HB

289

298

HB 289 + 298

Tape #	Date
22	3/31
24	4/4
35	4/28
36	4/28

"An Act relating to the definition of security."

COMMITTEE REPORT

3/13/75 HOUSE JUDICIARY

Mr. Speaker: Date _____

The Committee on Commerce has had HB 298 under consideration. A Majority of the members of the Committee

( ) recommends it DO PASS

( ) recommends it DO NOT PASS

(✓) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

( ) recommends it BE REPLACED WITH CS FOR _____ AND THAT CS FOR _____ DO PASS

( ) "and" recommends it BE REFERRED TO THE _____ COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

A. S. Bradley _____ _____

_____ _____ _____

_____ _____ _____

_____ _____ _____

Members NOT concurring in the Majority report:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

A. S. Bradley Chairman

A M E N D M E N T

Offered in the HOUSE By Commerce Committee

To: _____ HOUSE BILL NO. 200

_____ SENATE BILL NO. ____

AMENDMENT: Page_____ Line_____

Page 1

Line 22

After the word "from" delete the word "the".

Line 25

After the word "investors;" delete the words "a contract or" and insert the word "an".

Page 2

Line 3: 4

After the words "money or" delete the words "valuable assets" and insert the words "money's worth".

Line 4

After the words "furnished and" insert the word "/or".

Line 5

After the words "expectation of some" delete the word "nonmonetary".

Line 7

To the word "decision" add the letter "s".

IN REPLYING PLEASE QUOTE

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
REGIONAL OFFICE
[redacted]
SEATTLE, WASHINGTON [redacted]

RECEIVED
FEB 21 1975
DEPARTMENT OF COMMERCE
DIVISION OF BANKING
SECURITIES AND SMALL LOANS

SECURITIES AND EXCHANGE COMMISSION
ROOM 3040 FEDERAL BUILDING
915 SECOND AVENUE
SEATTLE, WASHINGTON 98174

February 19, 1975

File

James L. Thompson
Securities Examiner
Alaska Dept. of Commerce
Pouch D
Juneau, Alaska 99801

Re: Proposed revision of AS 45.55

Dear Mr. Thompson:

Thank you for forwarding this office a copy of the proposed revision of AS 45.55.140(b)(5) under the Alaska State Securities Act.

As we have discussed in the past, amendments and rules adopted by the federal Securities and Exchange Commission are not intended to be models for the state authorities. The existence of strong state regulation permits the Commission to spread our thin staff over more interstate and international violations and leave geographically isolated securities offerings to such local regulation.

Therefore, we are somewhat alarmed if state governments pattern exemptions from local regulation on exemptions which the federal authorities feel are appropriate in large part because we rely on state governments to police them. This creates loopholes, which in turn results in a demand by the public for stronger federal regulation.

With this in mind, we note that the proposal you sent us, which proposes to exempt sales to 35 residents of Alaska, would create the danger of a loophole which might result in an absence of regulation of very large offerings. The proposal does not provide for the safeguards, such as sophisticated ability to evaluate the business risks, or ability to bear the possibilities of total loss, which the Federal Rule 146 requires. The federal rule hinges upon this ability to fend for oneself, thus making registration of sales to 35

persons less necessary (suitably restricted so that nominees, companies, trusts and the like are counted as one investor for each beneficial owner of interests in such nominees, companies, trusts, etc.)

If Alaska exempts from registration offerings to a limited number of persons, the proposal by your office that the exemption be limited to 20 would appear to be the maximum number which the state should consider, and the definition of those persons should be made so as to avoid evasions through corporations and trusts which themselves have securities to offer. Also, as you propose, the dollar amount, notification requirement, sophistication test and prospectus test should be retained, in our opinion.

Sincerely,

Jack H. Bookey

Jack H. Bookey
Regional Administrator

MEMORANDUM

File

LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

POUCH Y — STATE CAPITOL
JUNEAU, ALASKA 99811

TO: Mr. Bradley

DATE: 2/28/75

FROM: Dave Walker

WO#510

SUBJECT: Amendment to the AK. Securities Act.

Following our conversation this afternoon I attempted to get in touch with Mr. Schlosberg. He is on vacation and unavailable until sometime the early part of March. (Mon. March 10). Mr. Thompson advises that his memo to the committee of 2/4/75 stands as the firm position of the staff of the Div. of Banking. He further advises that the Securities Exchange Commission is categorically opposed to Schlosberg's proposal. I recommend you sit on this until Schlosberg arrives and then determine ~~what~~ how to proceed.

BOB BRADLEY

state house

CHAIRMAN, COMMERCE COMMITTEE
POUCH V
JUNEAU, ALASKA 99811
465-3824

VICE CHAIRMAN, JUDICIARY
601 N. BRAGAW
ANCHORAGE, ALASKA 99504
272-0275

March 19, 1975

Mr. Jack Bookey
Regional Administrator
Securities Exchange Committee
Room 3040 Federal Building
915 2nd Avenue
Seattle, Washington 98174

Dear Mr. Bookey,

The House Commerce Committee is considering the enclosed bills, HB 289 and HB 298. The hearings on these bills is scheduled for Friday, March 28 at 8:00 a.m. Your testimony is invited, however, if you are unable to attend we would appreciate any written comments you might care to make. Please submit written testimony before March 28. If you have any questions please contact my office, the number is 465-3824.

Sincerely,

Bob Bradley

BB/mr

cc James Reeves
Stan Howitt
William Anderson
Willis Kirkpatrick
Fred Kokin

Witnesses

Stanley Howitt, Esq. 360 K St.
Director, Consumer Protection

Kenneth Hume, President 612 F St. 01
Anchorage Chamber of Commerce
(former Pres. of Alaska State Bank)

James L. Thompson
Securities Examiner, Division of Banking & Securities
AK Dept. of Commerce

Leslie Pace, President
Area Realty Inc.
Anchorage, AK

Ralph Whitmore, Chairman
Alaska State Bank, Anchorage

James E. Johnson, vice-president
First National Bank of Anchorage
Anchorage, AK

Bennett Williams
Sales Associate, Jack White Company
Anchorage, AK 909 W. 9th Ave, 01

James Reeves
Ass. AG 360 K St.
Anc

Miles Schlosberg
1026 4th Ave. Suite 206
AncAK

Jan 31

Proposed Bill on Alaska Securities Law

AS 45.55.140 (6) (5) change to "a transaction exempt as a private offering under U.S. Securities and Exchange Commis ion Rule 146, provided that the offeror shall by writing notify the Administrator of the offering prior to making the offering on such form as the Administrator shall by rule or order prescribe.

HB 289
298

Jack Bookey
Regional Administrator
Securities Exchange Committee
Room 3040 Federal Building
915 2nd Ave
Seattle Washington 98174

James Reeves
Asst. Attorney General
360 K St.
Anchorage Alaska

Stan Howitt
Consumer Protection-Anchorage

William Anderson
Asst. Comm.
Div. of Securities
230 State Office Building
Denver Colorado

Willis Kirkpatrick
Alaska Federal Saving + Loan Ass'n
301 Franklin St.

Fred Koken
Foster + Marshall
114 S Franklin St. Juneau

Dear

The House Commerce Comm. is considering the enclosed bills, HB 289 and HB 298. The hearings on these bills is scheduled for Friday March 28 at 8:00 AM. ~~Your~~ However Your testimony is invited ~~but~~ if you are unable to attend we would appreciate any ~~w~~ written comments you might care to make. Please submit written testimony before March 28. If you have any questions please contact my office, the number is 465 3824.

Sincerely

Bob

First Regular Session

LDO NO. 73 0203/1

HOUSE BILL NO. 1030

Forty-ninth General Assembly

ENGROSSED

STATE OF COLORADO

BUSINESS AFFAIRS

BY REPRESENTATIVES Sack and Kopel; also SENATOR Bermingham.

A BILL FOR AN ACT

1 DECLARING PYRAMID PROMOTIONAL SCHEMES TO BE DECEPTIVE TRADE
2 PRACTICES UNDER THE "COLORADO CONSUMER PROTECTION ACT".

3 Be it enacted by the General Assembly of the State of Colorado:

4 SECTION 1. 55-5-1, Colorado Revised Statutes 1963 (1969
5 Supp.), is amended BY THE ADDITION OF THE FOLLOWING NEW
6 SUBSECTIONS to read:

7 55-5-1. Definitions. (13) "Pyramid promotional scheme"
8 means any program utilizing a pyramid or chain process by which a
9 participant in the program gives a valuable consideration in excess of
9a one hundred dollars for the opportunity
10 or right to receive compensation or other things of value in
11 return for inducing other persons to become participants in the
12 program. Ordinary sales of goods or services to persons who are
13 not purchasing in order to participate in such a scheme are not
14 within this definition.

15 (14) "Promoting a pyramid promotional scheme" means
16 inducing one or more other persons to become participants, or
17 attempting to so induce, or assisting another in promoting a
18 pyramid promotional scheme by means of references or otherwise.

19 SECTION 2. 55-5-2 (1), Colorado Revised Statutes 1963, as
20 amended, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

21 55-5-2. Deceptive trade practices. (1) (r) Contrives,

Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

As amended 2nd readi
FEB 9 1973
HOUSE

prepares, sets up, operates, publicizes by means of advertisements, or promotes any pyramid promotional scheme.

SECTION 3. 55-5-10 (2) (c), Colorado Revised Statutes 1963 (1969 Supp.), is amended to read:

55-5-10. Duties of district attorneys. (2) (c) To transmit such complaints to the attorney general, ~~EXCEPT~~ AND AS TO PYRAMID PROMOTIONAL SCHEMES, TO ACT UPON SUCH COMPLAINTS IN THE ENFORCEMENT OF THE PROVISIONS OF THIS ARTICLE.

SECTION 4. 55-5-11, Colorado Revised Statutes 1963 (1969 Supp.), is amended to read:

55-5-11. Enforcement. In order to promote the uniform administration of this article in this state, the attorney general shall be responsible for its enforcement, but he may direct any district attorney in this state to enforce the provisions of this article, EXCEPT THAT ANY DISTRICT ATTORNEY HAS CONCURRENT JURISDICTION TO ENFORCE THE PROVISIONS OF THIS ARTICLE WITH RESPECT TO PYRAMID PROMOTIONAL SCHEMES. IN EITHER ~~in which~~ case the district attorney shall have the powers of the attorney general prescribed in this article.

SECTION 5. Article 5 of chapter 55, Colorado Revised Statutes 1963, as amended, is amended BY THE ADDITION OF A NEW SECTION to read:

55-5-14. Criminal penalties. Any person who promotes a pyramid promotional scheme in this state, upon a first conviction, is guilty of a class 1 misdemeanor, as defined in section 40-1-106, C.R.S. 1963, and upon a second or subsequent conviction, is guilty of a class 5 felony, as defined in section 40-1-105, C.R.S. 1963.

SECTION 6. Effective date. This act shall take effect July 1, 1973, and shall apply to offenses committed on and after such date.

SECTION 7. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

HOUSE BILL NO. 1278

ENGROSSED WITH AMENDMENT ADOPTED AT
MARCH 20 MEETING

FOR USE FOR COMMITTEE
DISCUSSION ONLY

A BILL FOR AN ACT

1 CONCERNING SECURITIES, AND PROVIDING FOR LICENSING PERSONS

2 DEALING THEREIN AND REGULATING PRACTICES RELATING THERETO.

Bill Summary

(NOTE: This summary applies to this bill as introduced and does not necessarily reflect any amendments which may be subsequently adopted.)

Adds to the list of persons regulated as salesmen under the securities law a new class called investment adviser, defined as one who, for compensation, engages in the business of advising others, by analyses, reports, or otherwise, concerning the value, future prospects, etc. of securities. Lists in detail occupations not included under that term. Defines in more detail what securities are. Allows the securities commissioner to censure or fine licensees violating certain provisions and to impose costs of proceedings on licensees. Under exemptions from registration, lists additional stock exchanges, defines commercial paper in detail, and redefines what are public offerings of securities. Authorizes the securities commissioner to enter orders to show cause or to cease and desist if necessary to prevent violations of the securities law. Details practices which are not permitted for investment advisers, and sets forth requirements for advisory contracts relating to compensation, restriction on assignments, and custody of securities. Repeals provisions of the securities law authorizing registration by notification as well as the exemption from registration of certain securities and persons dealing in securities.

---

3 Be it enacted by the General Assembly of the State of Colorado:

4 SECTION 1. 11-51-102 (9) and (12), Colorado Revised

5 Statutes 1973, are amended to read:

Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

11-51-102. Definitions. (9) "Salesman" means any individual, other than a broker-dealer, ~~or~~ issuer-dealer, OR INVESTMENT ADVISER, who represents a broker-dealer or issuer-dealer in effecting or attempting to effect purchases or sales of securities OR WHO IS EMPLOYED BY AN INVESTMENT ADVISER TO RENDER ADVICE, ANALYSIS, OR EVALUATION OF SECURITIES OR INVESTMENTS OR TO PARTICIPATE IN THE OFFER OR SALES OF ITS SERVICES OR CONTRACTS TO OTHERS. ~~"Salesman" does not include an individual who represents an issuer in effecting transactions in a security exempted by section 11-51-114 (1) (a) to (1) (c), (1) (i), or (1) (j) in effecting transactions exempted by section 11-51-114 (2) or in effecting transactions with existing employees, partners, or directors of the issuer if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state.~~ A partner, officer, or director of a broker-dealer ~~or~~ issuer-dealer, or investment advisor or a person occupying a similar status or performing similar functions, is a salesman only if he otherwise comes within the definition.

(12) "Security" means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; collateral-trust certificate; preorganization certificate of subscription; transferable share; investment contract; ANY INVESTMENT OF MONEY OR CONSIDERATION IN THE RISK CAPITAL OR INITIAL FINANCING OF A VENTURE WITH THE EXPECTATION OF SOME BENEFIT TO THE INVESTOR WHERE THE INVESTOR HAS NO DIRECT CONTROL OVER THE INVESTMENT, MANAGEMENT, OR POLICY DECISION OF THE

VENTURE; ANY CONTRACT, OPTION ON A CONTRACT, DISCRETIONARY AGREEMENT, OR DEPOSIT RECEIPT FOR FUTURE DELIVERY OF A COMMODITY NOT REGULATED BY THE COMMODITIES FUTURES TRADING COMMISSION, OR SIMILAR AGENCY OF THE UNITED STATES GOVERNMENT AND TRADED ON THE FLOOR OF A BONA FIDE EXCHANGE OR BOARD OF TRADE REGISTERED THEREUNDER; voting-trust certificate; certificate of deposit for a security; certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease; or, in general, any interest or instrument commonly known as a "security" or any certificate of interest or participation in, temporary or interim certificate for, guarantee of, or warrant or right to subscribe to or purchase any of the foregoing. "Security" does not include any insurance or endowment policy or annuity contract under which an insurance company promises to pay ~~a sum of~~ money either in a lump sum or periodically for life or some other specified period and does not include certificates of membership or stock offered or issued to its members by a cooperative association, as defined by 7-55-101 (1), Colorado Revised Statutes 1973.

SECTION 2. 11-51-102, Colorado Revised Statutes 1973, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

11-51-102. Definitions. (3.5) (a) "Investment adviser" means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for

compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities.

(b) "Investment adviser" does not include a:

(I) Bank, savings institution, pension fund, or trust company;

(II) Lawyer, accountant, engineer, or teacher whose performance of these services is solely incidental to the practice of his profession;

(III) Broker-dealer or a person whose only clients in this state are other investment advisers, broker-dealers, banks, savings institutions, trust companies, insurance companies, investment companies as defined in the "Investment Company Act of 1940", pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees;

(IV) Publisher of any bona fide newspaper, news magazine, or business or financial publication of general, regular, and paid circulation;

(V) Person whose advice, analyses, or reports relate only to securities exempted by section 11-51-114 (1)(a), or such other persons not within the intent of this subsection (3.5) as the securities commissioner may by rule or order designate.

SECTION 3. 11-51-104, Colorado Revised Statutes 1973, is amended to read:

11-51-104. Licensing of broker-dealers, issuer-dealers, investment advisers, and salesmen. (1) It is unlawful for any person to transact business in this state as a broker-dealer, issuer-dealer, INVESTMENT ADVISER, or salesman unless he is licensed under this article.

(2) It is unlawful for any broker-dealer, or issuer-dealer,

1 OR INVESTMENT ADVISER to employ a salesman unless the salesman is
2 licensed. The license of a salesman is not effective during any
3 period when he is not associated with a particular broker-dealer,
4 ~~or~~ issuer-dealer, or investment adviser licensed under this article. When a salesman
5 begins or terminates a connection with a broker-dealer, ~~or~~
6 issuer-dealer, or investment adviser, or begins or terminates those activities which
7 make him a salesman, the salesman as well as the broker-dealer, ~~or~~
8 issuer-dealer, or investment adviser shall promptly notify the securities commissioner.
9 (3) Every broker-dealer, ~~and~~ issuer-dealer, AND INVESTMENT
10 ADVISER license expires one year from its effective date unless
11 renewed. Every salesman license expires, unless renewed, upon
12 the expiration date of the license of the broker-dealer, ~~or~~
13 issuer-dealer, OR INVESTMENT ADVISER he represents.
14 SECTION 4. 11-51-105, Colorado Revised Statutes 1973, is
15 amended to read:
16 11-51-105. Licensing procedure. (1) A broker dealer,
17 issuer-dealer, INVESTMENT ADVISER, or salesman may obtain an
18 initial or renewal license by filing with the securities
19 commissioner an application together with a consent to service of
20 process pursuant to section 11-51-127 (3). The application shall
21 contain whatever
22 information the securities commissioner by rule requires
23 concerning such matters as: The applicant's fingerprints and photographs; the form and place of
24 organization; the applicant's proposed method of doing business;
25 the qualifications and business history of the applicant; in the
26 case of a broker-dealer, ~~or~~ issuer-dealer, OR INVESTMENT ADVISER,
27 the qualifications and business history of any partner, officer,

or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer, ~~or~~ issuer-dealer, OR INVESTMENT ADVISER; any injunction or administrative order or conviction of a misdemeanor involving a security or any aspect of the securities business and any conviction of a felony; and the applicant's financial condition and history. If no denial order is in effect and no proceeding is pending under section 11-51-112, the license becomes effective at noon of the thirtieth day after an application is filed. The securities commissioner may by rule or order specify an earlier effective date, and he may by order defer any effective date until noon of the thirtieth day after the filing of the amendment.

(2) Every applicant for original license shall pay a filing fee of one hundred dollars in the case of a broker-dealer, issuer-dealer, OR INVESTMENT ADVISER and twenty dollars in the case of a salesman. ~~In the case of issuer-dealers, the licensing fee of one hundred dollars shall be applied to the registration fee required under section 11-51-107 (2).~~ An applicant for renewal license shall pay a filing fee of fifty dollars for a broker-dealer OR INVESTMENT ADVISER and ten dollars for a salesman. ~~The renewal fee for an issuer-dealer shall be included in the renewal registration fee applicable thereto.~~ When a license or application is withdrawn, denied, suspended, or revoked, the fee shall not be refunded.

(3) A registered broker-dealer, ~~or~~ issuer-dealer, OR INVESTMENT ADVISER may file an application for license of a

successor, whether or not the successor is then in existence, for the unexpired portion of the year. There shall be no filing fee.

(4) The securities commissioner ~~shall~~ may by rule or order require a minimum NET capital of UP TO ~~ten~~ TWENTY-FIVE thousand dollars for licensed broker-dealers

(5) The securities commissioner may by rule or order require registered broker-dealers to post surety bonds in amounts up to ~~ten~~ TWENTY-FIVE thousand dollars and may determine their conditions. THE MINIMUM CAPITAL REQUIREMENTS OF SUBSECTION (4) OF THIS SECTION OR THE BOND REQUIREMENTS OF THIS SUBSECTION (5) SHALL ONLY APPLY TO BROKER-DEALERS WHO HOLD CUSTOMER'S SECURITIES OR CASH BALANCES. Any appropriate deposit of cash or securities shall be accepted in lieu of any bond so required. Every bond shall provide for suit thereon by any person who has a cause of action under section 11-51-125. Every bond shall provide that no suit may be maintained to enforce any liability on the bond unless brought within two years after the sale or other act upon which it is based.

(6) THE SECURITIES COMMISSIONER MAY BY RULE OR ORDER REQUIRE INVESTMENT ADVISERS TO POST SURETY BONDS IN AMOUNTS UP TO TEN THOUSAND DOLLARS.

SECTION 5. 11-51-107 (9), Colorado Revised Statutes 1973, is amended to read:

11-51-107. General registration provisions. (9) ~~When securities are registered by notification or by coordination or by qualification, they may be offered and sold by the issuer and~~

1 ~~other-person-on-whose--behalf--they--are--registered--or--by--any~~
2 ~~registered---broker-dealer.~~ Every registration shall remain
3 effective until revoked by the securities commissioner or until
4 terminated upon request of the registrant with the consent of the
5 securities commissioner. All outstanding securities of the same
6 class as a registered security are considered to be registered
7 for the purpose of any ~~nonissuer~~ transaction BY OR ON BEHALF OF A
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PERSON NOT THE ISSUER OR NOT IN CONTROL OF, CONTROLLED BY, OR UNDER COMMON CONTROL WITH THE ISSUER, so long as the registration statement is effective. ~~and between the thirtieth day after the entry of any stop order suspending or revoking the effectiveness of the registration statement under section 11-51-113, if the registration statement did not relate in whole or in part to a nonissuer distribution and one year from the effective date of the registration statement.~~ A registration statement may not be withdrawn ~~for one year from~~ AFTER its effective date if any securities ~~of the same class are outstanding. A registration statement may be withdrawn otherwise only on the order of the securities commissioner.~~ REGISTERED HAVE BEEN SOLD IN THIS STATE, UNLESS PERMITTED BY RULE OR ORDER OF THE SECURITIES COMMISSIONER. NO REGISTRATION STATEMENT IS EFFECTIVE DURING THE TIME A STOP ORDER IS IN EFFECT UNDER SECTION 11-51-113 (1).

SECTION 6. 11-51-111 (1) and (2), Colorado Revised Statutes 1973, are amended to read:

11-51-111. Postregistration provisions. (1) Every licensed broker-dealer, ~~and~~ issuer-dealer, AND INVESTMENT ADVISER shall make and keep such accounts, correspondence, memoranda, papers, books, and other records as the securities commissioner by rule prescribes. All records so required shall be preserved for three years, unless the securities commissioner by rule prescribes otherwise for particular types of records.

(2) Every licensed broker-dealer, ~~and~~ issuer-dealer, AND INVESTMENT ADVISER shall file such financial reports as the securities commissioner by rule prescribes.

SECTION 7. The introductory portion of 11-51-112 (1), and 11-51-112 (1) (c), (1) (f), (1) (h), (1) (j), and (1) (k), (2) (a) and (2) (c), (3), and (4), Colorado Revised Statutes 1973, are amended to read:

11-51-112. Denial, revocation, suspension, cancellation, and withdrawal of registration. (1) The securities commissioner may by order deny, suspend, or revoke any license, OF ANY LICENSEE OR APPLICANT FOUND TO HAVE BEEN IN VIOLATION OF ANY OF THE PROVISIONS OF THIS SUBSECTION (1), OR MAY CENSURE OR IMPOSE A FINE NOT TO EXCEED FIVE HUNDRED DOLLARS UPON ANY LICENSEE FOUND TO HAVE VIOLATED PARAGRAPHS (a), (b), (g) OR (j) OF THIS SUBSECTION (1) if he finds that the order is in the public interest and that the applicant or licensee or, in the case if a broker-dealer, ISSUER-DEALER, OR INVESTMENT ADVISER, any partner, officer, or director, or any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer, or issuer-dealer, OR INVESTMENT ADVISER:

(e) Is the subject of an order of the securities commissioner denying, suspending, or revoking his license as a broker-dealer, issuer-dealer, INVESTMENT ADVISER, or salesman;

(f) Is the subject of an order entered within the past five years by the securities administrator of any other state or by the securities and exchange commission denying or revoking licensing as a broker-dealer, ISSUER-DEALER, INVESTMENT ADVISER, or a salesman, or the substantial equivalent of those terms as defined in this article, or is the subject of an order of the

1 securities and exchange commission suspending or expelling him
2 from a national securities exchange or national securities
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1 association registered under the "Securities Exchange Act of
2 1934", or is the subject of a United States post office fraud
3 order; but the securities commissioner may not institute a
4 revocation or suspension proceeding under this paragraph (f) more
5 than one year from the date of the order relied on, and he may
6 not enter an order under this paragraph (f) on the basis of any
7 order unless that order was based on facts which would currently
8 constitute a ground for an order under this section;

9 (h) Is insolvent, either in the sense that his liabilities
10 exceed his assets or in the sense that he cannot meet his
11 obligations as they mature; but the securities commissioner may
12 not enter an order against a broker-dealer, issuer-dealer,
13 INVESTMENT ADVISER, or salesman under this paragraph (h) without
14 a finding of insolvency as to the broker-dealer, ISSUER-DEALER,
15 OR INVESTMENT ADVISER;

16 (j) Has failed reasonably to supervise his salesmen if he
17 is a broker-dealer, or issuer-dealer, OR INVESTMENT ADVISER; OR

18 (k) Has failed to pay the proper filing fee, ANY FINE
19 IMPOSED PURSUANT TO THIS SECTION, OR COSTS ASSESSED UNDER
20 SUBSECTION (3) OF THIS SECTION; but the securities commissioner
21 ~~may-enter-only-a-denial-order-under-this-paragraph--(k);--and--he~~
22 shall vacate any such order when the deficiency has been
23 corrected.

24 (2) (a) The securities commissioner may not enter an order
25 against a broker-dealer, or issuer-dealer, OR INVESTMENT ADVISER
26 on the basis of the lack of qualification of any person other
27 than the broker-dealer, or issuer-dealer, OR INVESTMENT ADVISER

1 himself, if he is an individual or a salesman of the
2 broker-dealer, or issuer-dealer, OR INVESTMENT ADVISER;
3 (c) The securities commissioner shall consider that a
4 salesman who will work under the supervision of a licensed
5 broker-dealer, or issuer-dealer, OR INVESTMENT ADVISER need not
6 have the same qualifications as a broker-dealer, ISSUER-DEALER,
7 OR INVESTMENT ADVISER;
8 (3) The securities commissioner may by order postpone or
9 suspend a license pending final determination of any proceeding
10 under this section. Upon the entry of the order, the securities
11 commissioner shall promptly notify the applicant or licensee, as
12 well as the employer or prospective employer if the applicant or
13 licensee is a salesman, that it has been entered and of the
14 reasons therefor and that within fifteen days after the receipt
15 of a written request the matter will be set down for hearing. If
16 no hearing is requested and none is ordered by the securities
17 commissioner, the order will remain in effect until it is
18 modified or vacated by the securities commissioner. If a hearing
19 is requested or ordered, the securities commissioner, after
20 notice of an opportunity for hearing, may modify or vacate the
21 order or extend it until final determination. IN ANY DISPOSITION
22 UNDER THIS SUBSECTION (3) THE LICENSEE OR APPLICANT SHALL BEAR
23 SUCH PART OF THE COSTS OF THE PROCEEDINGS AS THE SECURITIES
24 COMMISSIONER DEEMS REASONABLE AND APPROPRIATE IN THE
25 CIRCUMSTANCES.
26 (4) Withdrawal as a licensed broker-dealer, or
27 ISSUER-DEALER, INVESTMENT ADVISER, OR salesman becomes effective

1 thirty days after receipt of an application to withdraw or within
2 such shorter period of time as the securities commissioner may
3 determine, unless a revocation or suspension proceeding is
4 pending when the application is filed or a proceeding to revoke
5 or suspend or to impose conditions upon the withdrawal is
6 instituted within thirty days after the application is filed. If
7 a proceeding is pending or instituted, withdrawal becomes
8 effective at such times and upon such conditions as the
9 securities commissioner by order determines. If no proceeding is
10 pending or instituted and withdrawal automatically becomes
11 effective, the securities commissioner may nevertheless institute
12 a revocation or suspension proceeding under subsection (1) (b) of
13 this section within one year after withdrawal became effective
14 and enter a revocation or suspension order as of the last date on
15 which the license was effective.

16 SECTION 8. 11-51-114 (1) (g), (1) (h), and (2)
17 (i), Colorado Revised Statutes 1973, are amended, and the said
18 11-51-114 is further amended BY THE ADDITION OF A NEW SUBSECTION,
19 to read:

20 11-51-114. <u>Exempted securities and transactions; denial and</u>
21 <u>revocation of exemptions.</u> (1) (g) Any security listed or
22 approved for listing upon notice of issuance on the New York
23 stock exchange, the American stock exchange, ~~or the~~ Pacific ~~coast~~
24 stock exchange, ~~or the~~ Midwest stock exchange, PBW STOCK
25 EXCHANGE, OR BOSTON STOCK EXCHANGE; any other security of the
26 same issuer which is of senior or substantially equal rank; any
27 security called for by subscription rights or warrants so listed

or approved; or any warrant or right to purchase or subscribe to any of the foregoing;

(h) Any security issued by any person organized and operated not for private profit but exclusively for religious, educational, benevolent, OR charitable ~~fraternal,--social, athletic,-or-reformatory~~ purposes, or as a chamber of commerce or trade or professional association, WHICH. (1) IS OFFERED OR SOLD TO A BONAFIDE CONSTITUENT OR MEMBER OF SUCH ORGANIZATION OR ASSOCIATION WHERE NO DIRECT OR INDIRECT COMMISSION OR REMUNERATION IS PAID IN CONNECTION WITH THE OFFER OR SALE OF SUCH SECURITY, OR (2), IS OFFERED THROUGH A REGISTERED BROKER-DEALER, OR/ (3) ANY SECURITY ISSUED BY ANY COOPERATIVE ASSOCIATION ENGAGED IN THE SALE OR PRODUCTION OF ELECTRICITY AND REGULATED BY THE PUBLIC UTILITIES COMMISSION OF COLORADO.

(2) (i) Any transaction in this state/not (1) involving any

1 public offering WHERE THERE IS NO GENERAL OR PUBLIC
2 ADVERTISING OR SOLICITATION, OR (2) EFFECTED IN ACCOR-
3 DANCE WITH ANY RULE OR ORDER BY THE SECURITIES COMMIS-
4 SIONER ESTABLISHING AN EXEMPTION PURSUANT TO THIS PARA-
5 GRAPH WHERE THE SECURITIES COMMISSIONER FINDS THAT THE
6 APPLICABILITY OF SECTIONS 11-51-106 AND 11-51-115 ARE
7 NOT NECESSARY OR APPROPRIATE IN THE PUBLIC INTEREST OR
8 FOR THE PROTECTION OF INVESTORS. As used in this para-
9 graph (1), the phrase "not involving
10 any public offering" means any offering where the
11 seller reasonably believes that the securities purchased are
12 taken for investment and not with a view toward sale or resale
13 and where each offeree, by reason of his knowledge about the
14 affairs of the issuer or otherwise, does not require the
15 information which would be set forth in a registration statement
16 under this article in order to make a reasonably informed
17 judgment with respect to such investments AND WHERE NO COMMISSION
18 OR OTHER REMUNERATION IS PAID OR GIVEN DIRECTLY OR INDIRECTLY
19 (OTHER THAN TO A REGISTERED BROKER-DEALER) FOR SOLICITING ANY
20 PROSPECTIVE OFFEREE OR PURCHASER IN THIS STATE.
21 (5) Any issuer or person proposing or making an offering or
22 effecting transactions in a security pursuant to an exemption
23 under paragraph (h) or (i) of subsection (1) or under subsection
24 (2) of this section may
25 file, according to the form and content
26 prescribed, a written notice or claim for an exemption and
27 request a confirmation, interpretive opinion, or ruling thereon.

1 Such person shall pay a filing fee of FIFTY dollars, which
2 is not refundable. In any request, ruling, or order entered
3 under this subsection (5) as to any security or transaction or
4 any type of security or transaction, the securities commissioner
5 may waive any condition for the exemption.
6 SECTION 9. 11-51-120, Colorado Revised Statutes 1973, is
7 amended BY THE ADDITION OF A NEW SUBSECTION to read:
8 11-51-120. Investigations and Subpoenas. (5) Upon a
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1 finding or determination by the securities commissioner that the
2 act, or a rule promulgated thereunder, has been, is being, or is
3 about to be violated, he may enter an order to show cause for
4 non-compliance which may include an order to cease and desist the
5 acts, practices, or conduct complained of until compliance with
6 all relevant provisions. Upon the entry of the order, the
7 securities commissioner shall promptly notify the respondent that
8 it has been entered and of the reasons therefor and that within
9 ten days after the receipt of a written request the matter
10 will be set down for hearing. If no hearing is requested and
11 none is ordered by the securities commissioner, the order will
12 remain in effect until it is modified or vacated by the
13 securities commissioner. If a hearing is requested or ordered,
14 the securities commissioner, after notice of an opportunity for
15 hearing, may modify or vacate the order or extend it until final
16 determination.
17 SECTION 10. 11-51-123, Colorado Revised Statutes 1973, is
18 amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS to read:
19 11-51-123. Fraudulent and other prohibited practices. (2)
20 It is unlawful for any person who receives any consideration from
21 another person primarily for advising the other person as to the
22 value of securities or their purchase or sale, whether through
23 the issuance of analyses or reports or otherwise:
24 (a) To employ any device, scheme, or artifice to defraud
25 the the other person; or
26 (b) To engage in any act, practice, or course of business
27 which operates or would operate as a fraud or deceit upon the

1 other person.

2 (3) It is unlawful for any investment adviser to enter
3 into, extend, or renew any investment advisory contract unless it
4 provides in writing:

5 (a) That the investment adviser shall not be compensated on
6 the basis of a share of capital gains upon or capital
7 appreciation of the funds or any portion of the funds of the
8 client;

9 (b) That no assignment of the contract may be made by the
10 investment adviser without the consent of the other party to the
11 contract; and

12 (c) That the investment adviser, if a partnership, shall
13 notify the other party to the contract of any change in the
14 membership of the partnership within a reasonable time after the
15 change.

16 (4) The provisions of subsection (3) of this section do not
17 prohibit an investment advisory contract which provides for
18 compensation based upon the total value of a fund averaged over a
19 definite period or as of definite dates or taken as of a definite
20 date. As used in subsection (3) of this section, the term
21 "assignment" includes any direct or indirect transfer or
22 hypothecation of an investment advisory contract by the assignor
23 or of a controlling block of the assignor's outstanding voting
24 securities by a security holder of the assignor; but, if the
25 investment adviser is a partnership, no assignment of an
26 investment advisory contract is considered to result from the
27 death or withdrawal of a minority of the members of the

1 investment adviser having only a minority interest in the
2 business of the investment adviser or from the admission to the
3 investment adviser of one or more members who, after admission,
4 will be only a minority of the members and will have only a
5 minority interest in the business.

6 (5) It is unlawful for any investment adviser to take or
7 have custody of any securities or funds of any client if:

8 (a) The securities commissioner by rule prohibits custody;
9 or

10 (b) In the absence of rule, the investment adviser fails to
11 notify the securities commissioner that he has or may have
12 custody.

13 SECTION 11. Repeals. 11-51-102 (8) (f) (III),
14 11-51-108, 11-51-113 (1) (g) 11-51-114 (2) (k), and 11-51-128,
15 Colorado Revised Statutes 1973, are repealed.

16 SECTION 12. Effective date. This act shall take effect
17 July 1, 1975.

18 SECTION 13. Safety clause. The general assembly hereby
19 finds, determines, and declares that this act is necessary for
20 the immediate preservation of the public peace, health, and
21 safety.

COMMENTARY: _____BILL NO._____
SECTION 8

AMENDMENTS TO CRS 1963 - EXEMPTIONS

CRS '73
11-51-114 1) 125-1-13(I)(h) (Amend) Listed Securities

The present section affords NYSE, AMEX, Midwest and Pacific stock exchanges exempt status for listed securities; this bill will include PBW and Boston exchanges in the same status. The listing policies and requirements for these exchanges appear to be sufficient to afford investor protection without the necessity of registration for new issues of securieies, so qualified, and there is adequate regulation by the S.E.C.

2) 125-1-13(I)(i) (Repeal) Non-profit charitable organizations, etc.

The broad, categorical exemption afforded non-profit, charitable orcanizations, and the like, has out-lived its usefulness and purpose. The original concept of permitting the proverbial "country church" to raise money from the congregation (or membership) to build a chapel, buy an organ or install a few pews, without the restrictive, cumbersome requirement of registration has evolved into a large, conglomerate type of promotional activity, publicy financed, operated by professionals, and digressing into diverse businesses such as nursing homes, schools or colleges, luxury resort hotels, girdle factories, travel and advertising agencies, and other assorted industries-all under the guise of "non-profit", charitable or benevolent motivation.

Many millions of dollars have been extracted from the unsuspecting public which is urged to "invest in the work of the Lord, and make 10% besides!" In a recent example some $12 million was solicited and received, much of which has not been accounted for, and this is just one of several experiences on a national level, and probably indicates only a representative portion of the amount produced in this state.

Such securities are being marketed under variations of call payment and time payment certificates, gift annuity agreements, life loans, interest and non-interest notes, cognovit notes, building improvement bonds, first mortgage bonds, unit investment trusts, etc. These terms are confusing, misleading or deceptive, providing the buyer with a false sense of security. Typically, the "victims" are elderly or infirm people who are not in a position to seek financial or investment counsel, commit their life savings, and in the event of failure or collapse, there is almost no recourse-("Who wants to take over a church?") Even successful churches are often mortgaged, and no equity is found to exist. In addition much of the proceeds can be siphoned off into other enterprises as indicated above. (In the situation mentioned above it has developed that a "subsidiary" of the "exempt" entity was advised by counsel that it could not legally make an offering; so it merely raised the money through the religious organization which "re-invested" in the affiliate.)

Since these activities have not come under the regulatory purview it is difficult to document statistics or assess specific areas of abuse or

extent of the public interest involved, but the logical approach would seem to require registration (i.e. disclosure) by repealing the exemption which has heretofore been available. This would provide the mechanics for disseminating basic information in connection with the offering and sale, of such securities, and qualify the persons engaged in the distribution. Minimum data should be presented concerning the issuing organization's financial condition and budgeting, its properties and encumbrances; sinking fund provisions sources of other revenue and proposed plan of repayment; risk factors and security, if any, underlying the obligation; method of underwriting, selling commissions and expenses; and, most importantly, how the funds are to be expended. Such reasonable disclosure should be made as a matter of fairness, and to comply with anti-fraud provisions, without regard to legal responsibility, but enforcement is not practical and apprehension is after the fact, unless a filing for registration is prerequisite. The right of an offeree or purchaser to fundamental disclosure concerning an investment considerably outweighs any moderate inconvenience and expense incurred by the entity soliciting it, particularly where large sums of public financing are involved.

Many other states have adopted or are considering similar legislation which has been endorsed by the uniform securities act revision committee of the North American Securities Administrators' Association.

CRS '73
11-51-114

3) 125-1-13(1)(j) (Amend) Commercial Paper

Defines and clarifies existing standards for "commercial paper" according to administrative and judicial interpretation.

4) 125-1-13(2)(j) (Amend) Non-public offering

Conditions the present exemption for non-public offerings (i.e. private placement transactions) to restrict compensation or commission, except to licensed broker-dealers. The exemption is predicated on the knowledge and relationship of the offeree to the issuer-which would almost inherently preclude active solicitation outside the entity itself, other than to affiliates, insiders or institutional investors. ("Persons who can fend for themselves and do not require the protections and disclosures afforded by a registration statement.")

The largest area of concern is with respect to real estate syndications or limited partnerships, where the investors don't specifically fall within the above catagory or criteria. Numerous real estate brokers currently are engaged in syndicating or sponsoring, as general partners or managers, participating interests in such enterprises, without compliance with either licensing, or registration requirements, or both, as well as anti-fraud provisions. The claim for exemption is based on the premise that the offerings are limited to small numbers of "sophisticated" investors, which has no statutory basis in fact. There is always a substantial front-end remuneration, commensurate with a generally accepted real estate commission on the purchase price of the property-which becomes exorbitant in terms of leveraging or amounts of financing arranged. (Ex. A $100,000 piece of property, requiring a down payment of 10%, and a standard commission rate of 10%, accruing to the syndicating broker, is packaged and sold to investors who provide the initial $10,000, all of which goes to the "sponsor" as profit, representing a 100% payment of the invested funds and resulting in no equity interest

held by the purchasers. This situation can be compounded by pre-paid interest, wrap-around martgages and other "Mickey-Mouse" methods of financing.)

Ostensibly the reason for alleging the exemption is to avoid compliance with the real estate program guidelines adopted by the Division with respect to registration of such offerings, which restricts acquisition fees, conflicts of interests and provides for minimum capital and requirements of sponsors, disclosures, rights of participants and limits, use of advertising, projections and promotion etc. Many brokers organize series of "non-public" offerings, which, culmulatively or integrated, constitute large syndications, in terms of dollars invested and number of interests.

This particular exemption will always present a regulatory problem, but the amendment at least will put a handle on it-that is, the persons "engaged in this business" of real estate securities will have to meet the licensing requirement, or forego compensation in connection with its services as syndicator.

CRS '73
11-51-114 5) 125-1-13(2)(I) (Repeal) Offering to existing securities holders

There seems to be no economic or moral justification for exempting registration for an offering to "existing shareholders"-they are entitled to as much disclosure and consideration as other public investors. Registration provides the means of disseminating material information to such persons in order that an informed investment decision can be made. Situations have developed in which an illegal distribution (a violation of registration and/or anti-fraud provisions) is made, initially, and then the same people are re-solicited (or extended a recision offer) on the basis that the offerees are now "existing security holders"-and no registration required, so that these investors are never afforded the protection of the act. Enforcement of disclosure requirements is difficult where this type of exemption exists; registration being a relatively simple and painless process, it should not be eliminated in favor of the issuer, when the basic right of disclosure to the persons having an equity or debt interest in the enterprise is concerned.

In most of these areas described above (except (I)) the S.E.C. does not exercise oversight jurisdiction, and similar exemptions exist as well as the intra-state exemption, and they are matters of local concern, properly addressed by state regulatory authority.

FISCAL NOTE:

No criteria is available to determine the amount of additional revenue to be derived in filing fees as a result of these amendments, but it is reasonably anticipated to exceed the sum of $10,000, reverting to the general fund; Budgetary expenditure would not be increased, since processing "new business" created hereby would be handled through existing registration procedures conducted by the Division.

STATE OF COLORADO - DIVISION OF SECURITIES - DEPARTMENT OF REGULATORY AGENCIES
23C State Office Building Denver 80203

NON-PUBLIC OFFERING EXEMPTION
i.e. PRIVATE PLACEMENTS

ADMINISTRATIVE OPINION
RELEASE: December 13, 1974

The Division has received numerous requests for interpretive opinions relating to proposed "Transactions not involving any public offering" pursuant to Section 125-1-13(2)(j) of the securities act, particularly as it pertains to real estate syndications (limited partnerships). The problem has been compounded by the adoption of Rule 146 by the Securities and Exchange Commission.

Many issuers, sponsors, and attorneys have assumed that if the conditions of that rule are met, there is automatic compliance with state requirements for an exemption from registration. It is to be noted that the SEC has specifically expressed that such rule is not intended to supersede state regulation of local offerings and, on the contrary, these are matters of local concern which properly should be relegated and administered under respective state jurisdiction. The fact that an offering meets the requirements for an exemption under R.146 is not significant in determining whether it is exempt from the provisions of the Colorado act.

The criteria used to substantiate the availability of an exemption under sub-section (2)(j) are as follows:

(1) Number of offerees-and Number of actual purchasers or subscribers.
(2) Offerees' relationship to issuer and to each other-pre-existing personal or business affiliation and financial experience such that they could reasonably be expected to fend for themselves, and not need the protection afforded by the registration requirements.
(3) Offerees' knowledge-special information or access to material data concerning issuer, its financial condition, business operations, intended use of proceeds, management, etc.
(4) Manner of offering-Size, amount and number of units. Type, nature and scope of distribution, and whether Commission, direct or indirect remuneration to be paid in connection with the offer or sale of the security involved in the transaction.
(5) No general advertising for general circulation or public solicitation is to be used.
(6) Commitment by offeree that the security is being taken for investment only and not for the purpose of resale or distribution.

The "private placement" or limited offering evolved from the "Mom and Pop grocery" concept (permitting distribution to "friends and relatives", organizers, promoters or incorporators of close corporations)-extended by case law to embody "insiders", presumably controlling persons and management. Applying this rationality to limited partnerships and tax shelters, the very nature of their legal structure manifestly precludes this type of investor from meeting those qualifications.

Proponents attempt to establish an exemption on the basis that the investors are "sophisticated" or that the investment is "suitable" for such persons. These are standards to be considered with respect to <u>registered</u> distributions-not limited to exempt offerings-and do not in and of themselves substantiate a claim for exemption.

They are not alluded to in the Statute, rule, or philosophy of the provisions referred to hereinabove.

An essential factor is the offerees' pre-existing personal or business relationship with the offeror, and a reasonable presumption of the capacity to protect their own interests.

There is also a question of integration, where a series of allededly"private placements" is conducted over a period of time, packaged by the same, or an affiliated sponsor, and the cumulative distribution exceeds even the allowable numbers test or dollar limitation of such a standard, when taken in the aggregate. There is further need to resolve the applicability of the licensing requirements for a general partner marketing these interests-in most cases, a real estate broker or developer. The pertinent statutory language is that a securities "broker-dealer means any person engaged in the business of effecting transactions in securities....." Counsel have argued that if such activity is merely "incidental" to the operation of a real estate agency, and not in the regular course of its business, it does not come within the purview of the definition. The Division is unable to find a distinction or implication in support of that proposition, particularly when a substantial front-end syndication or management fee is involved.

Consideration is being given to a proposed statutory amendment to provide a more definitive and objective standard for qualifying an exemption for a non-public offering substantially in the following language:

> 125-1-13(2)(j) Any transaction not involving any public offering" means any offering extended to no more than ten (10) persons, which will result in actual purchases by not more than five (5) persons, and involving not in excess of fifty thousand ($50,000) total offering amount; and where the seller reasonably believes that the securities purchased are taken for investment and not for the purpose of redistribution; and where each offeree, by reason of his knowledge about the affairs of the issuer or otherwise, or a pre-existing personal, financial or business relationship with the offerors or where such offoree reasonably can be presumed to have the capacity to protect his own interests and does not require the information which would be set forth in a prospectus or offering circular in order to make a reasonably informed judgement with respect to such investment; no general advertising for general circulation or public solicitation is to be used, and no commission or other remuneration is paid or given directly or indirectly (other than to a registered broker-dealer)for soliciting any offeree or prospective purchaser; provided that notification of claim for exemption as to any security or transaction may be filed with the commissioner, in the form and content prescribed, who may waive or modify, by rule or order, any of the foregoing conditions or qualifications, and extend the number of offerees, purchasers, or offering amount permitted hereunder. The filing fee for such notification or request for exemption shall be twenty five ($25) dollars.

This Order is entered pursuant to the authority of 125-1-18(1) and 125-1-24(5) CRS 1963 and deemed necessary and appropriate in the public interest or for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of the Act. Interested persons may submit written data, views, or argument regarding such interpretation and opinion.

DIVISION OF SECURITIES

By Stanley R. Hays

STANLEY R. HAYS
Securities Commissioner

DEPARTMENT OF REGULATORY AGENCIES
DIVISION OF SECURITIES
230 STATE OFFICE BUILDING • 201 E. COLFAX AVE.
DENVER, COLORADO 80203 • TELEPHONE 892-2607

STATE OF COLORADO
RICHARD D. LAMM
GOVERNOR

STANLEY R. HAYS
SECURITIES COMMISSIONER

WILLIAM J. ANDERSON
ASS'T SECURITIES COMM'R

March 26, 1975

Bob Bradley, Chairman
Commerce Committee
Pouch V
Juneau, Alaska 99811

Dear Mr. Bradley:

This will acknowledge your correspondence of the 19th.

Interestingly, we had a bill (HB 1278, enclosed) containing similar provisions, which died in committee yesterday, on collateral issues, i.e. investment adviser regulation. The amendment, strongly supported by the Division, did not contain restrictions dealing with pyramid distributorships since this legislation (also enclosed) was enacted separately in 1973.

We feel the delineation of the term "security" is proper and in order, and that it does not actually expand present law or create new jurisprudence, but is simply a restatement or codification of existing interpretation and judicial decision. This language should help clarify the enforcement problems, and serve practitioners, administrators, and courts alike in determining the issues and protecting the public interest. (I assume you are familiar with the Oklahoma securities act revisions in this regard.)

We originally took an approach, similar to yours, in addressing the "non-public offering" exemption which has been of particular concern to us in the matter of real estate syndications, but it was modified to permit essentially the same type of regulation by rule implementation and encompass The Rule 146 transaction. (see page 14-15 of our draft)

Here, again, we strongly concur with the objectives expressed in your bill, and that more specificity is needed in this area.

With best wishes for success in your endeavor.

Stanley R. Hays

Stanley R. Hays, Securities Commissioner

P.S. Also attached is release dated 12-31-74 and commentary (which was prepared prior to revision of our proposed amendment) dealing with the latter subject.

Jack White Company
REAL ESTATE
CALAIS OFFICE CENTER
3201 "C" STREET – ANCHORAGE, ALASKA 99503
PHONE (907) 277-1553

March 24, 1975

Honorable Bob Bradley
Chairman House Commerce Committee

Re: House Bill No. 289

Dear Sir:

Would you please read into the public hearing record the following comments:

We are in favor of increasing the exemption of offerees from 20 to 35 persons without a full registration statement.

We are definitely against Provisos B, C, and D. We feel that these provisos will cause the additional burden of expensive legal and accounting bills that the investors will eventually pay.

Our firm has had a great deal of experience in offering smaller investments to Alaska residents. It is our opinion that if the red tape is seriously increased, as the provisos appear to do, these investments will no longer be offered to the small and medium sized Alaskan investors, but will be offered, and sold, to large outside companies that can buy without offering prospectus red tape.

We would welcome the chance to testify at an Anchorage hearing. We believe that most of the investment opportunities eminate from Anchorage and to a lesser extent, Fairbanks.

Sincerely yours,

Sewell F. Faulkner

Sewell F. Faulkner
President

SFF/sn

cc: Miles S. Schlosberg

CHARLES A. LEDBETTER

LEASE BROKER

OIL AND GAS LEASES
LEASING
ROYALTIES

3037 KNIK AVENUE
ANCHORAGE, ALASKA 99503
AREA CODE 907
279-2331

March 25, 1975

Call + have him come down - Mon.
lb

HOUSE COMMERCE COMMITTEE

The Honorable Bob Bradley
The Honorable Tim Wallis
The Honorable Helen M. Fischer
The Honorable Oral Freeman
The Honorable Ramona M. Kelley
The Honorable Leo Rhode
The Honorable Richard K. Urion
Alaska State House of Representatives
Pouch "V" State Capitol Building
Juneau, Alaska 99811

This is to request, that a Public Hearing be held in Anchorage for HB 289, because there are more employed sales persons in Anchorage, who will be affected by this bill, than in any other part of the State. HB 289 removes the present 20 person exemption by the addition of Conditions A, B, C & D. These conditions will unduly restrict small real estate syndication and small oil and gas syndication, and the brokerage of real estate and oil and gas leases as is now permitted. I urge you to vote against HB 289 and to hold a Hearing in Anchorage.

Respectfully,

Charles A. Ledbetter

Charles A. Ledbetter

PLEASE REPLY VIA AIR MAIL

FOSTER & MARSHALL INC.
INVESTMENT BANKERS AND BROKERS

MEMBERS
NEW YORK STOCK EXCHANGE, INC.
AMERICAN STOCK EXCHANGE

114 SOUTH FRANKLIN STREET
JUNEAU, ALASKA 99801
(907) 586-6000

OFFICES
IN THE PRINCIPAL CITIES OF THE
PACIFIC NORTHWEST AND ALASKA

MARCH 28, 1975

I WOULD LIKE TO OFFER TESTAMONY IN OPPOSITION TO HOUSE BILL 289 "AN ACT RELATED TO EXEMPTION FROM THE ALASKA SECURITIES ACT OF 1959."

THE ALASKA SECURITIES ACT OF 1959 WAS DESIGNED TO PROVIDE CERTAIN SAFEGUARDS TO THE INDIVIDUAL CITIZEN OF ALASKA SURROUNDING VARIOUS TYPES OF INVESTMENT OPPORTUNITIES. THE CHANGE IN THIS BILL DELETING THE OFFER REQUIREMENT AND SUBSTITUTING THE SALES REQUIREMENT IN DEFINING AN EXEMPTION IS IN MY ESTIMATION GOOD. IT HAS BEEN DIFFICULT IN THE PAST TO PROVE WHAT CONSTITUTES AN OFFER TO SELL, WHERE ACTUAL SALES ARE RELATIVELY EASY TO DEFINE. HOWEVER, INCREASING THE NUMBER OF EXEMPT SALES TO 35 WILL OPEN THE DOOR TO MANY TYPES OF CARPETBAGGERS FROM THE LOWER 48 AND POTENTIAL FRAUDULENT SCHEMES, AT THE EXPENSE OF THE CITIZEN OF ALASKA.

AS A MEMBER OF THE SECURITIES INDUSTRY, I AM OPPOSED TO ANY ADDITION TO THE REGULATIONS ALREADY IMPOSED ON OUR INDUSTRY. HOWEVER, I AM ALSO OPPOSED TO LEGISLATION WHICH, IF CARRIED TO ITS EXTREME, COULD PERPETRATE MANY FRAUDULENT ACTS AND THEREBY CAST A VERY DARK SHADOW ON THE LEGITIMATE SECTION OF OUR INDUSTRY.

REGARDING THE FOUR PARAGRAPHS OF THE PROPOSED LEGISLATION, I HAVE THE FOLLOWING COMMENTS TO OFFER:

PARAGRAPH A: THIS PARAGRAPH RELATES TO THE REQUIREMENTS PLACED ON THE ISSUER CONCERNING THE FILING OF NOTICE OF EXEMPTION. NOWHERE IN THIS ACT ARE PROVISIONS MADE FOR PENALTIES TO ISSUERS WHO FAIL TO FILE THE REQUIRED NOTICE. SUCH PENALTIES SHOULD EITHER BE STATED SPECIFICALLY IN THIS ACT OR REFERENCED TO A SECTION OF THE SECURITIES ACT WHERE PENALTIES ARE SPECIFIED.

PARAGRAPH B: THIS PARAGRAPH CONCERNS INFORMATION THAT MUST BE FURNISHED TO THE PROSPECTIVE BUYER UNDER THIS SECTION.

"THIS SECTION" DEALS WITH EXEMPTION NOT REGISTRATION. THEREFORE, THIS REQUIREMENT MEANS NOTHING UNDER THIS SECTION. I WOULD SUGGEST DELETING THE WORDS "THIS SECTION" AND INSERTING THE WORDS "SECTION 100 OF THIS CHAPTER." SECTION 100 DEALS WITH FULL DISCLOSURE.

PARAGRAPH C: THIS PARAGRAPH DEALS WITH INFORMATION SUPPLIED TO THE BUYER IF A COMMISSION IS PAID ON THE SALE. WHY IS AN OFFERING CIRCULAR REQUIRED ONLY WHEN A COMMISSION IS PAID? THE INTENTION OF THE ALASKA SECURITIES ACT OF 1959 IS TO PROTECT THE BUYER. THIS ACT REMOVES WHAT PROTECTIONS THE BUYER ALREADY HAS. IT APPEARS TO ME THAT THE INTENT HERE IS TO PROTECT THE SELLER AT THE EXPENSE OF THE BUYER.

PARAGRAPH D: THIS PARAGRAPH DEALS WITH THE LEGEND REQUIRED ON DOCUMENTS EVIDENCING SECURITIES, AND THE STATEMENT THAT THESE SECURITIES CANNOT BE SOLD WITHOUT REGISTRATION UNDER THE ALASKA SECURITIES ACT OF 1959. THE LEGEND AND STATEMENT APPEAR TO BE REQUIRED AFTER THE SALE. A REQUIREMENT SHOULD BE PLACED ON THE SELLER THAT HE INFORM THE BUYER PRIOR TO THE SALE OF THE

RESTRICTIONS ON TRANSFER AS WELL AS WHAT IS REQUIRED IN THE WAY OF TIME AND DOLLARS TO REGISTER A SECURITY FOR SALE AND/OR TRANSFER.

I HAVE STATED THAT THE PASSAGE OF THE PROPOSED BILL WOULD OPEN THE DOOR TO INCREASED FRAUDULENT ACTIVITIES. YOU WILL SAY FRAUD IS NOT LEGAL IN ANY FORM, THEREFORE, THIS STATEMENT IS NOT VALID. IN AN IDEAL SITUATION YOU WOULD BE RIGHT. HOWEVER, THE PEOPLE WHO WOULD PERPETRATE THESE FRAUDS HAVE NO IDEALS, AND IT WOULD BE VERY DIFFICULT, IF NOT IMPOSSIBLE, TO APPREHEND INDIVIDUALS AFTER THE FACT. THE PLACE TO STOP SUCH FRAUDS IS NOT TO LET THEM GET STARTED.

IN CHECKING THE BACKGROUND OF THIS PROPOSED LEGISLATION, IT HAS COME TO MY KNOWLEDGE THAT ONE OF THE PRIMARY BENEFICIARIES OF THIS LEGISLATION WOULD BE REAL ESTATE DEVELOPERS IN THE STATE OF ALASKA. IT HAS BEEN POINTED OUT TO ME THAT CURRENT LAWS AND REGULATIONS HAMPER THE INTRASTATE ACTIVITIES INVOLVING REAL ESTATE SYNDICATIONS. I CAN UNDERSTAND AND SYMPATHIZE WITH THIS PROBLEM. HOWEVER, I BELIEVE A MORE DIRECT APPROACH WOULD BE LEGISLATION EXEMPTING INTRASTATE REAL ESTATE SYNDICATIONS FROM REGISTRATION AS NOW REQUIRED, BUT SETTING FORTH STREAMLINED REGISTRATION PROCEDURES THAT CAN BE ADMINISTERED UNDER THE ALASKA SECURITIES ACT OF 1959.

FRED K. KOKEN
VICE PRESIDENT & BRANCH MANAGER
FOSTER & MARSHALL, INC.

To: House Commerce Committee

Date: February 4, 1975

From: James L. Thompson
Securities Examiner
Division of Banking

Subject: Proposed amendment to AS 45.55.140(b)(5)

RECOMMENDED REVISION TO PROPOSED AMENDMENT TO
AS 45.55.140(b)(5) OF THE ALASKA SECURITIES ACT

(5) sales by an issuer to no more than 20 persons in this state, other than those designated in (b)(4) of this section, during a period of 12 consecutive months from the date of filing, whether or not the offeror or any of the offerees is then present in this state, if the seller reasonably believes that all buyers in this state are purchasing for investment, and the following conditions are met:

(A) the issuer files with the administrator a notice specifying the issuer, the security to be offered, and the terms of the offer at least 15 days before the offer is made,

(B) offers shall be made without public solicitation or advertisement,

(C) prior to any sales, each prospective buyer must be furnished all of the information that would be provided to a prospective buyer in a registration pursuant to AS 45.55.100. Access to this information shall be furnished the administrator upon his request;

(D) If a commission or other remuneration is paid or given directly or indirectly for soliciting a prospective buyer in this state, an offering circular containing all of the information required by AS 45.55.100 must be given to each prospective buyer. A copy of this offering circular must be filed with the administrator in conjunction with the filing of the exemption notice as required in subsection (A) above. Commissions or other remunerations must meet the requirements of this chapter and may be made only to persons registered under AS 45.55.040 of this chapter,

(E) A legend shall be placed on the certificate or other document evidencing ownership of the security stating that the securities are not registered under the Act, and setting forth restrictions on transferability and sale of the securities. The issuer shall also obtain from the buyer a signed agreement acknowledging that the securities will not be re-sold without registration under the Act or exemption therefrom,

(F) The total dollar amount of the transaction does not exceed $250,000;

IN REPLYING PLEASE QUOTE

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
REGIONAL OFFICE
SEATTLE, WASHINGTON

SECURITIES AND EXCHANGE COMMISSION
ROOM 3040 FEDERAL BUILDING
915 SECOND AVENUE
SEATTLE, WASHINGTON 98174

RECEIVED
DEPARTMENT OF COMMERCE
BANKING AND SMALL LOANS

February 19, 1975

James L. Thompson
Securities Examiner
Alaska Dept. of Commerce
Pouch D
Juneau, Alaska 99801

Re: Proposed revision of AS 45.55

Dear Mr. Thompson:

Thank you for forwarding this office a copy of the proposed revision of AS 45.55.140(b)(5) under the Alaska State Securities Act.

As we have discussed in the past, amendments and rules adopted by the federal Securities and Exchange Commission are not intended to be models for the state authorities. The existence of strong state regulation permits the Commission to spread our thin staff over more interstate and international violations and leave geographically isolated securities offerings to such local regulation.

Therefore, we are somewhat alarmed if state governments pattern exemptions from local regulation on exemptions which the federal authorities feel are appropriate in large part because we rely on state governments to police them. This creates loopholes, which in turn results in a demand by the public for stronger federal regulation.

With this in mind, we note that the proposal you sent us, which proposes to exempt sales to 35 residents of Alaska, would create the danger of a loophole which might result in an absence of regulation of very large offerings. The proposal does not provide for the safeguards, such as sophisticated ability to evaluate the business risks, or ability to bear the possibilities of total loss, which the Federal Rule 146 requires. The federal rule hinges upon this ability to fend for oneself, thus making registration of sales to 35

persons less necessary (suitably restricted so that nominees, companies, trusts and the like are counted as one investor for each beneficial owner of interests in such nominees, companies, trusts, etc.)

If Alaska exempts from registration offerings to a limited number of persons, the proposal by your office that the exemption be limited to 20 would appear to be the maximum number which the state should consider, and the definition of those persons should be made so as to avoid evasions through corporations and trusts which themselves have securities to offer. Also, as you propose, the dollar amount, notification requirement, sophistication test and prospectus test should be retained, in our opinion.

Sincerely,

Jack H. Bookey

Jack H. Bookey
Regional Administrator

3/31/75

Proposed Revisions by the Division of Banking

HOUSE BILL 289

* Section 1. AS 45.55.140(b)(5) is amended to read:

(5) a transaction involving sales by an issuer to not more than 20 persons, other than those designated in (b)(4) of this section, in this state during a period of 12 consecutive months from the date of filing, whether or not the offeror or any of the offerees is then present in this state, if the seller reasonably believes that all the buyers in this state are purchasing for investment, provided the issuer meets the following conditions:

(A) the issuer files with the administrator a notice specifying the issuer, the security to be offered, and the terms of the offer at least 10 days before any offer is made;

(B) before any sales, each prospective buyer must be given an offering circular containing all of the information required by sec. 100 of this chapter; a copy of this offering circular must be filed with the administrator in conjunction with the filing of the exemption notice in (A) of this paragraph;

(C) if commissions or other remunerations is paid or given directly or indirectly for soliciting a prospective buyer in this state, they must meet the requirements of this chapter and may be made only to persons registered under AS 45.55.040 of this chapter;

(D) a legend shall be placed on the certificate, or other document evidencing the securities, stating that the securities have not been registered under the Alaska Securities Act of 1959, setting out restrictions on transferability and sale of the securities; the issuer shall obtain from the buyer a signed agreement acknowledging that the securities will not be sold without registration under the Alaska Securities Act of 1959 or exemption from it;

(E) offers shall be made without public solicitation or advertisement;

(F) the total dollar amount of the transaction does not exceed $250,000;

(underlined parts are the proposed revisions to House Bill 289)

3/31/75

Proposed Revisions by the Division of Banking

HOUSE BILL 289

Justification for Division's Recommended Changes

The proposed amendment, as presently written, would add some safeguard to public protection but would also create loopholes that could cause great harm to the investing public and to the purposes of the Alaska Securities Act of 1959. With the adequate protective changes which are proposed by the Division of Banking, the amendment could well serve the interests of both the businessman and the investing public, and not serve as a tool of avoiding the securities laws, as the present proposed bill does.

The proposed bill, as presently written, would lend itself to abuses in the areas of real estate and oil and gas limited partnerships and tax shelters. This has been recently seen in Colorado. According to William J. Anderson, Assistant Commissioner of the Division of Securities of Colorado, over 50 misleading and unfair issues have been sold in Colorado since 1969 as a direct result of their past "wide open" private offering exemption. These abuses have been primarily in the area of real estate securities, according to Mr. Anderson.

The passage of this proposed amendment, as presently written, would give Alaska the dubious distinction of being the easiest state in the country to avoid registration. Only two states, Iowa and Virginia, permit as many as 35 sales, but these two states also have restrictions that limit the total holders to 35 individuals. Thirty one states, including Alaska presently, limit the exemption to 25offers or less. Of the 18 states that currently have sales only, ten limit such sales to 15 individuals or less. The passage of this exemption as presently written would take Alaska completely away from the progressive approach to securities regulation that has been the hallmark of most states since the Securities & Exchange Acts were passed in 1933 and 1934. (emphasis added).

The Division recommends limiting sales to 20 and total dollar amount to $250,000. We do not oppose the sales only aspect as long as notification is required. Sales only with the notification proviso will result in easier enforcement than the nebulous 20 "offers". It will also provide a more clearly defined guideline for the businessman in the raising of capital. We feel it should be limited, however, to both a number and dollar figure to insure that it is truly a "private offering" and to make more certain that the investor is able to fend for himself.

The Division proposes that Subsection B be changed to require filing with the administrator. This insures full disclosure.

The Division proposes that Subsection C be changed to require fair commissions and to require that salespersons be registered

with the Division. This is to comply with the requirements that the rest of the securities industry already has to comply with in Alaska.

We recommend inclusion of restrictions on advertising in order to insure that this private offering exemption is truly "private".

The Division of Banking feels that with these revisions, the proposed amendment would be an improvement over the present offering exemption, but without these proposed revisions, the amendment could easily lead to abuses, especially by promoters outside of Alaska.

927

Form 02-002

STATE OF ALASKA
Inter-Department Route Slip

TO:
DEPT.: Office of Gov

ATTN.: Fran Olmer

- [ ] Approval
- [ ] Signature
- [ ] Comment
- [ ] Contact Me
- [ ] Prepare Reply
- [ ] For Your File
- [ ] Note & Return
- [ ] Initial & Return
- [x] Return As Requested
- [ ] Return For Approval
- [ ] Necessary Action
- [ ] Your Information

Remarks:

From:
Dept.: Admin (EGM) Date 3/78

By: Kent

The Legislature of the State of Alaska
FISCAL NOTE

First Session - Ninth Legislature

I. REQUEST

Bill No. House Bill No. 298

Title: An act relating to the definition of security

Requested by: Date: March 28, 1975

Return Date Requested:

Agency: Department of Commerce Program: Banking, Securities, etc

II. FISCAL DETAIL

Budget Request Unit(s) Affected: None

A. EXPENDITURES: (Thousands of dollars)

	OBJECT	FY 75	FY 76	FY 77	FY 78	FY 79	FY 80
100	PERSONAL SERVICES						
200	TRAVEL						
300	CONTRACTUAL						
400	COMMODITIES						
500	EQUIPMENT						
600	LAND & STRUCTURES						
700	GRANTS, CLAIMS, ETC.						
	TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

B. FUNDING: (Thousands of dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						

C. POSITIONS:

PERMANENT/TEMPORARY						
MAN MONTHS (P./T.)						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

[illegible] clear up areas which previously had prevented prompt
[illegible] be devoted to

02-001B (REV. 08-73)

MEMORANDUM
DEPARTMENT OF COMMERCE

State of Alaska
DIVISION OF BANKING, SECURITIES, SMALL LOANS AND CORPORATIONS

TO: Mike Clemens
Budget Analysist

DATE: March 28, 1975

FILE NO:

TELEPHONE NO: 465-2533

FROM: William W. Ladwig
Deputy Director

SUBJECT: HB 298

You have asked what fiscal impact this proposed legislation, if passed, will have on the State.

The answer is, in effect, none.

Passage of this legislation will save the State costs presently associated with the investigation and ajudication necessary to determine that these schemes (covered by the proposal) are securities. Courts in the lower "48" have continuously held such schemes to be securities. By inclusion in the definition of these ventures, the State can immediately move for civil or criminal sanctions without prior effort to determine our jurisdiction.

Time and cost savings by this proposed legislation will be absorbed by allowing the State to devote greater time to the more complex violations.

WWL:mls

LUM LOVELY **Geologist**

SUITE 440 • ANCHORAGE LEGAL CENTER • 1016 WEST SIXTH AVENUE
ANCHORAGE • ALASKA • 99501 PHONE • (907) 277-1551
OIL, GAS & MINERAL PROPERTIES

April 2, 1975

Read & File

The Honorable Bob Bradley, Chairman,
and each and every member of the
House Commerce Committee
Pouch V
Juneau, Alaska 99811

Re: House Bill No. 289

Ladies and Gentlemen:

If this letter reaches you before House Bill No. 289 is submitted to the floor of the house for consideration by the full assembly, I would appreciate your giving my following comments concerning the bill your serious consideration.

First, let me assure you that I am wholly in favor of paragraph (5) of the bill wherein "a transaction involving sales by an issuer to not more than 35 persons..." is exempted from full registration under the Alaska Securities Act of 1959.

In the interest of fostering and maintaining a secure place for the small entrepreneur within the framework of the free enterprise system in Alaska, however, I must vehemently protest the inclusion of provisions (A) and (B) in HB 289.

Because in my opinion provision (B) is the most devastating to the small entrepreneur, it is discussed first and more comprehensively than provision (A). A brief illustration following the discussion for provision (B) shows how provision (A) would kill all securities transactions wherein time is of the essence and speedy action on short notice is paramount.

Provision (B) will price the small entrepreneur out of business

The high cost of registering a security for sale to the public is well known. A prominent Anchorage real estate firm recently spent approximately $20,000, for example, in compiling information required to "go public" with a real estate syndication -- and it is not unusual for such registration costs to exceed $50,000.

Even the cost of a private offering can be high, when information required for a public offering must be compiled by the issuer for presentation to the prospective purchasers of his securities. A little over a year ago, for example, a well known Anchorage-based oil and gas consultant formed a non-public corporation, involving less than 35 stockholders, under then tentative federal securities guidelines (now SEC Rule 146) requiring him to furnish each prospective shareholder with all of the information which he would have to furnish under statutes and regulations governing full registration. To compile this information, he spent approximately $50,000.

Obviously, full registration is out of the question financially for the "Mom and Pop" enterprise and for the small venture requiring a total capitalization of as little as a few hundred or, at most, a few thousand dollars from a handful of friends, relatives, or close associates.

To encourage the small entrepreneur and thereby nurture the healthy growth of a strong and competitive network of small businesses as a vital part of America's free enterprise system, most states, including Alaska, now provide exemptions relieving the small enterprise from the financial burden of full registration. By requiring "...all of the information that would be provided to a prospective buyer in a registration under this section...", however, provision (B) of HB 289 dumps the financial burden of full registration right back into the lap of each and every entrepreneur in Alaska, whether or not the entrepreneur wants to "go public" and no matter how much or how little capitalization is involved.

While provision (B) of HB 289, if enacted into law, would create a strong negative impact on Alaskan free enterprise in general, it would be financially devastating to me personally. My livelihood is dependent almost entirely upon my freedom to conduct inexpensive and red-tape-free transactions with associates, involving oil and gas leases or certificates of interest therein. Such interests, of course, are defined as securities in the Alaska Securities Act.

Typical of the many transactions which I conduct annually is one which involves the joint ownership of a single oil and gas lease by myself and an associate who agrees to pay the required lease rentals directly to the State of Alaska (not to me). In return for my specialized knowledge and services in connection with the lease, I am allowed to earn a percentage of any net profits realized from the sale of the lease to an oil company after, and only after, my associate first recovers from the sales proceeds an amount equal to all of his prior rental payments for the lease.

Rental payments for any single lease will usually range between $320.00 and $1,280.00 annually; and seldom is a lease ever sold to an oil company for an amount which would equal, let alone exceed, what I would have to pay to furnish my associate with the information required for full registration of the aforementioned transaction under the Alaska Securities Act.

I believe the foregoing example clearly demonstrates why I am forced to rely on the exemption now provided by Alaska Statute AS 45.55.140 (b)(5) for my economic viability, though it limits my exposure to potential investors.

Bad argument for example of "WEEK" INVESTOR

Provision (A) will kill the speedy transaction

In addition to the cost aspect of provision (B) of HB 289, I am also vitally concerned with the time element contained in provision (A) of the bill. Often, for example, I have less than 24 hours in which to raise the

necessary lease rentals from an associate in order to take advantage of a one-time-only leasing opportunity where time is of the essence and speedy action is paramount. Should I be required to comply with provision (A) by giving 10 days notice to the Commissioner, of course, such short-term leasing opportunities would be lost to me forever.

Additional consequences of provision (B)

Whether I own an oil and gas lease as the sole party in interest or as a tenant in common with an associate, provision (B) of HB 289 would also force me to prepare all information required for full registration each time I sell a lease to an oil company, even though the oil company neither needs nor desires such information.

In addition, oil companies dealing among themselves would also be required to furnish each other with this same costly and, in most cases, unneeded and unwanted information when securities such as oil and gas leases are involved.

Prospectors seeking grubstakes, mining companies dealing among themselves in connection with mining interests, real estate companies who are involved with each other in real estate syndications, and untold numbers of other established businesses dealing with each other where securities are involved, would all have to comply with provision (B) of HB 289 no matter how much it might cost or how little the security in question might be worth.

Summary

It has long been my idealistic belief that a place should be reserved for the small entrepreneur in the world of free enterprise, for without him we would all eventually be controlled by a handful of corporate giants to the sorrow and misery of us all.

As a long-time lay student of securities laws and the free enterprise system of economics, it is my humble opinion that provisions (A) and (B) combine to abort the original intent of the exemption from full registration which is presently in effect here in Alaska and, in similar form, in most other states. Provision (A), for example, kills the securities transaction -- large or small, public or private -- wherein time is of the essence and speedy action is paramount, while provision (B) ties the hands of oil companies, mining companies, real estate and other types of companies in their every day dealings with one another. Provision (B), of course, will guarantee the demise of the small entrepreneur in Alaska and, most certainly, it will put me out of business.

April 2, 1975

Recommendation

In view of the foregoing observations, and if it is not too late to do so, I urge you to strike provisions (A) and (B) from HB 289 entirely or, at least, to modify or amend the bill in such a way that any transaction involving a certificate of interest or participation in an oil, gas, or mining title or lease, or in payments out of production under the title or lease, would be exempt from the requirements of provisions (A) and (B) of HB 289.

Also, if it could be arranged before the bill is submitted to the full House for final vote, I would appreciate being given an opportunity to present my views regarding HB 289 at a public hearing here in Anchorage where most of Alaska's small ventures originate. Should any of you have any questions or require any additional information, please do not hesitate to give me a call.

Very truly yours,

L. C. LOVELY, JR.
a/k/a LUM LOVELY, GEOLOGIST

cc: Miles S. Schlosberg

STATE OF ALASKA

JAY S. HAMMOND, Governor

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

360 K STREET—SUITE 105
ANCHORAGE 99501

April 1, 1975

File
HB 298

The Honorable Bob Bradley
State House of Representatives
Chairman, Commerce Committee
Pouch V
Juneau, Alaska 99811

Dear Representative Bradley:

You have asked for comments on House Bill 289 which is an act relating to exemptions from the Alaska Securities Act of 1959.

Please be aware that we have been working very closely with the Securities and Banking Division of the Department of Commerce and have seen many abuses and violations of the securities law as it is presently written. Insofar as changing the amount of sales by an issuer, we are not in agreement that 35 persons should be allowed to be made offers to. We believe this is far in excess of what is necessary for the safety of the public and therefore would keep the amount of persons at 20. In addition, I understand that the Division of Banking and Securities has also asked for a dollar figure and in that regard I would say that $100,000 would be more than enough under the circumstances. It is my understanding that they have asked for more but I still would believe that insofar as investment opportunites are concerned, we are going to be into a much more serious fraudulent situation than we presently are in. Therefore the law has to be as tight as possible under the circumstances for the protection of the Alaska public.

#1

#2

We also agree with the concept of a filing of notice and would think that an offering circular also should be filed. In addition, there should be a prohibition against advertisements on the offers since these are supposed to be of a private nature.

#3

#4

Please understand that there definitely needs to be a very strong law regarding solicitation for investments

and I am sure that you have received from Investigator James L. Thompson a good indication of what has happened in our State due to the pipeline impact.

In regard to House Bill 298, the new definition of the security is pretty much in keeping with other jurisdictions, and certainly is again a necessary protection feature for the public and consumers. I am sure you have already been told about the loss of many thousands of dollars by persons who purchased fraudulent commodity options in our State and pyramid sale operations. We therefore would very strongly back the additions to the definition of "security" found in this bill.

Very truly yours,

AVRUM M. GROSS
ATTORNEY GENERAL

By: Stanley Howitt
Stanley Howitt
Assistant Attorney General
Consumer Protection Division

SH:me

April 10, 1975

File

The Honorable Bob Bradley
Chairman, House Commerce Committee
House of Representatives
Pouch V
Juneau, AK 99811

RE: HOUSE BILL 289

Dear Sir:

I am very concerned about the far reaching consequences of House Bill 289. I believe that the financial consequences to businessmen in Alaska will be far more serious and disruptive to the free enterprise system than you had realized and intended.

It appears that you submitted the bill in an effort to regulate the private placement of securities in Alaska. As the bill reads, however, it will regulate and effectively prohibit most of the private transactions necessary to finance small businesses.

The bill could ultimately prohibit such varying financial transactions as "grubstaking" a prospector, joint ventures by two large companies where the percentage of capital contribution is different than the percentage of interest, permitting a valuable employee to purchase stock or interest in a business, joint purchases of oil and gas leases, and incorporations or formation of limited partnerships among small groups of knowledgeable individuals.

The cost of complying with House Bill 289 in its present form would be at least $20,000 and probably closer to $50,000 for each of the above financial transactions. Obviously, its cost will in most cases be greater than the actual transaction and will therefore effectively prohibit that transaction from occurring.

I don't believe that the people of Alaska need or want this kind of protection. If the intent of House Bill 289 is to facilitate private placement to more than 20 and less than 35 individuals, then important exceptions need to be included in the bill permitting

Alaska wilderness sport fishing in the Wood River - Tikchik Lakes region of western Alaska.

P.O. Box 546 • Anchorage, Alaska 99510 • Phone (907) 344-6114

the uninvolved transaction of smaller placements. If the intent of the bill is to prohibit all such transactions without filing with the Department of Commerce, then the far reaching and harmful consequences must be taken into consideration.

I appreciate your concern about this matter.

Very truly yours,

W. E. Shoemaker

W. E. Shoemaker

WES:md

cc: Miles S. Schlosberg

TO: Banking DATE: March 19, 1975

(~~SENATE~~ - HOUSE) BILL 298

RE: An Act relating to the definition of security.

Check One:

1. TOP PRIORITY -- in favor of. X
2. FAVOR -- in favor of, but not top priority. _____
3. OK - no definite stand. _____
4. NOT IN FAVOR -- _____
5. TOP PRIORITY -- "Strongly Opposed" _____
6. BILL DOES NOT PERTAIN TO DIVISION _____

COMMENTS: (Justification must be stated for the above line checked - continue on another page if needed.)

1. Codifies predominant court decisions (federal and other states) and follows statutes of progressive states,e.g. Wisc., Okla., Nev.

2.Codification eliminates uncertainty, will assure easier, quicker adjudication of enforcement actions and less expense in litigation and investigation.

3. Extensive definition of "commodity options"as a security is too fuzy and indefinite and the discretion given to the Administrator (currently this writer) could easily be abused because of extensive grant of power. However, I favor broad charter now because it will make it easier to prosecute "pipeline boom boilershops", i.e. shaky and unethical precious metals and securities dealers, and perchance will discourage others from even coming to this state. Therefore the power is a good interim measure which should be reviewed in a few years...Much like A.S. 45.55.140(b)(5) prior to its 1972 amendment removeing discretion from Administrator.

4. Alaska has been hit with silver commodity frauds, and pyramid sales frauds in 1972-1974: if these new phrases had been added to the law then it is probable that one of the major pryamid schemes, Dare To Be Great, might never have been promoted here.

Writer's Signature: Myles J. Sobelsberg
Writer's Title: Director Div. Banking Securities, etc.
(DEADLINE 24 hours)

[illegible] pursuant to A.S.45.55.140(b) of the Alaska Securities Act of 1959.

[illegible]

(b) [illegible] than 25 persons, [illegible] in this state during any period of 12 consecutive months, PROVIDED [illegible] the issuer meets the following conditions:

(i) the issuer files with the Administrator a notice specifying the number [illegible] to be offered, and the [illegible] of the issuer's [illegible] 10 days before any offer is made;

(ii) prior to any sale, [illegible] all of the information which would be provided [illegible] registration pursuant to A.S.45.55.[illegible] that information will be furnished [illegible]

(iii) [illegible]

[illegible]

REASONS TO ADOPT THE NEW LAW
AMENDING THE ALASKA SECURITIES ACT

HONORABLE LEGISLATORS:

Most investment capital financing in this state is done by means of the private offering exemption provided in A.S. 45-.55.140(b)(5). As our state grows and has more money available for its rapidly increasing private investment needs, it becomes apparent to any financier, businessman or lawyer who practices in the field that the current provision is unworkable to all of those affected, i.e. (1) the businessmen issuing securities, (2) the investor, and (3) the regulator, which is the Dept. of Commerce's Division of Banking and Securities.

I Deficiencies in the present law.

(Please refer to A.S. 45,55.140(b)(5), Securities Act, page 23 of pamphlet available at secretary's desk.)

A. Issuer

1. Twenty "offers" in 12 months is a nebulous standard to comply with since "offer" has never been clearly defined.
2. Twenty is too small a number to be effective for business financing.
3. No "commission" means that a professional investment banker's services cannot be hired, making it more difficult to efficiently market the securities and making it almost impossible to sell a sufficient amount to the first twenty offerees.

B. Investor

1. No safeguard of full disclosure. Full disclosure is the heart and basic intent of all federal and state securities regulation, yet our law does not require any.

> "The purpose of the Alaska Securities Act of 1959 and the regulations supporting the Act are to provide full and fair disclosure to the Alaskan investor and to provide a proper framework for the raising of investment capital by business." (Annual Report of the Dept. of Commerce, 1973-4, p.8, also see Schlosberg, Financing Alaskan Enterprises: Securities Law Implications, 4 UCLA-Alaska Law Review, pp. 12, 16 (1974).

2. Convenience of professional investment marketing and structuring is not available, because no investment banker would become involved since he could not earn remuneration for his services.

C. Regulator

1. Enforcement extremely difficult and costly because "offer" is vague, no judicial definitions, and must have at least twenty-one witnesses to show exceeded the 20 offer limit.

2. Administrator not made aware of activity in area until disaster has already struck, because there are no notification procedures.

II How Law would correct deficiencies

A. Issuer
1.""Sales" is a more definite and easier planning criterion.
2. Thirty-five sales permit raising a sufficient amount of capital for many small enterprises, yet is a small enough number to permit each investor receiving the individual attention condusive to complete disclosure, the Securities and Exchange Commission (17 CFR 230,146 91 1974) and most states use this number, uniformity will be achieved.
3. An investment banker can be employed to raise money promptly through his investor clients, also investment bankers are held to high regulatory standards under AS 45 .55.030.060.

B. Investor
1. Full disclosure, protection and better judgement of investment.
2. Benefit of an investment banker's expertise.

C. Regulator
1. Enforcement is easier, quicker, and cheaper, and only one witness is needed. There is a clear criterion of "sales" also.
2. Result - stop disasters before they occur.

III Conclusion

Economic activity generated by the Native Claims and natural resources exploitation can increase local business growth and provide Alaskans excellent investment opportunities. The money generated here ought to be reinvested here - especially when opportunities abound. Investment is being discouraged because of the provate offering law. AS 45.55.140(b)(5) is not working well. You now have the opportunity to correct this. I respectfully request you do so.

Please keep the undersigned advised of all events regarding this legislation. I will be glad to assist with further drafting and testimony. At the House Commerce Committee informational hearing on the new bill, held on 2/3/75, it was agreed that the Committee would sponsor the bill and hopefully hold further hearings February 14, 1975.

NOSEK, BRADBURY, WOLF & SCHLOSBERG

Miles Schlosberg

Appendix:
The Alaska Securities Act is analyzed in the recent law review article by Miles Schlosberg in the Fall issue, 1974, of the UCLA-Alaska law Review pp 12-55. See pp 31-35 and 46-50 for discussion of the private offering laws. Copy available from the secretary for the Commerce Committee.

FOSTER & MARSHALL INC.
INVESTMENT BANKERS AND BROKERS
114 SOUTH FRANKLIN STREET
JUNEAU, ALASKA 99801
(907) 586-6600

MEMBERS
NEW YORK STOCK EXCHANGE, INC.
AMERICAN STOCK EXCHANGE

OFFICES
IN THE PRINCIPAL CITIES OF THE
PACIFIC NORTHWEST AND ALASKA

MARCH 28, 1975

I WOULD LIKE TO OFFER TESTAMONY IN OPPOSITION TO HOUSE BILL 289 "AN ACT RELATED TO EXEMPTION FROM THE ALASKA SECURITIES ACT OF 1959."

THE ALASKA SECURITIES ACT OF 1959 WAS DESIGNED TO PROVIDE CERTAIN SAFEGUARDS TO THE INDIVIDUAL CITIZEN OF ALASKA SURROUNDING VARIOUS TYPES OF INVESTMENT OPPORTUNITIES. THE CHANGE IN THIS BILL DELETING THE OFFER REQUIREMENT AND SUBSTITUTING THE SALES REQUIREMENT IN DEFINING AN EXEMPTION IS IN MY ESTIMATION GOOD. IT HAS BEEN DIFFICULT IN THE PAST TO PROVE WHAT CONSTITUTES AN OFFER TO SELL, WHERE ACTUAL SALES ARE RELATIVELY EASY TO DEFINE. HOWEVER, INCREASING THE NUMBER OF EXEMPT SALES TO 35 WILL OPEN THE DOOR TO MANY TYPES OF CARPETBAGGERS FROM THE LOWER 48 AND POTENTIAL FRAUDULENT SCHEMES, AT THE EXPENSE OF THE CITIZEN OF ALASKA.

AS A MEMBER OF THE SECURITIES INDUSTRY, I AM OPPOSED TO ANY ADDITION TO THE REGULATIONS ALREADY IMPOSED ON OUR INDUSTRY. HOWEVER, I AM ALSO OPPOSED TO LEGISLATION WHICH, IF CARRIED TO ITS EXTREME, COULD PERPETRATE MANY FRAUDULENT ACTS AND THEREBY CAST A VERY DARK SHADOW ON THE LEGITIMATE SECTION OF OUR INDUSTRY.

REGARDING THE FOUR PARAGRAPHS OF THE PROPOSED LEGISLATION, I HAVE THE FOLLOWING COMMENTS TO OFFER:

PARAGRAPH A: THIS PARAGRAPH RELATES TO THE REQUIREMENTS PLACED ON THE ISSUER CONCERNING THE FILING OF NOTICE OF EXEMPTION. NOWHERE IN THIS ACT ARE PROVISIONS MADE FOR PENALTIES TO ISSUERS WHO FAIL TO FILE THE REQUIRED NOTICE. SUCH PENALTIES SHOULD EITHER BE STATED SPECIFICALLY IN THIS ACT OR REFERENCED TO A SECTION OF THE SECURITIES ACT WHERE PENALTIES ARE SPECIFIED.

PARAGRAPH B: THIS PARAGRAPH CONCERNS INFORMATION THAT MUST BE FURNISHED TO THE PROSPECTIVE BUYER UNDER THIS SECTION.

"THIS SECTION" DEALS WITH EXEMPTION NOT REGISTRATION. THEREFORE, THIS REQUIREMENT MEANS NOTHING UNDER THIS SECTION. I WOULD SUGGEST DELETING THE WORDS "THIS SECTION" AND INSERTING THE WORDS "SECTION 100 OF THIS CHAPTER." SECTION 100 DEALS WITH FULL DISCLOSURE.

PARAGRAPH C: THIS PARAGRAPH DEALS WITH INFORMATION SUPPLIED TO THE BUYER IF A COMMISSION IS PAID ON THE SALE. WHY IS AN OFFERING CIRCULAR REQUIRED ONLY WHEN A COMMISSION IS PAID? THE INTENTION OF THE ALASKA SECURITIES ACT OF 1959 IS TO PROTECT THE BUYER. THIS ACT REMOVES WHAT PROTECTIONS THE BUYER ALREADY HAS. IT APPEARS TO ME THAT THE INTENT HERE IS TO PROTECT THE SELLER AT THE EXPENSE OF THE BUYER.

PARAGRAPH D: THIS PARAGRAPH DEALS WITH THE LEGEND REQUIRED ON DOCUMENTS EVIDENCING SECURITIES, AND THE STATEMENT THAT THESE SECURITIES CANNOT BE SOLD WITHOUT REGISTRATION UNDER THE ALASKA SECURITIES ACT OF 1959. THE LEGEND AND STATEMENT APPEAR TO BE REQUIRED AFTER THE SALE. A REQUIREMENT SHOULD BE PLACED ON THE SELLER THAT HE INFORM THE BUYER PRIOR TO THE SALE OF THE

RESTRICTIONS ON TRANSFER AS WELL AS WHAT IS REQUIRED IN THE WAY OF TIME AND DOLLARS TO REGISTER A SECURITY FOR SALE AND/OR TRANSFER.

I HAVE STATED THAT THE PASSAGE OF THE PROPOSED BILL WOULD OPEN THE DOOR TO INCREASED FRAUDULENT ACTIVITIES. YOU WILL SAY FRAUD IS NOT LEGAL IN ANY FORM, THEREFORE, THIS STATEMENT IS NOT VALID. IN AN IDEAL SITUATION YOU WOULD BE RIGHT. HOWEVER, THE PEOPLE WHO WOULD PERPETRATE THESE FRAUDS HAVE NO IDEALS, AND IT WOULD BE VERY DIFFICULT, IF NOT IMPOSSIBLE, TO APPREHEND INDIVIDUALS AFTER THE FACT. THE PLACE TO STOP SUCH FRAUDS IS NOT TO LET THEM GET STARTED.

IN CHECKING THE BACKGROUND OF THIS PROPOSED LEGISLATION, IT HAS COME TO MY KNOWLEDGE THAT ONE OF THE PRIMARY BENEFICIARIES OF THIS LEGISLATION WOULD BE REAL ESTATE DEVELOPERS IN THE STATE OF ALASKA. IT HAS BEEN POINTED OUT TO ME THAT CURRENT LAWS AND REGULATIONS HAMPER THE INTRASTATE ACTIVITIES INVOLVING REAL ESTATE SYNDICATIONS. I CAN UNDERSTAND AND SYMPATHIZE WITH THIS PROBLEM. HOWEVER, I BELIEVE A MORE DIRECT APPROACH WOULD BE LEGISLATION EXEMPTING INTRASTATE REAL ESTATE SYNDICATIONS FROM REGISTRATION AS NOW REQUIRED, BUT SETTING FORTH STREAMLINED REGISTRATION PROCEDURES THAT CAN BE ADMINISTERED UNDER THE ALASKA SECURITIES ACT OF 1959.

FRED K. KOKEN
VICE PRESIDENT & BRANCH MANAGER
FOSTER & MARSHALL, INC.

CHARLES A. LEDBETTER
LEASE BROKER

OIL AND GAS LEASES
LEASING
ROYALTIES

3037 KNIK AVENUE
ANCHORAGE, ALASKA 99503
AREA CODE 907
279-2331

March [illegible], 1975

Call + have him come down — Mon. feb.

HOUSE COMMERCE COMMITTEE

The Honorable Bob Bradley
The Honorable Tim Wallis
The Honorable Helen M. Fischer
The Honorable Opal Freeman
The Honorable Ramona M. Kelley
The Honorable Leo Rhode
The Honorable Richard K. Welsh
Alaska State House of Representatives
Pouch "V" State Capitol Building
Juneau, Alaska 99811

This is to request, that a Public Hearing be held in Anchorage for HB 280, because there are more employed sales persons in Anchorage, who will be affected by this bill, than in any other part of the State. HB 280 removes the present 20 person exemption by the addition of conditions A, B, C & D. These conditions will unduly restrict small real estate syndication and small oil and gas syndication, and the brokerage of real estate and oil and gas leases as is now permitted. I urge you to vote against HB 280 and to hold a Hearing in Anchorage.

Respectfully,

Charles A. Ledbetter

Charles A. Ledbetter

PLEASE REPLY VIA AIR MAIL

Jack White Company
REAL ESTATE
CALAIS OFFICE CENTER
3201 "C" STREET – ANCHORAGE, ALASKA 99503
PHONE (907) 277-1553

March 24, 1975

Honorable Bob Bradley
Chairman House Commerce Committee

Re: House Bill No. 289

Dear Sir:

Would you please read into the public hearing record the following comments:

We are in favor of increasing the exemption of offerees from 20 to 35 persons without a full registration statement.

We are definitely against Provisos B, C, and D. We feel that these provisos will cause the additional burden of expensive legal and accounting bills that the investors will eventually pay.

Our firm has had a great deal of experience in offering smaller investments to Alaska residents. It is our opinion that if the red tape is seriously increased, as the provisos appear to do, these investments will no longer be offered to the small and medium sized Alaskan investors, but will be offered, and sold, to large outside companies that can buy without offering prospectus red tape.

We would welcome the chance to testify at an Anchorage hearing. We believe that most of the investment opportunities eminate from Anchorage and to a lesser extent, Fairbanks.

Sincerely yours,

Sewell F. Faulkner

Sewell F. Faulkner
President

SFF/sn

cc: Miles S. Schlosberg

DEPARTMENT OF REGULATORY AGENCIES
DIVISION OF SECURITIES
230 STATE OFFICE BUILDING • 201 E. COLFAX AVE.
DENVER, COLORADO 80203 • TELEPHONE 892-2507

STATE OF COLORADO
RICHARD D. LAMM
GOVERNOR

STANLEY R. HAYS
SECURITIES COMMISSIONER

WILLIAM J. ANDERSON
ASST. SECURITIES COMM.

March 26, 1975

Bob Bradley, Chairman
Commerce Committee
Pouch V
Juneau, Alaska 99811

Dear Mr. Bradley:

This will acknowledge your correspondence of the 19th.

Interestingly, we had a bill (HB 1278, enclosed) containing similar provisions, which died in committee yesterday, on collateral issues, i.e. investment adviser regulation. The amendment, strongly supported by the Division, did not contain restrictions dealing with pyramid distributorships since this legislation (also enclosed) was enacted separately in 1973.

We feel the delineation of the term "security" is proper and in order, and that it does not actually expand present law or create new jurisprudence, but is simply a restatement or codification of existing interpretation and judicial decision. This language should help clarify the enforcement problems, and serve practitioners, administrators, and courts alike in determining the issues and protecting the public interest. (I assume you are familiar with the Oklahoma securities act revisions in this regard.)

We originally took an approach, similar to yours, in addressing the "non-public offering" exemption which has been of particular concern to us in the matter of real estate syndications, but it was modified to permit essentially the same type of regulation by rule implementation and encompass The Rule 146 transaction. (see page 14-15 of our draft)

Here, again, we strongly concur with the objectives expressed in your bill, and that more specificity is needed in this area.

With best wishes for success in your endeavor.

Stanley R. Hays

Stanley R. Hays, Securities Commissioner

P.S. Also attached is release dated 12-31-74 and commentary (which was prepared prior to revision of our proposed amendment) dealing with the latter subject.

STATE OF COLORADO - DIVISION OF SECURITIES - DEPARTMENT OF REGULATORY AGENCIES
230 State Office Building Denver 80203

NON-PUBLIC OFFERING EXEMPTION
i.e. PRIVATE PLACEMENTS

ADMINISTRATIVE OPINION
RELEASE: December 13, 1974

The Division has received numerous requests for interpretive opinions relating to proposed "Transactions not involving any public offering" pursuant to Section 125-1-13(2)(j) of the securities act, particularly as it pertains to real estate syndications (limited partnerships). The problem has been compounded by the adoption of Rule 146 by the Securities and Exchange Commission.

Many issuers, sponsors, and attorneys have assumed that if the conditions of that rule are met, there is automatic compliance with state requirements for an exemption from registration. It is to be noted that the SEC has specifically expressed that such rule is not intended to supersede state regulation of local offerings and, on the contrary, these are matters of local concern which properly should be relegated and administered under respective state jurisdiction. The fact that an offering meets the requirements for an exemption under R.146 is not significant in determining whether it is exempt from the provisions of the Colorado act.

The criteria used to substantiate the availability of an exemption under sub-section (2)(j) are as follows:

(1) Number of offerees-and Number of actual purchasers or subscribers.
(2) Offerees' relationship to issuer and to each other-pre-existing personal or business affiliation and financial experience such that they could reasonably be expected to fend for themselves, and not need the protection afforded by the registration requirements.
(3) Offerees' knowledge-special information or access to material data concerning issuer, its financial condition, business operations, intended use of proceeds, management, etc.
(4) Manner of offering-Size, amount and number of units. Type, nature and scope of distribution, and whether Commission, direct or indirect remuneration to be paid in connection with the offer or sale of the security involved in the transaction.
(5) No general advertising for general circulation or public solicitation is to be used.
(6) Commitment by offeree that the security is being taken for investment only and not for the purpose of resale or distribution.

The "private placement" or limited offering evolved from the "Mom and Pop grocery" concept (permitting distribution to "friends and relatives", organizers, promoters or incorpators of close corporations)-extended by case law to embody "insiders", presumably controlling persons and management. Applying this rationality to limited partnerships and tax shelters, the very nature of their legal structure manifestly precludes this type of investor from meeting those qualifications.

Proponents attempt to establish an exemption on the basis that the investors are "sophisticated" or that the investment is "suitable" for such persons. These are standards to be considered with respect to <u>registered</u> distributions-not limited to exempt offerings-and do not in and of themselves substantiate a claim for exemption.

They are not alluded to in the statute, rule, or philosophy of the provisions referred to hereinabove.

An essential factor is the offerees' pre-existing personal or business relationship with the offeror, and a reasonable presumption of the capacity to protect their own interests.

There is also a question of integration, where a series of allededly"private placements" is conducted over a period of time, packaged by the same, or an affiliated sponsor, and the cumulative distribution exceeds even the allowable numbers test or dollar limitation of such a standard, when taken in the aggregate. There is further need to resolve the applicability of the licensing requirements for a general partner marketing these interests-in most cases, a real estate broker or developer. The pertinent statutory language is that a securities "broker-dealer means any person engaged in the business of effecting transactions in securities....." Counsel have argued that if such activity is merely "incidental" to the operation of a real estate agency, and not in the regular course of its business, it does not come within the purview of the definition. The Division is unable to find a distinction or implication in support of that proposition, particularly when a substantial front-end syndication or management fee is involved.

Consideration is being given to a proposed statutory amendment to provide a more definitive and objective standard for qualifying an exemption for a non-public offering substantially in the following language:

> 125-1-13(2)(j) Any transaction not involving any public offering" means any offering extended to no more than ten (10) persons, which will result in actual purchases by not more than five (5) persons, and involving not in excess of fifty thousand ($50,000) total offering amount; and where the seller reasonably believes that the securities purchased are taken for investment and not for the purpose of redistribution; and where each offeree, by reason of his knowledge about the affairs of the issuer or otherwise, or a pre-existing personal, financial or business relationship with the offerors or where such offeree reasonably can be presumed to have the capacity to protect his own interests and does not require the information which would be set forth in a prospectus or offering circular in order to make a reasonably informed judgement with respect to such investment; no general advertising for general circulation or public solicitation is to be used, and no commission or other remuneration is paid or given directly or indirectly (other than to a registered broker-dealer) for soliciting any offeree or prospective purchaser; provided that notification of claim for exemption as to any security or transaction may be filed with the commissioner, in the form and content prescribed, who may waive or modify, by rule or order, any of the foregoing conditions or qualifications, and extend the number of offerees, purchasers, or offering amount permitted hereunder. The filing fee for such notification or request for exemption shall be twenty five ($25) dollars.

This Order is entered pursuant to the authority of 125-1-18(1) and 125-1-24(5) CRS 1963 and deemed necessary and appropriate in the public interest or for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of the Act. Interested persons may submit written data, views, or argument regarding such interpretation and opinion.

DIVISION OF SECURITIES

By Stanley R. Hays

STANLEY R. HAYS
Securities Commissioner

PROPOSED AMENDMENT TO APPRAISERS LICENSING BILL

The requirements of section 50 of this chapter do not apply to:

(1) a licensed real estate broker or a licensed real estate salesman is exempt from the provisions of this chapter if he appraises real estate in the ordinary course of his real estate brokerage business except when a separate fee is paid for it;

(2) the commission may grant to licensed real estate brokers and officers of state and federally regulated banks and financial institutions an exemption, which must be applied for and renewed annually, from the provisions of this act to appraise residential properties up to and including four units and vacant land under conditions promulgated by the commission when there is no licensed appraiser maintaining an office within a hundred mile radius of the property appraised.

(3) a real estate appraiser trainee employed by a licensed real estate appraiser.

A BILL FOR LICENSING REAL ESTATE APPRAISERS
(as prepared by Alaska Chapter #158 of the Society
of Real Estate Appraisers and the Alaska Sub-Chapter
of the American Institute of Real Estate Appraisers)

NOTE: The SREA does not concur in the underlined portion.

For an act entitled: "An Act Providing for the Licensing of Real Estate Appraisers."

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

*Section 1. AS 08 is amended by adding a new chapter to read:

CHAPTER 89. REAL ESTATE APPRAISERS

Sec. 08.89.010. CREATION AND MEMBERSHIP OF COMMISSION.

(a) There is created the Real Estate Appraisal Commission consisting of five members appointed by the governor. The members shall be qualified, licensed real estate appraisers who have engaged in the general practice of real estate appraising in the state for not less than five years and who are currently engaged in the general practice of real estate appraising in the state and who are professional designated members of the American Institute of Real Estate Appraisers or the Society of Real Estate Appraisers. However, the members of the first commission are not required to be licensed for the first year of their tenure.

(b) A member of the commission is appointed for a term of four years and until his successor is appointed and qualified, except that the initial terms of members shall be as follows: one member for one year, one member for two years, one member for three years and two members for four years. Members serve at the pleasure of the governor. The governor shall fill a vacancy by appointment for the unexpired term.

(c) Members of the commission shall elect a chairman and a vice chairman.

(d) A majority of the members of the commission constitute a quorum to do business, but the affirmative vote of three members is required to revoke, suspend or deny a license.

Sec. 08.89.020. POWERS AND DUTIES. The commission shall

(1) meet at least once annually and more often on the call of the chairman or if the chairman is requested to do so by two or more members;

(2) receive applications for and issue licenses to real estate appraisers and prepare and grade the examinations provided for in this act,