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# STATE OF ALASKA

## DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

OFFICE OF THE COMMISSIONER

JAY S. HAMMOND, GOVERNOR

POUCH D

JUNEAU, ALASKA 99811

Phone: 465-2500

February 19, 1951

Honorable Bob Mulcahy  
Chairman  
Senate Labor and Commerce  
Committee  
Pouch V  
Juneau, Alaska 99811

Dear Senator Mulcahy:

Thank you for your request for a position statement and fiscal note on SB 807, dealing with registration of broker-dealers, investment advisors, agents and securities.

Section 1 of the bill amends the registration procedure so that the administrator need not require broker-dealers, agents and investment advisors to post surety bonds if they have a sufficient amount of insurance to cover investors. This change allows, rather than requires, the administrator to set out minimum capital requirements for broker-dealers and investment advisors. The amendment makes this Alaska Securities Act section consistent with the Uniform Securities Act.

Section 2 eliminates unnecessary statutory requirements for business without lessening the protection provided to the public by the Alaska Securities Act. Within the past few years, clients of broker-dealers who operate through national exchanges (New York Stock exchange, etc.) have had a substantial amount of insurance provided by the Security Investors Protection Corporation (SIPC). The SIPC insurance operates in a manner similar to insured bank savings accounts. That is, if the bank or broker-dealer for some reason goes out of business without sufficient insurance to cover depositors (investors), SIPC will reimburse the investors.

We have some registered broker-dealers who are not insured by SIPC and it is proposed that, by regulation, those broker-dealers would continue to maintain a bond while those insured by SIPC will not.

Section 3 simply reduces the amount of paper sent to the Division of Banking. We have found one copy of the prospectus filed under the Securities Act of 1933 is sufficient for our review.

February 19, 1982

Under current statutes, if a registrant sells more securities in Alaska than has been registered, the entire offering could be subject to rescission by an unhappy investor. Registrants should have some protection from this; at the same time, registrants should carefully assess and initially register the amount of securities they feel will be sold in the State. Section 4 of the proposed statute provides protection for the registrant while encouraging him not to underestimate the amount expected to be sold in Alaska.

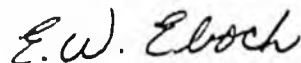
An example of how this works is:

The registrant provides a registration fee of \$75.00 to register \$75,000 in securities for sale in the State of Alaska. He then sells \$100,000. In this instance, he could posteffectively register the securities by paying the amount he should have paid to register \$100,000 in securities (an additional \$25.00) plus a triple penalty (\$75.00).

This proposed statute is taken from the Oregon Statute, ORS 59.065(5) with the minimum penalty raised from \$25.00 to \$50.00.

We encourage your support and passage of this legislation.

Sincerely,



Edward W. Eboch  
Deputy Commissioner

EWE/wfs 5/5

THE LEGISLATURE OF THE STATE OF ALASKA  
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST  
Bill/Resolution No. SB 807 -- An Act relating to the registration of broker-titled dealers, agents and investment advisors; and relating to registration of  
Requested by Rodey Date 2/18/82 Securities.

II. FISCAL DETAIL  
Agency Affected Department of Commerce & Economic Development  
Program Category Affected Consumer Protection  
BRU, Program, Or Subprogram(s) Affected Banking and Securities  
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES		0				
200 TRAVEL		0				
300 CONTRACTUAL		0				
400 COMMODITIES		0				
500 EQUIPMENT		0				
600 LAND & STRUCTURES		0				
700 GRANTS, CLAIMS, ETC.		0				
TOTAL		0				

FUNDING (Thousands of Dollars)

GENERAL FUND		0				
FEDERAL FUNDS		0				
OTHER (Specify Source)		0				

POSITIONS

FULL TIME		0				
PART TIME		0				
TEMPORARY		0				

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

No fiscal Impact

*Willis F. Kirkpatrick*

IV. DATE February 18, 1982 PREPARED BY Willis F. Kirkpatrick, Director  
AGENCY Division of Banking, Sec. Small Loans, & Corps.  
Original: Legislative Finance PHONE 465-2500  
Budget and Management  
Prime Sponsor: Sen. Legislator Name

Article 2. Registration of Broker-Dealers, Agents, and Investment Advisers.

Section

- 30. Registration requirements
- 40. Registration procedure
- 50. Post-registration provisions

Section

- 60. Denial, revocation, suspension, cancellation, and withdrawal of registration

Sec. 45.55.030. Registration requirements. (a) It is unlawful for a person to transact business in this state as a broker-dealer or agent unless he is registered under this chapter.

(b) It is unlawful for a broker-dealer or issuer to employ an agent unless the agent is registered. The registration of an agent is not effective during a period when he is not associated with a particular broker-dealer registered under this chapter or a particular issuer. When an agent begins or terminates a connection with a broker-dealer or issuer, or begins or terminates those activities which make him an agent, the agent as well as the broker-dealer or issuer shall promptly notify the administrator.

(c) It is unlawful for any person to transact business in this state as an investment adviser unless (1) he is registered as an investment adviser under this chapter; (2) he is registered as a broker-dealer without the imposition of a condition under AS 45.55.060(d)(5); or (3) his only clients in this state are investment companies as defined in the Investment Company Act of 1940 or insurance companies.

(d) Every registration expires one year from its effective date unless renewed. The administrator may by rule or order prepare an initial schedule for registration renewals so that subsequent renewals of registrations effective on May 9, 1959, may be staggered by calendar months. For this purpose the administrator may by rule reduce the registration fee proportionately. (§ 201 ch 190 SLA 1959)

Sec. 45.55.040. Registration procedure. (a) A broker-dealer, agent, or investment adviser may obtain an initial or renewal registration by filing with the administrator an application together with a consent to service of process pursuant to AS 45.55.260(g). The application shall be accompanied by the fingerprints and a photograph of the applicant and shall contain whatever information the administrator by rule requires concerning such matters as

- (1) the applicant's form and place of organization;
- (2) the applicant's proposed method of doing business;
- (3) the qualifications and business history of the applicant; in the case of a broker-dealer or investment adviser, the qualifications and business history of a partner, officer, or director, a person occupying a similar status or performing similar functions, or a person directly or indirectly controlling the broker-dealer or investment adviser; and, in the case of an investment adviser, the qualifications and business history of an employee;

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

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

(b) The administrator may by regulation or order require an applicant for initial registration to publish an announcement of the application in one or more specified newspapers published in this state. If no denial order is in effect and no proceeding is pending under AS 45.55.060, registration becomes effective at noon on the 30th day after an application is filed, except that registration becomes effective upon filing of the application by any of the persons subject to this chapter who were doing business in this state on May 9, 1959. The administrator may by regulation or order specify an earlier effective date, and he may by order defer the effective date until noon of the 30th day after the filing of an amendment.

(c) Every broker-dealer applicant for initial registration shall pay a registration fee of \$125. Every agent applicant and investment adviser applicant for initial registration shall pay a registration fee of \$50. Every broker-dealer applicant for annual renewal of registration shall pay an annual renewal fee of \$75. Every agent applicant and investment adviser applicant for annual renewal of registration shall pay an annual renewal fee of \$30.

(d) A registered broker-dealer or investment adviser may file an application for registration of a successor, whether or not the successor is then in existence, for the unexpired portion of the year. A broker-dealer may file a request to transfer from a previous broker-dealer an agent's unexpired portion of the registration if the provisions of AS 45.55.030(b) have been met. There is a filing fee of \$10 for filing applications under this subsection.

(e) The administrator shall by regulation require of registered broker-dealers and investment advisers a minimum capital and a bond guaranteed by a corporate surety qualified to do business in this state.

(f) The administrator shall by regulation require registered broker-dealers, agents, and investment advisers to post surety bonds in amounts up to \$10,000, and shall by regulation determine their conditions. An appropriate deposit of cash or securities shall be accepted in place of a bond so required. Every bond shall provide for suit on it by any person who has a cause of action under AS 45.55.220 and, if the administrator by rule or order requires, by any person who has a cause of action not arising under this chapter. Every bond shall provide that no suit may be maintained to enforce a liability on the bond unless brought within three years after the sale or other act upon which it is based. (§ 202 ch 198 SLA 1959; am § 1 ch 55 SLA 1972; am §§ 2 — 6 ch 86 SLA 1972; am § 6 ch 132 SLA 1977)

of the issuer as of a date within four months before the filing of the registration statement, and a summary of earnings for each of the two fiscal years preceding the date of the balance sheet and for any period between the close of the last fiscal year and the date of the balance sheet, or for the period of the issuer's and predecessor's existence if less than two years.

(c) If no stop order is in effect and no proceeding is pending under AS 45.55.120, a registration statement under this section automatically becomes effective at three o'clock Pacific Standard Time in the afternoon of the second full business day after the filing of the registration statement or the last amendment, or at an earlier time as the administrator determines. (§ 402 ch 198 SLA 1959, as added by § 19 ch 105 SLA 1961)

**Sec. 45.55.090. Registration by coordination.** (a) A security for which a registration statement has been filed under the Securities Act of 1933 or any security for which filing has been made under Regulations A, E, and F pursuant to subsection (b) of § 3 of the Securities Act of 1933 in connection with the same offering may be registered by coordination.

(b) A registration statement under this section shall contain the following information and be accompanied by the following documents in addition to the information specified in AS 45.55.110(c) and the consent to service of process required by AS 45.55.260(g):

(1) three copies of the latest form of prospectus filed under the Securities Act of 1933;

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

(3) if the administrator requests, any other information, or copies of any other documents, filed under the Securities Act of 1933; and

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

(c) A registration statement under this section automatically becomes effective at the moment the federal registration statement becomes effective if all the following conditions are satisfied: (1) no stop order is in effect and no proceeding is pending under AS 45.55.120; (2) the registration statement has been on file with the administrator for at least 10 days; and (3) a statement of the maximum and minimum proposed offering prices and the maximum underwriting discounts and commissions has been on file for two full business days or a shorter

period which the administrator permits and the offering is made within those limitations.

(d) The registrant shall promptly notify the administrator by telephone or telegram of the date and time when the federal registration statement became effective and the content of the price amendment, if any, and shall promptly file a post-effective amendment containing the information and documents in the price amendment. "Price amendment" means the final federal amendment which includes a statement of the offering price, underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call prices, and other matters dependent upon the offering price. Upon failure to receive the required notification and post-effective amendment with respect to the price amendment, the administrator may enter a stop order, without notice or hearing, retroactively denying effectiveness to the registration statement or suspending its effectiveness until compliance with (c) and (d) of this section if he promptly notifies the registrant by telephone or telegram (and promptly confirms by letter or telegram when he notifies by telephone) of the issuance of the order. If the registrant proves compliance with the requirements of (c) and (d) of this section as to notice and post-effective amendment, the stop order is void as of the time of its entry. The administrator may by rule or otherwise waive either or both of the conditions specified in (c)(2) and (3) of this section. If the federal registration statement becomes effective before all the conditions in (c) and (d) of this section are satisfied and they are not waived, the registration statement automatically becomes effective as soon as all the conditions are satisfied. If the registrant advises the administrator of the date when the federal registration statement is expected to become effective, the administrator shall promptly advise the registrant by telephone or telegram at the registrant's expense, whether all the conditions are satisfied and whether he then contemplates the institution of a proceeding under AS 45.55.120; but this advice by the administrator does not preclude the institution of the proceeding at any time. (§ 403 ch 198 SLA 1959, as added by § 19 ch 105 SLA 1961; am § 2 ch 55 SLA 1972; am § 7 ch 86 SLA 1972)

**Sec. 45.55.100. Registration by qualification.** (a) A security may be registered by qualification.

(b) A registration statement under this section shall contain the following information and be accompanied by the following documents in addition to the information specified in AS 45.55.110(c) and the consent to service of process required by AS 45.55.260(g):

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

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Article 3. Registration of Securities.

Sec. 45.55.070. Registration requirement.

NOTES TO DECISIONS

Applied in Hentzner v. State, Sup. Ct. Op. No. 2103 (File No. 3649), 613 P.2d 821 (1980).

Article 4. General Provisions.

Section

200. Orders and injunctions

Sec. 45.55.130. Definitions.

NOTES TO DECISIONS

Investment contract. — Contracts in February, to sell no more than 2,000 ounces of gold at considerably below the market price of 90 per ounce, delivery to be within six to eight months, with the money to be used to finance mining to begin in the spring, fell squarely within the definition of an investment contract and were therefore securities. Hentzner v. State, Sup. Ct. Op. No. 2103 (File No. 3649), 613 P.2d 821 (1980).

Sec. 45.55.200. Orders and injunctions. (a) Whenever it appears to the administrator that a person has engaged or is about to engage in an act or practice in violation of any provision of AS 45.55.010 — 45.55.270 or rule or order under AS 45.55.010 — 45.55.270, the administrator may

(1) if it is considered in the public interest or for the protection of investors, issue an order (A) directing the person to cease and desist from continuing the act or practice, (B) directing the person, for a period not to exceed three years, to file the annual reports, proxies, consents or authorizations, proxy statements, or other materials relating to proxy solicitations required under AS 45.55.139 with the administrator for examination and review 10 working days before a distribution to shareholders, and (C) voiding any proxies obtained by a person required to file under AS 45.55.139, including their future exercise or actions resulting from their past exercise, if the proxies were solicited by means of an untrue or misleading statement prohibited under AS 45.55.160; or

(2) bring an action in the superior court to enjoin the acts or practices and to enforce compliance with AS 45.55.010 — 45.55.270 or rule or order under AS 45.55.010 — 45.55.270, and upon a proper showing, the appropriate remedy shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets; the court may not require the administrator to post a bond.

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(b) Before issuing an order under (a)(1) of this section the administrator shall give reasonable notice of and an opportunity for a hearing. However, the administrator may issue a temporary order pending the hearing which order shall remain in effect until 10 days after the hearing is held and which shall become final if the person to whom notice is addressed does not request a hearing within 15 days after the receipt of notice. (§ 308 ch 198 SLA 1959; am § 1 ch 126 SLA 1968; am § 1 ch 65 SLA 1981)

**Effect of amendments.** — The 1981 amendment designated the existing section as subsection (a) and added subsection (b). In subsection (a), the amendment substituted "the administrator" for "he" in the introductory language, in paragraph (1), substituted "it is considered" for "he considers it," added "(A)" preceding "directing the person to cease" and substituted the language beginning "(B) directing the person" and ending with "prohibited under

AS 45.55.160" for "provided that reasonable notice of and an opportunity for a hearing shall first be given, except that the administrator may issue a temporary order pending the hearing which shall remain in effect until 10 days after the hearing is held and which shall become final if the person to whom notice is addressed does not request a hearing within fifteen days after the receipt of notice."

**Sec. 45.55.210. Criminal penalties.**

**NOTES TO DECISIONS**

"Willfully" as it is used in subsection (a) of this section requires an awareness of wrongdoing. *Hentzner v. State*, Sup. Ct.

Op. No. 2103 (File No. 3649), 613 P.2d 821 (1980).

**Chapter 87. Bulk Fuel.**

**Sec. 45.87.500. Definitions.**

**Editor's notes.** — This section was enacted as AS 45.87.040 but was

renumbered by the revisor of statutes pursuant to AS 01.05.031 (b).

**Chapter 88. Alternative Technology and Energy Revolving Loan Fund.**

**Editor's notes.** — The above chapter heading was changed to reflect the name of

the fund as established by AS 45.88.010.

**Sec. 45.88.500. Definition.**

**Editor's notes.** — This section was enacted as AS 45.88.010 but was

renumbered by the revisor of statutes pursuant to AS 01.05.031(b).