

HB

83

10/3

Passed

AMENDMENT

OFFERED IN THE HOUSE

BY REP. ROKEBERG

TO: CSHB 83 (L&C)

Page 1, line 1

AFTER: "licensing of"

INSERT" "and revocation of licenses of"

ALASKA STATE LEGISLATURE

HOUSE LABOR AND COMMERCE COMMITTEE

Representative Norman Rokeberg, Chairman
Representative Andrew Halcro, Vice-Chairman
Representative John Harris
Representative Lisa Murkowski
Representative Jerry Sanders
Representative Tom Brice
Representative Sharon Cissna



State Capitol
Juneau, AK 99801-1112
Telephone: (907) 465-4954
Fax: (907) 465-2040

MEMORANDUM

TO: Representative Pete Kott, Chairman
House Judiciary Committee

FROM: Representative Norman Rokeberg, Chairman
House Labor & Commerce Committee

DATE: February 23, 1999

RE: HB 83
Alaska Securities Act

Norman Rokeberg

Yesterday evening, the House Labor and Commerce Committee adopted a CS for HB 83 and passed the bill from committee. The bill's next referral is House Judiciary.

I would request that a hearing be scheduled for this legislation. The Division of Banking, Securities & Corporations will be delivering to you a packet containing fiscal note information, letters of support, CS HB 83 (L&C), sectional analysis and other documentation.

Attached are the following:

1. Sponsor Statement
2. Other letters not included in the Division packet
3. Cover letter from me to the Labor & Commerce Committee members indicating the change in the CS.

As this legislation is time sensitive (Alaska must adopt provisions this year in order to prevent loss of \$4-5 million in revenues), I would request that this matter be promptly scheduled before your committee for a hearing.

If you or your staff have any questions about this bill, you may wish to contact Terry Elder, Director, Division of Banking, Securities & Corporations, Department of Commerce & Economic Development, at 465-2521.

cc: Terry Elder (w/out attachments)

ALASKA STATE LEGISLATURE

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Representative Tom Brice
Representative Sharon Cissna



State Capitol
Juneau, AK 99801-1182
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SPONSOR STATEMENT

CSHB 83 (L&C)

ALASKA SECURITIES ACT

House Bill 83 would amend the Alaska Securities Act to bring it in line with the October 1996 federally adopted National Securities Markets Improvement Act (NSMIA). Two major impacts from NSMIA on Alaska are preemption from registration of a new class of securities, Federal Covered Securities, and changes to registration requirements of Investment Advisers and their agents.

Federal Covered Securities, for the most part mutual funds, are no longer required to register in Alaska. However, in an attempt to have a revenue neutral impact on the states and to preserve local investor protection, **congress allowed the states to require Notice filings and fees.** NSMIA provides a three-year window for the states to amend their statutes to provide for notice filings and notice fees or lose the authority to require them. **Without this legislation by October 1999, Alaska would lose between \$4-5 million in annual revenue funds** for the purpose of investor protection. Over 40 states already have passed similar legislation.

NSMIA also altered the registration and regulation of investment advisers. Investment advisers were previously registered with the Securities and Exchange Commission (SEC) and each state in which they offered their services. NSMIA created two kinds of advisers: Federal Covered Advisers, those who manage assets in excess of \$25-30 million, must register with the SEC; and State Investment Advisers (SIA) that must register with the states. States may require Federal Covered Advisers to file a notice and pay a notice fee in order to provide services in the state. Although Federal Covered Advisers are exempt from registration, the states retain regulatory authority over them for violations of the anti-fraud provisions of state law. Finally, NSMIA allows the states to require registration of the representatives of Federal Covered Advisers, who actually provide the investment advice, if they have a place of business in the state.

The changes in federal law require significant amendments to the Alaska Securities Act. These amendments must provide for Federal Covered Securities, Federal Covered

Advisers, Investment Adviser Representatives, and Notices and Notice fees. Provisions must also be added to specify fraudulent and unethical behavior that may lead to action not only against a registered person but now, also against a person who filed a Notice in Alaska. Language for the amendments was, for the most part, drafted by the North American Securities Administrators Association (NASAA), an organization of state securities regulators (members also include Mexico and the provinces of Canada). Division staff also worked with industry in developing this legislation. The Investment Company Institute (representing the mutual fund industry), the Investment Counsel Association of America, Inc. (representing the investment adviser industry), and the Institute of Certified Financial Planners (representing about 14,000 CFP licensees in the United States, including 16 in Alaska) have provided written support for the legislation. In addition to NSMIA changes, other proposed amendments would improve access to the capital market without weakening investor protection.

This legislation is essential to continue the State's ability to collect between \$4-\$5 million in fee income and to provide investor protection to Alaska investors who use the services of broker-dealers or investment advisers. Without this legislation, State Investment Advisers essentially would be unregulated, since they are no longer registered with the Securities and Exchange Commission. Not only is time of the essence, but we believe the NSMIA amendments and the other improvements described above will improve investor protection and issuer access to capital.

ED2:2/23/99

For Your Peace of Mind

Viaticals

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[Underwriting
Criteria](#)

[Outline
of Events](#)

[Viaticals
In The News](#)

[Investments](#)

[Request
Information](#)

What are Viaticals?

Viaticals are the ability of the terminally ill to sell the beneficiary rights of their insurance policy. This for many in America is the last method of insuring death with dignity. A "Viatical Settlement" is merely the sale of Life Insurance benefits from an insured person to a third party, and is a potential source of additional funds for terminally ill patients who are under severe financial stress. Whether the cash is needed to enhance the quality of life, to provide comfort in life, or to fund a cherished dream....For Your Peace of Mind, provides a method by which terminally ill people with qualified insurance policies may sell their policy to a third party purchaser. The program helps both the seller and the purchaser achieve a mutually beneficial financial result; thereby allowing the insured to provide for their own health care instead of depending on the government for assistance. You, as the purchaser in these policies, are able to provide this humanitarian service while securing a fixed rate of return on all funds used to purchase these policies.

[Health
Supplemental
Life](#)

[Investments](#)

[Medicare Supplement
Long Term Care
Auto](#)

For Your Peace of Mind
**Viaticals
 FAQ's**

Outline of Events	<i>Investments</i>	Underwriting Criteria Request Information
Viaticals In The News		

Viatical FAQ's

Why haven't I heard about this before? Are Viatical settlements new?

Viatical settlements are not new. Legally referred to as a "transfer for value" the selling of one's insurance benefits has been around for as long as the insurance industry itself...more that three hundred years. Prior to now, however, most Viatical settlements were arranged privately, usually between families and friends.

How is my purchase secured?

Insurance companies are rated based on assets. The Company only purchases policies from companies with a rating of "B+" or better. You are a direct beneficiary and you will receive your principle plus profit directly from the insurance company when the policy matures.

Why has the AIDS epidemic popularized Viatical settlements?

There are two reasons. First, The normally long disability period associated with AIDS or any other terminal illness usually places a severe financial hardship on the patient. Secondly, the life expectancy of PWA's (People With AIDS) can be reasonably predicted based upon the medical condition of the patient. Thus, a probable holding period can be established and a rate of return predicted within reasonable parameters. These conditions allow sellers to obtain badly needed cash and interested purchasers to provide a humanitarian financial service on a prudent financial basis.

Do Insurance Companies object to Viatical settlements?

Normally, no. Insurance carriers consider a life insurance policy to be the private property of the owner of the policy. Indeed, this is generally accepted legal concept. As long as the premiums are paid and there are no exclusions to transfer of ownership in the insurance contract the insurance company will pay the death benefit to any beneficiary properly designated by the owner. The recipient of the insurance benefits is the "beneficiary" solely due to the goodwill of the policy owner. Insurance companies do not care who the beneficiary is, as long as that is the desire of the owner of the policy. If an insured individual wishes to sell his policy or change the beneficiary that is his right...and the insurance companies have approved forms to accommodate such transfers.

Can a partial interest in a policy be purchased?

Yes.

	Underwriting Criteria	
Viaticals In The News	Outline of Events	Request Information
Health	<i>Investments</i>	Medicare Supplement
Supplemental Life		Long Term Care Auto

For Your Peace of Mind

Viaticals Viaticals in the News

Outline of Events	Underwriting Criteria
Viatical FAQ's	Request Information
Investments	

New class of investment cashes in on terminally ill.

by Cecile Gutscher
Dow Jones News Service

NEW YORK - Making securities out of a macabre new class of now - - life insurance policies held by the terminally ill - a gaining acceptance on Wall Street. For time, terminally ill patients have been selling future death benefits on insurance policies to investment agencies for 70 percent to 30 percent of their face value. The dying patient gets cash before he or she dies, and the investment firm gets a profit when the death benefit is paid. Now, pools of those purchased death, benefits are being grouped into a class of investment called asset-backed securities. Much the way mortgage-backed securities combine the right to collect on large numbers of mortgages, these securities give investors a stream of income derived from the sum of the future death-benefit payments. To date, there's bow only 'one offering of just \$35 million of these securities. That may not sound like much in financial markets where trillions of dollars in transactions are recorded daily, but proponents say the potential investment pool is vast and untapped.

On the plus side, investors view such policies as relatively stable collateral for asset-backed securities. "There can be no default on payment, only delay," says Sharon Crockett, director of structured finance at Standard & Poor's Ratings Group. Purchases of life insurance policies from the terminally ill are known as "viatical settlements." The somewhat unusual financial term comes from the Christian doctrine of viatica - that is, the Eucharist when administered to a person near or in danger of death. Before that, in the Roman Empire, a viaticum meant the money and supplies given to officials before risky journeys.

Most of the people who have sold their policies for cash have been afflicted with acquired immune deficiency syndrome. But about 50 companies have begun to offer the service to terminally ill cancer and heart-disease patients.

Standard A Poor's has been one of the most vocal proponents of security backed by death benefits. S&P keeps a renowned AIDS researcher on retainer to rate the offerings and spent a year and a half developing rating criteria.

"We wouldn't have done that if, we didn't believe them was a potential for growth," Crockett said. Only 7 percent of 400,000 people disposed with AIDS in the United States have sold their policies since the business emerged in the late 1980s, but the pool of policies is estimated to be \$350 million and growing 25 percent a year.

Last month, in the first securitization of viatical settlements, Ironwood Capital Partners Ltd. of Hartford, Conn., closed a \$35 million deal for Dignity Partners Inc., a San Francisco viatical company. The package was backed by a pool of life-insurance policies purchased from AIDS and patients infected with the human immunodeficiency virus.

At first blush, the business of backing securities with collateral derived from dying patients sounds callous.

"That's the difficulty in doing a transaction like this," said David Olson, managing director at Ironwood. "There's about five minutes where you just sort of shudder and get this dirty feeling, but people quickly realize that this is a good thing." With the cash, patients are able to improve their quality of life, buy medical supplies or support themselves, proponents argue. "Once you're able to hand someone a check for \$100,000, You change their lives," said Bradley N. Rotter, chairman of Dignity Partners. "You empower them to get pay for medical care and let their financial affairs in order."

	Outline of Events	
Viatical FAQ's	Underwriting Criteria	Request Information
Health Supplemental Life	Investments	Medicare Supplement Long Term Care Auto

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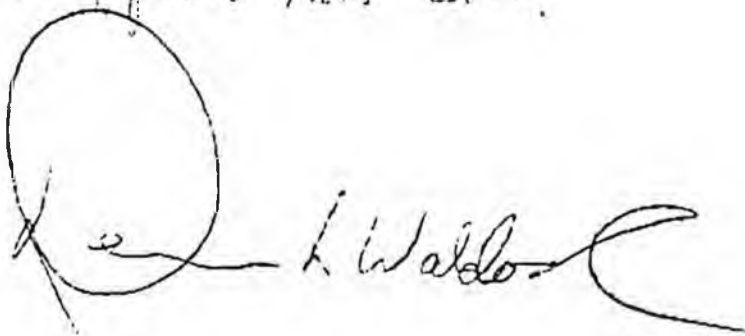
Dennis L. Waldock
Divisional Senior Vice President - Investments

2/18/99

PaineWebber

Norm

I Am the oldest registered Stock
Broker in Alaska (1987) and with the
Firm of PaineWebber for 20 years.
I Am very much in favor of HS 83
and would hope that you could also
support this Bill.



Gwaltney & Gwaltney, Inc.

FEB 19 1999

f a c s i m i l e t r a n s m i s s i o n

To: Representative Norman Rokeberg
Company:

From: Jack Gwaltney
Producer:
Fax Number: 907-561-4489
Business Phone: 907-561-7468
Internet: /http://alaska.net/~ggi/
Address: 701 Sesame Street, Suite 200
Anchorage, Alaska 99503-6641

Pages: 7
Date/Time: 02/19/99 05:03 PM
Subject:
Document Number:

Message: Representative Rokeberg here is the outline I followed in the teleconference today. Also I have included additional information just received from Future First. Thanks for taking time out of a very busy schedule to let us discuss the most important issue.

Chairman Rokeberg and Members of this Committee. Thank you for the opportunity to discuss HB 83 and recent requirements and allegations from the Division of Banking and Securities that is adversely affecting commerce and the consumers of Alaska.

My discussion today partially deals with what I feel is a constitutional breach of rights. Further, I am somewhat incensed by the implication that I have broken a statute that hasn't even been put in place and that "formal action...will be held in abeyance pending...response." If it turns out that legislation passes which makes viatical investments a security you can rest assured I will never sell another viatical. To have the specter hanging over my head that I could be charged with criminal action is quite alarming.

When I first spoke to Mr. Salveson, of the Division of Banking and Securities, whom I called after one of our agents received a phone call to cease and desist, I agreed to also cease and desist until as he put it, "We can get this thing straightened out." Now comes a letter indicating I might be charged with a violation of the Alaska Securities act, and that I am required to submit the names of clients and many other documents.

The definition of Viatical has most definitely not been addressed by statute in this and many other states. Of those States which have classified the

product, all have opted for a definition in favor of being guided under insurance laws not securities. The legislature in Alaska can choose to classify the product as it wishes, though it looks likely they will be the only one of the few states that have opted in the direction that HB83 seems to be heading on this issue.

It is my understanding, the state of Florida has enacted legislation that has served as a model to many other states. One of the main questions at issue with the division of Securities and banking is that they consider Viaticals as an investment contract. Thus far Viaticals have been viewed as personal property similar to real estate. In real estate a purchaser is exchanging money for property of value. This represents a fixed value not the definition of a security. Also at issue is the fact that most policies are sold in fractional amounts, which usually constitutes several parts of the face value, [or death value].

I have provided Representative Rokeberg additional information on this subject.

The Future First Viatical settlement program does not meet the definition of a security under SEC v. W. J. Howey Co., 328 U.S. 293 1946. The

Supreme court under section 2[1] of the Securities Act defined an investment contract "as an investment of money undertaken with the expectation of profit, whose profits are derived solely from the efforts of others with existence of a common enterprise." The assertion that Viatical settlements require an investment of money with the expectation of profit cannot be argued. We can easily argue, however, and it seems apparent to reasonable people, that "profit derived solely from the efforts of others," and "existence of a common enterprise" remain definitively excluded. Further, viaticals do not place principal at risk and provide a guaranteed return, subject to carrier solvency, which is a separate issue addressed under Title 21 of Alaska Statutes, and viaticals have not been deemed securities by the SEC, which seems to carry as much weight as any argument I can imagine.

My immediate concern is the arbitrary application of a cease and desist order on a product which is not addressed in any current statute or regulation, and to my understanding and research is only now pending definition. One of my associates has performed a word search on what I believe are the statutes relating to both Titles 45 and 21, and the term

"viatical" is not found. It appears to me that the allegation that these products conform to the investment securities act seems to be a matter of opinion until it is defined by statute.

Issuing a cease and desist order without defined regulatory authority seems to be to be a classical breach of constitutional rights. It is my understanding that "regulators" exist to protect the public interest and welfare. Regulators protect the public at large from unscrupulous providers and inappropriate products. The sale of viaticals, at present, represents no such threat to public welfare. These products have been sold for a long time, and in my experience, we have yet to have a single consumer complaint in Alaska. Consumers are now unable to exercise their right to purchase these products.

During a similar controversy over Surplus Lines with the Division of Insurance, the Division solicited advise, counsel, and testimony from numerous sources and began issuing bulletins on findings. A subsequent law was promulgated and enforced with a defined inception date and penalties for non-compliance. This was a reasonable approach to the situation. During the fact finding period, no producers were held to a

standard or law that "might" be passed. They dealt only with what was, then offered a period of time to gain compliance after the law was passed. Do these products need to be regulated? My opinion is yes, most definitely. But I feel they are reflective of insurance products much more than securities or investment products. Again, Representative Rokeberg is in possession of preliminary information that will support this position. Even so, in the absence of statutory regulation, we the public can not be held accountable for laws that do not exist.

Please note, without question if HB83 passes in its current form, we will comply with all appropriate law and statute just as I have with insurance law for the last thirty-eight years without incident, allegation, or consumer complaint.

To summarize, I am complying with the cease and desist order, despite the fact I feel it is grossly inappropriate. I will follow this testimony with additional correspondence to prove my point for Division of Insurance regulation.

Ladies and gentlemen, thank you for your attention and the opportunity to participate in this hearing.



FutureFirst

FINANCIAL GROUP 

OFFICE OF THE PRESIDENT

February 19, 1999

Jack,

In reference to our phone conversation this afternoon, I will re-cap some of the key points of issues regarding regulation. It is extremely important to understand the intent or purpose of regulation before modeling any legislation on an industry.

In 1996 the Florida Department of Banking and Finance investigated all activities of Viatical Settlement Funding Companies and found no investment concerns with Future First Financial Group. They reviewed our material and we basically never heard from them again. Soon after, the Department of Insurance notified us of their intent to regulate Viatical Settlements through their department. As such, Future First Financial Group is a licensed Viatical Settlement Company in Florida. The Department has also monitored our business practices in other states in their recent audit of our program. In accordance with this license we must agree to audits at the discretion of the Department. The audit selects a random sample of policies from all states to test our procedures for purchaser placement and Viator payment. We are also required to furnish audited financial information and current financial information to include the mandatory deposit requirements of the Department. Florida has put together a good program and several states may be modeling their programs after the Florida program.

Like Florida, many of the states will initiate some sort of investigative process through the state banking side, only to find that the Department of Insurance is better suited to regulate the industry. Lobbying for regulation has never been from the policy purchase side, but has instead been from the sellers' side. Most of the concern for a need to regulate was because many of the policy sellers were being taken advantage of. The policyholders were changing ownership and beneficiary information only to receive partial payments from brokers. Delays in payments only led to policyholders dying before receiving full payments with all the extra money remaining with the brokers. The intent of regulation was to protect the policy sellers and in turn has included regulation to monitor both sides of the transaction.

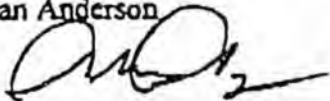
Following the history behind attempts to make Viatical Settlements a security, the Securities and Exchange Commission (SEC) has been unable to sue for this ruling. Additionally, appeals have been unsuccessful. The concept of "fractionalization" came originally from the SEC vs Life Partners cases. Years ago, Life Partners made themselves the owners and beneficiaries of the policies and their investors were given beneficial interest in this pool. Although the SEC made valid arguments that the success or failure of the investment depended on Life Partners being in business in order for investors to receive their payments, they were unable to convince the Federal Government that these investments were securities.

"Fractionalization" was never intended to represent more than one beneficiary on a policy. It was represented as the scenario described above. Not allowing for multiple beneficiaries on an insurance policy violates the rights of individuals to collectively purchase personal property. An insurance policy is nothing more than the personal property of the policyholder, and all policyholders have the right to sell personal property. It is important to not represent securities concerns that don't exist. It's not fair to the individuals selling their policies. It is similar to a homeowner being told they can't sell their home because it's a security.

In no way does any purchase program offered through Future First Financial Group represent a security. Future First does not take purchaser funds and buy policies with unknown expectations. Securities are investments that many times over are dependent on the growth and financial performance of the companies they invest in. The investor never truly knows the final outcome. All purchasers of the death benefits of life insurance policies know from the day they request the settlement what their future value return will be because it is set at life expectancy. I will say it again - all returns are fixed! They will never change! Only the rate of return is not known. This will not be known until the death of the policyholder. Purchasers will not lose their principal. The Trustees of the premium paying escrow fund pays all policy premiums until maturity.

I've run out of time on these comments but if there are any questions please call. Just remember, enforcing securities laws on non-securities is not the answer if the state wants some control over the Viatical Settlement Process. Simply have them model the legislation after Florida. They are tough but fair and have done all the work.

Alan Anderson



Executive Vice President, Future First Financial Group

STATE OF ALASKA

DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

DIVISION OF BANKING, SECURITIES, AND CORPORATIONS

TONY KNOWLES, GOVERNOR

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Banking & Securities (907) 465-2521
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ANCHORAGE
Corporation Information (907) 269-8140
TDD: (907) 465-5437

February 18, 1999

VIA FAX AND U.S. MAIL
(907) 297-7363

Jack Gwaltney
Premier Investments and Insurance, Inc.
3510 Spenard Road, Suite 104
Anchorage, AK 99503

Dear Jack Gwaltney:

Re: Future First Financial Group of Ponte Vedra Beach, FL

Reference is made to our conversation of February 17 regarding the program offered through the above sponsor (Future First) for the sale of interests in viatical settlement contracts (the viatical program). This office administers and enforces the Alaska Securities Act (AS 45.55) and it is our opinion that the viatical program, as offered through your agent Escrow Alaska Financial, Inc., is an investment contract security under AS 45.55.990(12) and subject to the registration provisions of AS 45.55.070. Firms and individuals that sell securities must also be registered as broker dealers or agents under AS 45.55.030.

Please immediately confirm to this Division in writing, as the Alaska General manager for the Future First viatical program, that the offer and sale of interests in the viatical program, including all advertising, has been voluntarily stopped. A copy of this letter must be provided to all firms and individuals who were previously authorized to sell the program and a list of those firms and individuals, including address and telephone numbers, must be provided to this office. Also, provide a list of all Alaskan purchasers of the viatical program. If you are offering any other viatical programs, disclosure to this office is required.

If you are aware of any other (non-affiliated) firms or individuals offering the Future First viatical program to Alaska residents, please identify.

As discussed, provide a copy of all written materials provided to or signed by an investor. If not set out in the written materials, disclose to this office supplementally the selling compensation structure of this offering. Provide a copy of any scripts used in telephone sales presentations and if none, so state. Provide a copy of any attorney's opinion, letters or court cases relied upon that supports your position that the viatical program does not constitute a security under AS 45.55. Forward a copy of any financial statements for Future First and if none, so state.

Mr. Jack Gwaltney

-2-

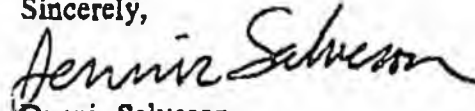
02/18/99

Please be advised that the advertisement of "Returns up to 42% Guaranteed" (emphasis added) in the newspaper constitutes a public offering and that, even in the event a securities registration is subsequently made effective, is strictly prohibited by 3 AAC 08.900(2). Identify the publications used, provide a list of all dates of publication and a copy of any advertising or notice used to promote the viatical program by you, Premier Investments and Insurance, Inc, or any agent or affiliate.

You are required to immediately respond to this letter under AS 45.55.910 and state whether or not you, Premier Investments and Insurance, Inc and its agents and affiliates agree to voluntarily cease and desist from offering or selling the Future First viatical program to Alaska residents. A response to the other information items is required within 10 days. A decision whether to take formal action under the Alaska Securities Act will be held in abeyance pending your full response. If we determine subsequently that there were ongoing activities that violated the Alaska Securities Act after your receipt of this letter, we will treat any such activity as a knowing violation of the Act.

If you have any questions, please feel free to contact me at 907/465-2524. However, only written replies suitable for filing with the Administrator, subject to AS 45.55.160, will be considered as responding to this letter.

Sincerely,



Dennis Salvesson
Securities Examiner

Cc: Escrow Alaska Financial, Inc.
J.H. Judy Gopaul, Marg Walker
VIA FAX AND U.S. MAIL

From the desk of
David E. Gwaltney, C.I.C.

6217 Chevigny Street
Anchorage, Alaska 99502
Telephone: (907) 297-7302
Facsimile: (907) 297-7363

Personal Correspondence

e-mail: dave@insuranceak.com

February 19, 1999

Mr. Dennis Salvesson
State of Alaska
Division of Banking
P.O. Box 110808
Juneau, Alaska 99811-0808

Re: February 18, 1999 Premiere Investment Correspondence
Constitutional breach

Dear Mr. Salvesson:

Please accept this correspondence as the first of what I anticipate will be three letters addressing issues raised in your February 18, 1999 correspondence to Jack Gwaltney of Premiere Investments and Insurance, Inc. Mr. Gwaltney has passed your letter on to me as required in your correspondence, and I have ceased solicitation and discussion of the product voluntarily, at least temporarily.

My letter today deals with what I feel is a constitutional breach of rights. Further, I am somewhat incensed by the implication that I have broken statute and that "formal action...will be held in abeyance pending...response." First, the definition of Viatical has most definitely not been addressed by statute in this and most other states. Of those States which have classified the product, virtually all have opted for a definition in favor of insurance offerings, not securities. The legislature in Alaska can choose to classify the product as it wishes, though it looks likely they will be in a vast minority if it opts in the direction that HB83 seems to be heading on this issue. (This will be the subject of my next correspondence.)

My immediate concern is the arbitrary application of a cease and desist order on a product which is not addressed in any current statute or regulation, and to my understanding and research is only now pending definition. I have performed a word search on what I believe are the statutes relating to both Titles 45 and 21, and the term "viatical" is not found. It appears to me that your allegation that these products conform to the investment securities act seems to be a matter of opinion until it is defined by statute. (Without digressing into my next correspondence prematurely, viaticals do not place principal at risk, do provide a guaranteed return (subject to carrier solvency, which is a separate issue addressed under Title 21) and they have not been deemed securities by the SEC, which seems to carry as much weight as any argument I can imagine.)

Issuing a cease and desist order without defined regulatory authority seems to be to be a classical breach of constitutional rights. It is my understanding that "regulators" exist to protect the

Gwalmey & Gwalmey, Inc.
02/19/99

Page 2

public interest and welfare. Regulators protect the public at large from unscrupulous providers and inappropriate products. The sale of viaticals, at present, represents no such threat to public welfare. These products have been sold for more than a decade in the presented format and in my experience we've yet to have a single consumer complaint in Alaska.

Next month will be the twentieth anniversary of my insurance licensure in the State of Alaska. (Incidentally, I've been a Series 7 registered representative since 1984 as well.) Over those twenty years, there have been many concerns over the suitability of numerous products, including a certain class known as "Surplus Lines." Despite the potential public harm or concerns (which are potentially most devastating, by the way, certainly well in excess of viatical sales), the Division of Insurance never issued a cease and desist on the sale of those products. They (the Division) recognized that although additional regulation may be required to fully protect the consumer, the product was still valued and to remove it without cause or notification would place many Alaskan consumers as well as agents and brokers in an untenable position to protect themselves or earn a living.

Your order has done that. Consumers are now unable to exercise their right to purchase these products. Many salespeople are now offering these products for their livelihood, and your order is eliminating their ability to earn a living and provide for their families. Is there a statute that deals with this issue? Will there be State reimbursement? If not, I hope the Attorney General's office agrees with your position, or the State of Alaska will be offering liquidated damages at a time when we (the populace of our State) can least afford it.

In the case of Surplus Lines, the Division of Insurance solicited advice, counsel, and testimony from numerous sources and began issuing bulletins on findings. A subsequent law was promulgated and enforced with a defined inception date and penalties for non-compliance. This was a reasonable approach to the situation. During the fact finding period, no producers were held to a standard or law that "might" be passed. They dealt only with what was, then offered a period of time to gain compliance after the law was passed.

A secondary issue deals with your demand for "...all written materials provided to or signed by an investor." I will not comply with this demand at present for fear of a much larger problem, that being the Federal Privacy Act. As you're aware, by their very nature, the Viatical product deals with individual rights of privacy and terminal medical conditions. Until I can be shown, in writing and at the direction of a federal authority, that releasing this confidential medical information to you is deemed appropriate, my files will remain confidential. I will, however, be happy to provide all non-client specific sales material per your request.

Do these products need to be regulated? My opinion is yes, most definitely. But I feel they are reflective of insurance products much more than securities products. (Future correspondence to substantiate.) Even so, in the absence of statutory regulation, we the public can not be held accountable for laws that do not exist.

You also request information and/or attorney's opinion statements supporting our position on the products themselves. This request for information (supposedly to determine the nature and breadth of our violation), followed immediately by the implication that we have criminally violated Title 45 statutes, seems very close to a request to incriminate ourselves. Last time I checked our legal system, "criminals" were innocent until proven guilty. The burden of proof

does not rest on us - the burden that we have violated a law rests with you. If you feel this statement is an over-reaction, please explain the nature of the cease and desist, and also explain the not-even-veiled threat of further recrimination for non-voluntary compliance with your "request."

Please note that, without question, if HB83 passes in its current form, we will comply with all appropriate law and statute just as I have with insurance law for the last twenty years. I simply see no reason to comply with laws that don't exist nor sit idly while I'm threatened with the removal of my livelihood.

To summarize, I am complying with your cease and desist order, despite the fact I feel it is grossly inappropriate. I will follow this letter with additional correspondence to prove my point for Division of Insurance regulation. I will comply with your request for file information as soon as I'm assured that compliance will not violate or preempt an existing federal statute. And I respectfully request re-consideration of the cease and desist until laws relating to our conduct and product offering have been established.

Regards,



David E. Gwaltney, CIC

P.S. I am writing this letter under personal letterhead given my position for Viatical sales is under a personal agreement. Please note that my current industry positions include President, Principal/Manager and Compliance Officer of Gwaltney & Gwaltney, Inc., President, Alaska Independent Insurance Agents and Brokers, and Property Casualty Representative for the Division of Insurance Continuing Education Advisory Committee. My comments in this correspondence are personal in nature and bare no correlation to those or other positions held.

cc: Rep. Norm Rokeberg (constituent)
Sen. Drue Pearce, (constituent)
Rep. Ramona Barnes (by request)

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Viaticals Not Securities, Court Rules

By JIM CONNOLLY

Viatical settlements are not securities subject to federal securities laws, a District of Columbia appeals court ruled in a 2-to-1 decision earlier this month.

The ruling in *Securities and Exchange Commission v. Life Partners, Inc. and Brian Pardo* reversed a district court decision handed down in August 1995 which addressed the sale of "fractional interests" in viatical settlements.

Viatical settlements are contracts in which an investor purchases a life insurance policy from a terminally ill person at a discount that can range from 20 percent to 40 percent depending on the life expectancy of the viator, the seller of the policy.

If viatical settlements are not securities, neither are they insurance policies, according to the court opinion which determined that "... a viatical settlement is not an insurance policy, and the business of selling fractional interests in insurance policies is no part of the business of insurance."

The court continued, "LPI's offering does not, therefore, qualify

for the insurance exemption from the federal securities laws, and is not shielded from federal regulation by the McCarran-Ferguson Act."

The appeals court reasoned that viatical settlements are not securities because the "profits from their purchase do not derive predominantly from the efforts of a party or parties other than the investors."

Court Also Said That Viatical Settlements Are Not Insurance Policies

The district court had determined that the defendants were selling unregistered securities but that the case rested on a "gray area of securities law."

"We are disappointed with the outcome," said Leo Orenstein, assistant chief litigation counsel with the SEC. At press time, no decision had been made on whether the SEC would take further action.

But, according to Mr. Orenstein, the SEC could request a rehearing en banc by the appeals court. Such

petitions are granted "very infrequently," he said, but in this case, "there is a question of first impression. This is virgin territory."

Other options, he said, include an appeal to the Supreme Court, a rehearing and then an appeal to the Supreme Court, or a decision to let the current decision stand.

"Fractionalized interests are a very smart way to buy viatical settlements and spread risk and return," according to Brian Pardo, current chairman and former president of Life Partners, Waco, Texas.

Within 60 to 90 days, Life Partners "will begin to act as an agent selling fractionalized interests again," Mr. Pardo said. "Now a million dollars and three years later, we can go back to the original way that we do business."

Speaking for the Viatical Association of America, Meir Eliav, president, said, "we as an industry, are very much concerned that investors, one or many, have a very good understanding of the risks they are taking upon themselves by buying policies." This is particularly true of the small investor, he said.

The logo for Future First Financial Group features the company name in a stylized, italicized serif font. Below the name is a horizontal line, and underneath that is the text "FINANCIAL GROUP" in a smaller, all-caps sans-serif font. To the right of the text is a five-pointed star with a textured, slightly irregular appearance.

OFFICE OF THE PRESIDENT

November 5, 1998

The following analysis is provided to educate all concerned parties on the Future First Viatical Program, and how the Securities and Exchange Commission (SEC) may view this program. This analysis is strictly the opinion of Future First Financial Group, Inc. Future First strongly recommends the consultation with private legal counsel on the following position.

From all available information and in our opinion, it is not the intent of the SEC to exercise jurisdiction over Viatical Settlement Companies. Leo Orenstein, assistant chief litigation counsel at the SEC's division of enforcement says the SEC is not opposed to the simple brokering of insurance policies, yet Viatical Companies that do much more are having to 'bare all' to the SEC. To date, only one Viatical Company has been charged by the SEC.

Specifically, the SEC contended that the Viatical Company charged sold fractional interests in insurance contracts, thus constituting a sale of investment contracts subject to federal securities laws. The Future First Viatical Program coordinates the purchase of the death benefits of life insurance policies by direction of a Purchase Request Agreement (PRA). The Purchaser named in the PRA authorizes Future First to act on their behalf to purchase the death-related benefit of an insurance policy. The purchaser becomes a beneficiary of the death benefit of an insurance policy. Future First as well as most Viatical Companies coordinate this exchange of real property in a manner resembling the Real Estate Business. Viatical Brokers (requiring a license in many states) serve as agents for the Viators (sellers), and Viatical Companies (requiring a license in many states) serve as agents for the purchasers. The Future First Program requires an attorney for closing and through this closing the transaction is finalized through the exchange of money (value).

As in real estate all purchasers are exchanging money for property of value. This value is fixed - never to increase or decrease in value. Similarities to real estate are focused mostly on the transaction process not the future value. Investors in real estate base most of their future value estimates on the economy. Viatical Settlements coordinated through the Future First program have a fixed future value, not dependent on the economy.

The Future First Viatical Settlement Program does not meet the definition of a security under SEC v. W.J. Howey Co., 328 U.S. 293 (1946) [hereinafter Howey]. The Supreme Court under section 2(1) of the Securities Act defined an investment contract as an investment of money undertaken with the expectation of profit, whose profits are derived solely from the efforts of others with the existence of a common enterprise.

Under Howey, all Viatical Settlements require an investment of money with expectations of profit. These two points Future First cannot argue. Future First will argue that profits derived solely from the efforts of others and the existence of a common enterprise are not satisfied under Howey.

For Howey to be satisfied, Viatical Settlement profits must be derived solely from the efforts of others. In application, the courts have not adhered to a literal interpretation of the word "solely." In *SEC v. International Loan Network, Inc.*, 968 F.2d 1304, 1308 (D.C.Cir.1992), "solely" was relaxed to "predominately." In any case, to satisfy this test, both the "others" whose effort produces profits and the effort itself must be identified. Under the Future First Viatical Program there are many possible "others:" the policy seller, a financial advisor of the seller, the policy broker, a financial advisor to the purchaser, and the purchaser's broker to name a few. The complexity of the settlement and the inability to know just when a person will die, makes it literally impossible to identify "others" and "whose effort" to satisfy Howey.

Common enterprise under Howey is defined in terms of horizontal and vertical commonality. Under horizontal commonality a common enterprise is defined in terms of the relationship between individual investors. A common enterprise exists if investor funds are pooled together, usually with pro-rata distribution of profits or losses. Both forms of vertical commonality define a common enterprise in terms of the relationship between the individual investor and the promoter. Narrow vertical commonality demands that the success or failure of the investor mirror the success or failure of the promoter. The broader form of vertical commonality requires that only the success or failure of the investor be dependent upon the efforts of the promoter. In our opinion, for Howey to be satisfied under common enterprise, both horizontal and vertical commonality must exist. It is difficult to argue against horizontal commonality, but neither forms of vertical commonality are present under the Future First Viatical Program. The success or failure of Future First Financial Group, Inc. has no correlation with the success or failure of a Viatical Settlement under the Future First Program. As described earlier, the value of the purchase is fixed at closing, never to increase - never to decrease. It is simply an exchange of real property finalized through a closing.

Beyond Howey and the SEC, Future First Financial Group, Inc. has developed the finest Viatical Program in the industry. Years of research and experience has uncovered the good and the bad in the industry, and Future First has capitalized on them all. Since day one, the Future First Viatical Program has become the model for the industry.

Probably the number one concern for all purchasers is: *who has access to purchaser funds?* Simply answered, *no one at Future First!* Future First is only authorized to make deposits. An independent CPA serves as trustee on the account, and only they have the authority to transact funds out of this account. This trustee is bound by a Trust and Escrow agreement limiting them to specific transactions at the direction of a law firm, and is personally covered by a Fidelity/Surety bond, providing third party protection of all purchaser funds.

The Future First Viatical Program has been designed to allow for as much choice as possible in the purchase process. As an agent for the purchaser, Future First is bound by the PRA to arrange the purchase of the death benefits of insurance policies under fixed program returns of their choice. The purchaser knows and agrees upon all settlement programs prior to closing.

After closing, the greatest concern for the purchaser is insurance policy premium payments. Some companies will not pay premium payments beyond their determination of life expectancy.

This should be a warning sign that these companies may not be placing appropriate life estimates with purchaser funds. The Future First Viatical Program, guarantees in writing under the PRA, to pay all insurance policy premiums to maturity, no matter how many years beyond the program the seller lives! This is accomplished through the Fidelity Viatical Special Trust. Advance premium payments required of the settlement at closing are deposited into this account. This is the sole purpose of this account, and bound by a Trust and Escrow agreement, this money can only be used for premium payments. All excess funds must remain in this account, earning interest over time, existing independent of Future First, to pay all policy premiums until maturity. Although this account may be over-funded, over-funding will allow for perpetual growth in the account even as individuals live beyond life estimates.

Future First Financial Group is a proponent for purchaser / investor protection. Protection may be in some form of regulation, but not at the expense of the entire industry. Regulation has almost ruined some industries, where de-regulation has been the savior. Any attempt to regulate a person's right to sell their personal property should not be approached. Most of the states developing legislation to regulate Viatical Settlements are following the lead of other states with legislation already in place. They are pushing the regulation through the insurance departments, with most of the emphasis on protection of the seller. Although this is an extremely important area to place emphasis, the protection of the purchaser / investor has received less attention.

This is not a reason for regulation by means of making this purchase of real property a security! It means that the insurance departments need to model the Viatical purchase process in some form similar to the Future First process. Regulation must not complicate this process and transform this process into something it's not. It is nothing more than the exchange of real property!

The future of this industry is not tied to more regulation. It is tied to legitimate claims of fixed future returns. The best 'statistical guessers' in the world will be wrong more times than right given a shorter time to be right. This is not magic, it's just common sense. Time is the key element to future events. This is why time is such a critical factor of the unknown. With more time, the unknown may be more predictable. Therefore, we must not be so naive and force naivete on purchasers / investors by claiming to be of a higher power when it comes to estimating life expectancy. It is then reasonable to assume that Viatical Companies should have a much better track record on longer-term programs than shorter-term programs. No one really knows when a person will pass away. What we do know is that one day they will and the purchaser / investor will receive their promised fixed return as long as the Viatical Company or Third Party Trust has not let the policy lapse. Based on what the industry is offering in the competitive market for fixed returns, even a Viator doubling their life estimate presents an extremely competitive and risk averse return.

All of the employees, managers, and officers of Future First Financial Group, Inc. welcome you to the finest Viatical Program in the industry.

STATE OF ALASKA

DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

DIVISION OF BANKING, SECURITIES, AND CORPORATIONS

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February 19, 1999

The Honorable Norman Rokeberg
Chairman, Labor & Commerce Committee
Alaska House of Representatives
State Capitol Room 24
Juneau, AK 99801-1182

FEB 19 1999

Dear Chairman Rokeberg:

RE: Information on viaticals

At the hearing of the House Labor and Commerce Committee on Wednesday, February 17, 1999, you asked that we provide you with some further information about the issue of viaticals as securities and various state responses.

In the May 11, 1998 issue of *BestWeek* (pp. 13-14), it was reported that the founders of Mutual Benefits Corp., a viatical settlement firm in Miami, Florida agreed to pay \$950,000 to settle charges brought against the firm by the U.S. Securities and Exchange Commission (SEC) for allegedly misleading investors. The article states that this was the first case concerning viaticals in which the SEC achieved full injunctive and monetary relief. In the previous December, the SEC lost a battle in the District of Columbia Appellate Court against Life Partners Inc., a Waco, Texas viatical settlement company (I believe the cite is 318 U.S. App. D.C. 305, 87 F.3d).

In the SEC v. Life Partners Inc. case, the appeals court found the viatical interests were not investment contracts based on its analysis of the activities of the company both before and after the investors' money was received. Although the decision is not binding outside of the D.C. area, it caused the SEC and state regulators considerable concern as the growth of the industry has been accompanied by a growth in complaints about the marketing of these interests to investors. The Mutual Benefits action shows that the SEC continues to look at this issue on a case by case basis.

In the November 2, 1998 issue of *Investment News* (pp. 1 and 33), a number of investor complaints are described, and the article states that at that point "...only Maine has formally put life insurance agents on notice that viaticals are subject to state securities laws and that all sales agents be licensed." Sales agents may not be insurance agents, of course. The North American Securities Administrators Association (NASAA) has created a task force to follow developments


February 19, 1999

in this field, and individual states are beginning to take actions to overcome the chilling effect SEC v. Life Partners, Inc. had on regulatory efforts. In addition to Maine, Missouri has introduced HB 492 and Oregon has introduced SB 285 to add interests in viatical settlements to the definition of securities in their securities statutes. Recently, we have had communication with a number of other states that are considering adding these interests to the definition of a security. Those state include North Dakota, South Dakota, Ohio, California, and Arizona. Arizona attempted legislation a year ago, but industry opposition killed the bill. We do not know what specific proposals were introduced there, or what specific objections were raised.

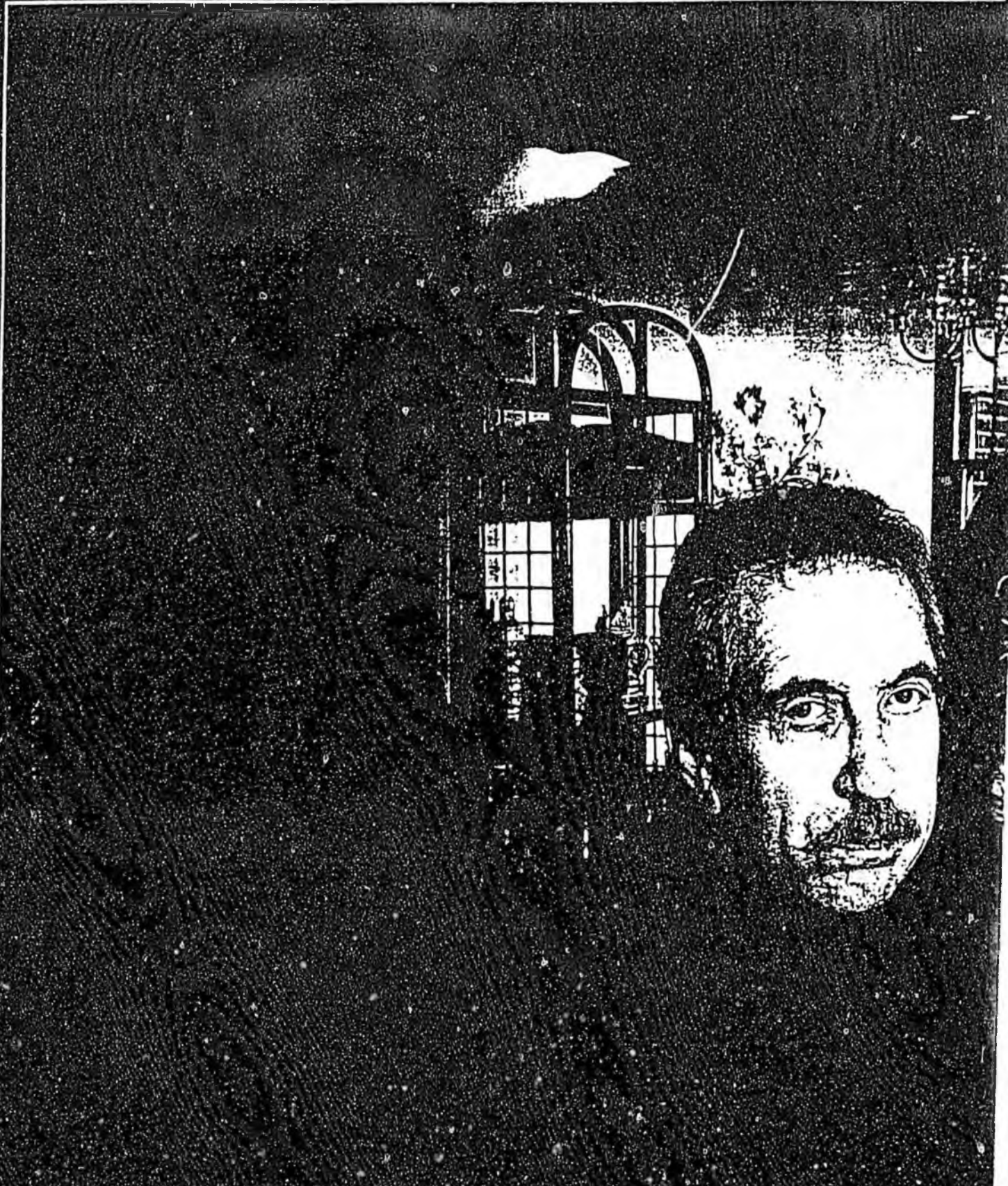
We would not be surprised if the viatical industry prefers not to have these interests added to the Alaska Securities Act. We have no objection to the proper marketing of these securities, but experience both here in Alaska and elsewhere shows a need to protect investors from improper marketing of these securities by unlicensed agents.

We hope this letter is responsive to the chairman's question. For your added information, we have attached a copy of an article on viatical investments appearing in the March issue of *Kiplinger's Personal Finance Magazine*.

Yours truly,



Franklin T. Elder
Director

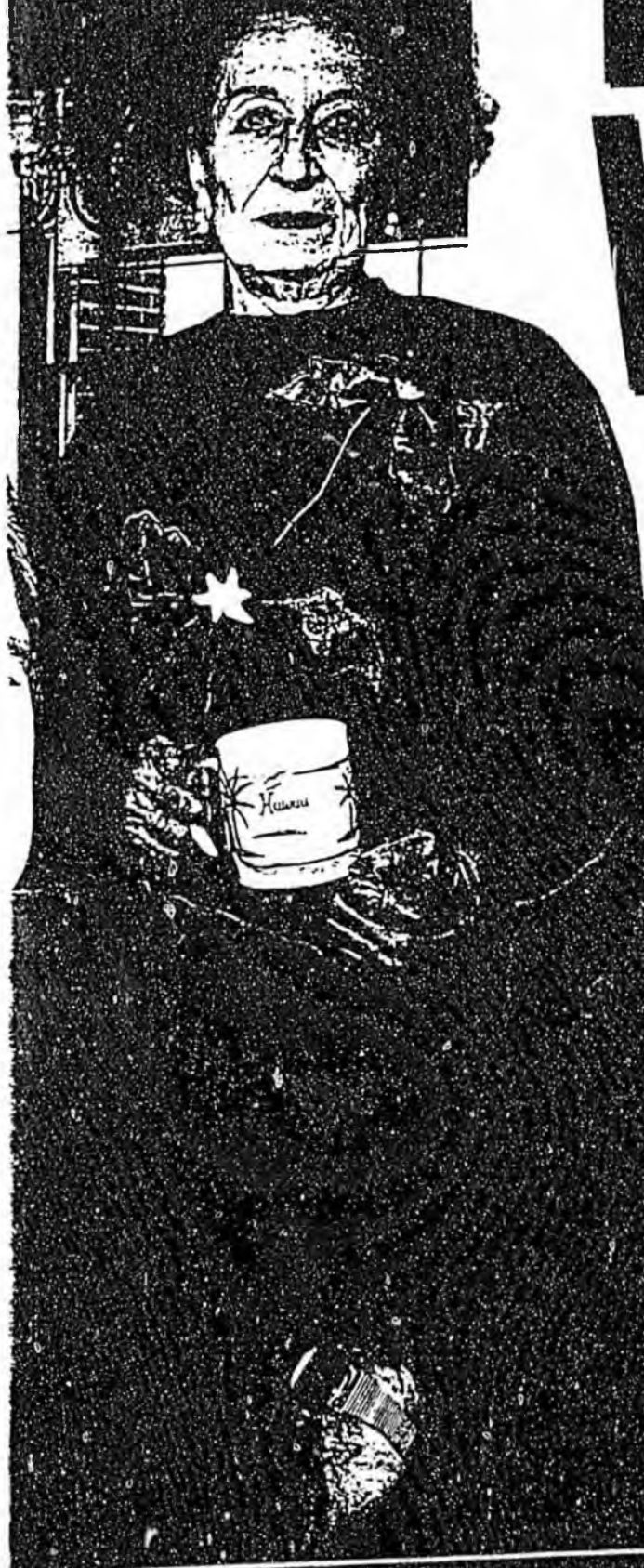


Jerry Warner and his mother, Vera, invested more than \$45,000 in viatical settlements, then received an early payoff when the viatical company sold its policies. They lost more than \$15,000.

Det Wat

By buying life insurance, parents of the terminally ill investors thought they were getting a payoff from a humanitarian investment. Now they're waiting for the policyholders to die.

By Kimberly Lankford
Photograph by [unreadable]



For more than a decade after her husband died, Betty Paxton barely touched her savings, other than to reinvest CDs and savings bonds when they matured. But two and a half years ago, Paxton, then 78 and worried about her health, filled out a card she'd received in the mail requesting more information about probate and estate planning.

A few weeks later, an insurance agent arrived at the door of her Ohio apartment. Initially he sold Paxton an annuity. Then, a little over a year later, the agent was back. He urged her to cash in her savings bonds and buy a viatical settlement—a life insurance policy that a terminally ill person sells to receive part of the death benefit early. The agent told Paxton she would earn a guaranteed 24% by investing in policies of people expected to live 24 months or less. When the insured person died, she would receive the death benefit.

Paxton felt uncomfortable about profiting from someone's death, but the agent reassured her that her investment would give terminally ill people money to help them live during their final days. He said *60 Minutes* had called viaticals "a perfect no-risk investment." The agent would not leave, Paxton says, until she promised to sell her savings bonds and buy a viatical investment—even though she'd lose four months of interest by cashing in early.

As Paxton's CDs and savings bonds matured over the next five months, she bought a total of \$33,000 worth of viatical-settlement investments on three people who, she was told, had life expectancies of 24 months or less.

For several years, viatical-settlement companies have been pushing these investments as a risk-free way to get a guaranteed return. With viatical settlements, terminally ill patients sell their life insurance policies before they die and get a fraction of the death benefit in cash. The policy remains in force and investors can buy portions of the policy at a discount to the death benefit. The investors become the beneficiaries and get their share of the full death benefit when the insured dies or, in the industry's terms, when the policy "matures."

Longer life expectancies aren't the only problem. Quick-buck artists have poured their efforts into selling viatical settlements (which are unregulated as investments), concentrating on elderly investors looking for a higher return on their fixed-income investments. Several viatical companies and their owners have been charged with fraud or misrepresentation; two such cases involved nearly \$100 million each. More than 35 state securities regulators are now investigating viatical-settlement companies, estimates John Ellis, securities counsel with the Missouri Securities Division.

"There's a lot of fraud almost inherent in these," says Bill McDonald, assistant commissioner of the California Department of Corporations' enforcement division. "Viaticals are unique because legally you're not entitled to know much about the insureds," he says. "You're completely at the mercy of the broker."

Now that several years have passed since a lot of policies were sold and the payoffs aren't forthcoming, the industry is "right on the edge of collapsing," says Roger Walter, general counsel for the Kansas Securities Commissioner and chairman of a national task force of securities regulators who are investigating viatical investments. The national organization of insurance commissioners is also searching for ways to regulate viaticals.

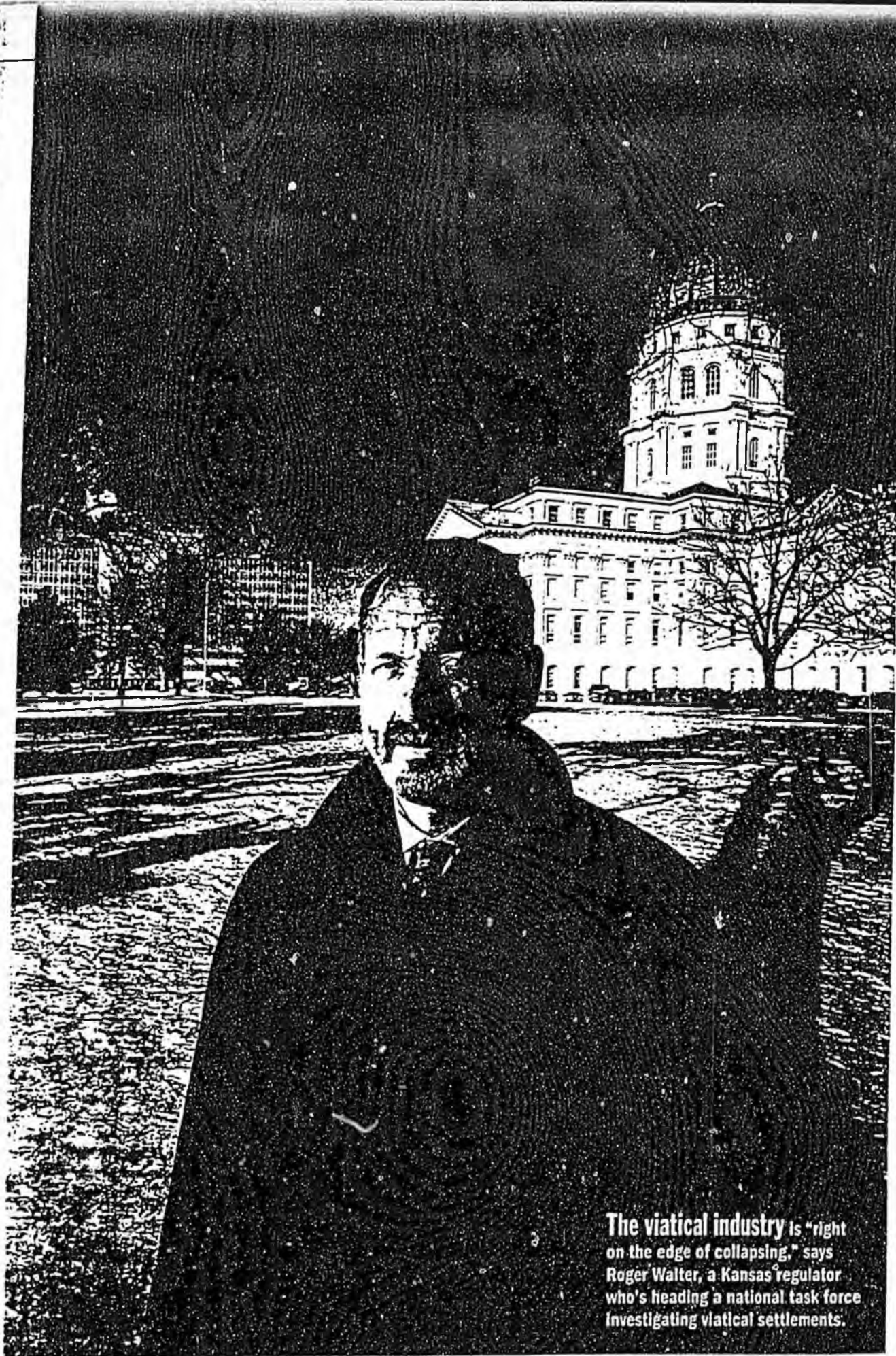
We had little trouble finding people who invested in

Quick-buck artists have poured their efforts into selling viatical settlements, concentrating on elderly investors looking for a higher return.

Viatical-settlement investments really took off when terminal AIDS patients began selling their policies to viatical firms in the early 1990s. But when protease inhibitors and other medical advancements started extending patients' lives, viatical investors found themselves waiting longer than expected for a payout. Many are still waiting. Others, such as Jerry Warner of Independence, Mo., and his mother, Vera—who together invested more than \$45,000 in viatical settlements—found themselves with an unexpected payout, but for much less than they'd put in. They lost more than \$15,000 between them.

viatical settlements and now wish they hadn't. Some have lost thousands of dollars; others haven't seen a cent yet because the policyholders have lived years longer than expected. Many investors are risk-averse seniors—a prime target of viatical sellers—who, like Paxton, have cashed in their savings and are still waiting for their money.

Some were told lies or half-truths and strong-armed. When they expressed reluctance to participate in this admittedly morbid investment, they were assured that viatical settlements are humane instruments that give the terminally ill much-needed cash. What they weren't told is



The viatical industry is "right on the edge of collapsing," says Roger Walter, a Kansas regulator who's heading a national task force investigating viatical settlements.

Some investors feel intimidated by the salespeople and fear they'll never get their money back if their names appear in print.

that there are actually more investors than there are policies. In some cases, investors have had to wait for several weeks before the viatical company could find policies for them to buy. At least one viatical company has urged terminally ill people to hide their medical conditions from life insurance companies so they could buy policies that the company could immediately resell to investors. And several insurers are willing to buy back policies themselves or offer to pay death benefits while policyholders are still alive, so terminally ill people aren't dependent on individual investors for cash.

Almost everyone we talked with is embarrassed and angry. Some are intimidated by the salespeople and afraid they'll never get their money back if their names appear in print. Among the investors we interviewed, only Jerry and Vera Warner agreed to let us use their real names.

When Betty Paxton's son learned about her viatical investments, he was suspicious. After he and his financial adviser did some digging, the suspicion turned to anger.

Paxton's son discovered many risks that his mother hadn't been warned about—such as that the policyholders could outlive their life expectancies and leave Paxton without access to her money for years to come. (The insureds could live even longer than the 80-year-old Paxton.) If she tried to resell the policies before the policyholders died, she'd probably get 25% to 50% less than her original investment—if she could find a buyer.

The salesman didn't explain that the 24% total return would become a smaller annualized return each year the insured people lived beyond their life expectancy—or

that Paxton could even be forced to pay additional premiums to keep the policies in force. And if anyone who invested in the same policies didn't pay the premiums, the policies could lapse and she'd lose her investment.

Paxton wasn't given any medical information about the policyholders until after she had invested her money. Because the policyholders wanted privacy, there was no way she could get a second opinion and verify that their life expectancies were reasonable.

Paxton's son and his financial adviser even looked up the full *60 Minutes* quote and discovered it was taken out of context from a 1995 program about AIDS—before medical advancements extended patients' life expectancies—but none of the people Paxton invested in had AIDS.

After the Ohio Department of Insurance told Paxton's son that the agent had been the subject of several complaints for misrepresentation, he sent certified letters to Beneficial Assistance, the Baltimore, Md., company that sold the policies, asking to have his mother's money refunded because this was clearly an unsuitable investment for her. So far, he has received no response.

Perhaps the biggest drawback of viatical investments is that the return depends on when the policyholder dies. Miscalculations are inevitable, but some companies have deliberately filed false medical reports. Life Options International, a Tuscaloosa, Ala., company that drew close to \$5 million in investments from 250 Missouri residents, was issued a cease and desist order by the Missouri Commissioner of Securities, which charged the company with misrepresenting insureds' medical conditions and falsely underestimating

Big commissions, big compromise

MARK CORTAZZO, a financial planner in Denville, N.J., receives at least one letter a month trying to recruit him to sell viatical investments. The companies usually offer him 7% to 12% of the investment amount. "It would take me ten years with a client to earn the same money these people make from selling one viatical," says Cortazzo.

But Cortazzo won't sell viaticals. And he wonders whether many of the salespeople, who

don't need to be licensed in most states, really understand how the investments work.

One solicitation for prospective salespeople, for example, includes a "Pyramid of Safety," which shows viatical settlements, insurance and annuities on the bottom layer as the safest investments. CDs and money-market accounts are listed on the next layer up, as riskier investments.

Chris Gemignani, the lawyer for a life insurance agent who

was offered 15% commissions to sell viaticals, researched the business for his client and discovered that so many people were taking a cut of the sale that there was little money left to help the terminally ill person. Additional money is used to pay premiums and to track the insured (if you can't find the insured and don't get a death certificate, there's no payout). His client decided not to bite.

Some viatical salespeople

have been trying to be responsive to their clients. Karl Hanke, who sold half a million dollars in viaticals to about 50 of his clients from 1995 to 1997, probably earned about \$40,000 in commissions, but now he calls the investments a "service nightmare." He's tried in vain to get information for clients who expected payouts several years ago. "The companies won't even take my phone calls," he says. He doesn't sell viaticals anymore.

life expectancies. In one case, an independent doctor estimated the insured's life expectancy to be four to ten years, but the company told an investor it was 36 to 48 months.

Patty Norton was one Life Options investor. As the 55-year-old Missouri woman's certificates of deposit matured in late 1994 and early 1995, she was disappointed with her investment options. "When the CDs came due, the new rate was just zilch," she says. A broker recommended that she buy viaticals instead. He told her that even if the person didn't die after the second or third year, the company would still offer to give back her money with a small return; but she'd get the big bucks if she waited until the person died. He also told her the policies were paid up—no matter how long the policyholders lived, she wouldn't owe any money to pay premiums. Both statements were untrue.

Within a year, Norton owned portions of seven policies from Life Options. Some promised a 10.5% return when the insured died, which she was told should be in about six to 12 months. Others promised 56% returns on life expectancies of two to three years and 95% for life expectancies of three to four years. "You think that didn't look good?" she says.

One of the insureds did die a year after Norton bought the policy, and she made \$525 on her \$5,000 investment. But she had to give back her \$500 gain on another \$5,000

because medical advancements had extended the life expectancies of the insureds, the company needed to sell the policies as soon as possible and had accepted an offer from the highest bidder. "They didn't give us any choice," says Warner, who hadn't been warned that Aide the Living could sell the policies for less than the invested amount.

About 70 Missouri residents had invested more than \$4 million with Aide the Living, the Missouri Securities Division discovered. It charged the company with misrepresentation and issued a cease and desist order prohibiting it from doing business in the state. Other states have also issued orders against the company.

Anne Jones's nephew—a viatical salesman—convinced her that she'd get better returns from viatical investments than she would from an annuity. At his urging, she cashed out a recently purchased annuity, paid \$24,000 in surrender charges and bought portions of insurance policies on seven terminally ill people. By the end of 1995, she had invested more than \$214,000 in viatical settlements. She expected to receive \$309,000 when the people died—which she was told should be no more than 24 to 36 months later.

Jones received one payout, for \$24,000. Jones, who is 70, still has nearly \$193,000 tied up in the other six policies. One person, who had a 12- to 18-month life

After five years, Janice Cannady hasn't received a payout. Meanwhile she's been diagnosed with Alzheimer's disease and her husband has died.

policy. According to Norton, Life Options said that the insured's family claimed he didn't have the right to sell the policy and wanted the insured's son to receive the death benefit. The company told her she could get back her original investment, but she'd have to return her gains to avoid a lawsuit.

Four years later, the five remaining insureds are still alive. Norton has about \$50,000 in the viaticals but has not received any updates from the company.

Sometimes the life-expectancy problem can turn returns into big losses. In 1996, Jerry Warner, 53, of Independence, Mo., purchased part of two life insurance policies belonging to terminally ill people for nearly \$19,000. His 76-year-old mother, Vera, from Lake of the Ozarks, Mo., invested \$27,000. Vera, who had had a friend who died of AIDS, says, "I just wanted to invest my money and thought, why not help someone at the same time?"

The Warners were told the patients were expected to live about three to five years. They both thought the lump sum they'd receive after the patients died would equal a 12% to 20% return for each year.

More than two years later, their investments unexpectedly paid off—but at far less than they had invested. Jerry received a check for \$12,000—nearly \$7,000 less than the amount he had invested. His mother lost nearly \$8,700. The company, Aide the Living, told investors that

expectancy in 1995, is still alive 43 months later. The 15% return Jones was to receive on that policy has dwindled to less than 4.2% per year—and is still falling.

The viatical company recently sent her a letter claiming that, because the insureds had outlived their life expectancies, she'd either have to pay premiums to prevent the policies from lapsing or sell them back to the company for half of her original investment. If she did that, she'd lose more than \$96,000.

Despite the company's threat to start charging her for premiums, the insurance companies told the Kansas Securities Commissioner's office, which is investigating her case, that premiums had been waived on some of the policies because the policyholders were considered disabled.

There's another complication. The viaticals are in an IRA, and since Jones turned 70% recently, she needs to begin taking withdrawals. Other than the \$24,000 payout she received, the rest of her IRA money is trapped in the viaticals. Any required distributions she can't take will be considered excess accumulations and subject to a 50% penalty for every year they're not distributed.

The uncertain wait for the payoff could have more dire repercussions for Janice Cannady, 75. Five years ago, a salesman from her hometown in Nebraska recommended that she cash in her CDs and buy a viatical for \$12,000. The investment was to pay out \$20,000 when the insured

In one large court case, a viatical company owner pleaded guilty to fraud after he and his colleagues pocketed \$95 million in investments.

died which, she was told, should be in 18 to 36 months.

Five years later, she still hasn't received a payout. Janice's daughter, Sally, requested an updated medical report, but the company hasn't responded. Since she bought the policy, Janice has been diagnosed with Alzheimer's disease and her husband has died. Sally wonders what will happen if her mother needs to enter a nursing home. She'll need the money to cover the bills. But if she doesn't have it, she'll have to apply for Medicaid—which might be difficult because of the viatical. "It complicates eligibility if you have an asset you can sell only at a tremendous discount," says Cynthia Barrett, an elder-law attorney in Portland, Ore.

Dick Hausten's in-laws were 78 years old when they saw a newspaper ad offering "guaranteed returns." A salesman came to their home, told them they were "burning their money by leaving it in CDs" and sold them \$92,000 in viatical settlements. (Hausten let us use his real name but not the names of his in-laws.)

When Hausten found out, he called the two doctors' phone numbers printed on the insureds' medical evaluations and got two wrong numbers. He couldn't find any evidence that they really were doctors. Plus, the medical report for one of the policyholders was from 1989, when he was said to have a life expectancy of 48 months. Yet the investment was made in 1998.

Nine months later, Hausten's father-in-law asked the company to return their money and received 88% of their original investment. They lost \$11,000.

The company that sold the policies, Accelerated Bene-

fits Corp., continues to run advertisements that say, "With the stock market plummeting and interest rates falling, isn't it nice to know there is still an investment that offers your clients fixed high profits with safety?" (Regulators cannot discuss current investigations, but at least one state is looking into Accelerated Benefits Corp.)

Several lawsuits have been won against viatical-settlement companies, and more have been filed. In the largest viatical case so far, David Laing, owner of Personal Choice Opportunities, of Palm Springs, Cal., pleaded guilty to fraud. More than 1,100 investors had given Laing's firm a total of \$95 million to purchase viatical investments, which were advertised as a "risk-free" way to earn 25% per year. Laing and his colleagues pocketed the money and never bought the viaticals.

After an investigation that included the FBI, several states' securities regulators and the U.S. attorney for the Southern District of New York, a receiver was appointed to track down the money and return it to investors.

The Securities and Exchange Commission brought a separate suit against Laing and has gone after other viatical firms for misrepresentation. Civil suits are also starting to appear. Mitchell Perlstein of Investors' Law Center and Scott Link of Ackerman, Link & Sartory have filed class-action lawsuits in Florida against three viatical-settlement companies, alleging that they misrepresented insureds' life expectancies because they knew protease inhibitors had extended the lives of AIDS patients. Yet they continued to tell potential investors that "death is certain and measured only in a matter of months." The plaintiffs are still waiting for payouts they expected several years ago. •

REPORTER: MARGARET RINGER

What to do if you've invested in a viatical

WHAT IF YOU already own a viatical settlement and suspect the company of misrepresentation or wonder whether you should accept an offer to sell back the policy? First contact the securities administrator, insurance department and attorney general in your state and the state where the company is located. (Find your state's Web site and contact numbers at www.piperinfo.com/state/states.html.) They may be investigating the firm and usually have

leverage to get more information from the insurance company and the viatical company. Also contact the Securities and Exchange Commission's Office of Investor Education and Assistance at 202-942-7040.

You'll need to contact that many people because viatical settlements aren't regulated by one central agency. The securities commission takes the lead in some states; in others, it's the Insurance department. And some states haven't figured out

yet what to do with viaticals—which makes it easy for unscrupulous sellers.

"One of the things con artists do is rely on jurisdictional gaps—they have the advantage of confusion," says Bill McDonald of the California Department of Corporations, which is currently participating in about ten viatical investigations.

But few consumer organizations know how to help viatical investors. The best one-stop resource is Gloria Grening

Wolk's Viatical Settlements: An Investor's Guide (Bialkin Books) and her Web site (www.viatical-expert.net). She learned about viatical investments while writing a financial guide for people with terminal illnesses.

The Florida Department of Insurance also offers a free booklet that discusses the risks related to viatical-settlement investments. Call the department's consumer help line at 850-922-3132.

From the desk of
David E. Gwaltney, C.I.C.

6217 Cheigny Street
Anchorage, Alaska 99502
Telephone: (907) 297-7302
Facsimile: (907) 297-7363

Personal Correspondence

e-mail: dave@insuranceak.com

February 22, 1999

Representative Norman Rokeberg
Chairman, House Labor and Commerce
State of Alaska, House of Representatives

Re: February 19, 1999 committee testimony

Dear Chairman:

Thank you very much for allowing Jack and my testimony at your recent L&C Committee Hearing on HB-83. I know the procedure was somewhat unconventional, and your willingness to allow us the public forum to air our concerns was gratifying. I will even go onto say that my prior experiences with the legislative process have been less than desirable, and your efforts both on the part of our Association and now personally have renewed my hope for the system. I know we have a long way to go, but at least having an advocate like you looking at both sides gives me hope.

Per your request, please accept the following as my written testimony for the committee hearing of February 19, 1999:

Chairman Rokeberg, Members of the Committee:

I wish to add my concurrence with Jack's testimony. In addition, I wish to argue on a point of logic as to the actual nature of a viatical settlement. As you know, numerous State and Federal Courts have upheld that the proceeds of life insurance policies are personal property. They are sold as an estate asset or planning tool and have always been regulated by the Division of Insurance. Further, proceeds are taxed as personal property, not securities. The best comparison to a mature life insurance policy may be the equity in your personal residence. Both the insurance proceeds and home are considered personal property, not securities. To sell viaticals as securities would be the same as selling your house as a security. Selling any personal property as a security provides an undo complication (and will restrict free market trade to no appreciable benefit). Thank you for your consideration.

I am still distressed at the constitutional nature of the "cease and desist" request (the Director noted there was no "order") issued by the Division of Banking. First, if there is no order (or implied order), what's the big deal? Why couldn't we continue our sales efforts until the end result was ascertained?

From a political standpoint, it's my feeling that the regulators are very quickly forgetting that if a "problem" is not consumer related, they really have no business involving themselves in the market system. As stated in our joint testimony, both Jack and I feel this product needs regulation (or at least a licensure process - Insurance License proceeds go into the General Fund, as you know), though the extra burden of securities disclosures, etc., would severely hamper the consumer's ability to purchase the product and would drive many salespeople out of the business.

I think it is important to note at this time that I happen to be a Series 7 Security Representative. Passage of the implied regulation as presented would actually help me personally by removing competition from the marketplace. Even though it would put money in my pocket, it still doesn't make the Division's position "right." I'd just like to make the point this is a regulation and market issue, not one of economics.

Please feel free to contact me if you would like additional information on this or other insurance related issues. I will be at your immediate disposal.

Thank you once again for your help and graciousness. I am very pleased to have voted for you and to have you as my Representative.

Most sincerely,



David E. Gwaltney, CIC

ALASKA STATE LEGISLATURE

HOUSE LABOR AND COMMERCE COMMITTEE

Representative Norman Rokeberg, Chairman
Representative Andrew Halcro, Vice-Chairman
Representative John Harris
Representative Lisa Murkowski
Representative Jerry Sanders
Representative Tom Brice
Representative Sharon Cissna



State Capitol
Juneau, AK 99801-1182
Telephone: (907) 465-4954
Fax: (907) 465-2040

MEMORANDUM

TO: House Labor & Commerce Committee Members

FROM: Rep. Norman Rokeberg, Chairman
House Labor & Commerce Committee

DATE: February 22, 1999

RE: Proposed CS for HB 83 (L&C)
LS0253\G, Bannister, 2/20/99

A handwritten signature in black ink that reads "Norman Rokeberg".

As the Committee decided on Friday, the following changes have been made to this legislation:

1. All references to "viatical settlements" have been removed from the CS
2. Page 21, lines 2-3. "dual agency capacity" has been removed and the following has been inserted: After "disclose": "to a customer that the broker-dealer or agent is acting as an agent for both the customer and another person;"

FISCAL NOTE

Bill Version: CSHB 83(L&C)
 (H) Publish Date: 2/24/99

**STATE OF ALASKA
 1999 LEGISLATIVE SESSION**

Revision Date/Time (Note if correction) _____ Dept. Affected Commerce & Econ. Dev.
 Title Alaska Securities Act BRU Banking, Securities and Corporations
 Component Banking, Securities and Corporations
 Sponsor Labor & Commerce by Request
 Requester House Labor & Commerce Component Serial No. 1233

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

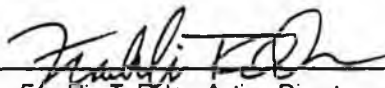
Estimate of any current year (FY99) cost: _____

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Because most of the provisions of HB 83 simply bring the Alaska Securities Act (the Act) into compliance with federal law (National Securities Markets Improvement Act of 1996 (NSMIA)), thus preserving the State's revenue and current authority to regulate market participants, there is no cost to implement this bill. Failure to pass this bill would result in a loss of currently anticipated revenue to the State of an estimated \$3.9 million in FY00, rising to \$6.4 million in FY05. Most of the language in HB 83 is uniform language, drafted by the North American Securities Administrators Assn., and has been adopted in a majority of the states at this time.



Prepared by Franklin T. Elder, Acting Director Phone 465-2521
 Division Banking, Securities and Corporations Date/Time 2/12/99 8:06 AM
 Approved by Commissioner Deborah B. Sedwick Date 2/24/99
 Agency Commerce and Economic Development

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Alaska Securities Act

**Department of Commerce and
Economic Development**

**Division of Banking, Securities and
Corporations**

CS HB 83(L&C)
(Alaska Securities Act Bill)

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H. J. W. H. 83

A

AMENDMENTS TO THE ALASKA SECURITIES ACT

Congress has recently enacted federal securities laws¹ that have a direct effect on Alaska (and other states) securities law and regulations. This federal action results in significant changes in both the registration of securities and those who market them. It is therefore essential that Alaska amend the Alaska Securities Act to conform to new federal provisions and to assure a degree of uniformity with other states. Another primary issue is to preserve Alaska's ability to collect designated revenues in excess of \$3 million that funds the division's investor protection programs.

The new federal law (NSMIA) provides in part:

- New class of security **Federal Covered Securities**, exempt from state registration. These include securities like Mutual Funds and limited offerings under Regulation D of the SEC.
- Federal Covered Securities would:
 - File a Notice with the State².
 - Pay Notice fees.
- New class of **Federal Covered Advisers** which are those with more than \$25 million under management. This class would no longer fall under the jurisdiction of the States. Although exempt, they too would have to file Notice and pay fees for the purpose of funding local investor protection.

The effect of this federal legislation also provides greater responsibility of the state to register and regulate those who are not within the Federal Covered Advisers and their investment adviser representatives (equivalent to Broker Dealer representatives.)

The legislation we propose covers the areas that need to be addressed because of federal action. This will allow Alaska to:

- Preserve funding for investor protection.
- Conform with securities laws of other states.
- Establish regulation for state licensed investment advisers and representatives of investment advisers. Also regulation for those Federal Covered Advisers who have a place of business in Alaska.

There are two primary points to consider. This legislation preserves the right for Alaska to continue to collect over \$3 million dollars in Notice fees. If by 1999 we do not enact legislation, Alaska will be preempted from requiring Notice and the intended fees. With the increase of problems in Alaska in investment advising it is essential that Alaska continues to receive this financial support.

¹ The National Securities Markets Improvement Act (NSMIA) enacted October 11, 1996.

² NSMIA requires the states to amend their securities law by October 1999 to prevent preemption of Notice and fees.

B

DRAFT FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. HB 83

Revision Date/Time (Note if correction) _____ Dept. Affected Commerce & Econ. Dev.
 Title Alaska Securities Act BRU Banking, Securities and Corporations
 Component Banking, Securities and Corporations
 Sponsor Labor & Commerce by Request
 Requester _____ Component Serial No. 1233

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY99) cost: _____

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Because most of the provisions of HB 83 simply bring the Alaska Securities Act (the Act) into compliance with federal law (National Securities Markets Improvement Act of 1996 (NSMIA)), thus preserving the State's revenue and current authority to regulate market participants, there is no cost to implement this bill. Failure to pass this bill would result in a loss of currently anticipated revenue to the State of an estimated \$3.9 million in FY00, rising to \$6.4 million in FY05. Most of the language in HB 83 is uniform language, drafted by the North American Securities Administrators Assn., and has been adopted in a majority of the states at this time.

Prepared by Franklin T. Elder, Acting Director Phone 465-2521
 Division Banking, Securities and Corporations Date/Time 2/10/99 9:52 AM
 Approved by Commissioner Deborah B. Sedwick Date _____
 Agency Commerce and Economic Development

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DRAFT FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. For Information Only

Revision Date/Time (Note if correction) _____ Dept. Affected Commerce & Econ. Dev.
 Title Alaska Securities Act BRU Banking, Securities and Corporations
 Component Banking, Securities and Corporations
 Sponsor For information only
 Requester _____ Component Serial No. 1233

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
CHANGE IN REVENUES ()	(3,900.0)	(4,370.0)	(4,809.0)	(5,293.0)	(5,826.0)	(6,412.0)

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY99) cost: _____

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

There is no cost to implement the Securities Act, but if this bill were not to pass, the State through the division, would lose revenue from refundable and non-refundable mutual funds and such a loss would be fiscally devastating as depicted above. In addition the State would lose approximately 335 federally covered advisers at \$75 per year per adviser - totaling approximately \$25,000. As well as revenue of \$20,000 from loss of notice fees for the Reg D 506 filings.

Prepared by Franklin T. Elder, Acting Director Phone 465-2521
 Division Banking, Securities and Corporations Date/Time 2/10/99 10:53 AM
 Approved by Commissioner Deborah B. Sedwick Date _____
 Agency Commerce and Economic Development

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C



NASAA

NORTH AMERICAN SECURITIES ADMINISTRATORS ASSOCIATION, INC.

10 G Street N.E., Suite 710
Washington, DC 20002
202 737-0900

Telecom: 202 783-3571

E-mail: general@nasaa.org

Web Address: http://www.nasaa.org

RECEIVED

FEB 8 1999

DEPARTMENT OF COMMERCE
& ECONOMIC DEVELOPMENT
DIVISION OF BANKING & SECURITIES

February 3, 1999

F. Terry Elder
Acting Director
Department of Commerce and Economic Development
Division of Banking, Securities & Corporations
333 Willoughby Avenue, 9th Floor
Juneau, AK 99811

Re: Proposed Legislation to Amend Alaska Securities Act

Dear Mr. Elder:

I am writing on behalf of the North American Securities Administrators Association (NASAA)¹ to express our support for the proposed amendments to the Alaska Securities Act. NASAA recognizes such amendments represent a concerted effort by the Division of Banking, Securities and Corporation ("the division") to respond to the changes brought about by the National Securities Markets Improvement Act of 1996 ("NSMIA").

Although certain state authority was preempted under the NSMIA, other aspects of regulation were left to the discretion of state securities regulators, some within certain parameters. NASAA drafted and distributed to its members uniform statutory and regulatory amendments to accommodate the NSMIA as well as to give direction to the states in the areas left to their discretion. NASAA amendments were adopted by the membership in an effort to create uniformity among the states in those areas they continued to regulate.

Alaska's proposed amendments follow those adopted by NASAA. The implementation of the proposed amendments by Alaska will facilitate uniform regulation consistent with other similarly amended state securities laws ultimately to benefit Alaska investors. In addition, such implementation is in accordance with the NSMIA.

¹ NASAA is the association of the 65 state, provincial and territorial securities regulatory agencies of the United States, Canada and Mexico. NASAA serves as a forum for state regulators to work with each other in an effort to protect investors at the grassroots level and to promote fair and open capital markets. NASAA serves as the voice of its members in forwarding those interests.

Letter to F. Terry Eider
February 3, 1999
Page 2

Once again, NASAA strongly supports the division's proposed amendments. As such, we are willing to assist in any manner possible to ensure their enactment. Please feel free to share this letter with the legislature in consideration of the amendments. If NASAA can be of any assistance in the enactment process, please do not hesitate to contact us.

Respectfully,



Philip A. Feigin
Executive Director

D



INVESTMENT COMPANY INSTITUTE

February 18, 1999

Willis F. Kirkpatrick, Director
Department of Commerce & Economic Development
Division of Banking, Securities & Corporations
333 Willoughby Avenue, 9th Floor
Juneau, AK 99811

Re: House Bill 83

Dear Director Kirkpatrick:

The Investment Company Institute¹ is writing to you to express our support for the amendments recently proposed by the Department of Commerce & Economic Development to the Alaska Securities Act in House Bill 83. In particular, these amendments will faithfully and comprehensively implement the provisions of the National Securities Markets Improvements Act of 1996 ("NSMIA"), which effected sweeping reforms of the nation's federal securities acts. We are most supportive of the legislative enactment of the amendments proposed by the Department and stand ready to assist the Department in this process.

The Institute believes that the amendments proposed by the Department will not only conform the Alaska Act to federal law, but also strengthen the ability of the Department to concentrate its efforts on redressing fraud and abusive practices in the offer and sale of securities and in the rendering of investment advice. As a result, enactment of these amendments will benefit all Alaska investors.

As stated above, the Institute stands ready to assist the Department in securing the enactment of this most worthwhile legislation. In this regard, please contact me at 202/326-5825 if I or the Institute can be of any assistance to you in this process, including providing oral or written testimony in support of the legislation. Also, please do not hesitate to provide this letter of support to the legislature during its consideration of this bill.

Sincerely,

Tamara K. Reed
Associate Counsel

¹ The Investment Company Institute is the national association of the American investment company industry. Its membership includes 7408 open-end investment companies ("mutual funds"), 449 closed-end investment companies and 8 sponsors of unit investment trusts. Its mutual fund members have assets of about \$5.468 trillion, accounting for approximately 95% of total industry assets, and over 62 million individual shareholders. The Institute also represents the interests of investment advisers. Many of the Institute's investment adviser members render investment advice to both investment companies and other clients. In addition, the Institute's membership includes 482 associate members which render investment management services exclusively to non-investment company clients. A substantial portion of the total assets managed by registered investment advisers are managed by these Institute members and associate members.



INVESTMENT COMPANY INSTITUTE

January 5, 1998

Willis F. Kirkpatrick, Director
Department of Commerce & Economic Development
Division of Banking, Securities & Corporations
333 Willoughby Avenue, 9th Floor
Juneau, Alaska 99811

Re: Proposed Securities Legislation

Dear Director Kirkpatrick:

The Investment Company Institute¹ is writing to you to express our support for the amendments recently proposed by the Department of Commerce & Economic Development to the Alaska Securities Act. In particular, these amendments will faithfully and comprehensively implement the provisions of the National Securities Markets Improvements Act of 1996 ("NSMIA"), which effected sweeping reforms of the nation's federal securities acts. We are most supportive of the legislative enactment of the amendments proposed by the Department and stand ready to assist the Department in this process.

The Institute believes that the amendments proposed by the Department will not only conform the Alaska Act to federal law, but also strengthen the ability of the Department to concentrate its efforts on redressing fraud and abusive practices in the offer and sale of securities and in the rendering of investment adviser. As a result, enactment of these amendment will benefit all Alaska investors.

As stated above, the Institute stands ready to assist the Department in securing the enactment of this most worthwhile legislation. In this regard, please contact me at 202/326-5825 if I or the Institute can be of any assistance to you in this process, including providing oral or written testimony in support of the legislation. Also, please do not hesitate to provide this letter of support to the legislature during its consideration of this bill.

Sincerely,

Tamara K. Reed
Associate Counsel

¹ The Investment Company Institute is the national association of the American investment company industry. Its membership includes 6,742 open-end investment companies ("mutual funds"), 442 closed-end investment companies and 10 sponsors of unit investment trusts. Its mutual fund members have assets of about \$4.359 trillion, accounting for approximately 95% of total industry assets, and over 59 million individual shareholders. The Institute also represents the interests of investment advisers. Many of the Institute's investment adviser members render investment advice to both investment companies and other clients. In addition, the Institute's membership includes 472 associate members which render investment management services exclusively to non-investment company clients. A substantial portion of the total assets managed by registered investment advisers are managed by these Institute members and associate members.

E

ICAA

February 18, 1999

By Facsimile and U.S. Mail

Willis F. Kirkpatrick, Director
Department of Commerce and Economic Development
Division of Banking, Securities and Corporations
333 Willoughby Avenue, 9th Floor
Juneau, AK 99811

Re: Legislation to Amend Alaska Securities Act – House Bill No. 83

Dear Mr. Kirkpatrick:

I am writing on behalf of the Investment Counsel Association of America (ICAA) to continue to express our support for the Division of Banking, Securities and Corporation's proposed statutory revisions to the Alaska Securities Act relating to investment advisers, now reflected in House Bill No. 83.

The ICAA is a national not-for-profit association of more than 235 investment advisory firms. ICAA member firms collectively manage funds in excess of \$1.8 trillion for a wide variety of institutional and individual clients. All of our members are registered with the U.S. Securities and Exchange Commission.

We commend the Division for its efforts in drafting this important legislation. As you know, the Investment Advisers Supervision Coordination Act ("Coordination Act," Title III of the National Securities Markets Improvement of 1996) allocated regulatory responsibility for larger advisers to the SEC and responsibility for smaller advisers and financial planners to the states. The proposed revisions to the Alaska Securities Act relating to investment advisers effectively respond to changes in the regulatory structure mandated by the Coordination Act. Significantly, the legislation would implement the Coordination Act in a manner that is substantially uniform with other states that already have adopted such implementing legislation. The legislation should result in less duplicative and overlapping regulation of investment advisers, while enhancing the protection of Alaska investors through more focused use of limited regulatory resources.

We appreciate the Division's consideration of our comments during the drafting process and recommend that the proposed legislation be accorded prompt consideration. Please feel free to share this letter with or relay our support of this bill to the legislature. We look forward to working with you on proposed implementing regulations once the

INVESTMENT COUNSEL ASSOCIATION OF AMERICA, INC.
1050 17TH STREET, N.W., SUITE 726 WASHINGTON, DC 20036-5503
(202) 293-ICAA FAX (202) 293-4223

bill has been enacted. Please do not hesitate to call me if you require any further information.

Sincerely,

Karen L. Barr

Karen L. Barr
General Counsel

ICAA

January 2, 1998

By Facsimile and U.S. Mail

Willis F. Kirkpatrick, Director
Department of Commerce and Economic Development
Division of Banking, Securities and Corporations
333 Willoughby Avenue, 9th Floor
Juneau, AK 99811

Re: Draft Legislation to Amend Alaska Securities Act

Dear Mr. Kirkpatrick:

I am writing on behalf of the Investment Counsel Association of America (ICAA) to express our support for the Division of Banking, Securities and Corporation's proposed statutory revisions to the Alaska Securities Act relating to investment advisers.

The ICAA is a national not-for-profit association of 225 investment advisory firms. ICAA member firms collectively manage funds in excess of \$1.3 trillion for a wide variety of institutional and individual clients. All of our members are SEC-registered.

We commend the Division for its efforts in drafting this important legislation. As you know, the Investment Advisers Supervision Coordination Act ("Coordination Act," Title III of the National Securities Markets Improvement of 1996) allocated regulatory responsibility for larger advisers to the SEC and responsibility for smaller advisers and financial planners to the states. The proposed revisions to the Alaska Securities Act relating to investment advisers effectively respond to changes in the regulatory structure mandated by the Coordination Act. Significantly, the legislation would implement the Coordination Act in a manner that is substantially uniform with other states that already have adopted such implementing legislation. The legislation should result in less duplicative and overlapping regulation of investment advisers, while enhancing the protection of Alaska investors through more focused use of limited regulatory resources.

We appreciate the Division's consideration of our comments during the drafting process and recommend that the proposed legislation be accorded prompt consideration. Please feel free to share this letter with or relay our support of this bill to the legislature. We look forward to working with you on proposed implementing regulations once the

INVESTMENT COUNSEL ASSOCIATION OF AMERICA, INC.
1050 17TH STREET, N.W., SUITE 725 WASHINGTON, DC 20036-5503
(202) 293-ICAA FAX (202) 293-4223

bill has been enacted. Please do not hesitate to call me if you require any further information.

Sincerely,

A handwritten signature in cursive script that reads "Karen L. Barr". The signature is written in black ink and includes a long horizontal flourish extending to the right.

Karen L. Barr
General Counsel

F



By Facsimile

December 17, 1998

Mr. F. Terry Elder
Securities Examiner
Division of Banking, Securities & Corporations
State Office Building, 9th Floor
333 Willoughby Avenue
Juneau, Alaska 110807

Dear Mr. Elder:

The Institute of Certified Financial Planners¹ has reviewed H.B. 486 in anticipation of a similar proposal being considered during the 1999 session of the Legislature. House Bill 486, as you are aware, would have provided conforming amendments to the Alaska Securities Act of 1959 in response to a 1996 federal securities reform law² mandating certain uniform regulatory requirements for state-licensed investment advisory firms.

The ICFP believes the changes contained in H.B. 486 – principally those requiring what are essentially uniform books and records, net minimum capital, and financial reporting requirements for state investment advisers, as well as a uniform 5-client *de minimis* exemption for both federal and state-licensed investment advisers, are badly needed to bring clarity and conformity to Alaska's investment advisory law, consistent with NSMIA and the majority of other state securities laws as similarly amended.

The Institute wishes to go on record in strong support of legislation to be considered by the 1999 session of the Alaska legislature identical to the amendments proposed in H.B. 486.

¹ The Institute of Certified Financial Planners (the "Institute" or "ICFP") is a Denver-based professional association representing approximately 14,000 CFP licensees in the U.S., including 16 in the state of Alaska. The Institute serves as a resource for legislative and regulatory policy makers on issues affecting financial planning.

² The National Securities Markets Improvement Act of 1996 ("NSMIA"). Approximately 75 percent of ICFP members are licensed by state securities administrators, with the remainder registered with the Securities & Exchange Commission.

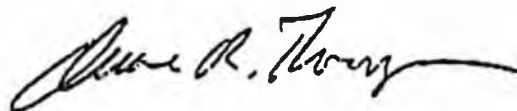
1801 F. Florida Avenue
Suite 705
Denver, CO
80210-2511
303.739.9900
Fax 303.739.0749

EMAIL: info@icfp.org
INTERNET: www.icfp.org

Mr. F. Terry Elder Letter
December 17, 1998
Page Two

The undersigned can be contacted at 1.800.322.4237, ext. 129, and would be pleased to respond to any questions or concerns regarding the specific provisions of such legislation.

Sincerely,

A handwritten signature in cursive script, appearing to read "Duane R. Thompson", with a long horizontal flourish extending to the right.

Duane R. Thompson
Director of Government Relations

cc: ICFP Board of Directors
National Government Relations Committee

G



INTERNATIONAL ASSOCIATION
FOR FINANCIAL PLANNING

Suite B-300
5775 Glenridge Drive, NE
Atlanta, Georgia 30328-5364
Voice 404.845.0011
Fax 404.845.3660
Web <http://www.iafp.org>

February 9, 1999

The Honorable Gail Phillips, Speaker
Alaska House of Representatives
State Capitol
Juneau, AK 99801-1182

Dear Speaker Phillips:

The International Association for Financial Planning (IAFP) is the largest and oldest membership association representing the financial planning community, with over 17,000 members nationwide. We are dedicated to the idea that objective advice supports smart financial decision-making. The purpose of this letter is to offer our support of House Bill 83. We believe its passage will enhance investment adviser regulation in Alaska and further the goals of the consumer, our members, and the financial planning process.

This bill provides consumers cost savings and added trust in investment advisers. Making regulation more uniform will ensure greater understanding of the rules by investment advisers and allow them to operate more efficiently. The Division of Banking, Securities, & Corporations will be able to more effectively and efficiently supervise the activities of investment advisers doing business in Alaska. All those interested in sound investment advice will benefit from this legislation.

As I am leaving IAFP, please call Dale Brown at 800-945-4237, extension 7764, if you need more information on IAFP, our members, or if you want to discuss this in more detail.

Respectfully submitted,

A handwritten signature in cursive script that reads "Michael C. Herndon".

Michael C. Herndon
Government Affairs Manager

Cc: Franklin Terry Elder

H



**HUGHES THORSNESS POWELL
HUDDLESTON & BAUMAN LLC**
ATTORNEYS AT LAW

FEB 22 1999

February 18, 1999

Direct Dial: (907) 263-8251
E-Mail Address: RLM@htlaw.com

Franklin Terry Elder
Acting Director, Securities Dept.
Division of Banking, Securities and Corporations
Department of Commerce & Economic Development
State of Alaska
P. O. Box 110807
Juneau, AK 99811-0807

VIA FAX: 907-465-2521
Original to follow by mail

Re: H.B. 83 - Alaska Securities Act

Dear Mr. Elder:

I am writing to express my support for the provisions of House Bill 83. In particular, the revised exempt transaction provisions set out in Section 46 are a substantial improvement and will make ordinary business activity for corporations and similar business entities much easier.

I also want to thank you for your willingness to involve business and estate planning lawyers in the drafting process. Your willingness to work with us on areas of mutual concern was an absolute breath of fresh air. Having dealt with government bureaucracies over almost 25 years of law practice, I have become used to agencies that are more concerned about expanding their regulatory turf than they are with determining what works and what is necessary to accomplish legitimate objectives without burdening the business community with unnecessary regulations or hoops to jump through. Your willingness to work with those at the sharp end of the stick to make procedures easier, while still looking out for the interests of the public is more than commendable.

As you know, securities law issues have been a potential problem with new Alaska trust business where individuals are considering setting up family limited liability companies or limited partnerships. House Bill 83 goes a long way to eliminating those impediments to developing additional work in the Alaska financial services sector.

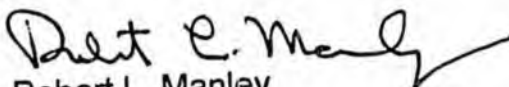
Please feel free to share this correspondence with such legislators or legislative committees as you see fit.

February 18, 1999
Page 2

HUGHES THORSNESS POWELL
HUDDLESTON & BAUMAN LLC
ATTORNEYS AT LAW

Very truly yours,

HUGHES THORSNESS POWELL
HUDDLESTON & BAUMAN LLC

By 
Robert L. Manley

RLM:kao: 97135

Arbor Capital Management

310 K Street, Suite 200 • Anchorage, AK 99501

Phone: (907) 264-6689 • Fax: (907) 264-6690

February 18, 1999

Mr. Dennis Salvesson
Securities Examiner
Department of Commerce &
Economic Development
P.O. Box 110807
Juneau, AK 99811-0807

Via Facsimile: (907) 465-2549
Two Pages

Dear Mr. Salvesson:

I have perused House Bill 83, the version of which I have attached its first page herewith. I have no material objection to the items detailed therein, specifically sections 45.55.023, 45.55.030, and 45.55.990.

Should you need to contact me in relation to this writing, please phone (907) 264-6689.

Sincerely,



Robert Sheldon
Principal

1-LS0253VD

HOUSE BILL NO. 83

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE BY REQUEST

Introduced: 2/8/99

Referred: Labor and Commerce, Judiciary

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the licensing of, acts and practices of, notice filings
2 required of, duties of, registration of, capitalization of, financial requirements for,
3 bonding of, coordinated securities examinations of, recordkeeping by, and
4 documents filed by certain securities occupations; relating to public entity
5 investment pools; relating to investment advisory contracts; relating to the
6 examination of records of certain securities occupations; relating to federal
7 covered securities; relating to the registration of securities; relating to the
8 general exemptions for securities and transactions; relating to offers of securities
9 on the Internet; relating to the confidentiality of investigative files under the
10 Alaska Securities Act; relating to the payment by certain securities occupations
11 of expenses and fees of investigations and examinations; relating to petitions to
12 superior court by the administrator to reduce civil penalties to judgment;



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Investments, Inc.**

Planning for your success.

4000 Old Seward Hwy., Suite 301
Anchorage, Alaska 99508
(907) 561-3118
Fax (907) 562-6225

February 18, 1999

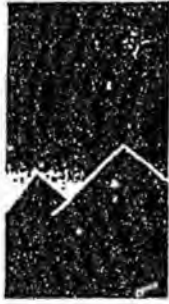
Franklin T. Elden
Director
Division of Banking, Securities and Corporations
State of Alaska
Juneau, Alaska

Mr. Elden:

I have reviewed House Bill 83 and, as a State of Alaska Registered Investment Advisor, I wish to express my support for the bill. Its passage would be beneficial to our profession.

Sincerely,

Mark Schneiter, CPA
Vice President



Polaris

FINANCIAL PLANNING, LTD.

... a Southeast Alaska Company

526 Main Street
Juneau, Alaska 99801

Tel: 907-585-4975
Fax: 907-586-4976
Email: tfm@polarisfp.com

February 19, 1999

Sent via FAX (465-2549)

Dennis Salvesson
State of Alaska
Department of Commerce and Economic Development
Division of Banking, Securities and Corporations

Dear Mr. Salvesson,

I have reviewed recently introduced legislation entitled House Bill 83, and have a few brief comments.

To put my comments into perspective, I will provide some background. I recently established a local business named Polaris Financial Planning, Ltd. which engages in comprehensive personal financial planning, including personal investment management. Because the company is small, I fall within the jurisdiction of the State of Alaska under Title III of the National Securities Market Improvement Act of 1996. As such, Polaris is registered with the State of Alaska as a State Investment Advisor, and I am personally registered as an Investment Advisor Representative.

My overall impression of HB 83 is quite favorable. Much of the Bill focuses on the broker-dealer industry, and securities registration issues outside the scope of activities of a typical small financial planner. On these I have no specific comment. Substantial parts of the Bill deal with procedural and administrative matters such as initial and renewal registration, surety bonds, minimum financial requirements and the like. These provisions appear to be comparable to procedures in other jurisdictions, and in my opinion present no particular problem for the small business owner.

The one area I wish to comment on specifically is Section 45.55.023, 'Unethical business practices of state investment advisors...' This section goes to the heart of what Financial Planning is all about, and what the public has a right to expect from our profession.

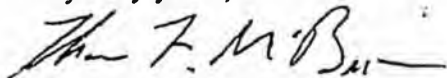
Section 023 makes the relationship between the financial professional and the client absolutely clear. Sub-section (a) states unequivocally that the professional has a fiduciary responsibility to the client, and must act in the best interests of the client. These paragraphs leave no doubt that the various principles of ethical conduct found in the Investment Advisors Act of 1940 shall also be applied to State Investment Advisors

through the Alaska Statutes. Any lingering doubt created by Title III of the National Securities Market Improvement Act is put to rest.

The legislation supports the work of professional organizations such as the Institute of Certified Financial Planners and the Certified Financial Planner Board of Standards in their efforts to implement codes of professional conduct based on the fiduciary concept. The efforts of these organizations, in conjunction with legislative initiatives such as HB 83, can only serve to benefit the public and elevate the profession.

I support this legislation, and wish the sponsors of HB 83 success in seeing it through to enactment.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Thomas F. McBrien".

Thomas F. McBrien

Terry P. Welsh CLU, ChFC
Certified Financial Planner
Registered Investment Advisor

R. Newt Mattison
Financial Consultant



February 22, 1999

Mr. F. Terry Elder
Director
Division of Banking, Securities & Corporations
State Office Building, 9th Floor
333 Willoughby Avenue
Juneau, Alaska 110807

Dear Mr. Elder:

I have recently reviewed the sections of HB #83 which pertain to investment advisors and I am writing to lend support to the bill. As a financial planner and registered investment advisor with the State of Alaska and State of Washington I have been concerned as to the lack of clear definition and regulation that relate to investment advisors in Alaska. As I understand the legislation, it will more clearly conform to the regulations governing investment advisors with the SEC as well as other states throughout the country.

I applaud you in your efforts to provide more clear oversight of investment advisors and I believe that the proposed legislation will be of benefit to investors and investment advisors throughout Alaska.

Please count me among the financial professionals who support HB #83. If it would be helpful to you for me to provide either written or oral testimony please let me know.

Sincerely,

Terry P. Welsh, CFP, ChFC, CLU
Registered Investment Advisor

**National
Planning**
CORPORATION INC.

2-18-99

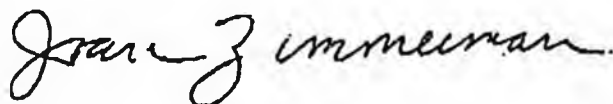
To: Dennis Salveson, CPA
State of Alaska
Division of Banking & Securities

Fr: Joan Zimmerman CFP
Adviser Representative 

RE: HB 83 "Alaska Securities Act"

Dennis, I have had an opportunity to review HB 83 and support the passage of HB 83 as written.

One suggestion, in the definitions, it might be helpful to define "disclosure" for the benefit of the average consumer.



Member NASD, SIPC

1413 G. Street • Anchorage, Alaska 99501 • (907) 258 4511 Fax: (907) 258 4833

**BLUNCK FINANCIAL**
REGISTERED INVESTMENT ADVISORNancy Blunck, MS, CFP
Certified Financial Planner

February 22, 1999

Mr. Dennis Salveson, CPA
State of Alaska Division of Banking, Securities & Corporations
State Office Building, 9th Floor
333 Willoughby Avenue
PO Box 110807
Juneau, Alaska 99811-0807

Fax number: (907) 465-2524

1165-2549

Re: HR 83

Dear Mr. Salveson:

Thank you for the opportunity to comment on the proposed state investment advisor law change and proposed regulation changes embodied in HR 83.

I have read the letter dated December 17, 1998 to Mr. Terry Elder of your division. The letter is from the Institute of Certified Financial Planners (ICFP). It speaks to the law change but not the regulation changes. I am in agreement with the ICFP's support of the law change.

I have had the opportunity to look at the Administrative Code Regulations which have been drafted to implement the law changes. Having had a chance to look at these, I have several comments:

1. I strongly support the general idea that there is uniform regulation of the investment advisor industry on a national basis by comparable adoption of laws and rules by each state. Investors and investment advisors alike are better served by uniform requirements for state investment advisors. The law changes are much needed to bring conformity to Alaska's investment advisory law.
2. I strongly support the waiver for Certified Financial Planners (CFPs) on the Series 63 and Series 65 exams.
3. I am concerned about the bonding requirement for state investment advisors who have discretion but do not have custody. It is my understanding that most (about two thirds) of the states considered and rejected this bonding requirement. It is also my understanding that the National Association of Securities Administrators Association (NASAA) initially supported this bonding requirement but has backed off its position. That leaves the State of Alaska writing the bonding requirement in a manner that is not consistent with NASAA. I oppose this bonding requirement.
4. Although this is not an issue currently being addressed by the proposed regulations for Alaska, I would like to go on record as strongly opposing the National Association of Securities Dealers (NASD) as a potential self regulatory organization (SRO) for investment advisors. I am far more comfortable with a body like the CFP Board of Standards acting as a self regulatory body.

Sincerely,

Nancy Blunck, MS, CFP

HARTIG, RHODES, NORMAN, MAHONEY & EDWARDS

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JAMES D. RHODES (RETIRED)

PETER B. BRAUTIGAM
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ROBERT B. FLINT
SEAN HALLORAN
LAWRENCE L. HARTIG
CHRISTINE FOOTE HYATT
ROBERT J. MAHONEY
ANDREW C. MITTON
JOHN K. NORMAN
BONNIE J. PASKVAN
DOUGLAS C. PERKINS
PAUL K. WHARTON
MICHAEL O. WHITE

OF COUNSEL

RAY D. GARDNER

February 19, 1999

Terry Elder
Acting Director, Securities Dept.
Division of Banking, Securities and Corporations
Department of Commerce & Economic Development
P.O. Box 110807
Juneau, AK 99811-0807

FEB 24 1999

D:
DIVIS.

Re: H.B. 83 - Alaska Securities Act
Our File No.: 0579-0

Dear Mr. Elder:

I would like to express my support for the provision of House Bill 83 and specifically the revised exempt transaction provisions set forth in Section 46. These provisions are a substantial improvement and will assist business entities in conducting business in the State of Alaska. House Bill 83 is important in eliminating many of the impediments that we have seen in developing Alaska's new trust business and related issues regarding family limited liability companies and family limited partnerships. House Bill 83 will provide significant improvement over current law and will allow Alaska to be more competitive and response to the needs of those seeking to do business in the State of Alaska.

If I can be of any assistance on this matter, please contact me.

Sincerely,

HARTIG, RHODES, NORMAN,
MAHONEY & EDWARDS, P.C.

By:


Peter B. Brautigam

PBB:jh

cc: Robert L. Manley, Esq.
F:\PBB\DCS\0579\0hb-83-lr.wpd

Lee Ann Gerhart
3818 Clay Products Road
Anchorage, AK 99517
(907)243-8951
email: Lee_Ann_Gerhart@compuserve.com

February 18, 1999

Attn: Mr. Dennis Salveson
State of Alaska
Department of Commerce and Economic Development
Division of Banking, Securities and Corporations
P.O. Box 110807
Juneau, Alaska 99811-0807

fax: 907(465)-2549

Mr. Salveson:

I have read House Bill HB-83 and support the bill. I appreciate your attention to my particular circumstances in making the amendment to 45.55.990, Section 70 (35)(B)(vii).

Lee Ann Gerhart

Lee Ann Gerhart

I

Comments on Non-NSMIA-Related Sections of CS HB 83(L&C) (Securities Act Bill)

Overview

CS HB 83(L&C) (Securities Act bill) preserves over \$4 million in annual State revenue and maintains the State's role in investor protection by amending the Alaska Securities Act (AS 45.55) to conform to federal law (National Securities Markets Improvement Act of 1996 (NSMIA)) passed in October 1996. The uniform language for those sections of the bill dealing with NSMIA was drafted by the North American Securities Administrators Association (NASAA), and is supported by the Investment Company Institute (ICI), the Investment Counsel Association of America (ICAA), the Institute of Certified Financial Planners (ICFP), and the International Association for Financial Planning (IAFP).

The sections of the bill that deal with non-NSMIA changes (23 of 76 in whole or in part), are included to add or update language to current uniform language as drafted by NASAA, to clarify certain sections of the Act to improve understanding of current policy, and to add certain exemptions from registration to the Act to improve access to capital markets for Alaska businesses. The sections below are the non-NSMIA sections in the proposed legislation. The seven sections indicated with "(Part)" are sections that include some NSMIA and some non-NSMIA changes. This paper concentrates its comments on the non-NSMIA changes. The full comment paper provides comments on all sections of the bill.

Section 12 (Part)

Section 45.55.030(f), (j)

New subsection (f) prohibits agents from dual registration which is currently prohibited by regulation. New subsection (j) allows agents to do wrap accounts without registration as investment adviser representatives which is standard practice in the industry and current Division policy.

Old law did not specifically provide for wrap accounts and dual registration.

Section 13

Section 45.55.035

New section to Uniform Securities Act provides for reciprocal limited registration of Canadian and US broker-dealers and their agents to serve existing customers who are temporarily residing outside their jurisdiction. Language drafted and adopted by NASAA and supported by the Securities Industry Association (SIA).

Old law does not provide for anything less than full registration, limiting the ability of Canadian and US broker-dealers to serve clients temporarily located outside their registered locations.

Section 15

Section 45.55.040(b)

Language describing effectiveness dates of registration is deleted from subsection (b), since the Division plans to include this language in its regulations.

Old law contained effectiveness language.

Section 25

Section 45.55.050(d)

Language is added to subsection (d) to clarify, in accordance with current policy and practice, that the Division may inspect records at any time.

Old law did not clearly state inspections may come at any time.

Section 26 (Part)

Section 45.55.050(k)

Subsection (k) is added to require broker-dealers to comply with NASD supervision requirements. Compliance is required by the NASD, but this amendment is needed to allow the Division to take action against broker-dealer for failure to supervise its agents.

Old law did not mention broker-dealer supervision.

Section 27 (Part)

Section 45.55.060(a)

Subsection (a)(2) makes repeated violations of the Act a basis for administrative action and not just wilful acts. Subsection (a)(3) clarifies the definition of "convicted" to conform with current policy. Subsection (a)(10) provides authority to take action against a person who fails to maintain and produce required records. Subsection (a)(11) provides authority to take action against persons who default on a student loan or do not comply with child support enforcement laws.

Old law did not provide for actions based on AS 14.43 or AS 25.27, and it did require violations of the Act to be wilful to be actionable under this section.

Section 34

Section 45.55.090

Adds language to clarify that the SEC is the United States Securities and Exchange Commission.

Old law did not specify that the SEC is the US SEC.

Section 37

Section 45.55.110(c)

Adds language to clarify that the SEC is the United States Securities and Exchange Commission.

Old law did not specify that the SEC is the US SEC.

Section 44 (Part)

Section 45.55.900(a)

(1) Subsection (a) is amended to include exemption from notice filing requirements of federal covered securities.

Old law did not mention federal covered securities.

(2) Subsection (a)(1) is amended to include US territories and the District of Columbia in order to update this exemption to the current uniform language.

Old law did not include US territories and the District of Columbia in this exemption.

(3) Subsection (a)(3) is amended to cover any security issued or guaranteed by a bank or other issuer listed in the subsection and not only a security representing an interest in or debt of the issuer. In addition, obligations of a federal reserve bank are explicitly added to the exemption.

Old law limited the issued security to interests in or debts of the issuer, and did not mention federal reserve banks.

(4) Subsection (a)(4) is amended to expand the types of short-term debt securities that are covered by the exemption from commercial paper to other types of securities that are also eligible for discount by a federal reserve bank.

Old law only covered commercial paper.

(5) Subsection (a)(5) is amended to reflect a provision in NSMIA which excluded certain plans from the definition of an investment company if the assets were used exclusively for the benefit of the beneficiaries, thus putting these plans on the same footing as similar employee benefit plans covered by this exemption.

Old law did not include plans allowed by NSMIA.

(6) Subsection (a)(10) is amended to update the names of stock exchanges and to add the Philadelphia Stock Exchange, which has been accepted by the administrator as having sufficiently high financial standards to be comparable to other exchanges currently covered by the exemption.

Old law did not include the Philadelphia Stock Exchange.

(7) Subsection (a)(11) is amended to include securities of funds excluded from the definition of an investment company. This was added by the Philanthropy Protection Act of 1995 to include pooled funds of charitable organizations. Without this amendment the subsection would not comply with the Philanthropy Protection Act of 1995.

Old law did not include funds exempted by the Philanthropy Protection Act of 1995.

(8) A new subsection (a)(13) is added to provide an exemption from registration of securities issued in connection with the acquisition of a bank by a holding company under

specified circumstances which require the holding company to be substantially equivalent to a bank. This amendment puts holding company acquisitions on an equal footing with the current exemption at (a)(3).

Old law did not provide an exemption for a bank holding company to acquire a bank under these limiting circumstances.

Section 45 (Part)

Section 45.55.900(b)

(1) Subsection (b) is amended to include exemption from notice filing requirements of federal covered securities.

Old law did not mention federal covered securities.

(2) Subsections (b)(5)(A)(ii) and (b)(5)(B)(iii) have been deleted for private, nonpublic offerings that are limited in terms of the number of investors. The Uniform Securities Act does not include a dollar amount limitation.

Old law limits the exemptions to \$100,000 and \$500,000, respectively.

(3) Subsection (b)(5)(B)(ii) is amended and language is added to clarify what information must be made available to an investor to allow the investor to make an informed decision.

Old law tied the information requirement to that required under full registration.

(4) New subsection (b)(5)(C) is added as a self-executing exemption, without a dollar limitation, to cover initial issuance of securities to up to 10 persons while maintaining disclosure requirements and commission restrictions for investor protection.

Old law requires such persons to register, seek another exemption, or obtain a no-action letter from the Division to avoid violating the Alaska Securities Act.

(5) New subsection (b)(5)(D) is added as a self-executing exemption, without a dollar limitation, for an issuer who sells a business and its assets and liabilities to a buyer, when the transfer of stock is solely incidental to the sale of the business.

Old law requires such persons to register, seek another exemption, or obtain a no-action letter from the Division to avoid violating the Alaska Securities Act.

(6) Subsection (b)(9) is amended to exclude promoters or controlling persons from claiming this exemption and escaping a registration requirement altogether after using the new exemption at (b)(5)(C).

Old law does not make it clear that a "nonissuer" is not a "promoter" or "controlling person."

(7) Old subsection (b)(10) is repealed and replaced by new (b)(17), adopting the new language for the "manual exemption," as (b)(10) was sometimes called, which was developed by NASAA and supported by the Securities Industry Association (SIA). The new language protects investors at least as much as the old language while allowing reliance on publicly available filings with the SEC as well as manuals.

Old law generally required listing in a securities manual.

(8) Old subsections (b)(13)(A) and (B) are deleted eliminating the restriction on commissions and the requirement for notice filing.

Old law limited commissions to standby commissions and required a notice to be filed with the State.

(9) Old subsection (b)(15) is amended to cover votes by security holders and not just stockholders of a corporation. Also includes a typographical error correction.

Old law was limited to corporations and did not include limited liability corporations.

(10) New subsection (b)(18) is added, as drafted by NASAA, to provide an exemption for qualifying issuers that are limiting sales to accredited investors (essentially, institutions and wealthy natural persons). This will allow Alaska entrepreneurs to use ACE-Net to raise capital electronically.

Old law would require these issuers to register or seek another exemption.

(11) New subsection (b)(19) is added to provide a noticed exemption for rescission offers pursuant to AS 45.55.930.

Old law contains no specific provision for these offers which requires them to either be registered, fit another exemption, or covered by a no-action letter.

(12) New subsection (b)(20) is added to provide a self-executing exemption for transactions that are solely between family members, or between family members and entities they create.

Old law contains no exemption for these transactions which requires them to either be registered, fit another exemption, or covered by a no-action letter issued by the Division.

Section 46

Section 45.55.900(g) and (h)

Paragraph (g) is added to provide an exemption for certain offers on the Internet, as drafted by NASAA and adopted by order of the administrator. Paragraph (h) provides the administrator authority to modify requirements of the (b)(5) exemptions.

Old law does not provide for offers on the Internet.

Section 47

Section 45.55.910(e)

This section, dealing with investigations and subpoenas, is amended by adding a new subsection (e) clarifying that investigative files and materials are confidential unless required for discovery in an administrative or a judicial proceeding.

Old law does not specifically provide for confidential investigative files.

Section 48 (Part)

Section 45.55.915

This section is amended to allow the administrator the option, not the obligation, to require reimbursement for expenses of investigations in addition to examinations. Language is added to include investment adviser representatives, federal covered advisers, and state investment advisers.

Old law covers only examinations, not investigations.

Section 49

Section 45.55.920(e)

A new subsection (e) is added to allow the State to reduce a final civil penalty to court judgment without reopening the matter to a new contest. This especially will help the State go after out-of-state violators.

Old law does not provide for this mechanism without a de novo matter being raised.

Section 51 (Part)

Section 45.55.930(a)

Subsection (a) is amended to change the interest rate for rescission offers from 6% to the stated rate of the security if it had a stated, fixed rate or 8% whichever is less, and makes a corrective amendment changing "seller" to "buyer," and excludes federal covered securities which are not subject to registration.

Old law set the interest rate for rescission offers at 6%, and does not mention federal covered securities.

Section 52

Section 45.55.930(b)

Subsection (b) is amended to change the interest rate associated with damages to 8% or the stated rate of the security, whichever is less.

Old law set damages at 6%.

Section 53

Section 45.55.930(f)

Subsection (f) is amended to allow more time to bring suit when the violation alleged is that of misrepresentation or fraud, and the rescission rate to prevent suit is raised to 8% or the stated rate of the security, whichever is less.

Old law limits a civil suit to three years from the date of purchase, and sets the rescission rate at 6%.

Section 54

Section 45.55.930(j)-(k)

New subsection (j) is added to allow a buyer to sue if the buyer accepted a rescission offer and has not been paid. New subsection (k) is added to make it clear to those reading AS 45.55.930 that a rescission offer is an offer of a security subject to registration, unless exempt from registration under AS 45.55.900, as provided in the new exemption at AS 45.55.900(b)(19).

Old law did not mention what happens if a rescission offer is made and accepted but not paid, and it did not specifically state that a rescission offer is an offer under the Act.

Section 58

Section 45.55.970(e)

Subsection (e) is amended to clarify that, in accordance with current practice, the administrator may require a fee to be submitted along with requests for interpretative opinions.

Old law does not explicitly state a fee is required.

Section 61

Section 45.55.980(c)

Subsection (c)(5) is amended to include limited liability companies and limited liability partnerships to clarify the jurisdiction of the Act, in accordance with current policies and practice.

Old law did not include those relatively new entities.

Section 65

Section 45.55.990(3)

Subsection (3)(E) is amended to make de minimis exemption more workable by focusing on solicited trades and not just offers.

Old law based on offers which are difficult to trace.

Section 66

Section 45.55.990(9)

Subsection (9) is amended to add these relatively new entities to the definition of person.

Old law did not include these newer entities in the definition.

Section 68

Section 45.55.990(12)

Language is added to definition of security to clarify potential confusion between AS 45.55 and AS 45.08.

Old law did not contain this clarifying language.

J

Comments on All Sections of CS HB 83(L&C) (Securities Act Bill)

Overview

The National Securities Markets Improvement Act (NSMIA), enacted on October 11, 1996, resulted in significant changes to the regulatory landscape of securities markets and people who sell securities or give investment advice.

By preempting certain securities and investment advisers from state registration, NSMIA would result in a loss of annual fee revenue for the State of Alaska of about \$4-\$5 million, unless Alaska adopts the changes described below to preserve its revenues through notice filings and fees, which are allowed by NSMIA. These fees are the State's primary source of fee revenue available for regulation of securities and investor protection. Without these changes, in addition to losing significant revenue, the State will be hampered significantly in its ability to protect investors from abusive potential practices of those who provide investment advice.

In particular, NSMIA created a new security, the Federal Covered Security (FCS), which is preempted from the registration requirements of the states. While some FCSs were already exempt from registration under the Alaska Securities Act (the Act), the largest impact of NSMIA in Alaska was the preemption of mutual fund and Regulation D 506 securities registrations. Alaska may no longer register these securities, but the State may require the issuers of these securities to file a notice and pay a notice fee in order to sell the security in this state. NSMIA requires states to change their statutes and regulations to provide for these notice filings and notice fees before October 1999, however, in order to preserve the state's ability to require notices and collect fees.

NSMIA also changed the regulatory landscape for broker-dealers and their agents, and for investment advisers and their investment adviser representatives. For example, states may no longer impose certain financial requirements for broker-dealers that are different from those imposed by the United States Securities and Exchange Commission (SEC). More significantly, however, NSMIA ended the dual registration requirements for investment advisers by creating Federal Covered Advisers (FCAs), essentially investment advisers with more than \$25-30 million under management. These FCAs are now registered only with the SEC, while smaller investment advisers, so called State Investment Advisers (SIAs), continue to register with the states. Like the FCSs described above, however, FCAs may be required to file notice and pay fees for providing investment advisory services in Alaska: FCAs remain subject to the anti-fraud provisions of the Act.

Additional language is needed in the Alaska Act for SIAs registered with the states because those SIAs are no longer subject to some of the rules of the SEC as they were prior to NSMIA. Language is also needed to specifically license Investment Adviser Representatives (IARs). These are essentially equivalent to agents of broker-dealers. In

the past, we have licensed them based on the fact that they met the statutory definition of an investment adviser. NSMIA, however, provided that the SEC would define IARs and further provided that the states could register IARs or FCAs, if those IARs have a place of business in the state. Thus, it becomes important to treat IARs or SIAs and FCAs more like agents of broker-dealers.

Many of the changes described below are made to bring the Act into conformity with NSMIA and to preserve the ability of the state to provide investor protection for Alaskans and to continue to collect the fees from market participants who seek to provide various investment services to Alaskans. The North American Securities Administrators (NASAA) developed most of the language to promote uniformity among the states, a major policy of the Act. For the same reason, some other changes are suggested to conform to language adopted by NASAA that are similar to that used in other states.

Finally, the language in the Act needs to be flexible enough to adapt to changing conditions in this new investment environment. In particular, since the SEC now has the authority to define FCAs and IARs, for example, the state's definitions of those have to be able to quickly reflect those changes, or be subject to playing catch up with each revision. NSMIA has made it imperative for states to take into consideration what the federal government and other states are doing in the regulation of securities markets participants.

The Alaska Department of Commerce and Economic Development, Division of Banking, Securities and Corporations has received letters of support for the legislative changes described below from the North American Securities Administrators Association (NASAA), the Investment Company Institute (ICI), the major association for the mutual fund industry, the Investment Counsel Association of America, Inc. (ICAA), the major association for investment advisers, the Institute of Certified Financial Planners (ICFP), and the International Association for Financial Planning (IAFP). Many ICFP and IAFP members provide investment advisory services. These organizations represent the market participants most affected by the changes required in the Alaska Act by NSMIA.

Section 1

Section 14.43.148(h)(1)

Adds state investment advisers and their representatives to list of those whose license may be revoked for defaulting on a state student loan.

Old law did not specify state-registered investment advisers or their representatives.

Sections 2 and 3

Section 25.27.244(s)(2)

Adds state investment advisers and their representatives to list of those whose license may be revoked for noncompliance with child support enforcement requirements.

Old law did not specify state-registered investment advisers or their representatives.

Section 4

Section 37.23.050

Adds registered state investment advisers and noticed federal covered advisers to list of those entities that can contract to manage investment pools of public entities.

Old law did not differentiate between state investment advisers and federal covered advisers.

Section 5

Section 45.55.010

Provides that neither exemption by statute nor preemption by NSMIA will exempt a person from this anti-fraud provision.

Old law did not mention preempted federal covered securities.

Section 6

Section 45.55.020(b)

These restrictions on contracts are limited to state investment advisers since federal covered advisers are covered by SEC rules. Section 2 deleted since covered by new section 45.55.023(a)(16)(E).

Old law did not mention state investment advisers and federal covered advisers.

Section 7

Section 45.55.020(c)

Certain state investment adviser contracts may be allowed if they conform to the requirements of Section 205 of the Investment Advisers Act of 1940.

Old law prohibited all contracts based on capital appreciation.

Section 8

Section 45.55.020(e)

These restrictions on custody are limited to state investment advisers since federal covered advisers are covered by SEC rules.

Old law did not mention state investment advisers and federal covered advisers.

Section 9

Section 45.55.023, 45.55.025, 45.55.027, and 45.55.028

New sections are added providing investor protection from unethical business practices by persons providing investment advisory and securities business services.

Old law did not contain these provisions since we could rely on SEC rules for advisers, and broker-dealers and agents were covered in our regulations at 3 AAC 08.060 and 061.

Section 10

Section 45.55.030(c)

Registration limited by NSMIA to state investment advisers and investment adviser representatives, and registration exemptions inserted here rather than in definition section.

Old law did not mention investment adviser representatives, and registration exceptions were treated as exclusion from definition.

Section 11

Section 45.55.030(d)

Adds reference to notice filings as required by NSMIA so that both registrations and notice filings expire in one year.

Old law did not provide for notice filings.

Section 12

Section 45.55.030(e)-(j)

New sections require federal covered advisers to file notices (e), and investment advisers to hire registered representatives (g)-(i); also, allow agents to do wrap accounts without registration as investment adviser representatives (j); and prohibit agents from dual registration (f).

Old law did not mention federal covered advisers, notice filings, or investment adviser representatives, and dual registration was part of current regulations.

Section 13

Section 45.55.035

New section to Uniform Securities Act to provide for reciprocal limited registration of Canadian and US broker-dealers and their agents to serve existing customers.

Old law does not provide for anything less than full registration, limiting the ability of Canadian and US broker-dealers to serve clients temporarily located outside their registered locations.

Section 14

Section 45.55.040(a)

Provides for the registration of state investment advisers and investment adviser representatives as permitted by NSMIA, deleting fingerprint and photograph requirements, and allowing filing of promotional materials.

Old law did not mention state investment advisers or investment adviser representatives.

Section 15

Section 45.55.040(b)

Language describing effectiveness dates of registration is deleted since the Division plans to include this language in its regulations.

Old law contained effectiveness language.

Section 16

Section 45.55.040(c)

Separately provides for registration and notice fees as required by NSMIA to preserve the State's fee base.

Old law did not provide for notice fees.

Section 17

Section 45.55.040(d)

Language is added allowing state and federal covered advisers the same rights to transfer their representatives from a predecessor advisory business broker-dealers have for agents.

Old law did not mention federal covered advisers or investment adviser representatives, and advisers did not have same rights as broker-dealers regarding successors.

Section 18

Section 45.55.040(e)

Makes language more flexible to adapt to NSMIA, under which states are restricted in their ability to impose financial requirements on broker-dealers, and state and federal covered advisers.

Old law required bonding and other requirements now prohibited by NSMIA.

Section 19

Section 45.55.040(f)

Makes language more flexible to adapt to NSMIA, under which states are restricted in their ability to require bonds of broker-dealers, and state and federal covered advisers.

Old law required bonding now largely prohibited by NSMIA.

Section 20

Section 45.55.040(g)

Provide for notice filings to preserve the State's fee base, and promotes uniformity in filing and securities examinations.

Old law did not provide for notice filings or mention coordinated examinations.

Section 21

Section 45.55.040(h)-(j)

Subsection (h) provides for notice filings for federal covered advisers to preserve the State's fee base; subsection (i) provides authority to adopt regulations for fees and other procedures; and subsection (j) provides authority to require certain state investment advisers to post bonds.

Old law did not provide for notice filings or flexibility in bonding requirements, both required by NSMIA.

Section 22

Section 45.55.050(a)

Section now applies only to broker-dealers, and, pursuant to NSMIA, states may not impose books and records requirements in addition to those imposed by the SEC.

Old law included investment advisers, now covered new section, AS 45.55.050(e).

Section 23

Section 45.55.050(b)

Makes language more flexible to adapt to NSMIA which limits the financial reporting requirements of states for broker-dealers.

Old language included investment advisers, now covered in new section, AS 45.55.050(g).

Section 24

Section 45.55.050(c)

Language added to require notice filers to update filed material.

Old law did not mention notice filers.

Section 25

Section 45.55.050(d)

Language added to clarify that the Division may inspect records at any time.

Old law did not clearly state inspections may come at any time.

Section 26

Section 45.55.050(e)-(k)

Sections added:

- (1) to require state investment advisers, located in this state (h), and investment adviser representatives to keep records (e) and file them with the state (g) as allowed by NSMIA (j);
- (2) to allow administrator to require state investment advisers to furnish information to the public (f);
- (3) to require broker-dealers and agents to file NSMIA-allowed reports (i); and
- (4) to require broker-dealers to comply with NASD supervision requirements (k).

Old law did not mention state investment advisers and investment adviser representatives, nor provide for limitations on filing requirements included in NSMIA, nor include language regarding broker-dealer supervision.

Section 27

Section 45.55.060(a)

Language added

- (1) to exclude federal covered advisers (a);
- (2) to make repeated violations of the Act a basis for administrative action (a)(2);
- (3) to clarify the definition of "convicted" (a)(3);
- (4) to include actions against investment adviser representatives (a)(5) and (a)(6);
- (5) to include dishonest or unethical conduct and to include the investment advisory business (a)(7);
- (6) to broaden insolvency to include lack of safety to customers (a)(8);
- (7) to provide authority to take action against a person who fails to maintain and produce required records (a)(10); and
- (8) to provide authority to take action against persons who default on a student loan or do not comply with child support enforcement laws (a)(11).

Old law did not include state investment advisers and did not refer to the advisory business, nor provide for actions based on AS 14.43 or AS 25.27, but it did require violations of the Act to be wilful to be actionable under this section.

Section 28

Section 45.55.060(b)

Adds supervision of investment adviser representatives by state investment advisers as basis for administrative action.

Old law did not mention investment adviser representatives or state investment advisers.

Section 29

Section 45.55.060(d)

Language added to exclude actions against federal covered advisers, and to provide for examinations of investment adviser representatives.

Old law did not mention state investment advisers, federal covered advisers, or investment adviser representatives.

Section 30

Section 45.55.060(f)

Adds state investment adviser and investment adviser representatives to paragraph dealing with cancellation of a registration or application.

Old law did not mention state investment advisers, federal covered advisers, or investment adviser representatives.

Section 31

Section 45.55.060(g)

Adds state investment adviser and investment adviser representatives to paragraph dealing with withdrawal of a registration.

Old law did not mention state investment advisers, federal covered advisers, or investment adviser representatives.

Section 32

Section 45.55.070

Adds a new type of security created by NSMIA, the federal covered security.

Old law did not mention federal covered securities.

Section 33

Section 45.55.075

Added to provide for the filing of notices and payment of fees with respect to certain federal covered securities, essentially mutual funds and Regulation D 506 securities, to preserve the State's fee base under NSMIA.

Old law did not mention federal covered securities or notice filings.

Section 34

Section 45.55.090

Clarifies the SEC is the United States Securities and Exchange Commission.

Old law did not specify that the SEC is the US SEC.

Section 35

Section 45.55.110(a)

Adds notice filings for federal covered securities created by NSMIA.

Old law did not mention federal covered securities or notice filings.

Section 36

Section 45.55.110(b)

Adds notice filing fees for federal covered securities to preserve the State's fee base, as allowed by NSMIA.

Old law did not provide for notice filing fees.

Section 37

Section 45.55.110(c)

Clarifies the SEC is the United States Securities and Exchange Commission.

Old law did not specify that the SEC is the US SEC.

Section 38

Section 45.55.110(d)

Adds reference to notice filings to incorporate documents by reference.

Old law did not mention notice filings.

Section 39

Section 45.55.110(e)

Adds reference to notice filings to section dealing with omission of information by permission.

Old law did not mention notice filings.

Section 40

Section 45.55.110(i)

Adds reference to notice filings for federal covered securities and provides that they may have automatic extension of effectiveness for additional year if the fee reflects that extension.

Old law does not mention federal covered securities, and does not explicitly describe the two-year effectiveness of mutual fund filings.

Section 41

Section 45.55.110(k)

Adds reference to notice filings and provides for amendments to those filings if the fee structure is based on dollar amount of securities offered.

Old law referred to registrations and not to notice filings.

Section 42

Section 45.55.150

Allows the administrator to establish requirements for specified sales literature and not just for the filing of the literature, excluding persons or securities exempted by NSMIA.

Old law did not mention federal covered securities, state investment advisers, or federal covered advisers, or limit filing requirements to those allowed by NSMIA.

Section 43

Section 45.55.170

Subsection (a) is amended to cover notice filings for federal covered advisers and federal covered securities.

Old law did not mention notice filings.

Section 44

Section 45.55.900(a)

(1) Subsection (a) is amended to include exemption from notice filing requirements of federal covered securities.

Old law did not mention federal covered securities.

(2) Subsection (a)(1) is amended to include US territories and the District of Columbia in order to update this exemption to the current uniform language.

Old law did not include US territories and the District of Columbia in this exemption.

(3) Subsection (a)(3) is amended to cover any security issued or guaranteed by a bank or other issuer listed in the subsection and not only a security representing an interest in or debt of the issuer. In addition, obligations of a federal reserve bank are explicitly added to the exemption.

Old law limited the issued security to interests in or debts of the issuer, and did not mention federal reserve banks.

(4) Subsection (a)(4) is amended to expand the types of short-term debt securities that are covered by the exemption from commercial paper to other types of securities that are also eligible for discount by a federal reserve bank.

Old law only covered commercial paper.

(5) Subsection (a)(5) is amended to reflect a provision in NSMIA which excluded certain plans from the definition of an investment company if the assets were used exclusively for the benefit of the beneficiaries, thus putting these plans on the same footing as similar employee benefit plans covered by this exemption.

Old law did not include plans allowed by NSMIA.

(6) Subsection (a)(10) is amended to update the names of stock exchanges and to add the Philadelphia Stock Exchange, which has been accepted by the administrator as having sufficiently high financial standards to be comparable to other exchanges currently covered by the exemption.

Old law did not include the Philadelphia Stock Exchange.

(7) Subsection (a)(11) is amended to include securities of funds excluded from the definition of an investment company. This was added by the Philanthropy Protection Act of 1995 to include pooled funds of charitable organizations. Without this amendment the subsection would not comply with the Philanthropy Protection Act of 1995.

Old law did not include funds exempted by the Philanthropy Protection Act of 1995.

(8) A new subsection (a)(13) is added to provide an exemption from registration of securities issued in connection with the acquisition of a bank by a holding company under specified circumstances which require the holding company to be substantially equivalent to a bank. This amendment puts holding company acquisitions on an equal footing with the current exemption at (a)(3).

Old law did not provide an exemption for a bank holding company to acquire a bank under these limiting circumstances.

Section 45

Section 45.55.900(b)

(1) Subsection (b) is amended to include exemption from notice filing requirements of federal covered securities.

Old law did not mention federal covered securities.

(2) Subsections (b)(5)(A)(ii) and (b)(5)(B)(iii) have been deleted for private, nonpublic offerings that are limited in terms of the number of investors. The Uniform Securities Act does not include a dollar amount limitation.

Old law limits the exemptions to \$100,000 and \$500,000, respectively.

(3) Subsection (b)(5)(B)(ii) is amended and language is added to clarify what information must be made available to an investor to allow the investor to make an informed decision.

Old law tied the information requirement to that required under full registration.

(4) New subsection (b)(5)(C) is added as a self-executing exemption, without a dollar limitation, to cover initial issuance of securities to up to 10 persons while maintaining disclosure requirements and commission restrictions for investor protection.

Old law requires such persons to register, seek another exemption, or obtain a no-action letter from the Division to avoid violating the Alaska Securities Act.

(5) New subsection (b)(5)(D) is added as a self-executing exemption, without a dollar limitation, for an issuer who sells a business and its assets and liabilities to a buyer, when the transfer of stock is solely incidental to the sale of the business.

Old law requires such persons to register, seek another exemption, or obtain a no-action letter from the Division to avoid violating the Alaska Securities Act.

(6) Subsection (b)(9) is amended to exclude promoters or controlling persons from claiming this exemption and escaping a registration requirement altogether after using the new exemption at (b)(5)(C).

Old law does not make it clear that a "nonissuer" is not a "promoter" or "controlling person."

(7) Old subsection (b)(10) is repealed and replaced by new (b)(17), adopting the new language for the "manual exemption," as (b)(10) was sometimes called, which was developed by NASAA and supported by the Securities Industry Association (SIA). The new language protects investors at least as much as the old language while allowing reliance on publicly available filings with the SEC as well as manuals.

Old law generally required listing in a securities manual.

(8) Old subsections (b)(13)(A) and (B) are deleted eliminating the restriction on commissions and the requirement for notice filing.

Old law limited commissions to standby commissions and required a notice to be filed with the State.

(9) Old subsection (b)(15) is amended to cover votes by security holders and not just stockholders of a corporation. Also includes a typographical error correction.

Old law was limited to corporations and did not include limited liability corporations.

(10) New subsection (b)(18) is added, as drafted by NASAA, to provide an exemption for qualifying issuers that are limiting sales to accredited investors (essentially, institutions and wealthy natural persons). This will allow Alaska entrepreneurs to use ACE-Net to raise capital electronically.

Old law would require these issuers to register or seek another exemption.

(11) New subsection (b)(19) is added to provide a noticed exemption for rescission offers pursuant to AS 45.55.930.

Old law contains no specific provision for these offers which requires them to either be registered, fit another exemption, or covered by a no-action letter.

(12) New subsection (b)(20) is added to provide a self-executing exemption for transactions that are solely between family members, or between family members and entities they create.

Old law contains no exemption for these transactions which requires them to either be registered, fit another exemption, or covered by a no-action letter issued by the Division.

Section 46

Section 45.55.900(g) and (h)

Paragraph (g) is added to provide an exemption for certain offers on the Internet, as drafted by NASAA and adopted by order of the administrator. Paragraph (h) provides the administrator authority to modify requirements of the (b)(5) exemptions.

Old law does not provide for offers on the Internet or flexibility in (b)(5) exemptions.

Section 47

Section 45.55.910

This section, dealing with investigations and subpoenas, is amended by adding a new subsection clarifying that investigative files and materials are confidential unless disclosure is required for discovery in an administrative or a judicial proceeding.

Old law does not specifically provide for confidential investigative files.

Section 48

Section 45.55.915

This section is amended to allow the administrator the option, not the obligation, to require reimbursement for expenses of investigations in addition to examinations. Language is added to include investment adviser representatives, federal covered advisers, and state investment advisers.

Old law covers only examinations, not investigations.

Section 49

Section 45.55.920(e)

A new subsection (e) is added to allow the State to reduce a final civil penalty to court judgment without reopening the matter to a new contest, unless the court orders otherwise. This especially will help the State go after out-of-state violators.

Old law does not provide for this mechanism without a de novo matter being raised.

Section 50

Section 45.55.925

Language required by NSMIA is added to exclude federal covered advisers and federal covered securities from criminal penalties for not filing notices.

Old law did not mention notices for federal covered advisers and federal covered securities.

Section 51

Section 45.55.930(a)

Subsection (a) is amended to change the interest rate for rescission offers from 6% to the stated rate of the security if it had a stated, fixed rate or 8% whichever is less, and makes a corrective amendment changing "seller" to "buyer," and excludes federal covered securities which are not subject to registration.

Old law set the interest rate for rescission offers at 6%, and does not mention federal covered securities.

Section 52

Section 45.55.930(b)

Subsection (b) is amended to change the interest rate associated with damages to 8% or the stated rate of the security, whichever is less.

Old law set damages at 6%.

Section 53

Section 45.55.930(f)

Subsection (f) is amended to allow more time to bring suit when the violation alleged is that of misrepresentation or fraud, and the rescission rate to prevent suit is raised to 8% or the stated rate of the security, whichever is less.

Old law limits a civil suit to three years from the date of purchase, and sets the rescission rate at 6%.

Section 54

Section 45.55.930(j)-(k)

New subsection (j) is added to allow a buyer to sue if the buyer accepted a rescission offer and has not been paid. New subsection (k) is added to make it clear to those reading AS 45.55.930 that a rescission offer is an offer of a security subject to registration, unless exempt from registration under AS 45.55.900.

Old law did not mention what happens if a rescission offer is made and accepted but not paid, and it did not specifically state that a rescission offer is an offer under the Act.

Section 55

Section 45.55.935(a)

Subsection (a)(2) is amended to add investment adviser representatives.

Old law did not mention investment adviser representatives.

Section 56

Section 45.55.970(b)

Subsection (b) is amended to require that a register of notice filings be maintained as it is for registrations.

Old law does not mention notice filings.

Section 57

Section 45.55.970(c)

Subsection (c) is amended to add notice filings to the list of materials available to the public.

Old law did not mention notice filings.

Section 58

Section 45.55.970(e)

Subsection (e) is amended to clarify that the administrator may require a fee to be submitted along with requests for interpretative opinions.

Old law does not explicitly state a fee is required.

Section 59

Section 45.55.980(a)

Subsection (a) is amended to add the new sections on fraudulent, dishonest and unethical business practices of broker-dealers and agents (45.55.025-028); limited registration of Canadian broker-dealers and agents (45.55.035); and federal covered securities (45.55.075) to cover those who sell or offer to sell.

Old law did not contain those sections.

Section 60

Section 45.55.980(b)

Subsection (b) is amended to add 45.05.025-028 and 45.55.035 as described in (a) above to cover those who buy or offer to buy.

Old law did not contain those sections.

Section 61

Section 45.55.980(c)

Subsection (c)(5) is amended to include limited liability companies and limited liability partnerships.

Old law did not include those relatively new entities.

Section 62

Section 45.55.980(f)

Subsection (f) is amended to include unethical business practices (AS 45.55.023) and the notice filing requirements for federal covered advisers (AS 45.55.030(e) and 45.55.040(h)) and to include state investment advisers, federal covered advisers, and investment adviser representatives.

Old law did not have these sections or mention state investment advisers, federal covered advisers, and investment adviser representatives.

Section 63

Section 45.55.980(g)

Language adds notice filings.

Old law did not mention notice filings.

Section 64

Section 45.55.990(2)

Language adds those excluded from the definition of agent, including agents of issuers of securities exempted by AS 45.55.900(a) and federal covered securities. Also, excludes those preempted by NSMIA in the Securities and Exchange Act of 1934.

Old law limited agent exclusion to exemptions at AS 45.55.900(a)(1)-(5), and did not mention federal covered securities, or the exclusions provided by NSMIA.

Section 65

Section 45.55.990(3)

Subsection (3)(E) is amended to make de minimis exemption more workable by focusing on solicited trades.

Old law based on offers that are difficult to trace.

Section 66

Section 45.55.990(9)

Language adds relatively new entities to the definition of person.

Old law did not include these newer entities in the definition.

Section 67

Section 45.55.990(11)

All federal laws are removed except the Securities Act of 1933.

Old law contains other federal laws that are added below in new sections.

Section 68

Section 45.55.990(12)

Language is added to definition of security to clarify potential confusion between AS 45.55 and AS 45.08.

Old law did not contain this clarifying language.

Section 69

Section 45.55.990(14)-(37)

Language adds new definitions to Act, defining existing terms like "advisory services" and defining new terms like "federal covered security." Most of the new definitions are required by NSMIA and deal with investment adviser representatives, state investment advisers, federal covered advisers, and notice filings.

Old law did not mention any of the new categories created by NSMIA.

Section 70

Short title of the chapter is the Alaska Securities Act.

Section 71

Repeals AS 45.55.020(d) that is moved to AS 45.55.023(16)(E). Repeals AS 45.55.990(6) that was the old definition of investment adviser.

Section 72

The Department may immediately proceed to adopt necessary regulations.

Section 73-75

Various technical sections.

Section 76

Provides the effective date of the Act.

K

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Bannister
2/20/99

CS FOR HOUSE BILL NO. 83(L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE

Offered:
Referred:

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

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the licensing of, acts and practices of, notice filings
2 required of, duties of, registration of, capitalization of, financial requirements for,
3 bonding of, coordinated securities examinations of, recordkeeping by, and
4 documents filed by certain securities occupations; relating to public entity
5 investment pools; relating to investment advisory contracts; relating to the
6 examination of records of certain securities occupations; relating to federal
7 covered securities; relating to the registration of securities; relating to the
8 general exemptions for securities and transactions; relating to offers of securities
9 on the Internet; relating to the confidentiality of investigative files under the
10 Alaska Securities Act; relating to the payment by certain securities occupations
11 of expenses and fees of investigations and examinations; relating to petitions to
12 superior court by the administrator to reduce civil penalties to judgment;

1 exempting certain violations of the Alaska Securities Act from criminal penalties;
2 relating to time limitations in bringing court actions for violations of the Alaska
3 Securities Act; relating to the affirmative defense of timeliness in court actions
4 relating to securities; prohibiting certain lawsuits involving buyers of securities;
5 relating to time limitations for bringing court actions involving the receipt of a
6 written offer related to securities; relating to offers to repay buyers of securities;
7 relating to notification of certain securities occupations regarding administrative
8 hearings; relating to fees established by the administrator; relating to a sale,
9 a purchase, or an offer to sell or purchase under the Alaska Securities Act;
10 relating to the locations of offers to buy or sell; relating to consent to service;
11 amending the Alaska Securities Act definitions of 'agent,' 'broker-dealer,' 'person,'
12 'Securities Act of 1933,' and 'security;' defining for purposes of the Alaska
13 Securities Act 'advisory client,' 'advisory fee,' 'advisory services,' 'Bank Holding
14 Company Act of 1956,' 'clients who are natural persons,' 'federal covered
15 adviser,' 'federal covered security,' 'Federal Deposit Insurance Act,' 'Home
16 Owners' Loan Act,' 'investment adviser representative,' 'Investment Advisers Act
17 of 1940,' 'investment advisory business,' 'investment advisory contract,' 'Investment
18 Company Act of 1940,' 'NASDAQ,' 'National Securities Markets Improvement Act
19 of 1996,' 'notice filing,' 'place of business,' 'principal place of business,'
20 'Securities Exchange Act of 1934,' 'securities business,' 'state investment adviser,'
21 'substantial portion of the business,' and 'supervised person'; relating to the title
22 of the Alaska Securities Act; relating to the definitions in the Alaska Securities
23 Act of 'assignment' and 'investment adviser'; relating to implementation of the
24 changes to the Alaska Securities Act; and providing for an effective date."

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

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

3 (1) "license"

4 (A) means, except as provided in (B) of this paragraph, a
5 license, certificate, permit, registration, or other authorization that, at the time
6 of issuance, will be valid for more than 150 days and that may be acquired
7 from a state agency to perform an occupation, including the following:8 (i) license relating to boxing or wrestling under
9 AS 05.10;10 (ii) authorization to perform an occupation regulated
11 under AS 08;

12 (iii) teacher certificate under AS 14.20;

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

15 (v) asbestos worker certification under AS 18.31;

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

17 (vii) certificate of fitness under AS 18.62;

18 (viii) hazardous painting certification under AS 18.63;

19 (ix) certification as a municipal correctional,
20 correctional, probation, or parole officer under AS 18.65.245;21 (x) security guard license under AS 18.65.400 -
22 18.65.490;

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

24 (xii) employment agency permit under AS 23.15.330 -
25 23.15.520;26 (xiii) registration as a broker-dealer, an agent, a state
27 [OR] investment adviser, or an investment adviser representative
28 under AS 45.55.030;29 (xiv) certification as a pesticide applicator under
30 AS 46.03.320;

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

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

(B) does not include

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

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

(iii) a license issued under AS 47.35;

(iv) a business license issued under AS 43.70;

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

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

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

(2) "license"

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

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

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

(iii) teacher certificate under AS 14.20;

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

(v) asbestos worker certification under AS 18.31;

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

(vii) certificate of fitness under AS 18.62;

(viii) hazardous painting certification under AS 18.63;

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- (ix) security guard license under AS 18.65.400 - 18.65.490;
 - (x) license relating to insurance under AS 21.27;
 - (xi) employment agency permit under AS 23.15.330 - 23.15.520;
 - (xii) registration as a broker-dealer, an agent, a state [OR] investment adviser, or an investment adviser representative under AS 45.55.030;
 - (xiii) certification as a pesticide applicator under AS 46.03.320;
 - (xiv) certification as a storage tank worker or contractor under AS 46.03.375;
 - (xv) certification as a water and wastewater works operator under AS 46.30; and
 - (xvi) commercial crewmember fishing license under AS 16.05.480 other than an entry permit or interim-use permit under AS 16.43;
- (B) does not include
- (i) a vessel license issued under AS 16.05.490 or 16.05.530;
 - (ii) a license issued under AS 47.35;
 - (iii) a business license issued under AS 43.70;
 - (iv) an entry permit or interim-use permit issued under AS 16.43; or
 - (v) a driver's license issued under AS 28.15;

* Sec. 3. AS 25.27.244(s)(2), as repealed and reenacted under sec. 148(c), ch. 87, SLA 1997, as amended by sec. 53, ch. 132, SLA 1998, is amended to read:

(2) "license"

(A) means, except as provided in (B) of this paragraph, a license, certificate, permit, registration, or other authorization that, at the time of issuance, will be valid for more than 150 days and that may be acquired

1 from a state agency to perform an occupation, including the following:

2 (i) license relating to boxing or wrestling under
3 AS 05.10;

4 (ii) authorization to perform an occupation regulated
5 under AS 08;

6 (iii) teacher certificate under AS 14.20;

7 (iv) authorization under AS 18.08 to perform emergency
8 medical services;

9 (v) asbestos worker certification under AS 18.31;

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

11 (vii) certificate of fitness under AS 18.62;

12 (viii) hazardous painting certification under AS 18.63;

13 (ix) security guard license under AS 18.65.400 -
14 18.65.490;

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

16 (xi) employment agency permit under AS 23.15.330 -
17 23.15.520;

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

21 (xiii) certification as a pesticide applicator under
22 AS 46.03.320;

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

25 (xv) certification as a water and wastewater works
26 operator under AS 46.30;

27 (B) does not include

28 (i) a commercial fishing license under AS 16.05.480,
29 including a crewmember fishing license;

30 (ii) a vessel license issued under AS 16.05.490 or
31 16.05.530;

1 (iii) a license issued under AS 47.35;

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

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

4 AS 16.43; or

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

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

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

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

12 (2) a state [AN] investment adviser registered under AS 45.55.030 or
13 a federal covered adviser that has made a notice filing under AS 45.55.040(h)
14 [AND UNDER 15 U.S.C. 80b3 (INVESTMENT ADVISERS ACT OF 1940)];

15 (3) the Department of Revenue; or

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

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

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

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

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

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

30 (2) [AN ASSIGNMENT OF THE CONTRACT MAY NOT BE MADE
31 BY THE INVESTMENT ADVISER WITHOUT THE CONSENT OF THE OTHER

1 PARTY TO THE CONTRACT; AND

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

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

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

9 The administrator, on request, may waive the provisions of (b)(1) of this section
10 for investment advisory contracts that conform to the limitations of 15 U.S.C. 80b-
11 5 (Investment Advisers Act of 1940).

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

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

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

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

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

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

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

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

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

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

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

24 (6) borrowing money or securities from a client unless the client is a
25 financial institution engaged in the business of loaning money or the client is an
26 affiliate of the state investment adviser or federal covered adviser borrowing the money
27 or securities;

28 (7) loaning money to a client unless the state investment adviser or
29 federal covered adviser loaning the money is a financial institution engaged in the
30 business of loaning money or the client is an affiliate of the state investment adviser
31 or federal covered adviser;

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

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

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

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

24 (A) compensation arrangements connected with advisory
25 services to a client if the arrangements are in addition to compensation from
26 the client for those services; and

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

31 (12) guaranteeing a client that a specific investment result will be

1 achieved with the advice given;

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

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

8 (15) taking action, directly or indirectly, with respect to securities or
9 funds in which a client has a beneficial interest if the state investment adviser, federal
10 covered adviser, or investment adviser representative has custody or possession of the
11 securities or funds and the adviser's action does not comply with the requirements of
12 17 C.F.R. 275.206(4) - 2 adopted under 15 U.S.C. 80b-1 - 80b-2 (Investment Advisers
13 Act of 1940), as that regulation exists on or after the effective date of this Act;

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

16 (A) the services to be provided;

17 (B) the term of the contract;

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

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

23 (E) that an assignment of the contract may not be made by a
24 state investment adviser without the consent of the other party to the contract;
25 in this subparagraph, "assignment" includes a direct or indirect transfer or
26 hypothecation of an investment advisory contract by the assignor or of a
27 controlling block of the assignor's outstanding voting securities by a security
28 holder of the assignor, but, if the adviser is a partnership, an assignment of an
29 investment advisory contract is not considered to result from the death or
30 withdrawal of a minority of the partners of the adviser having only a minority
31 interest in the business of the adviser, or from the admission to the adviser of

1 one or more partners who, after admission, will be only a minority of the
2 partners and will have only a minority interest in the business;

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

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

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

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

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

25 (22) acting as principal for the person's own account, knowingly selling
26 a security to or purchasing a security from a client, acting as broker for a person other
27 than the client, or knowingly effecting a sale or purchase of a security for the account
28 of the client without disclosing to the client in writing before the completion of the
29 transaction the capacity in which the person is acting and without obtaining the written
30 consent of the client to the transaction; the prohibitions in this paragraph do not apply
31 to a transaction with a customer of a broker-dealer if the broker-dealer is not acting

1 as a state investment adviser or federal covered adviser in relation to the transaction.

2 (b) The conduct listed in (a) of this section is not the exclusive conduct
3 prohibited by (a) of this section. Engaging in other similar conduct, including
4 nondisclosure, incomplete disclosure, or a deceptive practice, is considered unethical
5 practice or conduct under AS 45.55.060(a)(7). The federal statutory and regulatory
6 provisions referred to in this section apply to a state investment adviser and a
7 registered investment adviser representative of either a state investment adviser or a
8 federal covered adviser, regardless of whether the federal provisions limits their
9 application to state investment advisers or federal covered advisors subject to federal
10 registration. With respect to a federal covered adviser, the provisions of this section
11 apply only to the extent permitted under P.L. 104 - 290, 101 Stat. 3416 - 3440
12 (National Securities Markets Improvement Act of 1996) and only when the conduct
13 proscribed involves fraud or deceit within the meaning of AS 45.55.010(a) and
14 45.55.020(a).

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

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

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

29 (3) recommending to a customer the purchase, sale, or exchange of a
30 security without reasonable grounds to believe that the transaction or recommendation
31 is suitable for the customer based on reasonable inquiry concerning the customer's

- 1 investment objectives, financial situation, and needs, and other relevant information
2 known by the broker-dealer or agent;
- 3 (4) executing a transaction on behalf of a customer without
4 authorization to execute the transaction;
- 5 (5) exercising discretionary power in effecting a transaction for a
6 customer's account without first obtaining written discretionary authority from the
7 customer unless the discretionary power relates solely to the time or price for the
8 execution of orders;
- 9 (6) executing a transaction in a margin account without securing from
10 the customer a properly executed written margin agreement promptly after the initial
11 transaction in the account;
- 12 (7) failing to segregate a customer's free securities or securities held in
13 safekeeping;
- 14 (8) hypothecating a customer's securities without having a lien on the
15 securities unless the broker-dealer or agent receives from the customer a properly
16 executed written consent promptly after the initial transaction, except as permitted by
17 the rules of the United States Securities and Exchange Commission;
- 18 (9) entering into a transaction with or for a customer at a price not
19 reasonably related to the current market price of the securities or receiving an
20 unreasonable commission or profit;
- 21 (10) failing to furnish to a customer purchasing securities in a
22 registered offering a final or preliminary prospectus no later than the date of
23 confirmation of the transaction and, if the prospectus is preliminary, failing to furnish
24 a final prospectus within a reasonable time after the effective date of the offering;
- 25 (11) charging unreasonable or inequitable fees for services performed,
26 including fees for miscellaneous services, such as the collection of money due for
27 principal, dividends, or interest, the exchange or transfer of securities, appraisals,
28 safekeeping, the custody of securities, and other services related to the broker-dealer's
29 securities business;
- 30 (12) offering to buy from or sell to a person a security at a stated price
31 unless the broker-dealer is prepared to purchase or sell at that price and under the

1 conditions that are stated at the time of the offer to buy or sell;

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

6 (A) the broker-dealer;

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

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

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

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

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

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

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

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

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

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

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

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

17 (B) using supplementary material in connection with the offer
18 of a particular security if the information in the material is not consistent with
19 or adequately supported by the prospectus or is not filed as part of the
20 registration statement;

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

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

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

1 distribution as an underwriter or selling group member;

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

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

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

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

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

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

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

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

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

31 **Sec. 45.55.027. Additional fraudulent, dishonest, and unethical business**

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

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

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

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

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

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

25 (6) failing to disclose to a customer or prospective customer at the time
26 of the first contact with the customer or prospective customer the name of the
27 registered entity if different from the name under which the agent is doing business;

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

30 **Sec. 45.55.028. Practices of broker-dealers and agents considered**
31 **fraudulent or deceitful.** Acts and practices of broker-dealers or agents that are

1 considered fraudulent or deceitful acts, practices, or courses of business under
2 AS 45.55.010(a) include

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

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

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

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

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

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

26 (B) parking or withholding securities;

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

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

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

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

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

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

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

16 (B) the use of scripts designed to meet the customer's
17 objections;

18 (C) repeated phone calls;

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

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

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

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

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

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

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

31 (D) refers to the issuer's financial condition, anticipated

1 earnings, potential growth, or success;

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

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

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

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

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

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

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

19 (B) during the preceding 12 months, the person has not had
20 more than five clients who are residents of this state other than those specified
21 in (A) of this paragraph; in this subparagraph, the number of the person's
22 clients shall be determined under 17 C.F.R. 275.203(b)(3)-1 and 17 C.F.R.
23 275.222-2, as those regulations exist on or after the effective date of this Act.

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

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

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

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

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

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

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

18 (i) If an investment adviser representative terminates employment with a state
19 investment adviser or federal covered adviser, the state investment adviser or federal
20 covered adviser shall promptly notify the administrator.

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

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

27 **Sec. 45.55.035. Limited registration of Canadian broker-dealers and**
28 **agents.** (a) If a broker-dealer is registered under this section and its principal office
29 is located in a province or territory of Canada that provides at least equivalent
30 registration for a broker-dealer that is resident in the United States, a broker-dealer that
31 is resident in Canada and does not have an office or other physical presence in this

1 state may effect transactions in securities with or for or induce or attempt to induce
2 the purchase or sale of a security by a person from Canada who is

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

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

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

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

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

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

17 (3) is registered as a broker or dealer in good standing in the
18 jurisdiction from which the broker-dealer is effecting transactions into this state and
19 files evidence of the registration; and

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

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

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

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

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

31 (e) Registration under this section becomes effective on the 30th day after an

1 application is filed unless it is made effective earlier by the administrator or a denial
2 order is in effect and a proceeding is pending under AS 45.55.060.

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

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

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

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

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

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

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

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

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

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

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

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

30 (2) with or through

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

1 (B) other broker-dealers; or

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

7 (3) as otherwise permitted by this chapter.

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

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

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

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

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

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

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

1 INVESTMENT ADVISER, THE QUALIFICATIONS AND BUSINESS HISTORY OF
2 AN EMPLOYEE;]

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

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

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

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

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

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

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

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

26 (d) A registered broker-dealer, state investment adviser, or a federal covered
27 adviser who has filed notice under this chapter may file an application for registration
28 or notice filing, as applicable, of a successor for the unexpired portion of the year
29 regardless of whether the successor is then in existence. A broker-dealer may file a
30 request to transfer from a previous broker-dealer an agent's unexpired portion of the
31 registration if the provisions of AS 45.55.030(b) have been met. A state investment

1 adviser may file an application to transfer from a predecessor state investment adviser
2 or federal covered adviser the investment adviser representative's unexpired portion
3 of the registration. The department shall establish by regulation the filing fee for filing
4 applications under this subsection.

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

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

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

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

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

27 (g) The administrator may permit initial and renewal registration and notice
28 filings required for state investment advisers, federal covered advisers, investment
29 adviser representatives, broker-dealers, and agents under this chapter to be filed
30 with the United States Securities and Exchange Commission, the National Association
31 of Securities Dealers, or other similar authority [AUTHORITIES]. The administrator

1 may accept uniform securities examinations or other procedures designed to implement
2 a uniform national securities regulatory system or facilitate common practices and
3 procedures among the states, including participation in joint, coordinated securities
4 examinations with other states.

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

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

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

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

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

28 (a) Except as provided under 15 U.S.C. 78o (Securities Exchange Act of
29 1934), a [EVERY] registered broker-dealer [AND INVESTMENT ADVISER] shall
30 make and keep the accounts, correspondence, memoranda, papers, books, and other
31 records that the administrator requires [PRESCRIBES] by regulation or order. All

1 required records [SO REQUIRED] shall be preserved for three years unless the
2 administrator by regulation prescribes otherwise [FOR PARTICULAR TYPES OF
3 RECORDS].

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

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

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

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

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

18 (d) All the records referred to in [(a) OF] this section are subject at any time
19 to reasonable periodic, special, or other examinations by representatives of the
20 administrator, inside or outside this state, as the administrator considers necessary or
21 appropriate in the public interest or for the protection of investors. For the purpose
22 of avoiding unnecessary duplication of examinations, the administrator, insofar as the
23 administrator considers it practicable in administering this subsection, may cooperate
24 with the securities administrators of other states, the United States Securities and
25 Exchange Commission, and any national securities exchange or national securities
26 association registered under 15 U.S.C. 78a - 78III ([THE] Securities Exchange Act of
27 1934).

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

29 (e) Subject to 15 U.S.C. 80b-18a (Investment Advisers Act of 1940), an
30 investment adviser representative or state investment adviser shall make and keep the
31 accounts, correspondence, memoranda, papers, books, and other records that the

1 administrator requires by regulation or order. All required records shall be preserved
2 for three years unless the administrator by regulation prescribes otherwise.

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

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

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

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

23 (j) A state investment adviser that has its principal place of business in a state
24 other than this state and the investment adviser representatives of that state investment
25 adviser shall file with the administrator only the financial reports or other information
26 required by the state in which the state investment adviser maintains its principal place
27 of business if the state investment adviser is licensed in that state and is in compliance
28 with that state's reporting requirements.

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

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

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

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

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

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

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

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

26 (6) is the subject of an order entered within the past five years by the
27 securities administrator of another state or by the United States Securities and
28 Exchange Commission denying or revoking registration as a broker-dealer, agent, state
29 [OR] investment adviser, investment adviser representative, or the substantial
30 equivalent of those terms as defined in this chapter, or is the subject of an order of the
31 United States Securities and Exchange Commission suspending or expelling the

1 person from a national securities exchange or national securities association registered
2 under 15 U.S.C. 78a - 78lll ([THE] Securities Exchange Act of 1934), or is the
3 subject of a United States Postal Service [POST OFFICE] fraud order; but the
4 administrator may not

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

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

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

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

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

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

26 (11) is a person whose license renewal is denied under AS 14.43.148
27 or whose license issuance or renewal is denied under AS 25.27.244.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 (5) the administrator shall consider that a state [AN] investment adviser
30 is not necessarily qualified solely on the basis of experience as a broker-dealer or
31 agent; if [WHEN] the administrator finds that an applicant for initial or renewal

1 registration as a broker-dealer is not qualified as a state [AN] investment adviser, the
2 administrator may by order condition the applicant's registration as a broker-dealer
3 upon the applicant's not transacting business in this state as a state [AN] investment
4 adviser;

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

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

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

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

22 (g) Withdrawal from registration as a broker-dealer, agent, state investment
23 adviser, or investment adviser representative becomes effective 30 days after receipt
24 of an application to withdraw or within a shorter period of time as the administrator
25 may determine, unless a revocation or suspension proceeding is pending when the
26 application is filed or a proceeding to revoke or suspend or to impose conditions upon
27 the withdrawal is instituted within 30 days after the application is filed. If a proceeding
28 is pending or instituted, withdrawal becomes effective at the time and upon the
29 conditions as the administrator by order determines. If a [NO] proceeding is not
30 pending or instituted and withdrawal automatically becomes effective, the administrator
31 may nevertheless institute a revocation or suspension proceeding under (a)(2) of this

1 section within one year after withdrawal is effective and enter a revocation or
2 suspension order as of the last date on which registration was effective.

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

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

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

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

8 (3) it is a federal covered security.

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

10 **Sec. 45.55.075. Federal covered securities.** (a) Unless otherwise exempt
11 under AS 45.55.900, a security that is a federal covered security under 15 U.S.C.
12 77r(b)(2), (Securities Act of 1933), may only be offered for sale and sold into, from,
13 or within the state upon the administrator's receipt of

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

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

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

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

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

30 (d) With respect to a security that is a covered security under 15 U.S.C.
31 77r(b)(4)(D) (Securities Act of 1933), the administrator, by regulation or order, may

1 require the issuer to file a notice on United States Securities and Exchange
2 Commission's Form D and a consent to service of process signed by the issuer no later
3 than 15 days after the first sale of a covered security in this state and a fee established
4 by the administrator for a notice filing under this section.

5 (e) The administrator, by regulation or order, may require the filing of any
6 document filed with the United States Securities and Exchange Commission under 15
7 U.S.C. 77a - 77bbbb (Securities Act of 1933), with respect to a covered security under
8 15 U.S.C. 77r(b)(3) or (4) (Securities Act of 1933).

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

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

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

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

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

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

22 (1) one copy of the latest form of prospectus filed under 15 U.S.C. 77a
23 - 77bbbb ([THE] Securities Act of 1933);

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

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

31 (4) an undertaking to forward all future amendments to the federal

1 prospectus, other than an amendment which merely delays the effective date of the
2 registration statement, promptly and in any event not later than the first business day
3 after the day they are forwarded to or filed with the United States Securities and
4 Exchange Commission, whichever first occurs.

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

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

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

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

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

18 (c) A [EVERY] registration statement must specify

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

20 (2) the states in which a registration statement or similar document in
21 connection with the offering has been or is to be filed; and

22 (3) an adverse order, judgment, or decree entered in connection with
23 the offering by the regulatory authorities in each state or by any court or the United
24 States Securities and Exchange Commission.

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

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

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

31 (e) The administrator may by regulation or order [OTHERWISE] permit the

1 omission of an item of information or document from a registration statement or a
2 notice filing under AS 45.55.075.

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

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

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

28 (k) A notice filing under AS 45.55.075 [REGISTRATION STATEMENT]
29 relating to a security issued by a face-amount certificate company or a redeemable
30 security issued by an open-end management company or unit investment trust, as those
31 terms are defined in 15 U.S.C. 80a-1 - 80a-64 ([THE] Investment Company Act of

1 1940), may be amended after its effective date so as to increase the securities specified
2 as proposed to be offered if the notice filing was for a specified dollar amount of
3 securities to be offered in this state and if the total fees were based on the dollar
4 amount of securities to be offered. An amendment becomes effective when the
5 administrator so orders. A [EVERY] person filing [SUCH] an amendment shall pay
6 a [FILING] fee, calculated in the manner specified in (b) of this section, with respect
7 to the additional securities proposed to be offered.

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

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

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

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

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

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

23 (a) Neither the fact that an application for registration under AS 45.55.030 -
24 45.55.060, [OR] a registration statement under AS 45.55.070 - 45.55.120, or a notice
25 filing under AS 45.55.040(h) or 45.55.075 is filed nor the fact that a person or
26 security is effectively registered constitutes a finding by the administrator that a
27 document filed under this chapter is true, complete, and not misleading. Neither the
28 fact of filing nor the fact that an exemption or exception is available for a security or
29 a transaction means that the administrator has passed in any way upon the merits or
30 qualifications of, or recommended or given approval to, a person, security, or
31 transaction.

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

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

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

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

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

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

28 (5) a security issued in connection with an employee's stock purchase,
29 savings, pension, profit-sharing, or similar employee's benefit plan, or a security
30 issued by or an interest or participation in a church plan, company, or account
31 that is excluded from the definition of an investment company under 15 U.S.C.

1 80a-3(c)(14) (Investment Company Act of 1940):

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

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

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

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

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

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

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

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

29 (10) a security listed or approved for listing upon notice of issuance on
30 the New York Stock Exchange, the American Stock Exchange, the Chicago
31 [MIDWEST] Stock Exchange, the Pacific Coast Stock Exchange, the Philadelphia

1 Stock Exchange, the Chicago Board of Options Exchange, or another [ANY OTHER]
2 securities exchange designated by order of the administrator, or any security designated
3 or approved for designation upon notice of issuance as a national market system
4 security on the National Association of Securities Dealers Automated Quotation
5 National Market System or on any other quotation system designated by order of the
6 administrator, or any other security of the same issuer that is of senior or substantially
7 equal rank; a security called for by subscription rights or warrants so listed or
8 approved; or a warrant or right to purchase or subscribe to an entity described in this
9 paragraph [ANY OF THE FOREGOING];

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

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

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

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

30 (B) the security holders receive after the reorganization
31 substantially the same proportional interests in the holding company as

1 they held in the bank or savings association except for nominal changes in
2 shareholders' interests resulting from lawful elimination of fractional
3 interests and the exercise of dissenting shareholders' rights under state or
4 federal law:

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

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

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

12 (b) The following transactions are exempted from AS 45.55.070 and
13 45.55.075:

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

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

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

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

28 (5) sales by an issuer

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

1 in this state, if

2 (i) a [NO] commission or other remuneration is not paid
3 or given directly or indirectly for soliciting a prospective buyer in this
4 state;

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

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

12 (iii) [(iv)] offers are made without public solicitation or
13 advertisement; and

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

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

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

22 (ii) before a [ANY] sale, each prospective buyer is
23 furnished [ACCESS TO THE] information that is sufficient to make
24 an informed investment decision [WOULD BE PROVIDED TO A
25 PROSPECTIVE BUYER IN A REGISTRATION UNDER
26 AS 45.55.100], which information shall be furnished to the
27 administrator upon request; in this sub-subparagraph, "information
28 that is sufficient to make an informed investment decision" includes
29 a business plan, an income and expense statement, a balance sheet,
30 a statement of risks, and a disclosure of any significant negative
31 factors that may affect the outcome of the investment;

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

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

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

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

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

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

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

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

26 (i) the transfer of stock to the buyer is solely
27 incidental to the sale of the enterprise or business and its assets and
28 liabilities;

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

31 (iii) a legend is placed on the certificate or other

1 document evidencing ownership of the security, stating that the
2 security is not registered under this chapter and cannot be resold
3 without registration under this chapter or exemption from it;

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

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

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

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

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

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

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

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

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

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

31 (A) A RECOGNIZED SECURITIES MANUAL CONTAINS

1 THE NAMES OF THE ISSUER'S OFFICERS AND DIRECTORS, A
2 BALANCE SHEET OF THE ISSUER AS OF A DATE WITHIN 18
3 MONTHS, AND A PROFIT AND LOSS STATEMENT FOR EITHER THE
4 FISCAL YEAR PRECEDING THAT DATE OR THE MOST RECENT YEAR
5 OF OPERATIONS, OR

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

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

18 (11) [(12)] a transaction executed by a bona fide pledgee without
19 intending to evade [ANY PURPOSE OF EVADING] this chapter;

20 (12) [(13)] a transaction incident to a right of conversion or a statutory
21 or judicially approved reclassification, recapitalization, reorganization, quasi-
22 reorganization, stock split, reverse stock split, merger, consolidation, or sale of assets
23 [, IF]

24 (A) [NO COMMISSION OR OTHER REMUNERATION,
25 OTHER THAN A STANDBY COMMISSION IS PAID OR GIVEN
26 DIRECTLY OR INDIRECTLY FOR SOLICITING A SECURITY HOLDER
27 IN THIS STATE; AND

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

31 (13) [(14)] a stock dividend, regardless of whether the corporation

1 distributing the dividend is the issuer of the stock [OR NOT], if nothing of value is
2 given by stockholders for the dividend other than the surrender of a right to a cash or
3 property dividend when each stockholder may elect to take the dividend in cash or
4 property or in stock;

5 (14) [(15)] an act incident to a statutory [CLASS] vote by security
6 holders [STOCKHOLDERS, UNDER THE CERTIFICATE OF INCORPORATION
7 OR THE APPLICABLE CORPORATION STATUTE,] on a merger, consolidation,
8 reclassification of securities, or sale of assets in consideration of the issuance of
9 securities of another issuer [CORPORATION];

10 (15) [(16)] the offer or sale by a registered broker-dealer, acting either
11 as principal or agent, of securities previously sold and distributed to the public if the
12 securities

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

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

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

26 (16) [(17)] offers or sales of certificates or interest or participation in
27 oil, gas, or mining rights, titles, or leases, or in payments out of production under such
28 rights, titles, or leases, if the purchasers

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

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

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

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

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

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

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

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

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

31 (iii) an audited balance sheet of the issuer as of a

1 date within 18 months or, in the case of a reorganization or merger
2 where parties to the reorganization or merger had that audited
3 balance sheet, a pro forma balance sheet; and

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

10 (E) the issuer of the security has a class of equity securities
11 listed on a national securities exchange registered under 15 U.S.C. 78a -
12 78III (Securities Exchange Act of 1934) or designated for trading on the
13 National Association of Securities Dealers Automated Quotation System,
14 unless the issuer of the security

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

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

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

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

27 (A) sales of securities are made only to persons who are or
28 the issuer reasonably believes are accredited investors as defined in
29 17 C.F.R. 230.501(a), as that regulation exists on or after the effective date
30 of this Act;

31 (B) the issuer reasonably believes that all purchasers are

1 purchasing for investment and not with the view to or for sale in
2 connection with a distribution of the security; a resale of a security sold in
3 reliance on this exemption within 12 months of sale is presumed to be with
4 a view to distribution and not for investment, except a resale under a
5 registration statement under AS 45.55.070 - 45.55.120 or to an accredited
6 investor under an exemption available under this chapter;

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

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

18 (ii) within the last five years has been convicted of a
19 criminal offense in connection with the offer, purchase, or sale of
20 a security, of a criminal offense involving fraud or deceit, or of a
21 felony;

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

26 (iv) is currently subject to an order, judgment, or
27 decree of a court of competent jurisdiction entered within the last
28 five years, temporarily, preliminarily, or permanently restraining
29 or enjoining the person from engaging in or continuing to engage
30 in conduct or a practice involving fraud or deceit in connection
31 with the purchase or sale of a security;

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

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

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

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

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

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

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

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

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

26 (v) the name, address, and telephone number of the
27 person to contact for additional information;

28 (vi) a statement that sales will be made only to
29 accredited investors;

30 (vii) a statement that money or other consideration
31 is not being solicited or will not be accepted by way of this general

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announcement; and

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

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

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

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

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

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

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

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

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

1 members.

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

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

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

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

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

14 (h) For any security or transaction or any type of security or transaction, the
15 administrator may by order, waive, withdraw, or modify any of the requirements or
16 conditions of (b)(5) of this section.

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

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

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

22 **Sec. 45.55.915. Reimbursement of expenses incident to examination or**
23 **investigation.** (a) **The administrator may require an [AN] issuer, broker-dealer,**
24 **agent, investment adviser representative, federal covered adviser, or state**
25 **investment adviser to [SHALL] reimburse the administrator for actual travel expenses**
26 **and per diem incurred in connection with an examination or investigation [INCIDENT**
27 **TO A REGISTRATION] under this chapter.**

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

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

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

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

14 (e) After an order issued by the administrator under (b) or (c) of this section
15 becomes final and all rights of appeal are exhausted, the administrator may petition the
16 superior court to enter a judgment against a person who is a respondent in the order
17 for the amount of the civil penalty levied against the person. Subject to AS 44.62.570,
18 the filing of the petition for a judgment does not reopen the final order to further
19 substantive review unless the court orders otherwise. A judgment entered under this
20 subsection may be executed on and levied under in the manner provided in AS 09.35.

21 * Sec. 50. AS 45.55.925(a) is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 (a) Unless the persons are exempt elsewhere in this chapter, AS 45.55.010,
16 45.55.025, 45.55.027, 45.55.028, 45.55.030(a), 45.55.035, 45.55.070, 45.55.075,
17 45.55.170, and 45.55.930 apply to persons who sell or offer to sell when an offer to

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

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

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

21 (b) Unless the persons are exempt elsewhere in this chapter, AS 45.55.010,
22 45.55.025, 45.55.027, 45.55.028, 45.55.030(a), 45.55.035, and 45.55.170 apply to
23 persons who buy or offer to buy when an offer to

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

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

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

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

29 (1) originates from this state;

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

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

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

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

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

13 (f) AS 45.55.020, 45.55.023, 45.55.030(c), 45.55.030(e), 45.55.040(h), and
14 45.55.170, so far as state investment advisers, federal covered advisers, and
15 investment adviser representatives are concerned, apply when any act instrumental
16 in effecting prohibited conduct is done in this state, regardless of whether [OR NOT]
17 either party is then present in this state.

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

19 (g) An [EVERY] applicant for registration under this chapter, an [AND
20 EVERY] issuer that proposes to offer a security in this state through a person acting
21 on an agency basis in the common law sense, and a person making a notice filing
22 under this chapter shall file with the administrator, in the form that the administrator
23 prescribes by regulation, an irrevocable consent appointing the administrator or a
24 successor in office to be the applicant's or issuer's attorney to receive service of lawful
25 process in a civil suit, an action, or a proceeding against the applicant or issuer or a
26 successor executor or administrator that [WHICH] arises under this chapter or a
27 regulation or order under this chapter after the consent has been filed [,] with the same
28 force and validity as if served personally on the person filing the consent. A person
29 who has filed a [FILES THE] consent in connection with a previous registration or
30 notice filing need not file another. Service may be made by leaving a copy of the
31 process in the office of the administrator, but it is not effective unless

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

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

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

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

15 (A) an issuer in effecting transactions

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

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

19 (iii) in a covered security as described in 15 U.S.C.
20 77r(b)(3) and (4)(D) (Securities Act of 1933); or

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

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

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

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

30 (A) an agent;

31 (B) an issuer;

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

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

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

6 (ii) other broker-dealers; or

7 (iii) banks, savings institutions, trust companies,
8 insurance companies, investment companies as defined in 15 U.S.C.
9 80a-1 - 80a-64 ([THE] Investment Company Act of 1940), pension or
10 profit-sharing trusts, or other financial institutions or institutional
11 buyers, whether acting for themselves or as trustees; or

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

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

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

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

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

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

30 (12) "security" means a note; stock; treasury stock; bond; debenture;
31 evidence of indebtedness; certificate of interest or participation in any profit-sharing

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

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

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

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

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

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

1 1850, as that act exists on or after the effective date of this Act;

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

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

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

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

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

23 (23) "investment adviser representative"

24 (A) means a natural person who

25 (i) makes a recommendation or otherwise renders advice
26 regarding securities; manages accounts or portfolios of clients;
27 determines which recommendation or advice regarding securities should
28 be given; solicits, offers, or negotiates for the sale of or sells advisory
29 services; or supervises employees who perform an activity described in
30 this sub-subparagraph; and

31 (ii) is a supervised person of a state investment adviser

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

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

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

16 (24) "Investment Advisers Act of 1940" means 15 U.S.C. 80b-1 - 80b-
17 21, as that act exists on or after the effective date of this Act;

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

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

23 (27) "Investment Company Act of 1940" means 15 U.S.C. 80a-1 - 80a-
24 64, as that act exists on or after the effective date of this Act;

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

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

30 (30) "notice filing" means a filing made under AS 45.55.040(h) or
31 45.55.075 unless the context indicates otherwise;

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

3 (A) an office at which the state investment adviser, federal
4 covered adviser, or investment adviser representative regularly provides
5 advisory services, solicits, meets with, or otherwise communicates with clients;
6 and

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

11 (32) "principal place of business" of a state investment adviser,
12 investment adviser representative, or federal covered adviser means the executive
13 office of the state investment adviser, investment adviser representative, or federal
14 covered adviser from which the officers, partners, or managers of the state investment
15 adviser, investment adviser representative, or federal covered adviser direct, control,
16 and coordinate the activities of the state investment adviser, investment adviser
17 representative, or federal covered adviser;

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

20 (34) "securities business" means a business that provides the services
21 provided by

22 (A) state investment advisers, federal covered advisers, or
23 investment adviser representatives; or

24 (B) broker-dealers, issuers, or agents of broker-dealers or
25 issuers;

26 (35) "state investment adviser"

27 (A) means

28 (i) a person who, for compensation, engages in the
29 business of advising others, either directly or through publications or
30 writings, as to the value of securities or as to the advisability of
31 investing in, purchasing, or selling securities, or who, for compensation

1 and as a part of a regular business, issues or promulgates analyses or
2 reports concerning securities, or who, for compensation, engages in this
3 state in the business of managing an investment or trading account in
4 securities for other persons;

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

10 (B) does not include

11 (i) an investment adviser representative;

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

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

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

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

27 (vi) a person that is a federal covered adviser;

28 (vii) a person whose sole clients are the person's spouse,
29 parents, children, or siblings by blood or adoption, and who does not
30 hold out to provide the services described in (A)(i) of this paragraph to
31 the general public;

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(viii) other persons not within the intent of this paragraph whom the administrator may designate by regulation or order;
(36) "substantial portion of the business" means that more than 10 percent of the clients of a supervised person during the preceding 12 months are clients who are natural persons to whom the supervised person is providing the services described in (23)(A)(i) of this section;

(37) "supervised person"

(A) means

(i) a partner, an officer, a director, or another person occupying a similar status or performing similar functions, an employee of a state investment adviser or federal covered adviser, or another person who provides services described in (23)(A)(i) of this section to clients on behalf of the state investment adviser or federal covered adviser if the person is subject to the supervision and control of the state investment adviser or federal covered adviser;

(ii) a third-party natural person employed primarily to solicit, offer, or negotiate for the sale of or to sell the services described in (23)(A)(i) of this section for a state investment adviser or federal covered adviser, even if the person is not subject to the supervision or control of the state investment adviser or federal covered adviser;

(B) does not include a person who

(i) does not on a regular basis solicit, meet with, or otherwise communicate with clients of a state investment adviser or federal covered adviser as a normal and ordinary part of the duties of the person; or

(ii) provides the services described in (23)(A)(i) of this section only by means of written material or oral statements that do not claim to meet the objectives or needs of specific individuals or accounts.

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

Sec. 45.55.995. Short title. This chapter may be cited as the Alaska Securities

1 Act [OF 1959].

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

3 * Sec. 72. TRANSITION: REGULATIONS. Notwithstanding sec. 76 of this Act, the
4 Department of Commerce and Economic Development may immediately proceed to adopt
5 regulations necessary to implement the changes made by this Act. The regulations take effect
6 under AS 44.62 (Administrative Procedure Act), but not before the effective date of secs. 1 -
7 2 and 4 - 71 of this Act.

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

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

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

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