30 may not be imprisoned, if the individual did not know of the regulation or order.

31 (b) The attorney general, with or without a reference from the administrator,

1 may institute criminal proceedings under this chapter.

2 (c) This chapter does not limit the power of the state to punish a person for
3 conduct that constitutes a crime under other laws of the state.

4 **Sec. 45.56.509. Civil liability.** (a) Enforcement of civil liability under this
5 section is subject to P.L. 105-353 (Securities Litigation Uniform Standards Act of
6 1998).

7 (b) A person is liable to the purchaser if the person sells a security in violation
8 of AS 45.56.301 or by means of an untrue statement of a material fact or an omission
9 to state a material fact necessary in order to make the statement made, in light of the
10 circumstances under which it is made, not misleading, the purchaser not knowing the
11 untruth or omission and the seller not sustaining the burden of proof that the seller did
12 not know and, in the exercise of reasonable care, could not have known of the untruth
13 or omission. An action under this subsection is governed by the following:

14 (1) the purchaser may maintain an action to recover the consideration
15 paid for the security, less the amount of any income received on the security, and
16 interest at the legal rate of interest in AS 45.45.010 from the date of the purchase,
17 costs, and reasonable attorney fees determined by the court, upon the tender of the
18 security, or for actual damages as provided in (3) of this subsection;

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

24 (3) actual damages in an action arising under this subsection are the
25 amount that would be recoverable upon a tender less the value of the security when the
26 purchaser disposed of it, and interest at the legal rate of interest in AS 45.45.010 from
27 the date of the purchase, costs, and reasonable attorney fees determined by the court.

28 (c) A person is liable to the seller if the person buys a security by means of an
29 untrue statement of a material fact or omission to state a material fact necessary in
30 order to make the statement made, in light of the circumstances under which it is
31 made, not misleading, the seller not knowing of the untruth or omission, and the

1 purchaser not sustaining the burden of proof that the purchaser did not know and, in
2 the exercise of reasonable care, could not have known of the untruth or omission. An
3 action under this subsection is governed by the following:

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

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

13 (3) actual damages in an action arising under this subsection are the
14 difference between the price at which the security was sold and the value the security
15 would have had at the time of the sale in the absence of the purchaser's conduct
16 causing liability, and interest at the legal rate of interest in AS 45.45.010 from the date
17 of the sale of the security, costs, and reasonable attorney fees determined by the court.

18 (d) A person acting as a broker-dealer or agent that sells or buys a security in
19 violation of AS 45.56.401(a), 45.56.402(a), or 45.56.506 is liable to the customer.
20 The customer, if a purchaser, may maintain an action for recovery of actual damages
21 as specified in (b)(1) - (3) of this section or, if a seller, for a remedy as specified in
22 (c)(1) - (3) of this section.

23 (e) A person acting as an investment adviser or investment adviser
24 representative that provides investment advice for compensation in violation of
25 AS 45.56.403(a), 45.56.404(a), or 45.56.506 is liable to the client. The client may
26 maintain an action to recover the consideration paid for the advice, interest at the legal
27 rate of interest in AS 45.45.010 from the date of payment, costs, and reasonable
28 attorney fees determined by the court.

29 (f) A person that receives, directly or indirectly, any consideration for
30 providing investment advice to another person and that employs a device, scheme, or
31 artifice to defraud the other person or engages in an act, practice, or course of business

1 that operates or would operate as a fraud or deceit on the other person is liable to the
2 other person. An action under this subsection is governed by the following:

3 (1) the person defrauded may maintain an action to recover the
4 consideration paid for the advice and the amount of any actual damages caused by the
5 fraudulent conduct, interest at the legal rate of interest in AS 45.45.010 from the date
6 of the fraudulent conduct, costs, and reasonable attorney fees determined by the court,
7 less the amount of any income received as a result of the fraudulent conduct;

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

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

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

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

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

28 (4) a person that is a broker-dealer, agent, investment adviser, or
29 investment adviser representative that materially aids the conduct giving rise to the
30 liability under (b) - (f) of this section, unless the person sustains the burden of proof
31 that the person did not know and, in the exercise of reasonable care, could not have

1 known of the existence of conduct by reason of which liability is alleged to exist.

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

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

6 (j) A person may not obtain relief

7 (1) under (b) of this section for a violation of AS 45.56.301, or under
8 (d) or (e) of this section, unless the action is instituted within one year after the
9 violation occurred; or

10 (2) under (b) of this section, other than for violation of AS 45.56.301,
11 or under (c) or (f) of this section, unless the action is instituted within the earlier of
12 two years after discovery of the facts constituting the violation or five years after the
13 violation.

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

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

22 (m) The rights and remedies provided by this chapter are in addition to any
23 other rights or remedies that may exist, but this chapter does not create a cause of
24 action not specified in this section or AS 45.56.411(e).

25 **Sec. 45.56.510. Rescission offers.** A purchaser, seller, or recipient of
26 investment advice may not maintain an action under AS 45.56.509 if

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

29 (A) an offer stating the respect in which liability under
30 AS 45.56.509 may have arisen and fairly advising the purchaser, seller, or
31 recipient of investment advice of that person's rights in connection with the

1 offer, and any financial or other information necessary to correct all material
2 misrepresentations or omissions in the information that was required by this
3 chapter to be furnished to that person at the time of the purchase, sale, or
4 investment advice;

5 (B) if the basis for relief under this section may have been a
6 violation of AS 45.56.509(b), an offer to repurchase the security for cash,
7 payable on delivery of the security, equal to the consideration paid, and interest
8 at the legal rate of interest in AS 45.45.010 from the date of the purchase, less
9 the amount of any income received on the security, or, if the purchaser no
10 longer owns the security, an offer to pay the purchaser, upon acceptance of the
11 offer, damages in an amount that would be recoverable upon a tender, less the
12 value of the security when the purchaser disposed of it, and interest at the legal
13 rate of interest in AS 45.45.010 from the date of the purchase in cash equal to
14 the damages computed in the manner provided in this subparagraph;

15 (C) if the basis for relief under this section may have been a
16 violation of AS 45.56.509(c), an offer to tender the security, on payment by the
17 seller of an amount equal to the purchase price paid, less income received on
18 the security by the purchaser and interest at the legal rate of interest in
19 AS 45.45.010 from the date of the sale, or, if the purchaser no longer owns the
20 security, an offer to pay the seller, upon acceptance of the offer, in cash,
21 damages in the amount of the difference between the price at which the
22 security was purchased and the value the security would have had at the time
23 of the purchase in the absence of the purchaser's conduct that may have caused
24 liability and interest at the legal rate of interest in AS 45.45.010 from the date
25 of the sale;

26 (D) if the basis for relief under this section may have been a
27 violation of AS 45.56.509(d) and if the customer is a purchaser, an offer to pay
28 as specified in (B) of this paragraph or, if the customer is a seller, an offer to
29 tender or to pay as specified in (C) of this paragraph;

30 (E) if the basis for relief under this section may have been a
31 violation of AS 45.56.509(e), an offer to reimburse in cash the consideration

1 paid for the advice and interest at the legal rate of interest in AS 45.45.010
2 from the date of payment; or

3 (F) if the basis for relief under this section may have been a
4 violation of AS 45.56.509(f), an offer to reimburse in cash the consideration
5 paid for the advice, the amount of any actual damages that may have been
6 caused by the conduct, and interest at the legal rate of interest in AS 45.45.010
7 from the date of the violation causing the loss;

8 (2) the offer under (1) of this section states that it must be accepted by
9 the purchaser, seller, or recipient of investment advice within 30 days after the date of
10 its receipt by the purchaser, seller, or recipient of investment advice or any shorter
11 period of not less than three days that the administrator, by order, specifies;

12 (3) the offeror has the present ability to pay the amount offered or to
13 tender the security under (1) of this section;

14 (4) the offer under (1) of this section is delivered to the purchaser,
15 seller, or recipient of investment advice or sent in a manner that ensures receipt by the
16 purchaser, seller, or recipient of investment advice; and

17 (5) the purchaser, seller, or recipient of investment advice that accepts
18 the offer under (1) of this section, in a record, within the period specified under (2) of
19 this section, is paid in accordance with the terms of the offer.

20 **Article 6. Administration and Judicial Review.**

21 **Sec. 45.56.601. Administration.** (a) The Department of Commerce,
22 Community, and Economic Development shall administer this chapter.

23 (b) The administrator or an officer, employee, or designee of the administrator
24 may not use for personal benefit or the benefit of others records or other information
25 obtained by or filed with the administrator that are not public under AS 45.56.607(b).
26 This chapter does not authorize the administrator or an officer, employee, or designee
27 of the administrator to disclose the record or information, except in accordance with
28 AS 45.56.602, 45.56.607(c), or 45.56.608.

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

31 (d) The administrator may develop and implement investor education

1 initiatives to inform the public about investing in securities, with particular emphasis
 2 on the prevention and detection of securities fraud. In developing and implementing
 3 these initiatives, the administrator may collaborate with public and nonprofit
 4 organizations with an interest in investor education. The administrator may accept a
 5 grant or donation from a person that is not affiliated with the securities industry or
 6 from a nonprofit organization, regardless of whether the organization is affiliated with
 7 the securities industry, to develop and implement investor education initiatives. This
 8 subsection does not authorize the administrator to require participation or monetary
 9 contributions of a registrant in an investor education program.

10 (e) The securities investor education and training fund is created as a special
 11 fund in the general fund to provide funds for the purposes specified in (d) of this
 12 section. All money received by the state by reason of civil penalties under this chapter
 13 shall be deposited in the fund. The legislature may appropriate amounts from the fund
 14 to the administrator for securities investor education and training. Nothing in this
 15 subsection exempts money deposited into the fund from the requirements of AS 37.07
 16 (Executive Budget Act) or dedicates money for a specific purpose.

17 **Sec. 45.56.602. Investigations and subpoenas.** (a) The administrator may

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

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

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

31 (b) For the purpose of an investigation under this chapter, the administrator or

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

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

- 10 (1) hold the person in contempt;
- 11 (2) order the person to appear before the administrator;
- 12 (3) order the person to testify about the matter under investigation or in
 13 question;
- 14 (4) order the production of records;
- 15 (5) grant injunctive relief, including restricting or prohibiting the offer
 16 or sale of securities or the providing of investment advice;
- 17 (6) impose a civil penalty of not more than \$500 for a single violation
 18 and not more than \$25,000 for multiple violations; and
- 19 (7) grant any other necessary or appropriate relief.

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

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

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

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

21 **Sec. 45.56.603. Civil enforcement.** (a) If the administrator believes that a
22 person has engaged, is engaging, or is about to engage in an act, practice, or course of
23 business constituting a violation of this chapter or a regulation adopted or order issued
24 under this chapter or that a person has, is, or is about to engage in an act, practice, or
25 course of business that materially aids a violation of this chapter or a regulation
26 adopted or order issued under this chapter, the administrator may maintain an action in
27 the superior court to enjoin the act, practice, or course of business and to enforce
28 compliance with this chapter or a regulation adopted or order issued under this
29 chapter.

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

31 (1) issue a permanent or temporary injunction, restraining order, or

1 declaratory judgment;

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

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

6 (B) ordering the administrator to take charge and control of a
7 defendant's property, including investment accounts and accounts in a
8 depository institution, rents, and profits; to collect debts; and to acquire and
9 dispose of property;

10 (C) imposing a civil penalty of not more than \$2,500 for a
11 single violation or not more than \$100,000 for more than one violation; an
12 order of rescission, restitution, or disgorgement directed to a person that has
13 engaged in an act, practice, or course of business constituting a violation of this
14 chapter or former AS 45.55 or a regulation adopted or order issued under this
15 chapter or former AS 45.55; and

16 (D) ordering the payment of prejudgment and postjudgment
17 interest; or

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

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

21 **Sec. 45.56.604. Administrative enforcement.** (a) If the administrator
22 determines that a person has engaged, is engaging, or is about to engage in an act,
23 practice, or course of business constituting a violation of this chapter or a regulation
24 adopted or order issued under this chapter or that a person has materially aided, is
25 materially aiding, or is about to materially aid an act, practice, or course of business
26 constituting a violation of this chapter or a regulation adopted or order issued under
27 this chapter, the administrator may

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

31 (2) issue an order denying, suspending, revoking, or conditioning the

1 exemptions for a broker-dealer under AS 45.56.401(b)(1)(D) or (F) or an investment
2 adviser under AS 45.56.403(b)(1)(C); or

3 (3) issue an order under AS 45.56.204.

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

17 (c) If a hearing is requested or ordered under (b) of this section, a hearing must
18 be conducted by the office of administrative hearings established in AS 44.64.010
19 under AS 44.62.330 - 44.62.630. A final order may not be issued unless the
20 administrative law judge makes findings of fact and conclusions of law in a record
21 under AS 44.62.330 - 44.62.630 (Administrative Procedure Act). The final order may
22 make final, vacate, or modify the order issued under (a) of this section.

23 (d) In a final order under (c) of this section, the administrative law judge may
24 impose a civil penalty of not more than \$2,500 for a single violation or not more than
25 \$100,000 for more than one violation.

26 (e) In a final order, the administrative law judge may charge the actual cost of
27 an investigation or proceeding for a violation of this chapter or a regulation adopted or
28 order issued under this chapter.

29 (f) If a petition for judicial review of a final order is not filed in accordance
30 with AS 45.56.609, the administrative law judge may file a certified copy of the final
31 order with the clerk of a court of competent jurisdiction. The order so filed has the

1 same effect as a judgment of the court and may be recorded, enforced, or satisfied in
2 the same manner as a judgment of the court.

3 (g) If a person does not comply with an order under this section, the
4 administrator may petition a court of competent jurisdiction to enforce the order. The
5 court may not require the administrator to post a bond in an action or proceeding under
6 this section. If the court finds, after service and opportunity for hearing, that the
7 person was not in compliance with the order, the court may adjudge the person in civil
8 contempt of the order. The court may impose a further civil penalty against the person
9 for contempt in an amount not less than \$2,500 but not greater than \$100,000 for each
10 violation and may grant any other relief the court determines is just and proper in the
11 circumstances.

12 **Sec. 45.56.605. Regulations, forms, orders, interpretative opinions, and**
13 **hearings.** (a) The administrator may

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

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

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

22 (b) Under this chapter, a regulation or form may not be adopted or amended,
23 or an order issued or amended, unless the administrator finds that the regulation, form,
24 order, or amendment is necessary or appropriate in the public interest or for the
25 protection of investors and is consistent with the purposes intended by this chapter. In
26 adopting, amending, and repealing regulations and forms, AS 45.56.608 applies in
27 order to achieve uniformity among the states and coordination with federal laws in the
28 form and content of registration statements, applications, reports, and other records,
29 including the adoption of uniform rules, forms, and procedures.

30 (c) Subject to 15 U.S.C. 78o(h) and 15 U.S.C. 80b-18a, the administrator may
31 require that a financial statement filed under this chapter be prepared in accordance

1 with generally accepted accounting principles in the United States and comply with
 2 other requirements specified by regulation adopted or order issued under this chapter.
 3 A regulation adopted or order issued under this chapter may establish

4 (1) subject to 15 U.S.C. 78o(h) and 15 U.S.C. 80b-18a, the form and
 5 content of financial statements required under this chapter;

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

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

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

16 (e) A penalty under this chapter may not be imposed for and liability does not
 17 arise from conduct that is engaged in or omitted in good faith believing it conforms to
 18 a regulation, form, or order of the administrator under this chapter.

19 (f) A hearing in an administrative proceeding under this chapter must be
 20 conducted in public unless the administrative law judge or the administrator for good
 21 cause consistent with this chapter determines that the hearing may not be conducted in
 22 public.

23 **Sec. 45.56.606. Administrative files and opinions.** (a) The administrator
 24 shall maintain, or designate a person to maintain, a register of applications for
 25 registration of securities; registration statements; notice filings; applications for
 26 registration of broker-dealers, agents, investment advisers, and investment adviser
 27 representatives; notice filings by federal covered investment advisers that are or have
 28 been effective under this chapter or former AS 45.55; notices of claims of exemption
 29 from registration or notice filing requirements contained in a record; orders issued
 30 under this chapter or former AS 45.55; and interpretative opinions or no action
 31 determinations issued under this chapter.

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

3 (c) The administrator shall furnish a copy of a record that is a public record or
4 a certification that the public record does not exist to a person upon request. A
5 regulation adopted under this chapter may establish a reasonable charge for furnishing
6 the record or certification. A copy of the record certified or a certificate by the
7 administrator of a record's nonexistence is prima facie evidence of a record or its
8 nonexistence.

9 **Sec. 45.56.607. Public records; confidentiality.** (a) Except as otherwise
10 provided in (b) of this section, records obtained by the administrator or filed under this
11 chapter, including a record contained in or filed with a registration statement,
12 application, notice filing, or report, are public records and are available for public
13 examination.

14 (b) The following records are not public records and are not available for
15 public examination under (a) of this section:

16 (1) a record obtained by the administrator in connection with an audit
17 or inspection under AS 45.56.411(d) or an investigation under AS 45.56.602;

18 (2) a part of a record filed in connection with a registration statement
19 under AS 45.56.301 and 45.56.303 - 45.56.305 or a record under AS 45.56.411(d) that
20 contains trade secrets or confidential information if the person filing the registration
21 statement or report has asserted a claim of confidentiality or privilege that is
22 authorized by law;

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

26 (4) a nonpublic record received from a person specified in
27 AS 45.56.608(a); and

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

31 (c) If disclosure is for the purpose of a civil, administrative, or criminal

1 investigation, action, or proceeding or to a person specified in AS 45.56.608(a), the
2 administrator may disclose a record obtained in connection with an audit or inspection
3 under AS 45.56.411(d) or a record obtained in connection with an investigation under
4 AS 45.56.602.

5 **Sec. 45.56.608. Uniformity and cooperation with other agencies.** (a) The
6 administrator may cooperate, coordinate, consult, and, subject to AS 45.56.607, share
7 records and information with the securities regulator of another state, Canada, a
8 Canadian province or territory, a foreign jurisdiction, the Securities and Exchange
9 Commission, the United States Department of Justice, the Commodity Futures
10 Trading Commission, the Federal Trade Commission, the Securities Investor
11 Protection Corporation, a self-regulatory organization, a national or international
12 organization of securities regulators, a federal or state banking and insurance
13 regulator, and a governmental law enforcement agency to bring about greater
14 uniformity in securities matters among the federal government, self-regulatory
15 organizations, states, and foreign governments.

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

20 (1) maximizing effectiveness of regulation for the protection of
21 investors;

22 (2) maximizing uniformity in federal and state regulatory standards;
23 and

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

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

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

31 (2) developing and maintaining uniform forms;

- 1 (3) conducting a joint examination or investigation;
- 2 (4) holding a joint administrative hearing;
- 3 (5) instituting and prosecuting a joint civil or administrative
- 4 proceeding;
- 5 (6) sharing and exchanging personnel;
- 6 (7) coordinating registrations under AS 45.56.301 and 45.56.401 -
- 7 45.56.404 and exemptions under AS 45.56.203;
- 8 (8) sharing and exchanging records, subject to AS 45.56.607;
- 9 (9) formulating regulations, statements of policy, guidelines, forms,
- 10 and interpretative opinions and releases;
- 11 (10) formulating common systems and procedures;
- 12 (11) notifying the public of proposed regulations, forms, statements of
- 13 policy, and guidelines;
- 14 (12) attending conferences and other meetings among securities
- 15 regulators, which may include representatives of governmental and private sector
- 16 organizations involved in capital formation, considered necessary or appropriate to
- 17 promote or achieve uniformity; and
- 18 (13) developing and maintaining a uniform exemption from
- 19 registration for small issuers, and taking other steps to reduce the burden of raising
- 20 investment capital by small businesses.

21 **Sec. 45.56.609. Judicial review.** (a) A final order issued by the administrator

22 or administrative law judge under this chapter is subject to judicial review under

23 AS 44.62.560 (Administrative Procedure Act).

24 (b) A regulation adopted under this chapter is subject to judicial review under

25 AS 44.62.300 (Administrative Procedure Act).

26 **Sec. 45.56.610. Jurisdiction.** (a) AS 45.56.301, 45.56.302, 45.56.401(a),

27 45.56.402(a), 45.56.403(a), 45.56.404(a), 45.56.501, 45.56.506, 45.56.509, and

28 45.56.510 do not apply to a person that sells or offers to sell a security unless the offer

29 to sell or the sale is made in the state or the offer to purchase or the purchase is made

30 and accepted in the state.

31 (b) AS 45.56.401(a), 45.56.402(a), 45.56.403(a), 45.56.404(a), 45.56.501,

1 45.56.506, 45.56.509, and 45.56.510 do not apply to a person that purchases or offers
 2 to purchase a security unless the offer to purchase or the purchase is made in the state
 3 or the offer to sell or the sale is made and accepted in the state.

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

6 (1) originates from within the state; or

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

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

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

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

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

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

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

30 (3) the program or communication is an electronic communication that
 31 originates outside the state and is captured for redistribution to the general public in

1 the state by a community antenna or cable, radio, cable television, or other electronic
2 system; or

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

6 (f) AS 45.56.403(a), 45.56.404(a), 45.56.405(a), 45.56.502, 45.56.505, and
7 45.56.506 apply to a person if the person engages in an act, practice, or course of
8 business instrumental in effecting prohibited or actionable conduct in the state,
9 whether or not either party is then present in the state.

10 **Sec. 45.56.611. Service of process.** (a) A consent to service of process
11 complying with this section required by this chapter shall be signed and filed in the
12 form required by a regulation adopted or order issued under this chapter. A consent
13 appointing the administrator the person's agent for service of process in a noncriminal
14 action or proceeding against the person or the person's successor or personal
15 representative under this chapter or a regulation adopted or order issued under this
16 chapter after the consent is filed has the same force and validity as if the service were
17 made personally on the person filing the consent. A person that has filed a consent
18 under this subsection in connection with a previous application for registration or
19 notice filing need not file an additional consent.

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

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

29 (1) the plaintiff, which may be the administrator, promptly sends
30 notice of the service and a copy of the process, return receipt requested, to the
31 defendant or respondent at the address set out in the consent to service of process or, if

1 a consent to service of process has not been filed, at the last known address, or takes
2 other reasonable steps to give notice; and

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

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

10 (e) If process is served under (c) of this section, the court, or the administrator
11 in a proceeding before the administrator, shall order continuances as are necessary or
12 appropriate to afford the defendant or respondent reasonable opportunity to defend.

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

14 **Sec. 45.56.810. References to federal statutes.** 15 U.S.C. 77a - 77aa
15 (Securities Act of 1933), 15 U.S.C. 78a - 78lll (Securities Exchange Act of 1934), 15
16 U.S.C. 79 - 79z-6 (Public Utility Holding Company Act of 1935), 15 U.S.C. 80a-1 -
17 80a-64 (Investment Company Act of 1940), 15 U.S.C. 80b-1 - 80b-21 (Investment
18 Advisers Act of 1940), 29 U.S.C. 1001 - 1461 (Employee Retirement Income Security
19 Act of 1974), 12 U.S.C. 1701 - 1750g (National Housing Act), 7 U.S.C. 1 - 27f
20 (Commodity Exchange Act), 26 U.S.C. (Internal Revenue Code), 15 U.S.C. 78aaa -
21 78lll (Securities Investor Protection Act of 1970), P.L. 105-353, 112 Stat. 3227
22 (Securities Litigation Uniform Standards Act of 1998), 15 U.S.C. 661 - 697g (Small
23 Business Investment Act of 1958), and 15 U.S.C. 7001 - 7031 (Electronic Signatures
24 in Global and National Commerce Act) mean those statutes and the rules and
25 regulations adopted under those statutes, as in effect on the date of enactment of this
26 chapter, or as later amended.

27 **Sec. 45.56.820. References to federal agencies.** A reference in this chapter
28 to an agency or department of the United States is also a reference to a successor
29 agency or department.

30 **Sec. 45.56.830. Application to Alaska Native Claims Settlement Act**
31 **corporations.** The initial issue of stock of a corporation organized under Alaska law

1 under 43 U.S.C. 1601 et seq. (Alaska Native Claims Settlement Act) is not a sale of a
2 security under AS 45.56.301.

3 **Sec. 45.56.840. Reports of corporations.** Copies of all annual reports,
4 proxies, consents or authorizations, proxy statements, and other materials relating to
5 proxy solicitations distributed, published, or made available by any person to at least
6 30 Alaska resident shareholders of a corporation that has total assets exceeding
7 \$1,000,000 and a class of equity security held of record by 500 or more persons and
8 that is exempted from the registration requirements of AS 45.56.301 by AS 45.56.830
9 shall be filed with the administrator concurrently with their distribution to
10 shareholders.

11 **Sec. 45.56.990. Definitions.** In this chapter, unless the context otherwise
12 requires,

13 (1) "administrator" means the commissioner of commerce, community,
14 and economic development or a designee of the commissioner;

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

22 (3) "bank" means

23 (A) a banking institution organized under the laws of the
24 United States;

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

26 (C) any other banking institution, whether incorporated or not,
27 doing business under the laws of a state or of the United States, a substantial
28 portion of the business of which consists of receiving deposits or exercising
29 fiduciary powers similar to those permitted to be exercised by national banks
30 under the authority of the United States Comptroller of the Currency under 12
31 U.S.C. 92a, that is supervised and examined by a state or federal agency

1 having supervision over banks, and that is not operated for the purpose of
2 evading this chapter; and

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

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

8 (A) an agent;

9 (B) an issuer;

10 (C) a bank or savings institution if its activities as a broker-
11 dealer are limited to those specified in 15 U.S.C. 78c(a)(4)(B)(i) - (vi), (viii) -
12 (x), and (xi) if limited to unsolicited transactions, or 15 U.S.C. 78c(a)(5)(B)
13 and (C), or a bank that satisfies the conditions described in 15 U.S.C.
14 78c(a)(4);

15 (D) an international banking institution; or

16 (E) a person excluded by a regulation adopted or order issued
17 under this chapter;

18 (5) "depository institution" means

19 (A) a bank; or

20 (B) a savings institution, trust company, credit union, or similar
21 institution that is organized or chartered under the laws of a state or of the
22 United States, authorized to receive deposits, and supervised and examined by
23 an official or agency of a state or the United States if its deposits or share
24 accounts are insured to the maximum amount authorized by statute by the
25 Federal Deposit Insurance Corporation, the National Credit Union Share
26 Insurance Fund, or a successor authorized by federal law; the term does not
27 include

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

30 (ii) a Morris Plan bank; or

31 (iii) an industrial loan company;

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

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

6 (8) "filing" means the receipt under this chapter of a record by the
7 administrator or a designee of the administrator;

8 (9) "fraud," "deceit," and "defraud" are not limited to common law
9 deceit;

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

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

14 (A) a depository institution or international banking institution;

15 (B) an insurance company;

16 (C) a separate account of an insurance company;

17 (D) an investment company as defined in 15 U.S.C. 80a-1 -
18 80a-64 (Investment Company Act of 1940);

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

21 (F) an employee pension, profit-sharing, or benefit plan if the
22 plan has total assets in excess of \$10,000,000 or its investment decisions are
23 made by a named fiduciary, as defined in 29 U.S.C. 1102(a)(2) (Employee
24 Retirement Income Security Act of 1974), that is a broker-dealer registered
25 under 15 U.S.C. 78a - 78lll (Securities Exchange Act of 1934), an investment
26 adviser registered or exempt from registration under 15 U.S.C. 80b-1 - 80b-21
27 (Investment Advisers Act of 1940), an investment adviser registered under this
28 chapter, a depository institution, or an insurance company;

29 (G) a plan established and maintained by a state, a political
30 subdivision of a state, or an agency or instrumentality of a state or a political
31 subdivision of a state for the benefit of its employees if the plan has total assets

1 in excess of \$10,000,000 or its investment decisions are made by a legally
 2 designated public official or by a named fiduciary, as defined in 29 U.S.C.
 3 1102(a)(2), that is a broker-dealer registered under 15 U.S.C. 78a - 78lll
 4 (Securities Exchange Act of 1934), an investment adviser registered or exempt
 5 from registration under 15 U.S.C. 80b-1 - 80b-21 (Investment Advisers Act of
 6 1940), an investment adviser registered under this chapter, a depository
 7 institution, or an insurance company;

8 (H) a trust if that trust has total assets in excess of \$10,000,000,
 9 the trustee of the trust is a depository institution, and the participants in the
 10 trust are exclusively plans of the types identified in (F) or (G) of this
 11 paragraph, regardless of the size of their assets, except a trust that includes as
 12 participants self-directed individual retirement accounts or similar self-directed
 13 plans;

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

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

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

23 (L) a federal covered investment adviser acting for its own
 24 account;

25 (M) a qualified institutional buyer, as defined in 17 C.F.R.
 26 230.144A, other than 17 C.F.R. 230.144A(a)(1)(i)(H), adopted under 15
 27 U.S.C. 77a - 77aa (Securities Act of 1933);

28 (N) a major U.S. institutional investor, as defined in 17 C.F.R.
 29 240.15a-6(b)(4)(i), adopted under 15 U.S.C. 78a - 78lll (Securities Exchange
 30 Act of 1934);

31 (O) any other person, other than an individual, of institutional

1 character with total assets in excess of \$10,000,000 not organized for the
2 specific purpose of evading this chapter; or

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

5 (12) "insurance company" means a company organized as an insurance
6 company whose primary business is writing insurance or reinsuring risks underwritten
7 by insurance companies and that is subject to supervision by the insurance
8 commissioner or a similar official or agency of a state;

9 (13) "insured" means insured as to payment of all principal and all
10 interest;

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

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

23 (A) an investment adviser representative;

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

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

31 (D) a publisher of a bona fide newspaper, news magazine, or

1 business or financial publication of general and regular circulation;

2 (E) a federal covered investment adviser;

3 (F) a bank or savings institution;

4 (G) any other person that is excluded by 15 U.S.C. 80b-1 -
5 80b-21 (Investment Advisers Act of 1940) from the definition of investment
6 adviser; or

7 (H) any other person excluded by a regulation adopted or order
8 issued under this chapter;

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

17 (A) performs only clerical or ministerial acts;

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

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

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

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

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

30 (17) "issuer" means a person that issues or proposes to issue a security,
31 subject to the following:

1 (A) the issuer of a voting trust certificate, collateral trust
2 certificate, certificate of deposit for a security, or share in an investment
3 company without a board of directors or individuals performing similar
4 functions is the person performing the acts and assuming the duties of
5 depositor or manager under the trust or other agreement or instrument under
6 which the security is issued;

7 (B) the issuer of an equipment trust certificate or similar
8 security serving the same purpose is the person by which the property is or will
9 be used or to which the property or equipment is or will be leased or
10 conditionally sold or that is otherwise contractually responsible for ensuring
11 payment of the certificate;

12 (C) the issuer of a fractional undivided interest in an oil, gas, or
13 other mineral lease or in payments out of production under a lease, right, or
14 royalty is the owner of an interest in the lease or in payments out of production
15 under a lease, right, or royalty, whether whole or fractional, that creates
16 fractional interests for the purpose of sale;

17 (18) "nonissuer transaction" or "nonissuer distribution" means a
18 transaction or distribution not directly or indirectly for the benefit of the issuer;

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

22 (20) "person" means an individual; corporation; business trust; estate;
23 trust; partnership; limited liability company; association; joint venture; government;
24 governmental subdivision, agency, or instrumentality; public corporation; or any other
25 legal or commercial entity;

26 (21) "place of business" of a broker-dealer, an investment adviser, or a
27 federal covered investment adviser means

28 (A) an office at which the broker-dealer, investment adviser, or
29 federal covered investment adviser regularly provides brokerage or investment
30 advice or solicits, meets with, or otherwise communicates with customers or
31 clients; or

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

5 (22) "price amendment" means the amendment to a registration
 6 statement filed under 15 U.S.C. 77a - 77aa (Securities Act of 1933) or, if an
 7 amendment is not filed, the prospectus or prospectus supplement filed under 15 U.S.C.
 8 77a - 77aa (Securities Act of 1933) that includes a statement of the offering price,
 9 underwriting and selling discounts or commissions, amount of proceeds, conversion
 10 rates, call prices, and other matters dependent upon the offering price;

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

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

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

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

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

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

31 (26) "Securities and Exchange Commission" means the United States

1 Securities and Exchange Commission;

2 (27) "securities business" means a business that provides the services
3 provided by

4 (A) investment advisers, federal covered investment advisers,
5 or investment adviser representatives; or

6 (B) broker-dealers, issuers, or agents of broker-dealers or
7 issuers;

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

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

22 (B) does not include an insurance or endowment policy or
23 annuity contract under which an insurance company promises to pay a fixed
24 sum of money either in a lump sum or periodically for life or other specified
25 period;

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

29 (D) includes an investment in a common enterprise with the
30 expectation of profits to be derived primarily from the efforts of a person other
31 than the investor; in this subparagraph, "common enterprise" means an

1 enterprise in which the fortunes of the investor are interwoven with those of
2 either the person offering the investment, a third party, or other investors; and

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

6 (29) "self-regulatory organization" means a national securities
7 exchange registered under 15 U.S.C. 78a - 78lll (Securities Exchange Act of 1934), a
8 national securities association of broker-dealers registered under 15 U.S.C. 78a - 78lll
9 (Securities Exchange Act of 1934), a clearing agency registered under 15 U.S.C. 78a -
10 78lll (Securities Exchange Act of 1934), or the Municipal Securities Rulemaking
11 Board established under 15 U.S.C. 78o-4;

12 (30) "sign" means, with present intent to authenticate or adopt a
13 record,

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

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

17 (31) "state" means a state of the United States, the District of
18 Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular
19 possession subject to the jurisdiction of the United States.

20 **Sec. 45.56.995. Short title.** This chapter may be cited as the Uniform
21 Securities Act.

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

23 **Sec. 06.05.340. Certain remuneration prohibited.** A bank may not pay
24 directly or indirectly a fee, commission, or bonus of any kind for its promotion and
25 organization or for securing a subscription to the original capital or to any increase in
26 capital. However, this section does not prohibit the payment of reasonable
27 compensation for legal, accounting, and econometric services, or payments to a
28 securities broker-dealer registered under AS 43.56 [AS 45.55] for services that have
29 been performed in connection with the sale of bank securities.

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

31 (a) Notwithstanding any other provision of this chapter, a person does not act

1 as a fiduciary under this chapter if the person

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

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

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

12 (4) engages in securities business activity [OR INVESTMENT
13 ADVISORY BUSINESS ACTIVITY] as a registered broker-dealer, a broker-dealer
14 agent, **an** [A STATE] investment adviser, or an investment adviser representative, or
15 as a federal covered **investment** adviser who has made a notice filing under
16 **AS 45.56.405(c)** [AS 45.55.040(h),] the person is acting within the scope of the
17 person's registration or notice filing, and the activity is regulated by the department
18 under **AS 45.56** [AS 45.55] or by the United States Securities and Exchange
19 Commission; in this paragraph, "agent," "broker-dealer," "federal covered **investment**
20 adviser," "**investment adviser,**" "investment adviser representative," **and**
21 ["INVESTMENT ADVISORY BUSINESS,"] "securities business" [, " AND "STATE
22 INVESTMENT ADVISER"] have the meanings given in **AS 45.56.990**
23 [AS 45.55.990];

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

27 (6) handles escrow transactions and is a title insurance company that
28 has a certificate of authority issued under AS 21.09, a title insurance limited producer
29 that is licensed as required by AS 21.66.270, or an employee of the title insurance
30 company or title insurance producer when acting in the scope of the employee's
31 employment; in this paragraph,

1 (A) "escrow transaction" has the meaning given in
2 AS 34.80.090;

3 (B) "title insurance company" has the meaning given in
4 AS 21.66.480;

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

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

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

10 (9) has a certified public accountant certificate issued under AS 08.04,
11 the person is acting within the scope of the certificate, and the person and any
12 accounting firm of the person are not trustees of more trusts than the number
13 established for the person and accounting firm by the department by regulation or
14 order; in this paragraph, "accounting firm" means a partnership, a professional
15 corporation organized under AS 10.45, or another association organized for the
16 practice of public accounting and in which the person practices public accounting;

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

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

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

27 (13) holds money or other assets in connection with the collection of
28 debts or payments on loans by a person acting solely as the agent or representative at
29 the sole direction of the person to whom the debt or payment is owed, including
30 engaging in the business of an escrow agent;

31 (14) acts as a conservator if the person is appointed by a court of this

1 or another state or is qualified to act as a conservator under AS 13.26.320;

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

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

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

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

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

16 (21) "issuer" has the meaning given in AS 45.56.990 [AS 45.55.990];

17 * **Sec. 5.** AS 12.62.400(13) is amended to read:

18 (13) registration as a broker-dealer, agent, investment adviser
19 representative, or [STATE] investment adviser under AS 45.56.401 - 45.56.404
20 [AS 45.55.030 - 45.55.060].

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

22 (1) "license"

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

27 (i) license relating to boxing or wrestling under
28 AS 05.10;

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

31 (iii) teacher certificate under AS 14.20;

1 (iv) authorization under AS 18.08 to perform
2 emergency 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 municipal correctional,
8 correctional, probation, or parole 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, **an** [A
15 STATE] investment adviser, or an investment adviser representative
16 under **AS 45.56.401, 45.56.402, 45.56.403, or 45.56.404**
17 [AS 45.55.030];

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

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

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

24 (B) does not include

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

27 (ii) a vessel license issued under AS 16.05.490 or
28 16.05.530;

29 (iii) a license issued under AS 47.35;

30 (iv) a business license issued under AS 43.70;

31 (v) an entry permit or interim-use permit issued under

1 AS 16.43; or

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

3 * **Sec. 7.** AS 21.89.110(a) is amended to read:

4 (a) The director shall regulate the transaction of viatical settlement contracts
5 for the protection of viators, insureds, and insurers. The authority of the director under
6 this subsection extends to the regulation of transactions between a viator and a viatical
7 settlement provider and between a viator and a person acting as an agent in viaticating
8 a life insurance policy, while the authority of the commissioner extends to the
9 regulation of viatical settlement investments as provided under **AS 45.56**
10 [AS 45.55.905(c)].

11 * **Sec. 8.** AS 25.27.244(s)(2) is amended to read:

12 (2) "license"

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

17 (i) license relating to boxing or wrestling under

18 AS 05.10;

19 (ii) authorization to perform an occupation regulated

20 under AS 08;

21 (iii) teacher certificate under AS 14.20;

22 (iv) authorization under AS 18.08 to perform

23 emergency medical services;

24 (v) asbestos worker certification under AS 18.31;

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

26 (vii) certificate of fitness under AS 18.62;

27 (viii) hazardous painting certification under AS 18.63;

28 (ix) security guard license under AS 18.65.400 -

29 18.65.490;

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

31 (xi) employment agency permit under AS 23.15.330 -

1 23.15.520;

2 (xii) registration as a broker-dealer, an agent, **an** [A
3 STATE] investment adviser, or an investment adviser representative
4 under AS 45.56.401, 45.56.402, 45.56.403, 45.56.404 [AS 45.55.030];

5 (xiii) certification as a pesticide applicator under
6 AS 46.03.320;

7 (xiv) certification as a storage tank worker or contractor
8 under AS 46.03.375;

9 (xv) certification as a water and wastewater works
10 operator under AS 46.30; [AND]

11 (xvi) commercial crewmember fishing license under
12 AS 16.05.480 other than an entry permit or interim-use permit under
13 AS 16.43;

14 (xvii) fish transporter permit under AS 16.05.671;

15 (xviii) sport fishing operator license under
16 AS 16.40.260;

17 (xix) sport fishing guide license under AS 16.40.270;

18 (B) does not include

19 (i) a vessel license issued under AS 16.05.490 or
20 16.05.530;

21 (ii) a license issued under AS 14.37 or AS 47.35;

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

23 (iv) an entry permit or interim-use permit issued under
24 AS 16.43; or

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

26 * **Sec. 9.** AS 34.08.570 is amended to read:

27 **Sec. 34.08.570. Common interest community securities.** If an interest in a
28 common interest community is currently registered with the Securities and Exchange
29 Commission of the United States, a declarant satisfies each requirement relating to the
30 preparation of a public offering statement of this chapter if the declarant delivers to the
31 purchaser a copy of the public offering statement filed with the Securities and

1 Exchange Commission. An interest in a common interest community is not subject to
2 the registration requirements of AS 45.56 [AS 45.55].

3 * **Sec. 10.** AS 37.23.010(c) is amended to read:

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

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

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

11 (1) a securities broker-dealer registered under AS 45.56.401
12 [AS 45.55.030] and under 15 U.S.C. 78o (Securities Exchange Act of 1934);

13 (2) an [A STATE] investment adviser registered under AS 45.56.403
14 [AS 45.55.030] or a federal covered investment adviser that has made a notice filing
15 under AS 45.56.405(c) [AS 45.55.040(h)];

16 (3) the Department of Revenue; or

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

21 * **Sec. 12.** AS 43.70.105(a) is amended to read:

22 (a) This chapter does not apply to

23 (1) a fisheries business;

24 (2) the sale of liquor under a license issued under AS 04.11;

25 (3) an insurance business;

26 (4) a mining business;

27 (5) supplying services as an employee;

28 (6) furnishing goods or services by a person who does not represent to
29 be regularly engaged in furnishing goods or services;

30 (7) the activities of an investment club; in this paragraph,

31 (A) "investment club" means a group of individuals,

1 incorporated or otherwise organized, that engages primarily in investing in
 2 securities, that does not sell investment services to another person, that does
 3 not advertise, and the primary purpose of which is educational;

4 (B) "security" has the meaning given in AS 45.56.990
 5 [AS 45.55.990].

6 * **Sec. 13.** AS 44.64.030(a)(31) is repealed and reenacted to read:

7 (31) AS 45.56 (Uniform Securities Act);

8 * **Sec. 14.** AS 45.63.080(a)(1) is amended to read:

9 (1) of a security regulated under AS 45.56 [AS 45.55] or a security that
 10 is exempted by AS 45.56.201 [AS 45.55.900] from regulation under AS 45.56
 11 [AS 45.55];

12 * **Sec. 15.** AS 45.66.220 is amended to read:

13 **Sec. 45.66.220. Exemptions.** This chapter does not apply to a sale of or an
 14 offer to sell

15 (1) a business opportunity if the total amount of the payments to be
 16 made by the buyer under the contract is less than \$250;

17 (2) a franchise under 16 C.F.R. 436;

18 (3) an ongoing business operated by the seller that is to be sold in its
 19 entirety;

20 (4) a business opportunity to an ongoing business if the seller will
 21 provide products, equipment, supplies, or services that are to be sold by the buyer in
 22 connection with the buyer's ongoing business;

23 (5) sales demonstration equipment, materials, or samples for use in
 24 sales demonstrations and not for resale, or product inventory sold to the buyer at a
 25 bona fide wholesale price;

26 (6) a business opportunity by an executor, an administrator, a marshal,
 27 a receiver, a trustee in bankruptcy, or a guardian or conservator, or under a judicial
 28 sale;

29 (7) a security registered under AS 45.56 [AS 45.55] or a security that
 30 is exempted by AS 45.56.201 [AS 45.55.900] from registration under AS 45.56
 31 [AS 45.55];

1 (8) a business opportunity if the sale or offer is made by a person
 2 registered with the United States Securities and Exchange Commission when acting
 3 within the scope of the person's Securities and Exchange Commission license or by a
 4 person registered by the state under AS 45.56 [AS 45.55] when acting within the
 5 scope of registration;

6 (9) a business opportunity by an issuer or a subsidiary of an issuer of a
 7 class of securities that is

8 (A) subject to 15 U.S.C. 78a - 78lll (Securities Exchange Act of
 9 1934); and

10 (B) registered under 15 U.S.C. 78a - 78lll (Securities Exchange
 11 Act of 1934) unless exempt from registration under 15 U.S.C. 78l(g)(2)(A) -
 12 (C) or (E) - (H);

13 (10) a business opportunity in which the buyer is

14 (A) a bank, savings and loan association, trust company,
 15 insurance company, credit union, or investment company under 15 U.S.C. 80a-
 16 1 - 80a-64 (Investment Company Act of 1940), pension or profit sharing trust,
 17 or other financial institution or institutional buyer; or

18 (B) a broker-dealer registered under AS 45.56.401 [AS 45.55];

19 (11) a business opportunity that involves a marketing plan made in
 20 conjunction with the registration of a trademark or service mark under 15 U.S.C. 1051
 21 - 1127 (Trademark Act of 1946) if the seller has a minimum net worth of \$1,000,000
 22 as determined on the basis of the seller's most recent audited financial statement
 23 prepared within 13 months of the first offer to sell in this state; net worth may be
 24 determined on a consolidated basis if one person owns at least 80 percent of the seller
 25 and that one person expressly guarantees the obligations of the seller that arise under
 26 the sale or offer claimed to be exempt under this paragraph; or

27 (12) a business opportunity in which either the seller or the buyer is
 28 licensed as a real estate broker, associate real estate broker, or real estate salesperson
 29 under AS 08.88 and the sale or offer is regulated by AS 08.88.

30 * **Sec. 16.** AS 45.66.900(11) is amended to read:

31 (11) "securities or investment laws" means AS 45.56 (Uniform

1 **Securities Act** [AS 45.55 (ALASKA SECURITIES ACT)] or a substantially similar
 2 statute of another jurisdiction, **15 U.S.C. 77a - 77aa** [15 U.S.C. 77a - 77bbbb]
 3 (Securities [EXCHANGE] Act of 1933), 15 U.S.C. 78a - 78lll (Securities
 4 [EXCHANGE] Act of 1934), or 15 U.S.C. 80a-1 - 80b-21 ([INVESTMENT
 5 COMPANY ACT OF 1940/] Investment Advisers Act of 1940);

6 * **Sec. 17.** AS 45.55.010, 45.55.020, 45.55.023, 45.55.025, 45.55.027, 45.55.028,
 7 45.55.030, 45.55.035, 45.55.040, 45.55.050, 45.55.060, 45.55.070, 45.55.075, 45.55.080,
 8 45.55.090, 45.55.100, 45.55.110, 45.55.120, 45.55.138, 45.55.139, 45.55.150, 45.55.155,
 9 45.55.160, 45.55.170, 45.55.900, 45.55.905, 45.55.910, 45.55.915, 45.55.920, 45.55.925,
 10 45.55.930, 45.55.935, 45.55.940, 45.55.950, 45.55.960, 45.55.970, 45.55.980, 45.55.990, and
 11 45.55.995 are repealed.

12 * **Sec. 18.** The uncodified law of the State of Alaska is amended by adding a new section to
 13 read:

14 TRANSITION: REGULATIONS. The Department of Commerce, Community, and
 15 Economic Development may proceed to adopt regulations necessary to implement AS 45.56,
 16 enacted by sec. 1 of this Act. The regulations take effect under AS 44.62 (Administrative
 17 Procedure Act), but not before the effective date of sec. 1 of this Act.

18 * **Sec. 19.** The uncodified law of the State of Alaska is amended by adding a new section to
 19 read:

20 TRANSITION; APPLICATION OF ACT TO EXISTING PROCEEDING AND
 21 EXISTING RIGHTS AND DUTIES. (a) Former AS 45.55 exclusively governs all actions or
 22 proceedings that are pending on the effective date of this Act or may be instituted on the basis
 23 of conduct occurring before the effective date of this Act, but a civil action may not be
 24 maintained to enforce any liability under former AS 45.55 unless instituted within any period
 25 of limitation that applied when the cause of action accrued or within five years after the
 26 effective date of this Act, whichever is earlier.

27 (b) All effective registrations under former AS 45.55, all administrative orders
 28 relating to the registrations, regulations, statements of policy, interpretative opinions,
 29 declaratory rulings, no action determinations, and conditions imposed on the registrations
 30 under former AS 45.55 remain in effect while they would have remained in effect if this Act
 31 had not been enacted. They are considered to have been filed, issued, or imposed under this

1 Act, but are exclusively governed by former AS 45.55.

2 (c) Former AS 45.55 exclusively applies to an offer or sale made within one year after
3 the effective date of this Act under an offering made in good faith before the effective date of
4 this Act on the basis of an exemption available under former AS 45.55.

5 * **Sec. 20.** Section 18 of this Act takes effect immediately under AS 01.10.070(c).

6 * **Sec. 21.** Except as provided in sec. 20 of this Act, this Act takes effect July 1, 2006.