

**HB**

**194**

<TARGET><BILL>HB 194</BILL><SUBJECT>HB  
194</SUBJECT><COMM>HFIN29</COMM></TARGET>

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**HOUSE COMMITTEE REPORT**

(11)

Date Referred to Committee: April 6, 2016

FURTHER REFERRALS:

Date of Committee Action: 4.14.2016

The FINANCE Committee considered:

HB 194

**HOUSE BILL NO. 194**

"An Act repealing and reenacting the Alaska Securities Act, including provisions relating to exempt securities and transactions; relating to registration of securities, firms, and agents that offer or sell securities and investment advice; relating to administrative, civil, and criminal enforcement provisions, including restitution and civil penalties for violations; allowing certain civil penalties to be used for an investor training fund; establishing increased civil penalties for harming older Alaskans; retaining provisions concerning corporations organized under the Alaska Native Claims Settlement Act; amending Rules 4, 5, 54, 65, and 90, Alaska Rules of Civil Procedure; and providing for an effective date."

**HB 194 AK SECURITIES ACT; PENALTIES; CRT. RULES**

Recommends it be replaced with  HCS or  CS for HB 194 (FIN)  
 For Senate Bills with new title:  Technical Title  New Title: HCR \_\_\_\_\_  Same Title  New Title

- attach amendments
- add new referral to \_\_\_\_\_ Committee
- Letter of Intent \_\_\_\_\_ Committee

- List of Abbrev for Depts.:
- ADM
  - AJS
  - CED
  - COR
  - EED
  - DEC
  - DFG
  - GOV
  - DHS
  - LWF
  - LAW
  - LEG
  - MVA
  - DNR
  - DPS
  - REV
  - DOT
  - UA

<b>NEW FISCAL NOTES</b>				
*FN# is assigned by Chief Clerk's Office				
*FN#	List by Dept(s):	Fiscal	Indet.	Zero

<b>PREVIOUS FISCAL NOTES</b>				
FN#	List by Dept(s):	Fiscal	Indet.	Zero
<u>2</u>	<u>ADM</u>			<u>X</u>
<u>3</u>	<u>CED</u>			<u>X</u>

<u>Signing with recommendations</u>	Printed Last Name	DP	DNP	NR	AM
<u>Sam Saddle</u>	SADLER	<u>X</u>			
<u>[Signature]</u>	Kangas			<u>X</u>	
<u>[Signature]</u>	Gottis	<u>X</u>			
<u>[Signature]</u>	Preitt			<u>X</u>	
<u>Jammie Wilson</u>	Wilson			<u>X</u>	
<u>[Signature]</u>	EWINGBERG			<u>X</u>	
<u>[Signature]</u>	Edgmon			<u>X</u>	
<u>[Signature]</u>	Munoz	<u>✓</u>			
Chair: <u>[Signature]</u>	Gro				<u>✓</u>
Chair: <u>[Signature]</u>	Thompson	<u>X</u>			

# Fiscal Note

State of Alaska  
2016 Legislative Session

Bill Version:	CSHB 194(L&C)
Fiscal Note Number:	2
(H) Publish Date:	3/24/2016

Identifier: HB194-DOA-PDA-02-05-16  
 Title: AK SECURITIES ACT; PENALTIES; CRT. RULES  
 Sponsor: RLS BY REQUEST OF THE GOVERNOR  
 Requester: House Labor & Commerce

Department: Department of Administration  
 Appropriation: Legal and Advocacy Services  
 Allocation: Public Defender Agency  
 OMB Component Number: 1631

**Expenditures/Revenues**

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2017 Appropriation Requested	Included in Governor's FY2017 Request	Out-Year Cost Estimates					
			FY 2017	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
<b>OPERATING EXPENDITURES</b>								
Personal Services								
Travel								
Services								
Commodities								
Capital Outlay								
Grants & Benefits								
Miscellaneous								
<b>Total Operating</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**Fund Source (Operating Only)**

None								
<b>Total</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**Positions**

Full-time								
Part-time								
Temporary								

<b>Change in Revenues</b>								
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**Estimated SUPPLEMENTAL (FY2016) cost:** 0.0 *(separate supplemental appropriation required)*  
*(discuss reasons and fund source(s) in analysis section)*

**Estimated CAPITAL (FY2017) cost:** 0.0 *(separate capital appropriation required)*  
*(discuss reasons and fund source(s) in analysis section)*

**ASSOCIATED REGULATIONS**

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No.  
 If yes, by what date are the regulations to be adopted, amended or repealed? No.

**Why this fiscal note differs from previous version:**

Not applicable, initial version.

Prepared By: <u>Quinlan Steiner</u>	Phone: (907)334-4414
Division: <u>Public Defender Agency</u>	Date: 02/05/2016 12:00 AM
Approved By: <u>Sheldon Fisher, Commissioner</u>	Date: 02/05/16
Agency: <u>Administration</u>	

FISCAL NOTE ANALYSIS

STATE OF ALASKA  
2016 LEGISLATIVE SESSION

**Analysis**

This bill creates a new chapter titled the Alaska Securities Act. The act makes changes to current law regarding securities, and investor protections. The act creates new crimes and increases some criminal penalties for violations of certain provisions of the act.

The agency does not anticipate a significant fiscal impact from this legislation. Therefore, the agency submits a zero fiscal note.

# Fiscal Note

State of Alaska  
2016 Legislative Session

Bill Version:	CSHB 194(L&C)
Fiscal Note Number:	3
(H) Publish Date:	3/24/2016

Identifier: HB194-DCCED-DBS-01-25-16  
 Title: AK SECURITIES ACT; PENALTIES; CRT. RULES  
 Sponsor: RLS BY REQUEST OF THE GOVERNOR  
 Requester: (H) Labor & Commerce

Department: Department of Commerce, Community and  
Economic Development  
 Appropriation: Banking and Securities  
 Allocation: Banking and Securities  
 OMB Component Number: 2808

**Expenditures/Revenues**

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2017 Appropriation Requested	Included in Governor's FY2017 Request	Out-Year Cost Estimates					
			FY 2018	FY 2019	FY 2020	FY 2021	FY 2022	
<b>OPERATING EXPENDITURES</b>								
Personal Services								
Travel								
Services								
Commodities								
Capital Outlay								
Grants & Benefits								
Miscellaneous								
<b>Total Operating</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**Fund Source (Operating Only)**

None								
<b>Total</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**Positions**

Full-time								
Part-time								
Temporary								

<b>Change in Revenues</b>		***	***	***	***	***	***	***
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**Estimated SUPPLEMENTAL (FY2016) cost:** 0.0 (separate supplemental appropriation required)  
 (discuss reasons and fund source(s) in analysis section)

**Estimated CAPITAL (FY2017) cost:** 0.0 (separate capital appropriation required)  
 (discuss reasons and fund source(s) in analysis section)

**ASSOCIATED REGULATIONS**

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? Yes  
 If yes, by what date are the regulations to be adopted, amended or repealed? 07/15/15

**Why this fiscal note differs from previous version:**

Prepared By: Kevin Anselm, Director  
 Division: Banking and Securities  
 Approved By: Catherine Reardon, Director  
 Agency: Division of Administrative Services

Phone: (907)269-4157  
 Date: 01/20/2016 04:50 PM  
 Date: 01/25/16

## FISCAL NOTE ANALYSIS

STATE OF ALASKA  
2016 LEGISLATIVE SESSION

**Analysis**

This bill modifies the Alaska Statutes to create a new chapter, AS 45.56, as a new Alaska Securities Act. Proposed updates modernize and streamline outdated securities laws to reflect industry changes while enhancing investor protections and remedies. The division anticipates filing new regulations as soon as practical to concur with a September 1, 2016 effective date.

The Division of Banking and Securities (DBS) estimates the fiscal impact of this legislation as zero, and the impact on revenue to be indeterminate. Any negative fiscal impact from eliminated filings is expected to be minimal and may be offset by small revenue increases from new filings. Estimating additional revenue from civil penalties is indeterminate since the division cannot predict the outcome of enforcement cases with any certainty.

**CS FOR HOUSE BILL NO. 194(FIN)**

**IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-NINTH LEGISLATURE - SECOND SESSION**

**BY THE HOUSE FINANCE COMMITTEE**

**Offered:**

**Referred:**

**Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to securities, registration, exempt securities, exempt transactions,**  
2 **broker-dealers, agents, investment advice, investment advisers, investment adviser**  
3 **representatives, federal covered securities, federal covered investment advisers, viatical**  
4 **settlement interests, small intrastate security offerings, Canadian broker-dealers, and**  
5 **Canadian agents; relating to administrative, civil, and criminal enforcement provisions,**  
6 **including restitution and civil penalties for violations; relating to an investor training**  
7 **fund; establishing increased civil penalties for harming older persons and vulnerable**  
8 **adults; relating to corporations organized under the Alaska Native Claims Settlement**  
9 **Act; amending Rules 4, 5, 54, 65, and 90, Alaska Rules of Civil Procedure, and Rule 602,**  
10 **Alaska Rules of Appellate Procedure; and providing for an effective date."**

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

12 **\* Section 1. AS 06.05.340 is amended to read:**

1           **Sec. 06.05.340. Certain remuneration prohibited.** A bank may not pay  
 2 directly or indirectly a fee, commission, or bonus of any kind for its promotion and  
 3 organization or for securing a subscription to the original capital or to any increase in  
 4 capital. However, this section does not prohibit the payment of reasonable  
 5 compensation for legal, accounting, and econometric services, or payments to a  
 6 securities broker-dealer registered under AS 45.56 [AS 45.55] for services that have  
 7 been performed in connection with the sale of bank securities.

8 \* **Sec. 2.** AS 06.26.020(a) is amended to read:

9           (a) Notwithstanding any other provision of this chapter, a person does not act  
 10 as a fiduciary under this chapter if the person

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

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

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

21           (4) engages in securities business activity [OR INVESTMENT  
 22 ADVISORY BUSINESS ACTIVITY] as a registered broker-dealer, a broker-dealer  
 23 agent, an [A STATE] investment adviser, or an investment adviser representative, or  
 24 as a federal covered investment adviser who has made a notice filing under  
 25 AS 45.56.445(c) [AS 45.55.040(h)], the person is acting within the scope of the  
 26 person's registration or notice filing, and the activity is regulated by the department  
 27 under AS 45.56 [AS 45.55] or by the United States Securities and Exchange  
 28 Commission; in this paragraph, "agent," "broker-dealer," "federal covered investment  
 29 adviser," "investment adviser," "investment adviser representative," and  
 30 ["INVESTMENT ADVISORY BUSINESS,"] "securities business [,]" [AND "STATE  
 31 INVESTMENT ADVISER"] have the meanings given in AS 45.56.900

1 [AS 45.55.990];

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

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

10 (A) "escrow transaction" has the meaning given in  
11 AS 34.80.090;

12 (B) "title insurance company" has the meaning given in  
13 AS 21.66.480;

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

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

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

19 (9) has a certified public accountant license issued under AS 08.04.105  
20 or 08.04.195, the person is acting within the scope of the license, and the person and  
21 any accounting firm of the person are not trustees of more trusts than the number  
22 established for the person and accounting firm by the department by regulation or  
23 order; in this paragraph, "accounting firm" means a partnership, a professional  
24 corporation organized under AS 10.45, or another association organized for the  
25 practice of public accounting and in which the person practices public accounting;

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

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

31 (12) holds money or other assets as a homeowners' association or

1 similar organization to pay maintenance and other related costs for commonly owned  
 2 property; in this paragraph, "homeowners' association" includes an association of  
 3 apartment owners under AS 34.07.450 and a unit owners' association or master  
 4 association under AS 34.08.990;

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

9 (14) acts as a conservator if the person is appointed by a court of this  
 10 or another state or is qualified to act as a conservator under AS 13.26.320;

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

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

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

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

24 \* **Sec. 3.** AS 06.26.990(a)(21) is amended to read:

25 (21) "issuer" has the meaning given in AS 45.56.900 [AS 45.55.990];

26 \* **Sec. 4.** AS 12.62.400(a)(17) is amended to read:

27 (17) registration as a broker-dealer, agent, investment adviser  
 28 representative, or [STATE] investment adviser under AS 45.56.405 - 45.56.440  
 29 [AS 45.55.030 - 45.55.060].

30 \* **Sec. 5.** AS 14.43.148(h)(1) is amended to read:

31 (1) "license"

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

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

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

9 (iii) teacher certificate under AS 14.20;

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

12 (v) asbestos worker certification under AS 18.31;

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

14 (vii) certificate of fitness under AS 18.62;

15 (viii) hazardous painting certification under AS 18.63;

16 (ix) certification as a municipal correctional,  
 17 correctional, probation, or parole officer under AS 18.65.245;

18 (x) security guard license under AS 18.65.400 -  
 19 18.65.490;

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

21 (xii) employment agency permit under AS 23.15.330 -  
 22 23.15.520;

23 (xiii) registration as a broker-dealer, an agent, an [A  
 24 STATE] investment adviser, or an investment adviser representative  
 25 under AS 45.56.405 - 45.56.440 [AS 45.55.030];

26 (xiv) certification as a pesticide applicator under  
 27 AS 46.03.320;

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

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

1 (B) does not include

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

4 (ii) a vessel license issued under AS 16.05.490 or  
5 16.05.530;

6 (iii) [REPEALED

7 (iv)] a business license issued under AS 43.70;

8 (iv) [(v)] an entry permit or interim-use permit issued  
9 under AS 16.43; or

10 (v) [(vi)] a driver's license issued under AS 28.15;

11 \* **Sec. 6.** AS 21.96.110(a) is amended to read:

12 (a) The director shall regulate the transaction of viatical settlement contracts  
13 for the protection of viators, insureds, and insurers. The authority of the director under  
14 this subsection extends to the regulation of transactions between a viator and a viatical  
15 settlement provider and between a viator and a person acting as an agent in viaticating  
16 a life insurance policy, while the authority of the commissioner extends to the  
17 regulation of viatical settlement investments as provided under AS 45.56  
18 [AS 45.55.905(c)].

19 \* **Sec. 7.** AS 25.27.244(s)(2) is amended to read:

20 (2) "license"

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

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

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

29 (iii) teacher certificate under AS 14.20;

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

- 1 (v) asbestos worker certification under AS 18.31;  
 2 (vi) boiler operator's license under AS 18.60.395;  
 3 (vii) certificate of fitness under AS 18.62;  
 4 (viii) hazardous painting certification under AS 18.63;  
 5 (ix) security guard license under AS 18.65.400 -  
 6 18.65.490;  
 7 (x) license relating to insurance under AS 21.27;  
 8 (xi) employment agency permit under AS 23.15.330 -  
 9 23.15.520;  
 10 (xii) registration as a broker-dealer, an agent, an [A  
 11 STATE] investment adviser, or an investment adviser representative  
 12 under AS 45.56.405 - 45.56.440 [AS 45.55.030];  
 13 (xiii) certification as a pesticide applicator under  
 14 AS 46.03.320;  
 15 (xiv) certification as a storage tank worker or contractor  
 16 under AS 46.03.375;  
 17 (xv) certification as a water and wastewater works  
 18 operator under AS 46.30;  
 19 (xvi) commercial crewmember fishing license under  
 20 AS 16.05.480 other than an entry permit or interim-use permit under  
 21 AS 16.43;  
 22 (xvii) fish transporter permit under AS 16.05.671;  
 23 [(xviii) REPEALED  
 24 (xix) REPEALED]  
 25 (B) does not include  
 26 (i) a vessel license issued under AS 16.05.490 or  
 27 16.05.530;  
 28 (ii) [REPEALED  
 29 (iii)] a business license issued under AS 43.70;  
 30 (iii) [(iv)] an entry permit or interim-use permit issued  
 31 under AS 16.43; or

1 (iv) a driver's license [(v)] issued under AS 28.15;

2 \* **Sec. 8.** AS 34.08.570 is amended to read:

3 **Sec. 34.08.570. Common interest community securities.** If an interest in a  
4 common interest community is currently registered with the Securities and Exchange  
5 Commission of the United States, a declarant satisfies each requirement relating to the  
6 preparation of a public offering statement of this chapter if the declarant delivers to the  
7 purchaser a copy of the public offering statement filed with the Securities and  
8 Exchange Commission. An interest in a common interest community is not subject to  
9 the registration requirements of AS 45.56 [AS 45.55].

10 \* **Sec. 9.** AS 37.23.010(c) is amended to read:

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

14 \* **Sec. 10.** AS 37.23.050 is amended to read:

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

18 (1) a securities broker-dealer registered under AS 45.56.405  
19 [AS 45.55.030] and under 15 U.S.C. 78o (Securities Exchange Act of 1934);

20 (2) an [A STATE] investment adviser registered under AS 45.56.435  
21 [AS 45.55.030] or a federal covered **investment** adviser that has made a notice filing  
22 under AS 45.56.445(c) [AS 45.55.040(h)];

23 (3) the Department of Revenue; or

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

28 \* **Sec. 11.** AS 40.25.120(a) is amended to read:

29 (a) Every person has a right to inspect a public record in the state, including  
30 public records in recorders' offices, except

31 (1) records of vital statistics and adoption proceedings, which shall be

1 treated in the manner required by AS 18.50;

2 (2) records pertaining to juveniles unless disclosure is authorized by  
3 law;

4 (3) medical and related public health records;

5 (4) records required to be kept confidential by a federal law or  
6 regulation or by state law;

7 (5) to the extent the records are required to be kept confidential under  
8 20 U.S.C. 1232g and the regulations adopted under 20 U.S.C. 1232g in order to secure  
9 or retain federal assistance;

10 (6) records or information compiled for law enforcement purposes, but  
11 only to the extent that the production of the law enforcement records or information

12 (A) could reasonably be expected to interfere with enforcement  
13 proceedings;

14 (B) would deprive a person of a right to a fair trial or an  
15 impartial adjudication;

16 (C) could reasonably be expected to constitute an unwarranted  
17 invasion of the personal privacy of a suspect, defendant, victim, or witness;

18 (D) could reasonably be expected to disclose the identity of a  
19 confidential source;

20 (E) would disclose confidential techniques and procedures for  
21 law enforcement investigations or prosecutions;

22 (F) would disclose guidelines for law enforcement  
23 investigations or prosecutions if the disclosure could reasonably be expected to  
24 risk circumvention of the law; or

25 (G) could reasonably be expected to endanger the life or  
26 physical safety of an individual;

27 (7) names, addresses, and other information identifying a person as a  
28 participant in the Alaska Higher Education Savings Trust under AS 14.40.802 or the  
29 advance college tuition savings program under AS 14.40.803 - 14.40.817;

30 (8) public records containing information that would disclose or might  
31 lead to the disclosure of a component in the process used to execute or adopt an

1 electronic signature if the disclosure would or might cause the electronic signature to  
2 cease being under the sole control of the person using it;

3 (9) reports submitted under AS 05.25.030 concerning certain  
4 collisions, accidents, or other casualties involving boats;

5 (10) records or information pertaining to a plan, program, or  
6 procedures for establishing, maintaining, or restoring security in the state, or to a  
7 detailed description or evaluation of systems, facilities, or infrastructure in the state,  
8 but only to the extent that the production of the records or information

9 (A) could reasonably be expected to interfere with the  
10 implementation or enforcement of the security plan, program, or procedures;

11 (B) would disclose confidential guidelines for investigations or  
12 enforcement and the disclosure could reasonably be expected to risk  
13 circumvention of the law; or

14 (C) could reasonably be expected to endanger the life or  
15 physical safety of an individual or to present a real and substantial risk to the  
16 public health and welfare;

17 (11) the written notification regarding a proposed regulation provided  
18 under AS 24.20.105 to the Department of Law and the affected state agency and  
19 communications between the Legislative Affairs Agency, the Department of Law, and  
20 the affected state agency under AS 24.20.105;

21 (12) records that are

22 (A) proprietary, privileged, or a trade secret in accordance with  
23 AS 43.90.150 or 43.90.220(e);

24 (B) applications that are received under AS 43.90 until notice is  
25 published under AS 43.90.160;

26 (13) information of the Alaska Gasline Development Corporation  
27 created under AS 31.25.010 or a subsidiary of the Alaska Gasline Development  
28 Corporation that is confidential by law or under a valid confidentiality agreement;

29 (14) information under AS 38.05.020(b)(11) that is subject to a  
30 confidentiality agreement under AS 38.05.020(b)(12);

31 **(15) records that are**

1 (A) investigative files under AS 45.55.910; or

2 (B) confidential under AS 45.56.615.

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

4 (a) This chapter does not apply to

5 (1) a fisheries business;

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

7 (3) an insurance business;

8 (4) a mining business;

9 (5) supplying services as an employee;

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

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

13 (A) "investment club" means a group of individuals,  
14 incorporated or otherwise organized, that engages primarily in investing in  
15 securities, that does not sell investment services to another person, that does  
16 not advertise, and the primary purpose of which is educational;

17 (B) "security" has the meaning given in AS 45.56.900  
18 [AS 45.55.990].

19 \* **Sec. 13.** AS 44.64.030(a)(39) is repealed and reenacted to read:

20 (39) AS 45.56 (Alaska Securities Act);

21 \* **Sec. 14.** AS 44.64.030(a) is amended by adding a new paragraph to read:

22 (51) AS 45.55 (Alaska Native Claims Settlement Act Corporations  
23 Proxy Solicitations and Initial Issuance of Stock).

24 \* **Sec. 15.** AS 45.55.138 is amended to read:

25 **Sec. 45.55.138. Application to Alaska Native Claims Settlement Act**  
26 **corporations.** The initial issue of stock of a corporation organized under Alaska law  
27 **under** [PURSUANT TO] 43 U.S.C. 1601 et seq. (Alaska Native Claims Settlement  
28 Act) is not a sale of a security under AS 45.56.105 [AS 45.55.070] and 45.56.900(29)  
29 [45.55.990(28)].

30 \* **Sec. 16.** AS 45.55.139 is amended to read:

31 **Sec. 45.55.139. Reports of corporations.** A copy of all annual reports,

1 proxies, consents or authorizations, proxy statements, and other materials relating to  
2 proxy solicitations distributed, published, or made available by any person to at least  
3 30 Alaska resident shareholders of a corporation organized under Alaska law under  
4 43 U.S.C. 1601 et. seq. (Alaska Native Claims Settlement Act) that has total assets  
5 exceeding \$1,000,000 and a class of equity security held of record by 500 or more  
6 persons [AND WHICH IS EXEMPTED FROM THE REGISTRATION  
7 REQUIREMENTS OF AS 45.55.070 BY AS 45.55.138,] shall be filed with the  
8 administrator concurrently with its distribution to shareholders.

9 \* **Sec. 17.** AS 45.55.920(a) is amended to read:

10 (a) If it appears to the administrator that a person has engaged or is about to  
11 engage in an act or practice in violation of a provision of this chapter or regulation or  
12 order under this chapter, the administrator may

13 (1) in the public interest [OR FOR THE PROTECTION OF  
14 INVESTORS,] issue an order

15 (A) directing the person to cease and desist from continuing the  
16 act or practice;

17 (B) directing the person, for a period not to exceed three years,  
18 to file the annual reports, proxies, consents or authorizations, proxy statements,  
19 or other materials relating to proxy solicitations required under AS 45.55.139  
20 with the administrator for examination and review 10 working days before a  
21 distribution to shareholders; and

22 (C) voiding the proxies obtained by a person required to file  
23 under AS 45.55.139, including their future exercise or actions resulting from  
24 their past exercise, if the proxies were solicited by means of an untrue or  
25 misleading statement prohibited under AS 45.55.160; or

26 (2) bring an action in the superior court to enjoin the acts or practices  
27 and to enforce compliance with this chapter or regulation or order under this chapter,  
28 and upon a proper showing, the appropriate remedy must be granted and a receiver or  
29 conservator may be appointed for the defendant or the defendant's assets; the court  
30 may not require the administrator to post a bond.

31 \* **Sec. 18.** AS 45.55.920(b) is amended to read:

1 (b) The administrator may issue an order against a person [AN APPLICANT,  
2 REGISTERED PERSON, OR OTHER PERSON] who [KNOWINGLY OR]  
3 intentionally violates this chapter or a regulation or order of the administrator under  
4 this chapter, imposing a civil penalty of not more than \$2,500 for a single violation, or  
5 not more than \$25,000 for multiple violations, in a single proceeding or a series of  
6 related proceedings. In this subsection, "intentionally" has the meaning given in  
7 AS 11.81.900(a).

8 \* **Sec. 19.** AS 45.55.920(c) is amended to read:

9 (c) For violations not covered by (b) of this section, the administrator may  
10 issue an order against a person [AN APPLICANT, REGISTERED PERSON, OR  
11 OTHER PERSON] who violates this chapter or a regulation or order of the  
12 administrator under this chapter, imposing a civil penalty of not more than \$500 for a  
13 single violation, or not more than \$5,000 for multiple violations, in a single  
14 proceeding or a series of related proceedings.

15 \* **Sec. 20.** AS 45.55.925(a) is amended to read:

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

28 \* **Sec. 21.** AS 45.55.935(a) is repealed and reenacted to read:

29 (a) The administrator shall adopt regulations, consistent with the provisions of  
30 this chapter and with regulations adopted under AS 44.64.060, governing  
31 administrative hearings conducted by the office of administrative hearings

1 (AS 44.64.010) for orders issued under AS 45.55.920.

2 \* **Sec. 22.** AS 45.55.950(a) is amended to read:

3 (a) The administrator may make, adopt, amend, and rescind the regulations,  
4 forms, and orders that are necessary to carry out this chapter [, INCLUDING  
5 REGULATIONS AND FORMS GOVERNING REGISTRATION STATEMENTS,  
6 APPLICATIONS, AND REPORTS, AND DEFINING TERMS, WHETHER OR  
7 NOT USED IN THIS CHAPTER INsofar AS THE DEFINITIONS ARE NOT  
8 INCONSISTENT WITH THIS CHAPTER. FOR THE PURPOSE OF  
9 REGULATIONS AND FORMS, THE ADMINISTRATOR MAY CLASSIFY  
10 SECURITIES, PERSONS, AND MATTERS WITHIN THE JURISDICTION OF  
11 THE ADMINISTRATOR, AND PRESCRIBE DIFFERENT REQUIREMENTS FOR  
12 DIFFERENT CLASSES].

13 \* **Sec. 23.** AS 45.55.950(b) is amended to read:

14 (b) A regulation, form, or order may not be made, adopted, amended, or  
15 rescinded unless the administrator finds that the action is necessary or appropriate in  
16 the public interest [OR FOR THE PROTECTION OF INVESTORS AND  
17 CONSISTENT WITH THE PURPOSES FAIRLY INTENDED BY THE POLICY  
18 AND PROVISIONS OF THIS CHAPTER. IN ADOPTING REGULATIONS AND  
19 FORMS THE ADMINISTRATOR MAY COOPERATE WITH THE SECURITIES  
20 ADMINISTRATORS OF THE OTHER STATES AND THE SECURITIES AND  
21 EXCHANGE COMMISSION WITH A VIEW TO EFFECTUATING THE POLICY  
22 OF THIS SECTION TO ACHIEVE MAXIMUM UNIFORMITY IN THE FORM  
23 AND CONTENT OF REGISTRATION STATEMENTS, APPLICATIONS, AND  
24 REPORTS WHEREVER PRACTICABLE].

25 \* **Sec. 24.** AS 45.55 is amended by adding a new section to read:

26 **Sec. 45.55.985. Definition.** In this chapter, unless the context otherwise  
27 requires, "administrator" means the commissioner of commerce, community, and  
28 economic development or a designee of the commissioner.

29 \* **Sec. 25.** AS 45 is amended by adding a new chapter to read:

30 **Chapter 56. Alaska Securities Act.**

31 **Article 1. General Provisions.**

1           **Sec. 45.56.105. Securities registration requirement.** A person may not offer  
2 or sell a security in this state unless the security

3                   (1) is a federal covered security;

4                   (2) is registered under this chapter; or

5                   (3) or transaction is exempt from registration under AS 45.56.205 -  
6 45.56.250.

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

8           **Sec. 45.56.205. Exempt securities.** The following securities are exempt from  
9 the requirements of AS 45.56.105, 45.56.305 - 45.56.360, and 45.56.550:

10                   (1) a security, including a revenue obligation or a separate security as  
11 defined in 17 C.F.R. 230.131 adopted under 15 U.S.C. 77a - 77aa (Securities Act of  
12 1933), issued, insured, or guaranteed by the United States; by a state; by a political  
13 subdivision of a state; by a public authority, agency, or instrumentality of one or more  
14 states; by a political subdivision of one or more states; or by a person controlled or  
15 supervised by and acting as an instrumentality of the United States under authority  
16 granted by the United States Congress; or a certificate of deposit for any of the  
17 foregoing;

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

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

24                           (A) an international banking institution;

25                           (B) a banking institution organized under the laws of the  
26 United States; a member bank of the Federal Reserve System; or a depository  
27 institution a substantial portion of the business of which consists or will consist  
28 of receiving deposits or share accounts that are insured to the maximum  
29 amount authorized by statute by the Federal Deposit Insurance Corporation,  
30 the National Credit Union Share Insurance Fund, or a successor authorized by  
31 federal law or exercising fiduciary powers that are similar to those permitted

1 for national banks under the authority of the United States Comptroller of the  
2 Currency under 12 U.S.C. 92a; or

3 (C) any other depository institution, unless, by a regulation or  
4 order, the administrator proceeds under AS 45.56.250;

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

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

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

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

15 (C) a public utility holding company registered under 42  
16 U.S.C. 16451 - 16481 (Energy Policy Act of 2005) or a subsidiary of the  
17 registered holding company within the meaning of that Act;

18 (6) a federal covered security specified in 15 U.S.C. 77r(b)(1)  
19 (Securities Act of 1933) or adopted by rule under that provision or a security listed or  
20 approved for listing on another securities market specified by regulation under this  
21 chapter; a put or call option contract; a warrant; a subscription right on or with respect  
22 to the security; an option or similar derivative security on a security or an index of  
23 securities or foreign currencies issued by a clearing agency registered under 15 U.S.C.  
24 78a - 78pp (Securities Exchange Act of 1934) and listed or designated for trading on a  
25 national securities exchange, a facility of a national securities exchange, or a facility of  
26 a national securities association registered under 15 U.S.C. 78a - 78pp (Securities  
27 Exchange Act of 1934) or an offer or sale of the underlying security in connection  
28 with the offer, sale, or exercise of an option or other security that was exempt when  
29 the option or other security was written or issued; or an option or a derivative security  
30 designated by the Securities and Exchange Commission under 15 U.S.C. 78i(b)  
31 (Securities Exchange Act of 1934);

1 (7) a security issued by a person organized and operated exclusively  
2 for religious, educational, benevolent, fraternal, charitable, social, athletic, or  
3 reformatory purposes, or as a chamber of commerce, and not for pecuniary profit, no  
4 part of the net earnings of which inures to the benefit of a private stockholder or other  
5 person, or a security of a company that is excluded from the definition of an  
6 investment company under 15 U.S.C. 80a-3(c)(10)(B) (Investment Company Act of  
7 1940), except that, with respect to the offer or sale of a note, bond, debenture, or other  
8 evidence of indebtedness issued by the person, a regulation may be adopted under this  
9 chapter limiting the availability of this exemption by classifying securities, persons,  
10 and transactions, imposing different requirements for different classes, specifying,  
11 with respect to (B) of this paragraph, the scope of the exemption and the grounds for  
12 denial or suspension, and requiring an issuer to

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

18 (B) file a request for exemption authorization for which a  
19 regulation adopted under this chapter may specify the

20 (i) scope of the exemption;

21 (ii) requirement of an offering statement;

22 (iii) filing of sales and advertising literature;

23 (iv) filing of consent to service of process complying  
24 with AS 45.56.630; and

25 (v) grounds for denial or suspension of the exemption;

26 or

27 (C) register under AS 45.56.310;

28 (8) a member's or owner's interest in, or a retention certificate or like  
29 security given in lieu of a cash patronage dividend issued by, a cooperative organized  
30 and operated as a nonprofit membership cooperative under the cooperative laws of a  
31 state, but not a member's or owner's interest, retention certificate, or like security sold

1 to persons other than bona fide members of the cooperative;

2 (9) an equipment trust certificate with respect to equipment leased or  
3 conditionally sold to a person if any security issued by the person would be exempt  
4 under this section or would be a federal covered security under 15 U.S.C. 77r(b)(1)  
5 (Securities Act of 1933); and

6 (10) shares of membership stock in the Alaska Commercial Fishing  
7 and Agriculture Bank issued under AS 44.81.010 and other securities issued by that  
8 bank to members or in connection with loans to members.

9 **Sec. 45.56.210. Exempt transactions.** The following transactions are exempt  
10 from the requirements of AS 45.56.105, 45.56.305 - 45.56.360, and 45.56.550:

11 (1) an isolated nonissuer transaction, whether effected by or through a  
12 broker-dealer, if the seller is not a promoter or controlling person; the administrator  
13 may define by regulation or order who is a promoter or a controlling person;

14 (2) a nonissuer transaction by or through a broker-dealer registered, or  
15 exempt from registration under this chapter, and a resale transaction by a sponsor of a  
16 unit investment trust registered under 15 U.S.C. 80a-1 - 80a-64 (Investment Company  
17 Act of 1940), in a security of a class that has been outstanding in the hands of the  
18 public for at least 90 days, if, at the date of the transaction,

19 (A) the issuer of the security is engaged in business, the issuer  
20 is not in the organizational stage or in bankruptcy or receivership, and the  
21 issuer is not a blank check, blind pool, or shell company that does not have a  
22 specific business plan or purpose or has indicated that its primary business plan  
23 is to engage in a merger or combination of the business with or an acquisition  
24 of an unidentified person;

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

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

30 (D) a nationally recognized securities manual or its electronic  
31 equivalent designated by a regulation adopted or order issued under this

1 chapter or a record filed with the Securities and Exchange Commission that is  
2 publicly available contains

3 (i) a description of the business and operations of the  
4 issuer;

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

7 (iii) an audited balance sheet of the issuer as of a date  
8 within 18 months before the date of the transaction or, in the case of a  
9 reorganization or merger when the parties to the reorganization or  
10 merger each had an audited balance sheet, a pro forma balance sheet for  
11 the combined organization; and

12 (iv) an audited income statement for each of the issuer's  
13 two immediately previous fiscal years or for the period of existence of  
14 the issuer, whichever is shorter, or, in the case of a reorganization or  
15 merger when each party to the reorganization or merger had audited  
16 income statements, a pro forma income statement; and

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

18 (i) the issuer of the security has a class of equity  
19 securities listed on a national securities exchange registered under 15  
20 U.S.C. 78f (Securities Exchange Act of 1934) or designated for trading  
21 on the National Association of Securities Dealers Automated Quotation  
22 System;

23 (ii) the issuer of the security is a unit investment trust  
24 registered under 15 U.S.C. 80a-1 - 80a-64 (Investment Company Act of  
25 1940);

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

29 (iv) the issuer of the security has total assets of at least  
30 \$2,000,000 based on an audited balance sheet as of a date within 18  
31 months before the date of the transaction or, in the case of a

1 reorganization or merger when the parties to the reorganization or  
2 merger each had an audited balance sheet, a pro forma balance sheet for  
3 the combined organization;

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

8 (4) a nonissuer transaction by or through a broker-dealer registered or  
9 exempt from registration under this chapter in an outstanding security if the guarantor  
10 of the security files reports with the Securities and Exchange Commission under the  
11 reporting requirements of 15 U.S.C. 78m or 15 U.S.C. 78o (Securities Exchange Act  
12 of 1934);

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

15 (A) is rated at the time of the transaction by a nationally  
16 recognized statistical rating organization as identified by regulations of the  
17 administrator in one of its four highest rating categories; or

18 (B) has a fixed maturity or a fixed interest or dividend, if

19 (i) a default has not occurred during the current fiscal  
20 year or within the three previous fiscal years or, if the issuer has been in  
21 business less than three fiscal years, during the existence of the issuer  
22 and any predecessor in the payment of principal, interest, or dividends  
23 on the security; and

24 (ii) the issuer is engaged in business, is not in the  
25 organizational stage or in bankruptcy or receivership, and is not and has  
26 not, within the previous 12 months, been a blank check, blind pool, or  
27 shell company that does not have a specific business plan or purpose or  
28 has indicated that its primary business plan is to engage in a merger or  
29 combination of the business with, or an acquisition of, an unidentified  
30 person;

31 (6) a nonissuer transaction by or through a broker-dealer registered or

1 exempt from registration under this chapter effecting an unsolicited order or offer to  
2 purchase;

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

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

8 (9) a transaction in a security, whether or not the security or  
9 transaction is otherwise exempt, in exchange for one or more bona fide outstanding  
10 securities, claims, or property interests, or partly in exchange for one or more bona  
11 fide outstanding securities, claims, or property interests and partly for cash if the terms  
12 and conditions of the issuance and exchange or the delivery and exchange and the  
13 fairness of the terms and conditions have been approved by the administrator after a  
14 hearing;

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

17 (11) a transaction in a bond or other evidence of indebtedness secured  
18 by a real or chattel mortgage or deed of trust or by an agreement for the sale of real  
19 estate or chattels, if

20 (A) the entire mortgage, deed of trust, or agreement, together  
21 with all the bonds or other evidence of indebtedness, secured under those  
22 documents, is offered and sold as a unit;

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

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

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

30 (13) a sale or offer to sell to

31 (A) an institutional investor;

1 (B) a federal covered investment adviser; or

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

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

6 (A) not more than 25 purchasers in this state during any 12  
7 consecutive months, other than a person designated in (13) of this section,  
8 regardless of whether the seller or any of the buyers is then present in this  
9 state;

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

12 (C) a commission or other remuneration is not paid or given,  
13 directly or indirectly, to a person other than a broker-dealer registered under  
14 this chapter or an agent registered under this chapter for soliciting a  
15 prospective purchaser in this state;

16 (D) the issuer reasonably believes that all the purchasers in this  
17 state, other than those designated in (13) of this section, are purchasing for  
18 investment and not with a view to distribution;

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

23 (F) before a sale, each prospective buyer is furnished with  
24 information that is sufficient to make an informed investment decision; the  
25 information shall be furnished to the administrator upon request; in this  
26 subparagraph, "information that is sufficient to make an informed investment  
27 decision" includes a business plan, an income and expense statement, a balance  
28 sheet, a statement of risks, and a disclosure of any significant negative factors  
29 that may affect the outcome of the investment;

30 (15) a transaction under an offer to existing security holders of the  
31 issuer, including persons that, at the date of the transaction, are holders of convertible

1 securities, options, or warrants, if a commission or other remuneration, other than a  
2 standby commission, is not paid or given, directly or indirectly, for soliciting a  
3 security holder in this state;

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

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

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

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

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

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

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

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

30 (19) a rescission offer, sale, or purchase under AS 45.56.665;

31 (20) an offer to sell or sale of a security to a person not a resident of

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

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

10 (A) directors; general partners; managers and members if the  
11 issuer is a limited liability company; trustees, if the issuer is a business trust;  
12 officers; consultants; and advisors;

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

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

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

22 (22) a transaction involving

23 (A) a stock dividend or equivalent equity distribution,  
24 regardless of whether the corporation or other business organization  
25 distributing the dividend or equivalent equity distribution is the issuer, if  
26 nothing of value is given by stockholders or other equity holders for the  
27 dividend or equivalent equity distribution other than the surrender of a right to  
28 a cash or property dividend if each stockholder or other equity holder may  
29 elect to take the dividend or equivalent equity distribution in cash, property, or  
30 stock;

31 (B) a transaction incident to a right of conversion or judicially

1 approved reorganization in which a security is issued in exchange for one or  
2 more outstanding securities, claims, or property interests, or partly in exchange  
3 for one or more outstanding securities, claims, or property interests and partly  
4 for cash; or

5 (C) the solicitation of tenders of securities by an offeror in a  
6 tender offer in compliance with 17 C.F.R. 230.162, adopted under 15 U.S.C.  
7 77a - 77aa (Securities Act of 1933);

8 (23) a nonissuer transaction in an outstanding security by or through a  
9 broker-dealer registered or exempt from registration under this chapter, if the issuer is  
10 a reporting issuer in a foreign jurisdiction designated by this paragraph or by a  
11 regulation adopted or order issued under this chapter; the issuer has been subject to  
12 continuous reporting requirements in the foreign jurisdiction for not less than 180 days  
13 before the transaction; and the security is listed on the foreign jurisdiction's securities  
14 exchange that has been designated by this paragraph or by a regulation adopted or  
15 order issued under this chapter, or is a security of the same issuer that is of senior or  
16 substantially equal rank to the listed security or is a warrant or right to purchase or  
17 subscribe to any of the foregoing; for purposes of this paragraph, Canada, together  
18 with its provinces and territories, is a designated foreign jurisdiction, and TSX, Inc.,  
19 formerly known as the Toronto Stock Exchange, Inc., is a designated securities  
20 exchange; after an administrative hearing in compliance with AS 45.56.650(c), the  
21 administrator, by a regulation adopted or order issued under this chapter, may revoke  
22 the designation of a securities exchange under this paragraph if the administrator finds  
23 that revocation is necessary or appropriate in the public interest and for the protection  
24 of investors;

25 (24) a sale by an issuer to the buyer of an enterprise or a business and  
26 the assets and liabilities of the enterprise or business if

27 (A) the transfer of stock to the buyer is solely incidental to the  
28 sale of the enterprise or business and its assets and liabilities;

29 (B) the seller provides the buyer with full access to the books  
30 and records of the enterprise or business; and

31 (C) a legend is placed on the certificate or other document

1           evidencing ownership of the security, stating that the security is not registered  
2           under this chapter and cannot be resold without registration under this chapter  
3           or exemption from it;

4           (25) an offer or sale of a certificate of interest or participation in oil,  
5           gas, or mining rights, titles, or leases, or in payments out of production under the  
6           rights, titles, or leases, if the purchaser

7           (A) is or has been, during the preceding two years, engaged  
8           primarily in the business of exploring for, mining, producing, or refining oil,  
9           gas, or minerals; or

10          (B) has been found by the administrator upon written  
11          application to be substantially engaged in the business of exploring for,  
12          mining, producing, or refining oil, gas, or minerals so as not to require the  
13          protection provided by this chapter;

14          (26) a transaction involving only family members, or involving only  
15          family members and the corporations, partnerships, limited liability companies,  
16          limited partnerships, limited liability partnerships, associations, joint-stock companies,  
17          or trusts that are organized, formed, or created by family members or at the direction  
18          of family members; in this paragraph, "family members" means persons who are  
19          related, including related by adoption, within the fourth degree of affinity or  
20          consanguinity; or

21          (27) a transaction relating to a security that is not part of an initial issue  
22          of stock covered by AS 45.55.138, but that is issued by a corporation organized under  
23          Alaska law under 43 U.S.C. 1601 et seq. (Alaska Native Claims Settlement Act), if the  
24          corporation qualifies for exempt status under 43 U.S.C. 1625(a).

25          **Sec. 45.56.220. Small intrastate securities offerings.** (a) An offer or sale of  
26          securities conducted solely in this state to a person who has established residency in  
27          this state, by an issuer in a transaction that meets the requirements of this section, is  
28          exempt from the requirements of AS 45.56.105, 45.56.305 - 45.56.360, and 45.56.550  
29          and is subject to the following limitations:

30               (1) the issuer of the security shall be a for-profit corporation, another  
31               for-profit entity, or a business cooperative, have its principal place of business in this

1 state, and be licensed by the department;

2 (2) the transaction must meet the requirements of the federal  
3 exemption for intrastate offerings in 15 U.S.C. 77c(a)(11) (Securities Act of 1933) and  
4 17 C.F.R. 230.147; the securities must be offered to and sold only to persons who  
5 have established residency in this state at the time of purchase; before any offer or sale  
6 under this exemption, the seller shall obtain documentary evidence from each  
7 prospective purchaser that provides the seller with a reasonable basis to believe the  
8 investor has established residency in this state;

9 (3) the sum of all cash and other consideration to be received for all  
10 sales of the security in reliance on this exemption may not exceed \$1,000,000, less the  
11 aggregate amount received for all sales of securities by the issuer within the 12 months  
12 before the first offer or sale made in reliance on this exemption;

13 (4) the issuer may not accept more than \$10,000 from any single  
14 purchaser unless the purchaser is an accredited investor as defined by 17 C.F.R.  
15 230.501;

16 (5) the issuer must reasonably believe that all purchasers of securities  
17 are purchasing for investment and not for sale in connection with a distribution of the  
18 security;

19 (6) a commission or remuneration may not be paid or given, directly or  
20 indirectly, for any person's participation in the offer or sale of securities for the issuer  
21 unless the person is registered as a broker-dealer, agent, investment adviser  
22 representative, or investment adviser under AS 45.56.405 - 45.56.440;

23 (7) all funds received from investors shall be deposited into a bank or  
24 depository institution authorized to do business in this state, and all funds shall be  
25 used in accordance with representations made to investors;

26 (8) not less than 10 days before the use of any general solicitation or  
27 within 15 days after the first sale of the security under this exemption, if general  
28 solicitation has not been used before the sale, whichever occurs first, the issuer shall  
29 provide a notice to the administrator as prescribed in regulations for this section; the  
30 notice must specify that the issuer is conducting an offering in reliance on this  
31 exemption and must contain the names and addresses of

1 (A) the issuer;

2 (B) officers, directors, and any control person of the issuer;

3 (C) all persons who will be involved in the offer or sale of  
4 securities on behalf of the issuer; and

5 (D) the bank or other depository institution in which investor  
6 funds will be deposited;

7 (9) the issuer may not be, either before or as a result of the offering,

8 (A) an investment company as defined by 15 U.S.C. 80a-1 -  
9 80a-64 (Investment Company Act of 1940), or subject to the reporting  
10 requirements of 15 U.S.C. 78m or 78o (Securities Exchange Act of 1934); or

11 (B) a broker-dealer, agent, investment adviser representative, or  
12 investment adviser subject to AS 45.56.405 - 45.56.440;

13 (10) the issuer shall inform all purchasers that the securities have not  
14 been registered under AS 45.56.105, 45.56.305 - 45.56.360, and 45.56.550 and may  
15 not be resold unless the securities are registered or qualify for an exemption from  
16 registration under AS 45.56.205, 45.56.210, or 45.56.240; in addition, the issuer shall  
17 make the disclosures required by 17 C.F.R. 230.147(f);

18 (11) the issuer shall require all purchasers to sign the following  
19 statement at the time of sale: "I acknowledge that I am investing in a high-risk,  
20 speculative business venture, that I may lose all of my investment, and that I can  
21 afford the loss of my investment";

22 (12) this exemption may not be used in conjunction with any other  
23 exemption under this chapter, except the exemption to institutional investors under  
24 AS 45.56.405 and 45.56.435 and for offers and sales to controlling persons of the  
25 issuer; sales to controlling persons may not count toward the limitation in (3) of this  
26 subsection;

27 (13) this exemption may not be construed to remove any person from  
28 the anti-fraud provisions under AS 45.56.505 - 45.56.560, and the exemption may not  
29 be construed to provide relief from any other provision of this chapter other than as  
30 expressly stated.

31 (b) The administrator may by order deny or revoke the exemption specified in

1 this section with respect to a specific security if the administrator finds that the sale of  
2 the security would work or tend to work a fraud on the purchasers of the security. An  
3 order under this subsection may not operate retroactively. A person may not be  
4 considered to have violated AS 45.56.205 - 45.56.250 because of any offer or sale  
5 effected after the entry of an order under this subsection if the person sustains the  
6 burden of proof that the person did not know and, in the exercise of reasonable care,  
7 could not have known of the order.

8 (c) A person who makes application to the department for an exemption under  
9 this section shall be assessed a filing fee as prescribed in regulations for this section.

10 (d) In this section, "residency" has the meaning given in AS 01.10.055.

11 **Sec. 45.56.230. Disqualifier.** Exemption from registration under AS 45.56.205  
12 - 45.56.250 is not available for a security or transaction if the issuer, or any of its  
13 officers, controlling persons, or promoters, is subject to a disqualifier described in the  
14 regulations adopted under 15 U.S.C. 78c(a)(39) (Dodd-Frank Wall Street Reform and  
15 Consumer Protection Act) as of the date of the transaction or offer.

16 **Sec. 45.56.240. Waiver and modification.** For any security or transaction or  
17 any type of security or transaction, the administrator may by order, waive, withdraw,  
18 or modify any of the requirements or conditions of AS 45.56.205 - 45.56.250.

19 **Sec. 45.56.250. Denial, suspension, revocation, condition, or limitation of**  
20 **exemptions.** (a) Except with respect to a federal covered security or a transaction  
21 involving a federal covered security, an order under this chapter may deny, suspend  
22 application of, condition, limit, or revoke an exemption created under  
23 AS 45.56.205(3)(C), (7), or (8), 45.56.210, or 45.56.220, or an exemption or waiver  
24 created under AS 45.56.240 with respect to a specific security, transaction, or offer.  
25 An order under this subsection may be issued only under the procedures in  
26 AS 45.56.360(d) or 45.56.650 and only prospectively.

27 (b) A person does not violate AS 45.56.105, 45.56.305 - 45.56.320, 45.56.340,  
28 45.56.360, 45.56.550, or 45.56.665 by an offer to sell, offer to purchase, sale, or  
29 purchase effected after the entry of an order issued under this section if the person did  
30 not know and, in the exercise of reasonable care, could not have known, of the order.

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

1           **Sec. 45.56.305. Securities registration by coordination.** (a) A security for  
2           which a registration statement has been filed under 15 U.S.C. 77a - 77aa (Securities  
3           Act of 1933) in connection with the same offering may be registered by coordination  
4           under this section.

5           (b) A registration statement and accompanying records under this section must  
6           contain or be accompanied by the following records, in addition to the information  
7           specified in AS 45.56.320, and a consent to service of process complying with  
8           AS 45.56.630:

9                   (1) a copy of the latest form of prospectus filed under 15 U.S.C. 77a -  
10                  77aa (Securities Act of 1933);

11                   (2) if the administrator requires, a copy of the articles of incorporation  
12                  and bylaws or their substantial equivalents currently in effect; a copy of any other  
13                  information or any other records filed by the issuer under 15 U.S.C. 77a - 77aa  
14                  (Securities Act of 1933) requested by the administrator; a copy of any agreement with  
15                  or among underwriters; a copy of any indenture or other instrument governing the  
16                  issuance of the security to be registered; and a specimen, copy, or description of the  
17                  security that is required by a regulation adopted or order issued under this chapter; and

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

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

24                   (1) a stop order under (d) of this section or AS 45.56.360 or issued by  
25                  the Securities and Exchange Commission is not in effect, and a proceeding is not  
26                  pending against the issuer under AS 45.56.480; and

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

29           (d) The registrant shall promptly notify the administrator in a record of the  
30           date when the federal registration statement becomes effective and the content of any  
31           price amendment and shall promptly file a record containing the price amendment. If

1 the notice is not timely received, the administrator may issue a stop order, without  
2 prior notice or hearing, retroactively denying effectiveness to the registration  
3 statement or suspending its effectiveness until compliance with this section. The  
4 administrator shall promptly notify the registrant of an order by telephone or  
5 electronic means and promptly confirm this notice by a record. If the registrant later  
6 complies with the notice requirements of this subsection, the stop order is void as of  
7 the date of its issuance.

8 (e) If the federal registration statement becomes effective before each of the  
9 conditions in this section is satisfied or is waived by the administrator, the registration  
10 statement is automatically effective under this chapter when all the conditions are  
11 satisfied or waived. If the registrant notifies the administrator of the date when the  
12 federal registration statement is expected to become effective, the administrator shall  
13 promptly notify the registrant by telephone or electronic means and promptly confirm  
14 this notice by a record, indicating whether all the conditions are satisfied or waived  
15 and whether the administrator intends the institution of a proceeding under  
16 AS 45.56.360. The notice by the administrator does not preclude the institution of a  
17 proceeding under AS 45.56.360.

18 **Sec. 45.56.310. Securities registration by qualification.** (a) A security may  
19 be registered by qualification under this section.

20 (b) A registration statement under this section must contain the information or  
21 records specified in AS 45.56.320, a consent to service of process complying with  
22 AS 45.56.630, and the following information or records:

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

30 (2) with respect to each director and officer of the issuer and other  
31 person having a similar status or performing similar functions, the person's name,

1 address, and principal occupation for the previous five years; the amount of securities  
2 of the issuer held by the person as of the 30th day before the filing of the registration  
3 statement; the amount of the securities covered by the registration statement to which  
4 the person has indicated an intention to subscribe; and a description of any material  
5 interest of the person in any material transaction with the issuer or a significant  
6 subsidiary effected within the previous three years or proposed to be effected;

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

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

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

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

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

1 issue its securities;

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

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

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

1 the aggregate of those options;

2 (11) the dates of, parties to, and general effect, concisely stated, of  
3 each managerial or other material contract made or to be made other than in the  
4 ordinary course of business to be performed in whole or in part at or after the filing of  
5 the registration statement or that was made within the previous two years, and a copy  
6 of each contract;

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

10 (13) a copy of any prospectus, pamphlet, circular, form letter,  
11 advertisement, or other sales literature intended as of the effective date of the  
12 registration statement to be used in connection with the offering and any solicitation of  
13 interest used in compliance with AS 45.56.210(17)(B);

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

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

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

28 (17) a balance sheet of the issuer as of a date within four months  
29 before the filing of the registration statement; a statement of income and a statement of  
30 cash flows for each of the three fiscal years preceding the date of the balance sheet and  
31 for any period between the close of the immediately previous fiscal year and the date

1 of the balance sheet, or for the period of the issuer's and any predecessor's existence if  
2 less than three years; and, if any part of the proceeds of the offering is to be applied to  
3 the purchase of a business, the financial statements that would be required if that  
4 business were the registrant; and

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

7 (c) A registration statement under this section becomes effective when the  
8 administrator orders that the registration is effective.

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

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

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

19 (3) payment under the sale; or

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

21 **Sec. 45.56.320. Securities registration filings.** (a) A registration statement  
22 may be filed by the issuer, a person on whose behalf the offering is to be made, or a  
23 broker-dealer registered under this chapter.

24 (b) A person filing a registration statement shall pay a filing fee established by  
25 a regulation adopted under this chapter and consent to service of process as described  
26 under AS 45.56.630.

27 (c) A registration statement filed under AS 45.56.305 or 45.56.310 must  
28 specify

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

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

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

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

7                   (e) In the case of a nonissuer distribution, information or a record may not be  
8 required under (i) of this section or AS 45.56.310 unless it is known to the person  
9 filing the registration statement or to the person on whose behalf the distribution is to  
10 be made or unless it can be furnished by those persons without unreasonable effort or  
11 expense.

12                   (f) A regulation adopted or order issued under this chapter may require as a  
13 condition of registration that a security issued within the previous five years or to be  
14 issued to a promoter for a consideration substantially less than the public offering  
15 price or to a person for a consideration other than cash be deposited in escrow and that  
16 the proceeds from the sale of the registered security in this state be impounded until  
17 the issuer receives a specified amount from the sale of the security, either in this state  
18 or elsewhere. The conditions of any escrow or impoundment required under this  
19 subsection may be established by a regulation adopted or order issued under this  
20 chapter, but the administrator may not reject a depository institution solely because of  
21 its location in another state.

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

27                   (h) Except while a stop order is in effect under AS 45.56.360, a registration  
28 statement is effective for one year after the effective date of the registration statement  
29 or for any longer period designated in an order under this chapter during which the  
30 security is being offered or distributed in a nonexempted transaction by or for the  
31 account of the issuer or other person on whose behalf the offering is being made or by

1 an underwriter or broker-dealer that is still offering part of an unsold allotment or  
2 subscription taken as a participant in the distribution. For the purposes of a nonissuer  
3 transaction, all outstanding securities of the same class identified in the registration  
4 statement as a security registered under this chapter are considered to be registered  
5 while the registration statement is effective. If any securities of the same class are  
6 outstanding, a registration statement may not be withdrawn until one year after the  
7 effective date of the registration statement. A registration statement may be withdrawn  
8 only with the approval of the administrator.

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

14 (j) A registration statement may be amended after the effective date of the  
15 registration statement. The post-effective amendment becomes effective when the  
16 administrator so orders. If a post-effective amendment is made to increase the number  
17 of securities specified to be offered or sold, the person filing the amendment shall pay  
18 a registration fee established by a regulation adopted under this chapter. A post-  
19 effective amendment relates back to the date of the offering of the additional securities  
20 being registered if, within one year after the date of the sale, the amendment is filed  
21 and the additional registration fee is paid.

22 **Sec. 45.56.330. Notice filing of federal covered securities.** (a) With respect to  
23 a federal covered security, as defined in 15 U.S.C. 77r(b) (Securities Act of 1933), that  
24 is not otherwise exempt under AS 45.56.205 - 45.56.240, a regulation adopted or order  
25 issued under this chapter may require the filing of any or all of the following records:

26 (1) before the initial offer of a federal covered security in this state, all  
27 records that are part of a federal registration statement filed with the Securities and  
28 Exchange Commission under 15 U.S.C. 77a - 77aa (Securities Act of 1933), a consent  
29 to service of process complying with AS 45.56.630 signed by the issuer, and the  
30 payment of a fee established in a regulation adopted under this chapter;

31 (2) after the initial offer of the federal covered security in this state, all

1 records that are part of an amendment to a federal registration statement filed with the  
2 Securities and Exchange Commission under 15 U.S.C. 77a - 77aa (Securities Act of  
3 1933); and

4 (3) to the extent necessary or appropriate to compute fees, a report of  
5 the value of the federal covered securities sold or offered to persons present in this  
6 state if the sales data are not included in records filed with the Securities and  
7 Exchange Commission and payment of a fee established in a regulation adopted under  
8 this chapter.

9 (b) A notice filing under (a) of this section is effective for one year  
10 commencing on the later of the notice filing or the effectiveness of the offering filed  
11 with the Securities and Exchange Commission. On or before expiration, the issuer  
12 may renew a notice filing by filing with the Securities and Exchange Commission a  
13 copy of those records filed by the issuer that are required by a regulation adopted or  
14 order issued under this chapter to be filed and by paying a renewal fee established in a  
15 regulation adopted under this chapter. A previously filed consent to service of process  
16 complying with AS 45.56.630 may be incorporated by reference in a renewal. A  
17 renewed notice filing becomes effective upon the expiration of the filing being  
18 renewed.

19 (c) With respect to a security that is a federal covered security under 15 U.S.C.  
20 77r(b)(4)(D) (Securities Act of 1933), a regulation adopted under this chapter may  
21 require a notice filing by or on behalf of an issuer to include a copy of Form D,  
22 including the Appendix, as adopted by the Securities and Exchange Commission, and  
23 a consent to service of process complying with AS 45.56.630 signed by the issuer not  
24 later than 15 days after the first sale of the federal covered security in this state and the  
25 payment of a fee established in a regulation adopted under this chapter; and the  
26 payment of a fee established in a regulation adopted under this chapter for any late  
27 filing.

28 (d) Except with respect to a federal covered security under 15 U.S.C. 77r(b)(1)  
29 (Securities Act of 1933), if the administrator finds that there is a failure to comply  
30 with a notice or fee requirement of this section, the administrator may issue a stop  
31 order suspending the offer and sale of a federal covered security in this state. If the

1 deficiency is corrected, the stop order is void as of the time of its issuance and a  
2 penalty may not be imposed by the administrator.

3 **Sec. 45.56.340. Viatical settlement interests.** (a) Before the sale of a viatical  
4 settlement interest, an issuer shall provide a prospective buyer with information that is  
5 sufficient to make an informed investment decision. The issuer shall also provide the  
6 information to the administrator upon request if the issuer is not otherwise required to  
7 file the information with the administrator. In this subsection, "information that is  
8 sufficient to make an informed investment decision" includes state-mandated  
9 disclosure forms and a disclosure of any significant factors that may affect the  
10 outcome of the investment.

11 (b) Except as may be required in the course of conduct of the responsibilities  
12 of the administrator, an issuer of a viatical settlement interest may not disclose to  
13 another person the identity of the viator or insured of the insurance policy that is the  
14 subject of the viatical settlement interest. The viator may waive this prohibition  
15 against disclosure if the waiver is in writing and signed by the viator.

16 (c) The administrator shall regulate transactions between a viatical settlement  
17 provider or person acting as an agent of a viatical settlement provider and a  
18 subsequent investor, while the authority of the director of the division of insurance  
19 extends to the regulation of viatical settlement contracts under AS 21.96.110.

20 (d) In this section,

21 (1) "viatical settlement contract" has the meaning given in  
22 AS 21.96.110(h);

23 (2) "viatical settlement interest"

24 (A) means the entire interest or any fractional interest in a life  
25 insurance policy or in the death benefit under a life insurance policy that is the  
26 subject of a viatical settlement contract;

27 (B) does not include the initial purchase from the viator by a  
28 viatical settlement provider;

29 (3) "viatical settlement provider" has the meaning given in  
30 AS 21.96.110(h);

31 (4) "viator" has the meaning given in AS 21.96.110(h).

1           **Sec. 45.56.350. Waiver and modification.** The administrator may waive or  
2 modify, in whole or in part, any or all of the requirements of AS 45.56.305 and  
3 45.56.320 or the requirement of any information or record in a registration statement  
4 or in a periodic report filed under AS 45.56.320(i).

5           **Sec. 45.56.360. Denial, suspension, and revocation of securities**  
6 **registration.** (a) The administrator may issue a stop order denying effectiveness to, or  
7 suspending or revoking the effectiveness of, a registration statement if the  
8 administrator finds that the order is in the public interest and that

9                   (1) the registration statement as of the effective date of the registration  
10 statement or before the effective date in the case of an order denying effectiveness, an  
11 amendment under AS 45.56.320(j) as of the effective date of the amendment, or a  
12 report under AS 45.56.320(i) is incomplete in a material respect or contains a  
13 statement that, in the light of the circumstances under which it was made, was false or  
14 misleading with respect to a material fact;

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

18                                 (A) the person filing the registration statement;

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

21                                 (C) a promoter of the issuer;

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

25                                 (E) an underwriter;

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

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

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

7 (5) with respect to a security sought to be registered under  
8 AS 45.56.305, there has been a failure to comply with the undertaking required by  
9 AS 45.56.305(b)(3);

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

13 (7) the offering

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

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

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

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

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

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

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

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

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

12 (2) an opportunity for hearing conducted in the manner provided in  
 13 AS 45.56.650(c); and

14 (3) findings of fact and conclusions of law in a record.

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

19 **Article 4. Broker-Dealers, Agents, Investment Advisers, Investment Adviser**  
 20 **Representatives, and Federal Covered Investment Advisers.**

21 **Sec. 45.56.405. Broker-dealer registration requirement and exemptions.**

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

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

27 (1) a broker-dealer without a place of business in this state if the  
 28 broker-dealer's only transactions effected in this state are with

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

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

1 (C) an institutional investor;

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

5 (E) a bona fide preexisting customer whose principal place of  
6 residence is not in this state if the person is registered as a broker-dealer under  
7 15 U.S.C. 78a - 78pp (Securities Exchange Act of 1934) or not required to be  
8 registered under 15 U.S.C. 78a - 78pp (Securities Exchange Act of 1934) and  
9 is registered under the securities act of the state in which the customer  
10 maintains a principal place of residence;

11 (F) a bona fide preexisting customer whose principal place of  
12 residence is in this state but who was not present in this state when the  
13 customer relationship was established if

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

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

27 (G) not more than three customers in this state during the  
28 previous 12 months, in addition to those customers specified in (A) - (F) of this  
29 paragraph and under (H) of this paragraph if the broker-dealer is registered  
30 under 15 U.S.C. 78a - 78pp (Securities Exchange Act of 1934) or not required  
31 to be registered under 15 U.S.C. 78a - 78pp (Securities Exchange Act of 1934)

1 and is registered under the securities act of the state in which the broker-dealer  
2 has its principal place of business; and

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

5 (2) a person that deals solely in United States government securities  
6 and is supervised as a dealer in government securities by the Board of Governors of  
7 the Federal Reserve System, the United States Comptroller of the Currency, or the  
8 Federal Deposit Insurance Corporation.

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

22 **Sec. 45.56.410. Limited registration of Canadian broker-dealers and**  
23 **agents.** (a) If a broker-dealer is registered under this section and its principal office is  
24 located in a province or territory of Canada that provides at least equivalent  
25 registration for a broker-dealer that is resident in the United States, a broker-dealer  
26 that is resident in Canada and does not have an office or other physical presence in this  
27 state may effect transactions in securities with or for or induce or attempt to induce the  
28 purchase or sale of a security by a person from Canada who is

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

1 (2) resident in this state and whose transactions are in a self-directed  
2 tax-advantaged retirement plan in Canada if the person is the holder of or contributor  
3 to the plan.

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

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

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

11 (2) files a written consent to service of process under AS 45.56.630;

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

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

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

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

22 (2) files a written consent to service of process under AS 45.56.630;  
23 and

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

26 (e) Registration under this section becomes effective on the 30th day after an  
27 application is filed unless it is made effective earlier by the administrator or a denial  
28 order is in effect and a proceeding is pending under AS 45.56.480.

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

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

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

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

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

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

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

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

15 (h) A Canadian broker-dealer or agent registered under this section may renew  
16 its registration by filing by midnight on December 31 of each year the most recent  
17 renewal application, if any, filed in the jurisdiction in which the broker-dealer or agent  
18 has its principal office or, if a renewal application is not required, the most recent  
19 application filed under (c)(1) or (d)(1) of this section.

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

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

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

25 (2) with or through

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

27 (B) other broker-dealers; or

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

1 or

2 (3) as otherwise permitted by this chapter.

3 (k) A Canadian broker-dealer or agent registered under this section and acting  
4 in accordance with the limitations in (j) of this section is exempt from all of the  
5 requirements of this chapter except the anti-fraud provisions under AS 45.56.505 and  
6 the requirements of this section. The registration of a Canadian broker-dealer or agent  
7 under this section may not be denied, suspended, or revoked except in accordance with  
8 the provisions of AS 45.56.480 for a breach of the anti-fraud provisions under  
9 AS 45.56.505 or the requirements of this section.

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

12 **Sec. 45.56.420. Registration exemption for merger and acquisition broker.**

13 (a) Except as provided in (b) and (c) of this section, a merger and acquisition broker is  
14 exempt from registration under AS 45.56.405.

15 (b) A merger and acquisition broker is not exempt from registration under  
16 AS 45.56.405 if the broker

17 (1) directly or indirectly, in connection with the transfer of ownership  
18 of an eligible privately held company, receives, holds, transmits, or has custody of the  
19 funds or securities to be exchanged by the parties to the transaction;

20 (2) engages on behalf of an issuer in a public offering of any class of  
21 securities that is registered, or is required to be registered, with the United States  
22 Securities and Exchange Commission under 15 U.S.C. 78l(b) (Securities Exchange  
23 Act of 1934) or with respect to which the issuer files, or is required to file, periodic  
24 information, documents, and reports under 15 U.S.C. 78o(d) (Securities Exchange Act  
25 of 1934); or

26 (3) engages on behalf of any party in a transaction involving a public  
27 shell company.

28 (c) A merger and acquisition broker is not exempt from registration under  
29 AS 45.56.405 if the broker is subject to

30 (1) suspension or revocation of registration under 15 U.S.C. 78o(b)(4)  
31 (Securities Exchange Act of 1934);

1 (2) a statutory disqualification described in 15 U.S.C. 78c(a)(39)  
2 (Securities Exchange Act of 1934);

3 (3) a disqualification under the rules adopted by the United States  
4 Securities and Exchange Commission under 15 U.S.C. 77d note (Dodd-Frank Wall  
5 Street Reform and Consumer Protection Act); or

6 (4) a final order described in 15 U.S.C. 78o(b)(4)(H) (Securities  
7 Exchange Act of 1934).

8 (d) This section may not be construed to limit any other authority of the  
9 department to exempt any person, or any class of persons, from a provision of this  
10 chapter, or a provision of a rule or regulation adopted under this chapter.

11 (e) In this section,

12 (1) "control" means the power, directly or indirectly, to direct the  
13 management or policies of a company, whether through ownership of securities, by  
14 contract, or otherwise; there is a presumption of control for any person who

15 (A) is a director, general partner, limited liability company  
16 member, limited liability company manager, an officer who exercises  
17 executive responsibility, or an officer who has status or functions similar to an  
18 officer who exercises executive responsibility;

19 (B) has the right to vote 20 percent or more of a class of voting  
20 securities or the power to sell or direct the sale of 20 percent or more of a class  
21 of voting securities; or

22 (C) in the case of a partnership or limited liability company,  
23 has the right to receive upon dissolution, or has contributed, 20 percent or more  
24 of the capital;

25 (2) "eligible privately held company" means a company that

26 (A) does not have any class of securities registered, or required  
27 to be registered, with the United States Securities and Exchange Commission  
28 under 15 U.S.C. 78l(b) (Securities Exchange Act of 1934), or with respect to  
29 which the company files, or is required to file, periodic information,  
30 documents, and reports under 15 U.S.C. 78o(d) (Securities Exchange Act of  
31 1934); and

1 (B) in the fiscal year ending immediately before the fiscal year  
2 in which the services of the merger and acquisition broker are initially engaged  
3 with respect to the securities transaction, meets either or both of the following  
4 conditions, determined in accordance with the historical financial accounting  
5 records of the company:

6 (i) the earnings of the company before interest, taxes,  
7 depreciation, and amortization are less than \$25,000,000;

8 (ii) the gross revenue of the company is less than  
9 \$250,000,000;

10 (3) "merger and acquisition broker" means a broker, and a person  
11 associated with the broker, engaged in the business of effecting securities transactions  
12 solely in connection with the transfer of ownership of an eligible privately held  
13 company, regardless of whether that broker acts on behalf of a seller or buyer, through  
14 the purchase, sale, exchange, issuance, repurchase, or redemption of, or a business  
15 combination involving, securities or assets of the eligible privately held company, if  
16 the broker reasonably believes that

17 (A) upon consummation of the transaction, a person acquiring  
18 securities or assets of the eligible privately held company, acting alone or in  
19 concert, will control and, directly or indirectly, be active in the management of  
20 the eligible privately held company or the business conducted with the assets  
21 of the eligible privately held company; and

22 (B) if a person is offered securities in exchange for securities or  
23 assets of the eligible privately held company, the person will, before becoming  
24 legally bound to consummate the transaction, receive or have reasonable  
25 access to the most recent fiscal year-end financial statements of the issuer of  
26 the securities as customarily prepared by its management in the normal course  
27 of operations and, if the financial statements of the issuer are audited,  
28 reviewed, or compiled, any related statement by the independent accountant; a  
29 balance sheet dated not more than 120 days before the date of the exchange  
30 offer; and information pertaining to the management, business, results of  
31 operations for the period covered by the foregoing financial statements, and

1 any material loss contingencies of the issuer;

2 (4) "public shell company" means a company that, at the time of a  
3 transaction with an eligible privately held company,

4 (A) has any class of securities registered, or required to be  
5 registered, with the United States Securities and Exchange Commission under  
6 15 U.S.C. 78l(b), or with respect to which the company files, or is required to  
7 file, periodic information, documents, and reports under 15 U.S.C. 78o(d);

8 (B) has no assets or has nominal operations; and

9 (C) has

10 (i) no assets or has nominal assets;

11 (ii) assets consisting solely of cash and cash  
12 equivalents; or

13 (iii) assets consisting of any amount of cash and cash  
14 equivalents and nominal other assets.

15 **Sec. 45.56.430. Agent registration requirement and exemptions.** (a) An  
16 individual may not transact business in this state as an agent unless the individual is  
17 registered under this chapter as an agent or is exempt from registration as an agent  
18 under (b) of this section.

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

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

23 (2) an individual who represents a broker-dealer that is exempt under  
24 AS 45.56.405(b) or 45.56.410;

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

30 (4) an individual who represents an issuer and who effects transactions  
31 in the issuer's securities exempted by AS 45.56.210, other than AS 45.56.210(11) and

1 (14);

2 (5) an individual who represents an issuer that effects transactions  
3 solely in federal covered securities of the issuer, but an individual who effects  
4 transactions in a federal covered security under 15 U.S.C. 77r(b)(3) or (b)(4)(D)  
5 (Securities Act of 1933) is not exempt if the individual is compensated in connection  
6 with the agent's participation by the payment of commissions or other remuneration  
7 based, directly or indirectly, on transactions in those securities;

8 (6) an individual who represents a broker-dealer registered in this state  
9 under AS 45.56.405(a) or exempt from registration under AS 45.56.405(b) in the offer  
10 and sale of securities for an account of a nonaffiliated federal covered investment  
11 adviser with investments under management in excess of \$100,000,000 acting for the  
12 account of others under discretionary authority in a signed record;

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

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

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

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

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

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

31 **Sec. 45.56.435. Investment adviser registration requirement and**

1 **exemptions.** (a) A person may not transact business in this state as an investment  
2 adviser unless the person is registered under this chapter as an investment adviser or is  
3 exempt from registration as an investment adviser under (b) of this section.

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

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

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

11 (B) institutional investors;

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

16 (D) exempt by a regulation adopted or order issued under this  
17 chapter;

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

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

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

1 of the prohibitions of this subsection to the investment adviser.

2 (d) An investment adviser may not employ or associate with an individual  
3 required to be registered under this chapter as an investment adviser representative  
4 who transacts business in this state on behalf of the investment adviser unless the  
5 individual is registered under AS 45.56.440(a) or is exempt from registration under  
6 AS 45.56.440(b).

7 **Sec. 45.56.440. Investment adviser representative registration requirement**  
8 **and exemptions.** (a) An individual may not transact business in this state as an  
9 investment adviser representative unless the individual is registered under this chapter  
10 as an investment adviser representative or is exempt from registration as an investment  
11 adviser representative under (b) of this section.

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

14 (1) an individual who is employed by or associated with an investment  
15 adviser that is exempt from registration under AS 45.56.435(b) or a federal covered  
16 investment adviser that is excluded from the notice filing requirements of  
17 AS 45.56.445; and

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

20 (c) The registration of an investment adviser representative is not effective  
21 while the investment adviser representative is not employed by or associated with an  
22 investment adviser registered under this chapter or a federal covered investment  
23 adviser that has made or is required to make a notice filing under AS 45.56.445.

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

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

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

8 (f) An investment adviser registered under this chapter, a federal covered  
9 investment adviser that has filed a notice under AS 45.56.445, or a broker-dealer  
10 registered under this chapter is not required to employ or associate with an individual  
11 as an investment adviser representative if the only compensation paid to the individual  
12 for a referral of investment advisory clients is paid to an investment adviser registered  
13 under this chapter, a federal covered investment adviser who has filed a notice under  
14 AS 45.56.445, or a broker-dealer registered under this chapter with which the  
15 individual is employed or associated as an investment adviser representative.

16 **Sec. 45.56.445. Federal covered investment adviser notice filing**  
17 **requirement.** (a) Except with respect to a federal covered investment adviser  
18 described in (b) of this section, a federal covered investment adviser may not transact  
19 business in this state as a federal covered investment adviser unless the federal  
20 covered investment adviser complies with (c) of this section.

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

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

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

27 (B) institutional investors;

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

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

1 (2) a federal covered investment adviser without a place of business in  
2 this state if the person has had, during the preceding 12 months, not more than five  
3 clients that are resident in this state in addition to those specified under (1) of this  
4 subsection; and

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

7 (c) A person acting as a federal covered investment adviser not excluded  
8 under (b) of this section shall file a notice, a consent to service of process complying  
9 with AS 45.56.630, and the records that have been filed with the Securities and  
10 Exchange Commission under 15 U.S.C. 80b-1 - 80b-21 (Investment Advisers Act of  
11 1940) as required by a regulation adopted or order issued under this chapter and shall  
12 pay the fees specified by regulation adopted under AS 45.56.470.

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

14 **Sec. 45.56.450. Registration by broker-dealer, agent, investment adviser,**  
15 **and investment adviser representative.** (a) A person shall register as a broker-dealer,  
16 agent, investment adviser, or investment adviser representative by filing an application  
17 and a consent to service of process complying with AS 45.56.630 and by paying the  
18 fee specified in AS 45.56.470 and any reasonable fees charged by the designee of the  
19 administrator for processing the filing. The application must contain

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

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

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

27 (c) If an order is not in effect, and a proceeding is not pending under  
28 AS 45.56.480, and the administrator has not initiated an investigation, registration  
29 becomes effective at noon on the 45th day after a completed application is filed, unless  
30 the registration is denied. A regulation adopted or order issued under this chapter may  
31 set an earlier effective date or may defer the effective date until noon on the 45th day

1 after the filing of any amendment completing the application.

2 (d) A registration is effective until midnight on December 31 of the year for  
3 which the application for registration is filed. Unless an order is in effect under  
4 AS 45.56.480, a registration may be automatically renewed each year by filing the  
5 records required by a regulation adopted or order issued under this chapter, by paying  
6 the fee specified in AS 45.56.470, and by paying costs charged by the designee of the  
7 administrator for processing the filings.

8 (e) A regulation adopted or order issued under this chapter may impose other  
9 conditions, not inconsistent with 15 U.S.C. 77b, 77c, 77e, 77f, 77r, 77z-3, 77ddd, 78b  
10 - 78d, 78g, 78h, 78n, 78o, 78q, 78bb, 78ee, 78kk, 78mm, 80a-2, 80a-3, 80a-6, 80a-12,  
11 80a-24, 80a-26, 80a-27, 80a-29, 80a-30, 80a-34, 80a-51, 80a-54, 80a-60, 80a-63, 80b-  
12 2, 80b-3a, 80b-5, 80b-10, 80b-18a, and 80b-20, and 29 U.S.C. 1002 (National  
13 Securities Markets Improvement Act of 1996). An order issued under this chapter may  
14 waive, in whole or in part, specific requirements in connection with registration that  
15 are in the public interest and for the protection of investors.

16 **Sec. 45.56.455. Succession and change in registration of broker-dealer or**  
17 **investment adviser.** (a) A broker-dealer or investment adviser may succeed to the  
18 current registration of another broker-dealer or investment adviser or a notice filing of  
19 a federal covered investment adviser, and a federal covered investment adviser may  
20 succeed to the current registration of an investment adviser or notice filing of another  
21 federal covered investment adviser, by filing as a successor an application for  
22 registration under AS 45.56.405 or 45.56.435 or a notice under AS 45.56.445 for the  
23 unexpired portion of the current registration or notice filing.

24 (b) A broker-dealer or investment adviser that changes its form of  
25 organization or state of incorporation or organization may continue its registration by  
26 filing an amendment to its registration if the change does not involve a material  
27 change in its financial condition or management. The amendment becomes effective  
28 when filed or on a date designated by the registrant in its filing. The new organization  
29 is a successor to the original registrant for the purposes of this chapter. If there is a  
30 material change in financial condition or management, the broker-dealer or investment  
31 adviser shall file a new application for registration. A predecessor registered under this

1 chapter shall stop conducting its securities business other than winding down  
2 transactions and shall file for withdrawal of broker-dealer or investment adviser  
3 registration within 45 days after filing its amendment to effect succession.

4 (c) A broker-dealer or investment adviser that changes its name may continue  
5 its registration by filing an amendment to its registration. The amendment becomes  
6 effective when filed or on a date designated by the registrant.

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

9 **Sec. 45.56.460. Termination of employment or association of agent and**  
10 **investment adviser representative and transfer of employment or association.** (a)  
11 If an agent registered under this chapter terminates employment by or association with  
12 a broker-dealer or issuer, or if an investment adviser representative registered under  
13 this chapter terminates employment by or association with an investment adviser or  
14 federal covered investment adviser, or if either registrant terminates activities that  
15 require registration as an agent or investment adviser representative, the broker-dealer,  
16 issuer, investment adviser, or federal covered investment adviser shall promptly file a  
17 notice of termination. The registrant may file the notice of termination if the registrant  
18 learns that the broker-dealer, issuer, investment adviser, or federal covered investment  
19 adviser has not filed the notice.

20 (b) If an agent registered under this chapter terminates employment by or  
21 association with a broker-dealer registered under this chapter and begins employment  
22 by or association with another broker-dealer registered under this chapter, or if an  
23 investment adviser representative registered under this chapter terminates employment  
24 by or association with an investment adviser registered under this chapter or a federal  
25 covered investment adviser that has filed a notice under AS 45.56.445 and begins  
26 employment by or association with another investment adviser registered under this  
27 chapter or a federal covered investment adviser that has filed a notice under  
28 AS 45.56.445, then, within 30 days after the termination, upon the filing by or on  
29 behalf of the registrant of an application for registration that complies with the  
30 requirement of AS 45.56.450(a) and payment of the filing fee required under  
31 AS 45.56.470, the registration of the agent or investment adviser representative is

1 (1) immediately effective as of the date of the completed filing, if the  
2 agent's record or successor record in the Central Registration Depository operated by  
3 the Financial Industry Regulatory Authority or the investment adviser representative's  
4 record or successor record in the Investment Adviser Registration Depository operated  
5 by the Financial Industry Regulatory Authority does not contain a new or amended  
6 disciplinary disclosure within the previous 12 months; or

7 (2) temporarily effective as of the date of the completed filing, if the  
8 agent's record or successor record in the Central Registration Depository operated by  
9 the Financial Industry Regulatory Authority or the investment adviser representative's  
10 record or successor record in the Investment Adviser Registration Depository operated  
11 by the Financial Industry Regulatory Authority contains a new or amended  
12 disciplinary disclosure within the preceding 12 months.

13 (c) The administrator may withdraw a temporary registration if there are or  
14 were grounds for discipline as specified in AS 45.56.480 and the administrator does so  
15 within 30 days after the filing of the application. If the administrator does not  
16 withdraw the temporary registration within the 30-day period, registration becomes  
17 automatically effective on the 31st day after filing.

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

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

29 **Sec. 45.56.465. Withdrawal of registration of broker-dealer, agent,**  
30 **investment adviser, and investment adviser representative.** Withdrawal of  
31 registration by a broker-dealer, agent, investment adviser, or investment adviser

1 representative becomes effective 60 days after the filing of the application to withdraw  
2 or within any shorter period as provided by a regulation adopted or order issued under  
3 this chapter unless a revocation or suspension proceeding is pending when the  
4 application is filed. If a proceeding is pending, withdrawal becomes effective when  
5 and upon the conditions required by a regulation adopted or order issued under this  
6 chapter. The administrator may institute a revocation or suspension proceeding under  
7 AS 45.56.480 within one year after the withdrawal became effective automatically and  
8 issue a revocation or suspension order as of the last date on which registration was  
9 effective if a proceeding is not pending.

10 **Sec. 45.56.470. Filing fees.** (a) The administrator shall establish fees by  
11 regulation for

12 (1) an initial filing of an application as a broker-dealer and renewal of  
13 an application by a broker-dealer for registration;

14 (2) an application for registration as an agent and renewal of  
15 registration as an agent;

16 (3) an application for registration as an investment adviser and renewal  
17 of registration as an investment adviser;

18 (4) an application for registration as an investment adviser  
19 representative, a renewal of registration as an investment adviser representative, and a  
20 change of registration as an investment adviser representative; and

21 (5) an initial fee and annual notice fee for a federal covered investment  
22 adviser required to file a notice under AS 45.56.445.

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

26 **Sec. 45.56.475. Post registration requirements.** (a) Subject to 15 U.S.C.  
27 78o(i) or 80b-18a, a regulation adopted or order issued under this chapter may  
28 establish minimum financial requirements for broker-dealers registered or required to  
29 be registered under this chapter and investment advisers registered or required to be  
30 registered under this chapter.

31 (b) Subject to 15 U.S.C. 78o(i) or 80b-18a, a broker-dealer registered or

1 required to be registered under this chapter and an investment adviser registered or  
2 required to be registered under this chapter shall file the financial reports required by a  
3 regulation adopted or order issued under this chapter. If the information contained in a  
4 record filed under this subsection is or becomes inaccurate or incomplete in a material  
5 respect, the registrant shall promptly file a correcting amendment.

6 (c) Subject to 15 U.S.C. 78o(i) or 80b-18a,

7 (1) a broker-dealer registered or required to be registered under this  
8 chapter and an investment adviser registered or required to be registered under this  
9 chapter shall make and maintain the accounts, correspondence, memoranda, papers,  
10 books, and other records required by a regulation adopted or order issued under this  
11 chapter;

12 (2) broker-dealer records required to be maintained under (1) of this  
13 subsection may be maintained in any form of data storage acceptable under 15 U.S.C.  
14 78q(a) if they are readily accessible to the administrator; and

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

18 (d) The records of a broker-dealer registered or required to be registered under  
19 this chapter and of an investment adviser registered or required to be registered under  
20 this chapter are subject to the reasonable periodic, special, or other audits or  
21 inspections by a representative of the administrator, in or outside this state, that the  
22 administrator considers necessary or appropriate in the public interest and for the  
23 protection of investors. An audit or inspection may be made at any time and without  
24 prior notice. The administrator may copy and remove for audit or inspection copies of  
25 all records the administrator reasonably considers necessary or appropriate to conduct  
26 the audit or inspection. The administrator may assess a reasonable charge for  
27 conducting an audit or inspection under this subsection.

28 (e) Subject to 15 U.S.C. 78o(i) or 80b-18a, a regulation adopted or order  
29 issued under this chapter may require a broker-dealer or investment adviser that has  
30 custody of or discretionary authority over funds or securities of a customer or client to  
31 obtain insurance or post a bond or other satisfactory form of security in an amount

1 established by a regulation adopted under this chapter. The administrator may  
2 determine the requirements of the insurance, bond, or other satisfactory form of  
3 security. Insurance or a bond or other satisfactory form of security may not be required  
4 of a broker-dealer registered under this chapter whose net capital exceeds, or of an  
5 investment adviser registered under this chapter whose minimum financial  
6 requirements exceed, the amounts required by a regulation adopted or order issued  
7 under this chapter. The insurance, bond, or other satisfactory form of security must  
8 permit an action by a person to enforce any liability on the insurance, bond, or other  
9 satisfactory form of security if instituted within the time limitations in  
10 AS 45.56.660(j)(2).

11 (f) Subject to 15 U.S.C. 78o(i) or 80b-18a, an agent may not have custody of  
12 funds or securities of a customer except under the supervision of a broker-dealer, and  
13 an investment adviser representative may not have custody of funds or securities of a  
14 client except under the supervision of an investment adviser or a federal covered  
15 investment adviser. A regulation adopted or order issued under this chapter may  
16 prohibit, limit, or impose conditions on a broker-dealer regarding custody of funds or  
17 securities of a customer and on an investment adviser regarding custody of securities  
18 or funds of a client.

19 (g) With respect to an investment adviser registered or required to be  
20 registered under this chapter, a regulation adopted or order issued under this chapter  
21 may require that information or other records be furnished or disseminated to clients  
22 or prospective clients in this state as necessary or appropriate in the public interest and  
23 for the protection of investors and advisory clients.

24 (h) A regulation adopted or order issued under this chapter may require an  
25 individual registered under AS 45.56.430 or 45.56.440 to participate in a continuing  
26 education program approved by the Securities and Exchange Commission and  
27 administered by a self-regulatory organization, or, in the absence of a continuing  
28 education program, a regulation adopted or order issued under this chapter may  
29 require continuing education for an individual registered under AS 45.56.440.

30 **Sec. 45.56.480. Denial, revocation, suspension, withdrawal, restriction,**  
31 **condition, or limitation of registration.** (a) If the administrator finds that the order is

1 in the public interest and (d) of this section authorizes the action, an order issued under  
2 this chapter may deny an application, or may condition or limit registration of an  
3 applicant to be a broker-dealer, agent, investment adviser, or investment adviser  
4 representative, and, if the applicant is a broker-dealer or investment adviser, of a  
5 partner, officer, director, or person having a similar status or performing similar  
6 functions, or a person directly or indirectly in control, of the broker-dealer or  
7 investment adviser.

8 (b) If the administrator finds that the order is in the public interest and (d) of  
9 this section authorizes the action, an order issued under this chapter may revoke,  
10 suspend, condition, or limit the registration of a registrant, and, if the registrant is a  
11 broker-dealer or investment adviser, of a partner, officer, director, or person having a  
12 similar status or performing similar functions, or a person directly or indirectly in  
13 control, of the broker-dealer or investment adviser. However, the administrator may  
14 not

15 (1) institute a revocation or suspension proceeding under this  
16 subsection based on an order issued under a law of another state that is reported to the  
17 administrator or a designee of the administrator more than three years after the date of  
18 the order on which it is based; or

19 (2) under (d)(5)(A) and (B) of this section, issue an order based on an  
20 order issued under the securities act of another state unless the other order was based  
21 on conduct for which (d) of this section would authorize the action had the conduct  
22 occurred in this state.

23 (c) If the administrator finds that the order is in the public interest and (d)(1) -  
24 (6), (8) - (10), (12), or (13) of this section authorize the action, an order under this  
25 chapter may censure, impose a bar, or impose a civil penalty of not more than  
26 \$100,000 for a single violation on a registrant and, if the registrant is a broker-dealer  
27 or investment adviser, on a partner, officer, director, or person having a similar status  
28 or performing similar functions, or on a person directly or indirectly in control of the  
29 broker-dealer or investment adviser.

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

31 (1) has filed, within the previous 10 years under this chapter or former

1 AS 45.55, an application for registration in this state that, as of the effective date of  
2 registration or as of any date after filing in the case of an order denying effectiveness,  
3 was incomplete in any material respect or contained a statement that, in light of the  
4 circumstances under which it was made, was false or misleading with respect to a  
5 material fact;

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

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

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

19 (5) is the subject of an order issued after notice and opportunity for  
20 hearing by

21 (A) the securities or other financial services regulator of a state  
22 or the Securities and Exchange Commission or other federal agency denying,  
23 revoking, barring, or suspending registration as a broker-dealer, agent,  
24 investment adviser, federal covered investment adviser, or investment adviser  
25 representative;

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

29 (C) the Securities and Exchange Commission or a self-  
30 regulatory organization suspending or expelling the registrant from  
31 membership in the self-regulatory organization;

1 (D) a court adjudicating a United States Postal Service fraud  
2 order;

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

5 (F) a depository institution or financial services regulator  
6 suspending or barring the person from the depository institution or other  
7 financial services business;

8 (6) is the subject of an adjudication or determination, after notice and  
9 opportunity for hearing, by the Securities and Exchange Commission, the Commodity  
10 Futures Trading Commission, the Federal Trade Commission, a federal depository  
11 institution regulator, or a depository institution, insurance, or other financial services  
12 regulator of a state that the person wilfully violated 15 U.S.C. 77a - 77aa (Securities  
13 Act of 1933), 15 U.S.C. 78a - 78pp (Securities Exchange Act of 1934), 15 U.S.C. 80b-  
14 1 - 80b-21 (Investment Advisers Act of 1940), 15 U.S.C. 80a-1 - 80a-64 (Investment  
15 Company Act of 1940), or 7 U.S.C. 1 - 27 (Commodity Exchange Act), the securities  
16 or commodities law of a state, or a federal or state law under which a business  
17 involving investments, franchises, insurance, banking, or finance is regulated;

18 (7) is insolvent, either because the person's liabilities exceed the  
19 person's assets or because the person cannot meet the person's obligations as they  
20 mature, but the administrator may not enter an order against an applicant or registrant  
21 under this paragraph without a finding of insolvency as to the applicant or registrant;

22 (8) refuses to allow or otherwise impedes the administrator from  
23 conducting an audit or inspection under AS 45.56.475(d) or refuses access to a  
24 registrant's office to conduct an audit or inspection under AS 45.56.475(d);

25 (9) has failed to reasonably supervise an agent, investment adviser  
26 representative, or other individual, if the agent, investment adviser representative, or  
27 other individual was subject to the person's supervision and committed a violation of  
28 this chapter or former AS 45.55 or a regulation adopted or order issued under this  
29 chapter or former AS 45.55;

30 (10) has not paid the proper filing fee within 30 days after having been  
31 notified by the administrator of a deficiency, but the administrator shall vacate an

1 order under this paragraph when the deficiency is corrected;

2 (11) after notice and opportunity for a hearing, has been found

3 (A) by a court of competent jurisdiction to have wilfully  
4 violated the laws of a foreign jurisdiction under which the business of  
5 securities, commodities, investment, franchises, insurance, banking, or finance  
6 is regulated;

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

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

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

17 (13) has engaged in dishonest or unethical practices in the securities,  
18 commodities, investment, franchise, banking, finance, or insurance business;

19 (14) is not qualified based on factors that may include training,  
20 experience, and knowledge of the securities business; however, in the case of an  
21 application by an agent for a broker-dealer that is a member of a self-regulatory  
22 organization or by an individual for registration as an investment adviser  
23 representative, a denial order may not be based on this paragraph if the individual has  
24 successfully completed all examinations required by (e) of this section; the  
25 administrator may require an applicant for registration under AS 45.56.430 or  
26 45.56.440 who has not been registered in a state within the two years preceding the  
27 filing of an application in this state to complete successfully an examination; or

28 (15) is a person whose license renewal is denied under AS 14.43.148  
29 or whose license issuance or renewal is denied under AS 25.27.244.

30 (e) A regulation adopted or order issued under this chapter may require that an  
31 examination, including an examination developed or approved by an organization of

1 securities regulators, be successfully completed by a class of individuals or all  
2 individuals. An order issued under this chapter may waive, in whole or in part, an  
3 examination as to an individual and a regulation adopted under this chapter may  
4 waive, in whole or in part, an examination as to a class of individuals if the  
5 administrator determines that the examination is not necessary or appropriate in the  
6 public interest and for the protection of investors.

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

18 (g) An order may not be issued under this section, except under (f) of this  
19 section, without appropriate notice to the applicant or registrant, and an opportunity  
20 for hearing under AS 45.56.650(c).

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

26 (i) The administrator may not institute a proceeding under (a) - (c) of this  
27 section based solely on material facts actually known by the administrator unless an  
28 investigation or the proceeding is instituted within one year after the administrator  
29 actually acquires knowledge of the material facts.

#### 30 **Article 5. Fraud and Liabilities.**

31 **Sec. 45.56.505. General fraud.** A person may not, in connection with the

1 offer, sale, or purchase of a security, directly or indirectly,

2 (1) employ a device, scheme, or artifice to defraud;

3 (2) make an untrue statement of a material fact or omit to state a  
4 material fact necessary to make the statements made, in light of the circumstances  
5 under which they were made, not misleading; or

6 (3) engage in an act, practice, or course of business that operates or  
7 would operate as a fraud or deceit on another person.

8 **Sec. 45.56.510. Prohibited conduct in providing investment advice.** (a) A  
9 person that advises others for compensation, either directly or indirectly or through  
10 publications or writings, as to the value of securities or the advisability of investing in,  
11 purchasing, or selling securities or that, for compensation and as part of a regular  
12 business, issues or adopts analyses or reports relating to securities may not

13 (1) employ a device, scheme, or artifice to defraud another person; or

14 (2) engage in an act, practice, or course of business that operates or  
15 would operate as a fraud or deceit on another person.

16 (b) A regulation adopted under this chapter may define an act, practice, or  
17 course of business of an investment adviser or an investment adviser representative,  
18 other than a supervised person of a federal covered investment adviser, as fraudulent,  
19 deceptive, or manipulative and may prescribe means reasonably designed to prevent  
20 investment advisers and investment adviser representatives, other than supervised  
21 persons of a federal covered investment adviser, from engaging in acts, practices, and  
22 courses of business defined as fraudulent, deceptive, or manipulative.

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

26 **Sec. 45.56.520. Misleading filings.** A person may not, in a document filed  
27 with the administrator or in a proceeding under this chapter, make or cause to be made  
28 an untrue statement of a material fact or omit to state a material fact necessary in order  
29 to make the statements made, in the light of the circumstances under which they are  
30 made, not misleading.

31 **Sec. 45.56.530. Misrepresentations concerning registration or exemption.**

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

11 **Sec. 45.56.540. Evidentiary burden.** (a) In a civil action or administrative  
12 proceeding under this chapter, a person claiming an exemption, exception,  
13 preemption, or exclusion has the burden to prove the applicability of the claim.

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

17 **Sec. 45.56.550. Filing of sales and advertising literature.** (a) Except as  
18 otherwise provided in (b) of this section, a regulation adopted or order issued under  
19 this chapter may require the filing of a prospectus, pamphlet, circular, form letter,  
20 advertisement, sales literature, or other advertising record relating to a security or  
21 investment advice, addressed or intended for distribution to prospective investors,  
22 including clients or prospective clients of a person registered or required to be  
23 registered as an investment adviser under this chapter.

24 (b) This section does not apply to sales and advertising literature specified in  
25 (a) of this section that relates to a federal covered security, a federal covered  
26 investment adviser, or a security or transaction exempted by AS 45.56.205, 45.56.210,  
27 45.56.220, or 45.56.240, except as required under AS 45.56.205(7).

28 (c) The administrator may by regulation or order prohibit the publication,  
29 circulation, or use of any advertising considered false or misleading.

30 **Sec. 45.56.560. Qualified immunity.** A broker-dealer, agent, investment  
31 adviser, federal covered investment adviser, or investment adviser representative is not

1 liable to another broker-dealer, agent, investment adviser, federal covered investment  
2 adviser, or investment adviser representative for defamation relating to a statement  
3 that is contained in a record required by the administrator, a designee of the  
4 administrator, the Securities and Exchange Commission, or a self-regulatory  
5 organization, unless the person knew, or should have known at the time the statement  
6 was made, that it was false in a material respect or the person acted in reckless  
7 disregard of the statement's truth or falsity.

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

9 **Sec. 45.56.605. Administration.** (a) The department shall administer this  
10 chapter.

11 (b) The administrator or an officer, employee, or designee of the administrator  
12 may not use for personal benefit or the benefit of others records or other information  
13 obtained by or filed with the administrator that is not public under AS 45.56.615(b).  
14 This chapter does not authorize the administrator or an officer, employee, or designee  
15 of the administrator to disclose the record or information, except in accordance with  
16 AS 45.56.615(c), 45.56.620, or 45.56.645.

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

19 (d) The administrator may develop and implement investor education  
20 initiatives to inform the public about investing in securities, with particular emphasis  
21 on the prevention and detection of securities fraud. In developing and implementing  
22 these initiatives, the administrator may collaborate with public and nonprofit  
23 organizations with an interest in investor education. The administrator may accept a  
24 grant or donation from a person that is not affiliated with the securities industry or  
25 from a nonprofit organization, regardless of whether the organization is affiliated with  
26 the securities industry, to develop and implement investor education initiatives. This  
27 subsection does not authorize the administrator to require participation or monetary  
28 contributions of a registrant in an investor education program.

29 **Sec. 45.56.610. Administrative files and opinions.** (a) The administrator shall  
30 maintain, or designate a person to maintain, a register of applications for registration  
31 of securities; registration statements; notice filings; applications for registration of

1 broker-dealers, agents, investment advisors, and investment adviser representatives;  
2 notice filings by federal covered investment advisors that are or have been effective  
3 under this chapter or former AS 45.55; notices of claims of exemption from  
4 registration or notice filing requirements contained in a record; orders issued under  
5 this chapter or former AS 45.55; and interpretative opinions or no-action  
6 determinations issued under this chapter. The register must be kept according to the  
7 existing retention schedule mandated by the department.

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

10 (c) The administrator shall furnish a copy of a record that is a public record or  
11 a certification that the public record does not exist to a person upon request. A copy of  
12 the record certified or a certificate by the administrator of a record's nonexistence is  
13 prima facie evidence of a record or its nonexistence.

14 **Sec. 45.56.615. Public records; confidentiality.** (a) Except as otherwise  
15 provided in (b) of this section, records obtained by the administrator or filed under this  
16 chapter, including a record contained in or filed with a registration statement,  
17 application, notice filing, or report are public records and are available for public  
18 examination under AS 40.25.100 - 40.25.295 (Alaska Public Records Act).

19 (b) The following records are not public records under AS 40.25.100 -  
20 40.25.295 (Alaska Public Records Act) and are not available for public examination  
21 under (a) of this section:

22 (1) a record obtained by the administrator in connection with an audit,  
23 examination or inspection under AS 45.56.475(d) or an investigation under  
24 AS 45.56.645;

25 (2) a part of a record filed in connection with a registration statement  
26 under AS 45.56.105 and 45.56.305 - 45.56.320 or a record under AS 45.56.475(d) that  
27 contains trade secrets or confidential information if the person filing the registration  
28 statement or report has asserted a claim of confidentiality or privilege that is  
29 authorized by law;

30 (3) a record that is not required to be provided to the administrator or  
31 filed under this chapter and is provided to the administrator only on the condition that

1 the record may not be subject to public examination or disclosure;

2 (4) a nonpublic record received from a person specified in  
3 AS 45.56.620(a); and

4 (5) a social security number, residential address unless used as a  
5 business address, and residential telephone number unless used as a business  
6 telephone number, contained in a record that is filed.

7 (c) If disclosure is for the purpose of a civil, administrative, or criminal  
8 investigation, action, or proceeding or to a person specified in AS 45.56.620(a), the  
9 administrator may disclose a record obtained in connection with an audit or inspection  
10 under AS 45.56.475(d) or a record obtained in connection with an investigation under  
11 AS 45.56.645.

12 **Sec. 45.56.620. Uniformity and cooperation with other agencies.** (a) The  
13 administrator may cooperate, coordinate, consult, and, subject to AS 45.56.615, share  
14 records and information with the securities regulator of another state, Canada, a  
15 Canadian province or territory, a foreign jurisdiction, the Securities and Exchange  
16 Commission, the United States Department of Justice, the Commodity Futures  
17 Trading Commission, the Federal Trade Commission, the Securities Investor  
18 Protection Corporation, a self-regulatory organization, a national or international  
19 organization of securities regulators, a federal or state banking and insurance  
20 regulator, and a governmental law enforcement agency to bring about greater  
21 uniformity in securities matters among the federal government, self-regulatory  
22 organizations, states, and foreign governments.

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

27 (1) maximizing effectiveness of regulation for the protection of  
28 investors;

29 (2) maximizing uniformity in federal and state regulatory standards;  
30 and

31 (3) minimizing burdens on the business of capital formation, without

1 adversely affecting essentials of investor protection.

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

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

7 (2) developing and maintaining uniform forms;

8 (3) conducting a joint examination or investigation;

9 (4) holding a joint administrative hearing;

10 (5) instituting and prosecuting a joint civil or administrative  
11 proceeding;

12 (6) sharing and exchanging personnel;

13 (7) coordinating registrations under AS 45.56.105 and 45.56.405 -  
14 45.56.440 and exemptions under AS 45.56.240;

15 (8) sharing and exchanging records, subject to AS 45.56.615;

16 (9) formulating regulations, statements of policy, guidelines, forms,  
17 and interpretative opinions and releases;

18 (10) formulating common systems and procedures;

19 (11) notifying the public of proposed regulations, forms, statements of  
20 policy, and guidelines;

21 (12) attending conferences and other meetings among securities  
22 regulators, that may include representatives of governmental and private sector  
23 organizations involved in capital formation, considered necessary or appropriate to  
24 promote or achieve uniformity; and

25 (13) developing and maintaining a uniform exemption from  
26 registration for small issuers and taking other steps to reduce the burden of raising  
27 investment capital by small businesses.

28 **Sec. 45.56.625. Securities investor education and training fund.** The  
29 securities investor education and training fund is created as a special fund in the  
30 general fund to provide funds for the purposes specified in 45.56.605(d). The  
31 legislature may appropriate 33 percent of the money received by this state from civil

1 penalties under this chapter into the fund for securities investor education and training.  
2 Nothing in this section exempts money deposited into the fund from the requirements  
3 of AS 37.07 (Executive Budget Act) or dedicates money for a specific purpose.

4 **Sec. 45.56.630. Service of process.** (a) A consent to service of process  
5 complying with this section required by this chapter shall be signed and filed in the  
6 form required by a regulation adopted or order issued under this chapter. A consent  
7 appointing the administrator the person's agent for service of process in a noncriminal  
8 action or proceeding against the person or the person's successor or personal  
9 representative under this chapter or a regulation adopted or order issued under this  
10 chapter after the consent is filed has the same force and validity as if the service were  
11 made personally on the person filing the consent. A person that has filed a consent  
12 under this subsection in connection with a previous application for registration or  
13 notice filing need not file an additional consent.

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

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

23 (1) the plaintiff, which may be the administrator, promptly sends  
24 notice of the service and a copy of the process, return receipt requested, to the  
25 defendant or respondent at the address set out in the consent to service of process or, if  
26 a consent to service of process has not been filed, at the last known address, or takes  
27 other reasonable steps to give notice; and

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

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

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

7 **Sec. 45.56.635. Applicability of the chapter.** (a) Unless the persons are  
8 exempt elsewhere in this chapter, this chapter applies to persons who buy or offer to  
9 buy when an offer to

10 (1) buy is made in this state; or

11 (2) sell is made and accepted in this state.

12 (b) Unless the person is exempt elsewhere in this chapter, this chapter applies  
13 to a person who sells or offers to sell when an offer to

14 (1) sell is made in this state; or

15 (2) buy is made and accepted in this state.

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

18 (1) originates from this state;

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

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

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

27 (5) is for an interest or participation in real property located in this  
28 state, or in a corporation, a partnership, a limited liability company, a limited  
29 partnership, a limited liability partnership, an association, or a joint-stock company;  
30 jurisdiction under this paragraph may be exercised only when the exercise is  
31 consistent with the constitution of this state or of the United States.

1 (d) For the purpose of this section, an offer to buy or to sell is accepted in this  
2 state when acceptance is communicated to the offeror in this state and has not  
3 previously been communicated to the offeror, orally or in writing, outside this state.  
4 Acceptance is communicated to the offeror in this state, whether or not either party is  
5 then present in this state, when the offeree directs the acceptance to the offeror in this  
6 state reasonably believing the offeror to be in this state and the acceptance is received  
7 at the place to which it is directed or, in the case of a mailed acceptance, at a post  
8 office in this state.

9 (e) This chapter applies to investment advisers, federal covered advisers, and  
10 investment adviser representatives when any act instrumental in effecting prohibited  
11 conduct is done in this state, regardless of whether either party is then present in this  
12 state.

13 **Sec. 45.56.640. Regulations, forms, orders, interpretative opinions, and**  
14 **hearings.** (a) The administrator may

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

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

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

23 (b) Under this chapter, a regulation or form may not be adopted or amended,  
24 or an order issued or amended, unless the administrator finds that the regulation, form,  
25 order, or amendment is necessary or appropriate in the public interest or for the  
26 protection of investors and is consistent with the purposes intended by this chapter. In  
27 adopting, amending, and repealing regulations and forms, AS 45.56.620 applies to  
28 achieve uniformity among the states and coordination with federal laws in the form  
29 and content of registration statements, applications, reports, and other records,  
30 including the adoption of uniform rules, forms, and procedures.

31 (c) Subject to 15 U.S.C. 78o(i) and 80b-18a, the administrator may require

1 that a financial statement filed under this chapter be prepared in accordance with  
2 generally accepted accounting principles in the United States and comply with other  
3 requirements specified by regulation adopted or order issued under this chapter. A  
4 regulation adopted or order issued under this chapter may establish

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

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

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

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

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

21 (f) AS 44.62 (Administrative Procedure Act) applies to all regulations adopted  
22 or authorized under this chapter.

23 **Sec. 45.56.645. Investigations and subpoenas.** (a) The administrator may

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

29 (2) require or permit a person to testify, file a statement, or produce a  
30 record, under oath or otherwise as the administrator determines, as to all the facts and  
31 circumstances concerning a matter to be investigated or about which an action or

1 proceeding is to be instituted; and

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

6 (b) For the purpose of an investigation under this chapter, the administrator or  
7 the designated officer of the administrator may administer oaths and affirmations,  
8 subpoena witnesses, seek compulsion of attendance, take evidence, require the filing  
9 of statements, and require the production of any records that the administrator  
10 considers relevant or material to the investigation.

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

16 (1) hold the person in contempt;

17 (2) order the person to appear before the administrator;

18 (3) order the person to testify about the matter under investigation or in  
19 question;

20 (4) order the production of records;

21 (5) grant injunctive relief, including restricting or prohibiting the offer  
22 or sale of securities or the providing of investment advice;

23 (6) impose a civil penalty of not more than \$100,000 for a single  
24 violation; and

25 (7) grant any other necessary or appropriate relief.

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

29 (e) A person is not excused from attending, testifying, filing a statement,  
30 producing a record or other evidence, or obeying a subpoena of the administrator  
31 under this chapter or in an action or proceeding instituted by the administrator under

1 this chapter on the ground that the required testimony, statement, record, or other  
2 evidence, directly or indirectly, may tend to incriminate the individual or subject the  
3 individual to a criminal fine, penalty, or forfeiture. If the person refuses to testify, file  
4 a statement, or produce a record or other evidence based on the individual's privilege  
5 against self-incrimination, the administrator may apply to the superior court to compel  
6 the testimony, the filing of the statement, the production of the record, or the giving of  
7 other evidence. The testimony, record, or other evidence compelled under an order of  
8 the superior court may not be used, directly or indirectly, against the individual in a  
9 criminal case, except in a prosecution for perjury, contempt, or otherwise failing to  
10 comply with the order.

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

27 **Sec. 45.56.650. Administrative enforcement.** (a) If the administrator  
28 determines that a person has engaged, is engaging, or is about to engage in an act,  
29 practice, or course of business constituting a violation of this chapter or a regulation  
30 adopted or order issued under this chapter or that a person has materially aided, is  
31 materially aiding, or is about to aid materially an act, practice, or course of business

1 constituting a violation of this chapter or a regulation adopted or order issued under  
2 this chapter, the administrator may issue an order

3 (1) directing the person to cease and desist from engaging in the act,  
4 practice, or course of business or to take other action necessary or appropriate to  
5 comply with this chapter;

6 (2) denying, suspending, revoking, or conditioning the exemptions for  
7 a broker-dealer under AS 45.56.405(b)(1)(D) or (F) or an investment adviser under  
8 AS 45.56.435(b)(1)(C); or

9 (3) denying, suspending, conditioning, or limiting an exemption as  
10 provided under AS 45.56.250.

11 (b) An order under (a) of this section is effective on the date of issuance. Upon  
12 issuance of the order, the administrator shall promptly serve each person subject to the  
13 order with a copy of the order and a notice that the order has been entered. The order  
14 must include a statement of any civil penalty, restitution, or costs of investigation the  
15 administrator will seek, a statement of the reasons for the order, and notice that, within  
16 15 days after receipt of a request in a record from the person, the matter will be  
17 scheduled for a hearing. If a person subject to the order does not request a hearing and  
18 none is ordered by the administrator within 30 days after the date of service of the  
19 order, the order, including the imposition of a civil penalty, the imposition of  
20 restitution, or requirement for payment of the costs of investigation sought in a  
21 statement in the order, becomes final as to that person by operation of law. If a hearing  
22 is requested or ordered, the administrator, after notice of and opportunity for hearing  
23 provided to each person subject to the order, may modify or vacate the order or extend  
24 it until final determination.

25 (c) If a hearing is requested or ordered under (b) of this section, a hearing shall  
26 be conducted by the office of administrative hearings (AS 44.64.010), and  
27 AS 44.64.040 - 44.64.200 apply to and govern the hearing.

28 (d) In a final order under (b) of this section, the administrator may impose a  
29 civil penalty of not more than \$100,000 for a single violation, unless the violation of  
30 this chapter is against an older person or a vulnerable adult. In addition to a civil  
31 penalty imposed under this subsection, a person or entity who engages in conduct

1 prohibited under this chapter against an older person or a vulnerable adult may be  
2 liable for an additional civil penalty of treble statutory damages. In determining  
3 whether to impose a supplemental civil penalty under this subsection, the  
4 administrator shall consider, in addition to other appropriate factors, the extent to  
5 which the following factors are present:

6 (1) whether the respondent knew that the respondent's conduct was  
7 directed to an older person or a vulnerable adult;

8 (2) whether the respondent's conduct caused an older person or a  
9 vulnerable adult to suffer

10 (A) severe loss or encumbrance of a primary residence,  
11 principal employment, or source of income; or

12 (B) substantial loss of property set aside for retirement or for  
13 personal and family care and maintenance; or

14 (3) whether the respondent's conduct caused substantial loss of  
15 payments received under a pension or retirement plan or a government benefits  
16 program.

17 (e) In a final order under (b) of this section, the administrator may

18 (1) impose restitution to any person in interest for any money or  
19 property, real or personal, that may have been acquired or transferred in violation of  
20 this chapter;

21 (2) charge the actual cost of an investigation or proceeding for a  
22 violation of this chapter or a regulation adopted or order issued under this chapter; and

23 (3) deny the violator of the use of any exemptions listed under this  
24 chapter.

25 (f) The administrator may petition the superior court to enter a judgment  
26 against a person who is a respondent in the order for the amount of the civil penalty  
27 levied against the person. Subject to AS 44.62.570, the filing of the petition for a  
28 judgment does not reopen the final order to further substantive review. A judgment  
29 entered under this subsection may be executed on and levied under in the manner  
30 provided in AS 09.35.

31 (g) If a person does not comply with an order under this section, the

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

9 **Sec. 45.56.655. Civil enforcement.** (a) If the administrator believes that a  
10 person has engaged, is engaging, or is about to engage in an act, practice, or course of  
11 business constituting a violation of this chapter or a regulation adopted or order issued  
12 under this chapter, or that a person has engaged, is engaging, or is about to engage in  
13 an act, practice, or course of business that materially aids a violation of this chapter or  
14 a regulation adopted or order issued under this chapter, the administrator may maintain  
15 an action in the superior court to enjoin the act, practice, or course of business and to  
16 enforce compliance with this chapter or a regulation adopted or order issued under this  
17 chapter.

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

19 (1) issue a permanent or temporary injunction, restraining order, or  
20 declaratory judgment;

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

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

25 (B) ordering the administrator to take charge and control of a  
26 defendant's property, including investment accounts and accounts in a  
27 depository institution, rents, and profits; to collect debts; and to acquire and  
28 dispose of property;

29 (C) imposing a civil penalty of not more than \$100,000 for a  
30 single violation, unless the violation of this chapter is against an older person  
31 or a vulnerable adult; in determining whether to impose a supplemental civil

1 penalty for a violation of this chapter against an older person or a vulnerable  
2 adult, the court shall consider, in addition to other appropriate factors, the  
3 extent to which the following factors are present:

4 (i) whether the respondent knew that the respondent's  
5 conduct was directed to an older person or a vulnerable adult;

6 (ii) whether the respondent's conduct caused an older  
7 person or a vulnerable adult to suffer severe loss or encumbrance of a  
8 primary residence, principal employment, or source of income; or  
9 substantial loss of property set aside for retirement or for personal and  
10 family care and maintenance; or

11 (iii) whether the respondent's conduct caused  
12 substantial loss of payments received under a pension or retirement  
13 plan or a government benefits program;

14 (D) imposing an order of rescission, or disgorgement directed  
15 to a person that has engaged in an act, practice, or course of business  
16 constituting a violation of this chapter or former AS 45.55 or a regulation  
17 adopted or order issued under this chapter or former AS 45.55;

18 (E) imposing an order of restitution to any person in interest for  
19 any money or property, real or personal, that may have been acquired or  
20 transferred in violation of this chapter; and

21 (F) ordering the payment of prejudgment and post judgment  
22 interest; or

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

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

26 (d) After an order issued by the court under (b) of this section becomes final  
27 and all rights of appeal are exhausted, the administrator may petition the superior court  
28 to enter a judgment against a person who is a respondent in the order for the amount of  
29 the civil penalty levied against the person. Subject to AS 44.62.570, the filing of the  
30 petition for a judgment does not reopen the final order to further substantive review. A  
31 judgment entered under this subsection may be executed on and levied under in the

1 manner provided in AS 09.35.

2 **Sec. 45.56.660. Civil liability.** (a) Enforcement of civil liability under this  
3 section is subject to P.L. 105-353 (Securities Litigation Uniform Standards Act of  
4 1998).

5 (b) A person is liable to the purchaser if the person sells a security in violation  
6 of AS 45.56.105, or by means of an untrue statement of a material fact or an omission  
7 to state a material fact necessary to make the statement made, in light of the  
8 circumstances under which it is made, not misleading, the purchaser not knowing the  
9 untruth or omission and the seller not sustaining the burden of proof that the seller did  
10 not know and, in the exercise of reasonable care, could not have known of the untruth  
11 or omission. An action under this subsection is governed by the following:

12 (1) the purchaser may maintain an action to recover the consideration  
13 paid for the security, less the amount of any income received on the security, and  
14 interest at the legal rate of interest under AS 09.30.070, or eight percent a year,  
15 whichever is greater, from the date of the purchase, costs, and attorney fees as  
16 determined by the court, upon the tender of the security, or for actual damages as  
17 provided in (3) of this subsection;

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

23 (3) actual damages in an action arising under this subsection are the  
24 amount that would be recoverable upon a tender less the value of the security when the  
25 purchaser disposed of it, and interest at the legal rate of interest under AS 09.30.070,  
26 or eight percent a year, whichever is greater, from the date of the purchase, costs, and  
27 attorney fees as determined by the court.

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

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

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

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

13 (3) actual damages in an action arising under this subsection are the  
14 difference between the price at which the security was sold and the value the security  
15 would have had at the time of the sale in the absence of the purchaser's conduct  
16 causing liability, and interest at the legal rate of interest under AS 09.30.070, or eight  
17 percent a year, whichever is greater, from the date of the sale of the security, costs,  
18 and attorney fees as determined by the court.

19 (d) A person acting as a broker-dealer or agent that sells or buys a security in  
20 violation of AS 45.56.405(a), 45.56.435(a), or 45.56.530 is liable to the customer. The  
21 customer, if a purchaser, may maintain an action for recovery of actual damages as  
22 specified in (b)(1) - (3) of this section or, if a seller, for a remedy as specified in (c)(1)  
23 - (3) of this section.

24 (e) A person acting as an investment adviser or investment adviser  
25 representative that provides investment advice for compensation in violation of  
26 AS 45.56.435(a), 45.56.440(a), or 45.56.530 is liable to the client. The client may  
27 maintain an action to recover the consideration paid for the advice, interest at the legal  
28 rate of interest under AS 09.30.070, or eight percent a year, whichever is greater, from  
29 the date of payment, costs, and attorney fees as determined by the court.

30 (f) A person that receives, directly or indirectly, any consideration for  
31 providing investment advice to another person and that employs a device, scheme, or

1 artifice to defraud the other person or engages in an act, practice, or course of business  
2 that operates or would operate as a fraud or deceit on the other person is liable to the  
3 other person. An action under this subsection is governed by the following:

4 (1) the person defrauded may maintain an action to recover the  
5 consideration paid for the advice and the amount of any actual damages caused by the  
6 fraudulent conduct, interest at the legal rate of interest under AS 09.30.070, or eight  
7 percent a year, whichever is greater, from the date of the fraudulent conduct, costs,  
8 and reasonable attorney fees as determined by the court, less the amount of any  
9 income received as a result of the fraudulent conduct;

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

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

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

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

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

30 (4) a person that is a broker-dealer, agent, investment adviser, or  
31 investment adviser representative that materially aids the conduct giving rise to the

1 liability under (b) - (f) of this section, unless the person sustains the burden of proof  
 2 that the person did not know and, in the exercise of reasonable care, could not have  
 3 known of the existence of conduct because of which the liability is alleged to exist.

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

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

8 (j) A person may not obtain relief under (b) of this section

9 (1) for a violation of AS 45.56.105, or under (d) or (e) of this section,  
 10 unless the action is instituted within three years after the violation occurred; or

11 (2) other than for a violation of AS 45.56.105, or under (c) or (f) of this  
 12 section, unless the action is instituted within the earlier of two years after discovery of  
 13 the facts constituting the violation or five years after the violation.

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

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

22 (m) The rights and remedies provided by this chapter are in addition to any  
 23 other rights or remedies that may exist, but this chapter does not create a cause of  
 24 action not specified in this section or AS 45.56.475(e).

25 **Sec. 45.56.665. Rescission offers.** (a) A purchaser, seller, or recipient of  
 26 investment advice may not maintain an action under AS 45.56.660 if

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

29 (A) an offer stating the respect in which liability under  
 30 AS 45.56.660 may have arisen and fairly advising the purchaser, seller, or  
 31 recipient of investment advice of that person's rights in connection with the

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

5 (B) if the basis for relief under this section may have been a  
6 violation of AS 45.56.660(b), an offer to repurchase the security for cash,  
7 payable on delivery of the security, equal to the consideration paid, and interest  
8 at the legal rate of interest under AS 09.30.070, or eight percent a year,  
9 whichever is greater, from the date of the purchase, less the amount of any  
10 income received on the security, or, if the purchaser no longer owns the  
11 security, an offer to pay the purchaser, upon acceptance of the offer, damages  
12 in an amount that would be recoverable upon a tender, less the value of the  
13 security when the purchaser disposed of it, and interest at the legal rate of  
14 interest under AS 09.30.070, or eight percent a year, whichever is greater, from  
15 the date of the purchase in cash equal to the damages computed in the manner  
16 provided in this subparagraph;

17 (C) if the basis for relief under this section may have been a  
18 violation of AS 45.56.660(c), an offer to tender the security, on payment by the  
19 seller of an amount equal to the purchase price paid, less income received on  
20 the security by the purchaser and interest at the legal rate of interest under  
21 AS 09.30.070, or eight percent a year, whichever is greater, from the date of  
22 the sale, or, if the purchaser no longer owns the security, an offer to pay the  
23 seller, upon acceptance of the offer, in cash, damages in the amount of the  
24 difference between the price at which the security was purchased and the value  
25 the security would have had at the time of the purchase in the absence of the  
26 purchaser's conduct that may have caused liability and interest at the legal rate  
27 of interest in AS 09.30.070, or eight percent a year, whichever is greater, from  
28 the date of the sale;

29 (D) if the basis for relief under this section may have been a  
30 violation of AS 45.56.660(d); and if the customer is a purchaser, an offer to  
31 pay as specified in (B) of this paragraph; or, if the customer is a seller, an offer

1 to tender or to pay as specified in (C) of this paragraph;

2 (E) if the basis for relief under this section may have been a  
3 violation of AS 45.56.660(e), an offer to reimburse in cash the consideration  
4 paid for the advice and interest at the legal rate of interest under AS 09.30.070,  
5 or eight percent a year, whichever is greater, from the date of payment; or

6 (F) if the basis for relief under this section may have been a  
7 violation of AS 45.56.660(f), an offer to reimburse in cash the consideration  
8 paid for the advice, the amount of any actual damages that may have been  
9 caused by the conduct, and interest at the legal rate of interest under  
10 AS 09.30.070, or eight percent a year, whichever is greater, from the date of  
11 the violation causing the loss;

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

16 (3) the offeror has the present ability to pay the amount offered or to  
17 tender the security under (1) of this subsection;

18 (4) the offer under (1) of this subsection is delivered to the purchaser,  
19 seller, or recipient of investment advice or sent in a manner that ensures receipt by the  
20 purchaser, seller, or recipient of investment advice; and

21 (5) the purchaser, seller, or recipient of investment advice that accepts  
22 the offer under (1) of this subsection, in a record, within the period specified under (2)  
23 of this subsection, is paid in accordance with the terms of the offer.

24 (b) The offer under this section shall be filed with the administrator 10  
25 business days before the offering and conform in form and content with a regulation  
26 adopted under this chapter.

27 **Sec. 45.56.670. Criminal enforcement.** (a) A person who intentionally  
28 violates this chapter, a regulation adopted under this chapter, or an order issued under  
29 this chapter, except AS 45.56.550 or the notice filing requirements of AS 45.56.330 or  
30 45.56.445, is guilty of a class C felony punishable by imprisonment under  
31 AS 12.55.125 or by a fine of not more than \$100,000, or by both. A person convicted

1 of violating a regulation or order issued under this chapter may be fined, but may not  
2 be imprisoned, if the person did not know of the regulation or order.

3 (b) A person who intentionally alters, destroys, shreds, mutilates, or conceals a  
4 record, document, or other object, or attempts to do so, with the intent to alter or  
5 impair the record, document, or object for use in an official proceeding under this  
6 chapter, is guilty of a class C felony. A person convicted of violating this subsection is  
7 punishable by imprisonment as provided in AS 12.55.125, by a fine of not more than  
8 \$500,000, or by both.

9 (c) The attorney general, with or without a reference from the administrator,  
10 may institute criminal proceedings under this chapter.

11 (d) This chapter does not limit the power of this state to punish a person for  
12 conduct that constitutes a crime under other laws of this state.

13 (e) In this section, "intentionally" has the meaning given in AS 11.81.900(a).

14 **Sec. 45.56.675. Judicial review.** (a) A person may obtain judicial review by  
15 the superior court of a final order issued by the administrator under this chapter by  
16 filing a notice of appeal in accordance with the applicable rules of court governing  
17 appeals in civil matters. The notice of appeal shall be filed within 30 days after the  
18 order becomes final under AS 44.64.060.

19 (b) A regulation adopted under this chapter is subject to judicial review under  
20 AS 44.62.300.

#### 21 **Article 7. Miscellaneous and Additional General Provisions.**

22 **Sec. 45.56.710. Reimbursement of expenses incident to examination or**  
23 **investigation.** (a) The administrator may require an issuer, broker-dealer, agent,  
24 investment adviser representative, federal covered adviser, or investment adviser to  
25 reimburse the administrator for actual travel expenses and per diem incurred in  
26 connection with an examination or investigation under this chapter.

27 (b) The administrator may by regulation or order adopt a schedule of charges  
28 for annual examination and investigation of issuers, broker-dealers, agents, investment  
29 adviser representatives, federal covered advisers, and investment advisers.

30 (c) If an issuer, broker-dealer, agent, investment adviser representative, federal  
31 covered adviser, or investment adviser fails to pay the fees and expenses provided for

1 in this section, the fees and expenses shall be paid out of funds of the administrator in  
 2 the same manner as other disbursements made by the administrator. The amounts paid  
 3 from the funds of the administrator are a lien on all of the assets and property of the  
 4 issuer, broker-dealer, agent, investment adviser representative, federal covered  
 5 adviser, or investment adviser, and the amount may be recovered by the attorney  
 6 general on behalf of this state.

7 (d) Failure of the issuer, broker-dealer, agent, investment adviser  
 8 representative, federal covered adviser, or investment adviser to pay fees and expenses  
 9 under this section is a willful violation of this chapter, and the violation falls within  
 10 the provisions of AS 45.56.350, 45.56.440, and 45.56.615.

11 **Sec. 45.56.720. Electronic records and signatures.** This chapter modifies,  
 12 limits, and supersedes 15 U.S.C. 7001 - 7031 (Electronic Signatures in Global and  
 13 National Commerce Act), but does not modify, limit, or supersede 15 U.S.C. 7001(c)  
 14 or authorize electronic delivery of any of the notices described in 15 U.S.C. 7003(b).  
 15 This chapter authorizes the filing of records and signatures, when specified by  
 16 provisions of this chapter or by a regulation adopted or order issued under this chapter,  
 17 in a manner consistent with 15 U.S.C. 7004(a).

18 **Sec. 45.56.730. References to federal statutes.** In this chapter, a reference to  
 19 the following federal statutes, including a statute within a spanned reference, means  
 20 those statutes and the rules and regulations adopted under those statutes, as in effect on  
 21 the date of enactment of this chapter, or as later amended:

- 22 (1) 7 U.S.C. 1 - 27 (Commodity Exchange Act);  
 23 (2) 15 U.S.C. 77a - 77aa (Securities Act of 1933);  
 24 (3) 15 U.S.C. 77b, 77k, 77m, 77p, 77r, 77v, 77z-1 - 77z-3, 77aa,  
 25 77ccc, 77ddd, 77mmm, 77sss, 78a, 78c, 78d, 78g, 78n, 78o, 78o-4, 78o-5, 78s, 78t,  
 26 78u, 78u-4, 78z, 78bb, 78ee, 78kk, 78ll, 80a-2, 80a-3, 80a-12, 80a-18, 80a-29, 80a-30,  
 27 80b-3, and 80b-18a (Securities Litigation Uniform Standards Act of 1998);  
 28 (4) 15 U.S.C. 78a - 78pp (Securities Exchange Act of 1934);  
 29 (5) 15 U.S.C. 80a-1 - 80a-64 (Investment Company Act of 1940);  
 30 (6) 15 U.S.C. 80b-1 - 80b-21 (Investment Advisers Act of 1940);  
 31 (7) 15 U.S.C. 661 - 697g (Small Business Investment Act of 1958);

1 (8) 15 U.S.C. 7001 - 7031 (Electronic Signatures in Global and  
2 National Commerce Act);

3 (9) 26 U.S.C. (Internal Revenue Code);

4 (10) 29 U.S.C. 1001 - 1461 (Employee Retirement Income Security  
5 Act of 1974);

6 (11) 42 U.S.C. 16451 - 16481 (Energy Policy Act of 2005).

7 **Sec. 45.56.740. References to federal agencies.** A reference in this chapter to  
8 an agency or department of the United States is also a reference to a successor agency  
9 or department.

10 **Sec. 45.56.900. Definitions.** In this chapter, unless the context otherwise  
11 requires,

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

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

21 (3) "bank" means

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

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

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

1 evading this chapter; and

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

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

7 (A) an agent;

8 (B) an issuer;

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

14 (D) an international banking institution; or

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

17 (5) "defraud" includes engaging in common law deceit;

18 (6) "department" means the Department of Commerce, Community,  
19 and Economic Development;

20 (7) "depository institution" means

21 (A) a bank; or

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

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

1 (ii) a Morris Plan bank; or

2 (iii) an industrial loan company that is not an "insured  
3 depository institution" as defined in 12 U.S.C. 1813(c)(2) (Federal  
4 Deposit Insurance Act), or any successor federal statute;

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

7 (9) "federal covered security" means a security that is, or upon  
8 completion of a transaction will be, a covered security under 15 U.S.C. 77r(b)  
9 (Securities Act of 1933) or rules or regulations adopted under that provision;

10 (10) "filing" means the receipt under this chapter of a record by the  
11 administrator or a designee of the administrator;

12 (11) "former AS 45.55" means AS 45.55 as it existed immediately  
13 before July 1, 2016;

14 (12) "fraud" and "deceit" include common law deceit;

15 (13) "guaranteed" means guaranteed as to payment of all principal and  
16 all interest;

17 (14) "institutional investor" means any of the following, whether  
18 acting for itself or for others in a fiduciary capacity:

19 (A) a depository institution, a trust company organized or  
20 chartered under the laws of this state, or an international banking institution;

21 (B) an insurance company;

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

23 (D) an investment company as defined in 15 U.S.C. 80a-1 -  
24 80a-64 (Investment Company Act of 1940);

25 (E) a broker-dealer registered under 15 U.S.C. 78a - 78pp  
26 (Securities Exchange Act of 1934);

27 (F) an employee pension, profit-sharing, or benefit plan if the  
28 plan has total assets in excess of \$10,000,000 or its investment decisions are  
29 made by a named fiduciary, as defined in 29 U.S.C. 1102(a)(2) (Employee  
30 Retirement Income Security Act of 1974), that is a broker-dealer registered  
31 under 15 U.S.C. 78a - 78pp (Securities Exchange Act of 1934), an investment

1 adviser registered or exempt from registration under 15 U.S.C. 80b-1 - 80b-21  
2 (Investment Advisers Act of 1940), an investment adviser registered under this  
3 chapter, a depository institution, or an insurance company;

4 (G) a plan established and maintained by a state, a political  
5 subdivision of a state, or an agency or instrumentality of a state or a political  
6 subdivision of a state for the benefit of its employees if the plan has total assets  
7 in excess of \$10,000,000 or its investment decisions are made by a legally  
8 designated public official or by a named fiduciary, as defined in 29 U.S.C.  
9 1102(a)(2) (Employee Retirement Income Security Act of 1974), that is a  
10 broker-dealer registered under 15 U.S.C. 78a - 78pp (Securities Exchange Act  
11 of 1934), an investment adviser registered or exempt from registration under  
12 15 U.S.C. 80b-1 - 80b-21 (Investment Advisers Act of 1940), an investment  
13 adviser registered under this chapter, a depository institution, or an insurance  
14 company;

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

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

25 (J) a small business investment company licensed by the  
26 United States Small Business Administration under 15 U.S.C. 681(c) (Small  
27 Business Investment Act of 1958) with total assets in excess of \$10,000,000;

28 (K) a private business development company as defined in 15  
29 U.S.C. 80b-2(a)(22) (Investment Advisers Act of 1940) with total assets in  
30 excess of \$10,000,000;

31 (L) a federal covered investment adviser acting for its own

1 account;

2 (M) a qualified institutional buyer, as defined in 17 C.F.R.  
3 230.144A, other than 17 C.F.R. 230.144A(a)(1)(i)(H), adopted under 15  
4 U.S.C. 77a - 77aa (Securities Act of 1933);

5 (N) a major United States institutional investor, as defined in  
6 17 C.F.R. 240.15a-6(b)(4)(i), adopted under 15 U.S.C. 78a - 78pp (Securities  
7 Exchange Act of 1934);

8 (O) any other person, other than an individual, of institutional  
9 character with total assets in excess of \$10,000,000 not organized for the  
10 specific purpose of evading this chapter; or

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

13 (15) "insurance company" means a company organized as an insurance  
14 company whose primary business is writing insurance or reinsuring risks underwritten  
15 by insurance companies and that is subject to supervision by the insurance  
16 commissioner or a similar official or agency of a state;

17 (16) "insured" means insured as to payment of all principal and all  
18 interest;

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

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

31 (A) an investment adviser representative;

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

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

8 (D) a publisher of a bona fide newspaper, news magazine, or  
9 business or financial publication of general and regular circulation;

10 (E) a federal covered investment adviser;

11 (F) a bank, a trust company organized or chartered under the  
12 laws of this state, or a savings institution;

13 (G) any other person that is excluded by 15 U.S.C. 80b-1 - 80b-  
14 21 (Investment Advisers Act of 1940) from the definition of investment  
15 adviser; or

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

18 (19) "investment adviser representative" means an individual  
19 employed by or associated with an investment adviser or federal covered investment  
20 adviser and who makes any recommendations or otherwise gives investment advice  
21 regarding securities, manages accounts or portfolios of clients, determines which  
22 recommendation or advice regarding securities should be given, provides investment  
23 advice or offers to provide investment advice, receives compensation to solicit, offer,  
24 or negotiate for the sale of or for selling investment advice, or supervises employees  
25 who perform any of the foregoing; the term does not include an individual who

26 (A) performs only clerical or ministerial acts;

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

30 (C) is employed by or associated with a federal covered  
31 investment adviser, unless the individual has a place of business in this state, as

1 that term is defined by rule adopted under 15 U.S.C. 80b-3a (Investment  
2 Advisers Act of 1940) and is

3 (i) an investment adviser representative, as that term is  
4 defined by rule adopted under 15 U.S.C. 80b-3a (Investment Advisers  
5 Act of 1940); or

6 (ii) not a supervised person, as that term is defined in 15  
7 U.S.C. 80b-2(a)(25) (Investment Advisers Act of 1940); or

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

10 (20) "issuer" means a person that issues or proposes to issue a security,  
11 subject to the following:

12 (A) the issuer of a voting trust certificate, collateral trust  
13 certificate, certificate of deposit for a security, or share in an investment  
14 company without a board of directors or individuals performing similar  
15 functions is the person performing the acts and assuming the duties of  
16 depositor or manager under the trust or other agreement or instrument under  
17 which the security is issued;

18 (B) the issuer of an equipment trust certificate or similar  
19 security serving the same purpose is the person by which the property is or will  
20 be used or to which the property or equipment is or will be leased or  
21 conditionally sold or that is otherwise contractually responsible for ensuring  
22 payment of the certificate;

23 (C) the issuer of a fractional undivided interest in an oil, gas, or  
24 other mineral lease or in payments out of production under a lease, right, or  
25 royalty is the owner of an interest in the lease or in payments out of production  
26 under a lease, right, or royalty, whether whole or fractional, that creates  
27 fractional interests for the purpose of sale;

28 (21) "nonissuer transaction" or "nonissuer distribution" means a  
29 transaction or distribution not directly or indirectly for the benefit of the issuer;

30 (22) "offer to purchase" includes an attempt or offer to obtain, or  
31 solicitation of an offer to sell, a security or interest in a security for value; the term

1 does not include a tender offer that is subject to 15 U.S.C. 78n(d) (Securities Exchange  
2 Act of 1934);

3 (23) "older person" means a natural person who is 60 years of age or  
4 older;

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

10 (25) "place of business" of a broker-dealer, an investment adviser, or a  
11 federal covered investment adviser means

12 (A) an office at which the broker-dealer, investment adviser, or  
13 federal covered investment adviser regularly provides brokerage or investment  
14 advice or solicits, meets with, or otherwise communicates with customers or  
15 clients; or

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

20 (26) "price amendment" means the amendment to a registration  
21 statement filed under 15 U.S.C. 77a - 77aa (Securities Act of 1933) or, if an  
22 amendment is not filed, the prospectus or prospectus supplement filed under 15 U.S.C.  
23 77a - 77aa (Securities Act of 1933) that includes a statement of the offering price,  
24 underwriting and selling discounts or commissions, amount of proceeds, conversion  
25 rates, call prices, and other matters dependent on the offering price;

26 (27) "principal place of business" of a broker-dealer or an investment  
27 adviser means the executive office of the broker-dealer or investment adviser from  
28 which the officers, partners, or managers of the broker-dealer or investment adviser  
29 direct, control, and coordinate the activities of the broker-dealer or investment adviser;

30 (28) "record," except in the phrases "of record," "official record," and  
31 "public record," means information that is inscribed on a tangible medium or that is

1 stored in an electronic or other medium and is retrievable in perceivable form;

2 (29) "sale" includes every contract of sale, contract to sell, or  
3 disposition of a security or interest in a security for value, and "offer to sell" includes  
4 every attempt or offer to dispose of, or solicitation of an offer to purchase, a security  
5 or interest in a security for value; both terms include

6 (A) a security given or delivered with, or as a bonus because of,  
7 a purchase of securities or any other thing constituting part of the subject of the  
8 purchase and having been offered and sold for value;

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

10 (C) a sale or offer of a warrant or right to purchase or subscribe  
11 to another security of the same or another issuer and a sale or offer of a  
12 security that gives the holder a present or future right or privilege to convert  
13 the security into another security of the same or another issuer, including an  
14 offer of the other security;

15 (30) "Securities and Exchange Commission" means the United States  
16 Securities and Exchange Commission;

17 (31) "securities business" means a business that provides the services  
18 provided by

19 (A) investment advisers, federal covered investment advisers,  
20 or investment adviser representatives; or

21 (B) broker-dealers, issuers, or agents of broker-dealers or  
22 issuers;

23 (32) "security" means a note; stock; treasury stock; security future;  
24 bond; debenture; evidence of indebtedness; certificate of interest or participation in a  
25 profit-sharing agreement; collateral trust certificate; preorganization certificate or  
26 subscription; transferable share; investment contract; voting trust certificate; certificate  
27 of deposit for a security; viatical settlement; fractional undivided interest in oil, gas, or  
28 other mineral rights; put, call, straddle, option, or privilege on a security, certificate of  
29 deposit, or group or index of securities, including an interest in or based on the value  
30 of a put, call, straddle, option, or privilege on a security, certificate of deposit, or  
31 group or index of securities; put, call, straddle, option, or privilege entered into on a

1 national securities exchange relating to foreign currency; or, in general, an interest or  
 2 instrument commonly known as a "security"; or a certificate of interest or participation  
 3 in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to  
 4 subscribe to or purchase any of the foregoing; the term

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

6 (B) does not include a participation agreement entered under  
 7 AS 14.40.802 or an insurance or endowment policy subject to AS 21;

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

11 (D) includes an investment in a common enterprise with the  
 12 expectation of profits to be derived primarily from the efforts of a person other  
 13 than the investor; in this subparagraph, "common enterprise" means an  
 14 enterprise in which the fortunes of the investor are interwoven with those of  
 15 the person offering the investment, a third party, or other investors;

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

19 (F) includes a viatical settlement interest;

20 (33) "self-regulatory organization" means a national securities  
 21 exchange registered under 15 U.S.C. 78a - 78pp (Securities Exchange Act of 1934), a  
 22 national securities association of broker-dealers registered under 15 U.S.C. 78a - 78pp  
 23 (Securities Exchange Act of 1934), a clearing agency registered under 15 U.S.C. 78a -  
 24 78pp (Securities Exchange Act of 1934), or the Municipal Securities Rulemaking  
 25 Board established under 15 U.S.C. 78o-4 (Securities Exchange Act of 1934);

26 (34) "sign" means, with present intent to authenticate or adopt a  
 27 record,

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

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

31 (35) "state" means a state of the United States, the District of

1 Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular  
2 possession subject to the jurisdiction of the United States;

3 (36) "vulnerable adult" means a person 18 years of age or older who,  
4 because of incapacity, mental illness, mental deficiency, physical illness, physical  
5 disability, advanced age, chronic use of drugs, chronic intoxication, fraud,  
6 confinement, dementia, or Alzheimer's disease, is unable to meet the person's own  
7 needs or to seek help without assistance.

8 **Sec. 45.56.995. Short title.** This chapter may be cited as the Alaska Securities  
9 Act.

10 \* **Sec. 26.** AS 45.63.080(a) is amended to read:

11 (a) AS 45.63.010, 45.63.015, 45.63.020, and AS 45.63.030(c) and (d) do not  
12 apply to a sale or attempted sale

13 (1) of a security regulated under AS 45.56 [AS 45.55] or a security that  
14 is exempted by AS 45.56.205 [AS 45.55.900] from regulation under AS 45.56  
15 [AS 45.55];

16 (2) by a person registered with the United States Securities and  
17 Exchange Commission when acting within the scope of the person's Securities and  
18 Exchange Commission license;

19 (3) by an issuer, or a subsidiary of an issuer, of a class of securities that  
20 is

21 (A) subject to 15 U.S.C. 78a - 78pp [15 U.S.C. 78a - 78III]  
22 (Securities Exchange Act of 1934); and

23 (B) either registered under 15 U.S.C. 78a - 78pp [15 U.S.C.  
24 78a - 78III] (Securities Exchange Act of 1934) or exempt from registration  
25 under 15 U.S.C. 78l(g)(2)(A) - (C) or (E) - (H);

26 (4) by a real estate broker, associate real estate broker, or real estate  
27 salesperson licensed under AS 08.88 and acting in a capacity covered by the license;

28 (5) by a person who has a certificate of registration under AS 08.18 to  
29 operate as a contractor and is acting in a capacity covered by the certificate of  
30 registration;

31 (6) by an embalmer or funeral director licensed under AS 08.42 and

1 acting in a capacity covered by the license;

2 (7) by an insurance agent, general agent, broker, solicitor, or adjuster  
3 licensed under AS 21.27 and acting in a capacity covered by the license;

4 (8) by a person who is primarily soliciting the sale of a subscription to,  
5 or advertising in, a newspaper of general circulation;

6 (9) by a charitable organization or paid solicitor if the organization or  
7 solicitor is registered to make charitable solicitations under AS 45.68 and is acting in a  
8 capacity that is covered by the registration;

9 (10) by a person who is primarily soliciting the sale of a sound  
10 recording or book

11 (A) if the person

12 (i) has no minimum purchase requirements;

13 (ii) provides written notice of the buyer's right to cancel  
14 at any time; and

15 (iii) allows the buyer to return the sound recording or  
16 book and obtain a full refund; or

17 (B) through a membership in a book or record club

18 (i) where the club provides the buyer with a form that  
19 the buyer may use to instruct the club not to ship the offered  
20 merchandise; and

21 (ii) that is regulated by the Federal Trade Commission  
22 as a negative option plan under 16 C.F.R. Part 425;

23 (11) by a publisher, or a publisher's agent operating under a written  
24 agreement between a publisher and the agent, who is soliciting the sale of a publisher's  
25 magazine if

26 (A) the buyer has the right to review the magazine and cancel  
27 the subscription for the magazine within seven days after receipt of the  
28 magazine or at the time the invoice is received by the buyer, whichever is later;  
29 a cancellation request is timely if the request is mailed, properly addressed and  
30 postmarked, postage prepaid, within seven days after receipt of the magazine;

31 (B) the right of cancellation and refund is fully disclosed in

1 writing to the buyer before or at the time the initial invoice is received by the  
2 buyer;

3 (12) of services provided by a cable television system operating under  
4 a franchise issued by a municipality;

5 (13) by a person who is soliciting for a business, or for an affiliate of a  
6 business, that is regulated by the Regulatory Commission of Alaska;

7 (14) by a person whose solicitation is solely for telephone answering  
8 services provided by the person or the person's employer;

9 (15) of property from a mail order catalog that is published on a  
10 regular, periodic basis and that describes or pictures the items for sale and prominently  
11 provides the specific price of each item;

12 (16) by a supervised financial institution or the parent, subsidiary, or  
13 affiliate of a supervised financial institution; in this paragraph, "supervised financial  
14 institution" means a commercial bank, savings bank, mutual savings bank, trust  
15 company, savings and loan association, credit union, industrial loan company,  
16 personal property broker, consumer finance lender, commercial finance lender, or  
17 other financial institution if the financial institution is subject to regulation by this  
18 state or the United States;

19 (17) by an insurer or the parent, subsidiary, or affiliate of an insurer;

20 (18) by a person who solicits a sale by a contact by telephonic means  
21 without intending to complete the sales presentation during the contact, who does not  
22 complete the sales presentation during the contact, and who only completes the sales  
23 presentation at a later meeting in person, unless at the later meeting the solicitor  
24 attempts to collect payment for property or services delivered before the later meeting;

25 (19) of an item of personal property, including a food product, that is  
26 made by hand by an individual, if the sale or attempted sale of the item is made by the  
27 individual who made the item; in this paragraph, "made by hand" includes the use of  
28 ordinary household devices if the majority of the value of the item is added by the  
29 labor of the individual.

30 \* **Sec. 27.** AS 45.66.220 is amended to read:

31 **Sec. 45.66.220. Exemptions.** This chapter does not apply to a sale of or an

1 offer to sell

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

4 (2) a franchise under 16 C.F.R. Part 436 [16 C.F.R. 436];

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

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

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

13 (6) a business opportunity by an executor, an administrator, a marshal,  
14 a receiver, a trustee in bankruptcy, or a guardian or conservator, or under a judicial  
15 sale;

16 (7) a security registered under AS 45.56 [AS 45.55] or a security that  
17 is exempted by AS 45.56.205 [AS 45.55.900] from registration under AS 45.56  
18 [AS 45.55];

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

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

26 (A) subject to 15 U.S.C. 78a - 78pp [15 U.S.C. 78a - 78lll]  
27 (Securities Exchange Act of 1934); and

28 (B) registered under 15 U.S.C. 78a - 78pp [15 U.S.C. 78a -  
29 78lll] (Securities Exchange Act of 1934) unless exempt from registration under  
30 15 U.S.C. 78l(g)(2)(A) - (C) or (E) - (H);

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

1 (A) a bank, savings and loan association, trust company,  
 2 insurance company, credit union, or investment company under 15 U.S.C. 80a-  
 3 1 - 80a-64 (Investment Company Act of 1940), pension or profit sharing trust,  
 4 or other financial institution or institutional buyer; or

5 (B) a broker-dealer registered under AS 45.56.405 [AS 45.55];

6 (11) a business opportunity that involves a marketing plan made in  
 7 conjunction with the registration of a trademark or service mark under 15 U.S.C. 1051  
 8 - 1127 (Trademark Act of 1946) if the seller has a minimum net worth of \$1,000,000  
 9 as determined on the basis of the seller's most recent audited financial statement  
 10 prepared within 13 months of the first offer to sell in this state; net worth may be  
 11 determined on a consolidated basis if one person owns at least 80 percent of the seller  
 12 and that one person expressly guarantees the obligations of the seller that arise under  
 13 the sale or offer claimed to be exempt under this paragraph; or

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

17 \* **Sec. 28.** AS 45.66.900(11) is amended to read:

18 (11) "securities or investment laws" means AS 45.56 [AS 45.55]  
 19 (Alaska Securities Act) or a substantially similar statute of another jurisdiction, 15  
 20 U.S.C. 77a - 77aa [15 U.S.C. 77a - 77bbbb] (Securities Exchange Act of 1933), 15  
 21 U.S.C. 78a - 78pp [15 U.S.C. 78a - 78lll] (Securities Exchange Act of 1934), or 15  
 22 U.S.C. 80a-1 - 80b-21 (Investment Company Act of 1940/Investment Advisers Act of  
 23 1940);

24 \* **Sec. 29.** AS 45.55.010, 45.55.020, 45.55.023, 45.55.025, 45.55.027, 45.55.028, 45.55.030,  
 25 45.55.035, 45.55.040, 45.55.050, 45.55.060, 45.55.070, 45.55.075, 45.55.080, 45.55.090,  
 26 45.55.100, 45.55.110, 45.55.120, 45.55.150, 45.55.155, 45.55.170, 45.55.900, 45.55.905(c),  
 27 45.55.915, 45.55.930, 45.55.935(b), 45.55.970, 45.55.980, 45.55.990, and 45.55.995 are  
 28 repealed.

29 \* **Sec. 30.** The uncodified law of the State of Alaska is amended by adding a new section to  
 30 read:

31 **INDIRECT COURT RULE AMENDMENTS.** (a) The provisions of AS 45.56.630(c)

1 - (e), enacted by sec. 25 of this Act, have the effect of changing Rules 4 and 5, Alaska Rules  
2 of Civil Procedure, by allowing service on the administrator in certain cases.

3 (b) The provisions of AS 45.56.650(f), enacted by sec. 25 of this Act, have the effect  
4 of changing Rule 54, Alaska Rules of Civil Procedure, by expanding the definition of  
5 judgments to include final judgments of the administrator issued under AS 45.56.650, enacted  
6 by sec. 25 of this Act.

7 (c) The provisions of AS 45.56.650(g), enacted by sec. 25 of this Act, have the effect  
8 of changing Rule 90, Alaska Rules of Civil Procedure, by changing the contempt procedure in  
9 certain cases.

10 (d) The provisions of AS 45.56.655(c), enacted by sec. 25 of this Act, have the effect  
11 of changing Rule 65, Alaska Rules of Civil Procedure, by changing the procedure for  
12 injunctions in certain cases by prohibiting requiring the administrator to post a bond.

13 (e) The provisions of AS 45.56.675(a), enacted by sec. 25 of this Act, have the effect  
14 of changing Rule 602, Alaska Rules of Appellate Procedure, by changing the time for filing a  
15 notice of appeal.

16 \* **Sec. 31.** The uncodified law of the State of Alaska is amended by adding a new section to  
17 read:

18 TRANSITION: REGULATIONS. The Department of Commerce, Community, and  
19 Economic Development may adopt regulations necessary to implement AS 45.56, enacted by  
20 sec. 25 of this Act. The regulations take effect under AS 44.62 (Administrative Procedure  
21 Act), but not before the effective date of this Act.

22 \* **Sec. 32.** The uncodified law of the State of Alaska is amended by adding a new section to  
23 read:

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

31 (b) All effective registrations under former AS 45.55 and all administrative orders

1 relating to the registrations, regulations, statements of policy, interpretative opinions,  
2 declaratory rulings, determinations to take no action, and conditions imposed on the  
3 registrations under former AS 45.55 remain in effect while they would have remained in  
4 effect if this Act had not been enacted. They are considered to have been filed, issued, or  
5 imposed under this Act, but are exclusively governed by former AS 45.55, unless removed or  
6 replaced by the administrator.

7 (c) Former AS 45.55 exclusively applies to an offer or sale made within one year after  
8 the effective date of sec. 25 of this Act under an offering made in good faith before the  
9 effective date of sec. 25 of this Act based on an exemption available under former AS 45.55.

10 (d) In this section, "former AS 45.55" means AS 45.55 as it existed immediately  
11 before July 1, 2016.

12 \* **Sec. 33.** The uncodified law of the State of Alaska is amended by adding a new section to  
13 read:

14 REVISOR'S INSTRUCTION. The revisor of statutes is requested to change the  
15 chapter heading of AS 45.55 from "Alaska Securities Act" to "Alaska Native Claims  
16 Settlement Act Corporations Proxy Solicitations and Initial Issuance of Stock."

17 \* **Sec. 34.** The uncodified law of the State of Alaska is amended by adding a new section to  
18 read:

19 CONDITIONAL EFFECT. AS 45.56.630(c) - (e), 45.56.650(f) and (g), 45.56.655(c),  
20 and 45.56.675(a), enacted by sec. 25 of this Act, take effect only if sec. 30 of this Act receives  
21 the two-thirds majority vote of each house required by art. IV, sec. 15, Constitution of the  
22 State of Alaska.

23 \* **Sec. 35.** This Act takes effect July 1, 2016.

Adopted 4/14/16

29-GH1060S  
Bannister  
4/13/16

**CS FOR HOUSE BILL NO. 194(FIN)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-NINTH LEGISLATURE - SECOND SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered:  
Referred:

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to securities, registration, exempt securities, exempt transactions,  
2 broker-dealers, agents, investment advice, investment advisers, investment adviser  
3 representatives, federal covered securities, federal covered investment advisers, viatical  
4 settlement interests, small intrastate security offerings, Canadian broker-dealers, and  
5 Canadian agents; relating to administrative, civil, and criminal enforcement provisions,  
6 including restitution and civil penalties for violations; relating to an investor training  
7 fund; establishing increased civil penalties for harming older persons and vulnerable  
8 adults; relating to corporations organized under the Alaska Native Claims Settlement  
9 Act; amending Rules 4, 5, 54, 65, and 90, Alaska Rules of Civil Procedure, and Rule 602,  
10 Alaska Rules of Appellate Procedure; and providing for an effective date."

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

12 \* **Section 1.** AS 06.05.340 is amended to read:

1           **Sec. 06.05.340. Certain remuneration prohibited.** A bank may not pay  
2 directly or indirectly a fee, commission, or bonus of any kind for its promotion and  
3 organization or for securing a subscription to the original capital or to any increase in  
4 capital. However, this section does not prohibit the payment of reasonable  
5 compensation for legal, accounting, and econometric services, or payments to a  
6 securities broker-dealer registered under AS 45.56 [AS 45.55] for services that have  
7 been performed in connection with the sale of bank securities.

8 \* **Sec. 2.** AS 06.26.020(a) is amended to read:

9           (a) Notwithstanding any other provision of this chapter, a person does not act  
10 as a fiduciary under this chapter if the person

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

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

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

21                   (4) engages in securities business activity [OR INVESTMENT  
22 ADVISORY BUSINESS ACTIVITY] as a registered broker-dealer, a broker-dealer  
23 agent, an [A STATE] investment adviser, or an investment adviser representative, or  
24 as a federal covered investment adviser who has made a notice filing under  
25 AS 45.56.445(c) [AS 45.55.040(h)], the person is acting within the scope of the  
26 person's registration or notice filing, and the activity is regulated by the department  
27 under AS 45.56 [AS 45.55] or by the United States Securities and Exchange  
28 Commission; in this paragraph, "agent," "broker-dealer," "federal covered investment  
29 adviser," "investment adviser," "investment adviser representative," and  
30 ["INVESTMENT ADVISORY BUSINESS,"] "securities business [,]" [AND "STATE  
31 INVESTMENT ADVISER"] have the meanings given in AS 45.56.900

1 [AS 45.55.990];

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

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

10 (A) "escrow transaction" has the meaning given in  
11 AS 34.80.090;

12 (B) "title insurance company" has the meaning given in  
13 AS 21.66.480;

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

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

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

19 (9) has a certified public accountant license issued under AS 08.04.105  
20 or 08.04.195, the person is acting within the scope of the license, and the person and  
21 any accounting firm of the person are not trustees of more trusts than the number  
22 established for the person and accounting firm by the department by regulation or  
23 order; in this paragraph, "accounting firm" means a partnership, a professional  
24 corporation organized under AS 10.45, or another association organized for the  
25 practice of public accounting and in which the person practices public accounting;

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

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

31 (12) holds money or other assets as a homeowners' association or

1 similar organization to pay maintenance and other related costs for commonly owned  
2 property; in this paragraph, "homeowners' association" includes an association of  
3 apartment owners under AS 34.07.450 and a unit owners' association or master  
4 association under AS 34.08.990;

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

9 (14) acts as a conservator if the person is appointed by a court of this  
10 or another state or is qualified to act as a conservator under AS 13.26.320;

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

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

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

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

24 \* **Sec. 3.** AS 06.26.990(a)(21) is amended to read:

25 (21) "issuer" has the meaning given in AS 45.56.900 [AS 45.55.990];

26 \* **Sec. 4.** AS 12.62.400(a)(17) is amended to read:

27 (17) registration as a broker-dealer, agent, investment adviser  
28 representative, or [STATE] investment adviser under AS 45.56.405 - 45.56.440  
29 [AS 45.55.030 - 45.55.060].

30 \* **Sec. 5.** AS 14.43.148(h)(1) is amended to read:

31 (1) "license"

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

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

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

9 (iii) teacher certificate under AS 14.20;

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

12 (v) asbestos worker certification under AS 18.31;

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

14 (vii) certificate of fitness under AS 18.62;

15 (viii) hazardous painting certification under AS 18.63;

16 (ix) certification as a municipal correctional,  
17 correctional, probation, or parole officer under AS 18.65.245;

18 (x) security guard license under AS 18.65.400 -  
19 18.65.490;

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

21 (xii) employment agency permit under AS 23.15.330 -  
22 23.15.520;

23 (xiii) registration as a broker-dealer, an agent, an [A  
24 STATE] investment adviser, or an investment adviser representative  
25 under AS 45.56.405 - 45.56.440 [AS 45.55.030];

26 (xiv) certification as a pesticide applicator under  
27 AS 46.03.320;

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

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

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(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) [REPEALED

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

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

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

\* **Sec. 6.** AS 21.96.110(a) is amended to read:

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

\* **Sec. 7.** 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;

- 1 (v) asbestos worker certification under AS 18.31;
- 2 (vi) boiler operator's license under AS 18.60.395;
- 3 (vii) certificate of fitness under AS 18.62;
- 4 (viii) hazardous painting certification under AS 18.63;
- 5 (ix) security guard license under AS 18.65.400 -
- 6 18.65.490;
- 7 (x) license relating to insurance under AS 21.27;
- 8 (xi) employment agency permit under AS 23.15.330 -
- 9 23.15.520;
- 10 (xii) registration as a broker-dealer, an agent, an [A
- 11 STATE] investment adviser, or an investment adviser representative
- 12 under AS 45.56.405 - 45.56.440 [AS 45.55.030];
- 13 (xiii) certification as a pesticide applicator under
- 14 AS 46.03.320;
- 15 (xiv) certification as a storage tank worker or contractor
- 16 under AS 46.03.375;
- 17 (xv) certification as a water and wastewater works
- 18 operator under AS 46.30;
- 19 (xvi) commercial crewmember fishing license under
- 20 AS 16.05.480 other than an entry permit or interim-use permit under
- 21 AS 16.43;
- 22 (xvii) fish transporter permit under AS 16.05.671;
- 23 [(xviii) REPEALED
- 24 (xix) REPEALED]
- 25 (B) does not include
- 26 (i) a vessel license issued under AS 16.05.490 or
- 27 16.05.530;
- 28 (ii) [REPEALED
- 29 (iii)] a business license issued under AS 43.70;
- 30 (iii) [(iv)] an entry permit or interim-use permit issued
- 31 under AS 16.43; or

1 (iv) a driver's license [(v)] issued under AS 28.15;

2 \* **Sec. 8.** AS 34.08.570 is amended to read:

3 **Sec. 34.08.570. Common interest community securities.** If an interest in a  
4 common interest community is currently registered with the Securities and Exchange  
5 Commission of the United States, a declarant satisfies each requirement relating to the  
6 preparation of a public offering statement of this chapter if the declarant delivers to the  
7 purchaser a copy of the public offering statement filed with the Securities and  
8 Exchange Commission. An interest in a common interest community is not subject to  
9 the registration requirements of AS 45.56 [AS 45.55].

10 \* **Sec. 9.** AS 37.23.010(c) is amended to read:

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

14 \* **Sec. 10.** AS 37.23.050 is amended to read:

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

18 (1) a securities broker-dealer registered under AS 45.56.405  
19 [AS 45.55.030] and under 15 U.S.C. 78o (Securities Exchange Act of 1934);

20 (2) an [A STATE] investment adviser registered under AS 45.56.435  
21 [AS 45.55.030] or a federal covered investment adviser that has made a notice filing  
22 under AS 45.56.445(c) [AS 45.55.040(h)];

23 (3) the Department of Revenue; or

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

28 \* **Sec. 11.** AS 40.25.120(a) is amended to read:

29 (a) Every person has a right to inspect a public record in the state, including  
30 public records in recorders' offices, except

31 (1) records of vital statistics and adoption proceedings, which shall be

1 treated in the manner required by AS 18.50;

2 (2) records pertaining to juveniles unless disclosure is authorized by  
3 law;

4 (3) medical and related public health records;

5 (4) records required to be kept confidential by a federal law or  
6 regulation or by state law;

7 (5) to the extent the records are required to be kept confidential under  
8 20 U.S.C. 1232g and the regulations adopted under 20 U.S.C. 1232g in order to secure  
9 or retain federal assistance;

10 (6) records or information compiled for law enforcement purposes, but  
11 only to the extent that the production of the law enforcement records or information

12 (A) could reasonably be expected to interfere with enforcement  
13 proceedings;

14 (B) would deprive a person of a right to a fair trial or an  
15 impartial adjudication;

16 (C) could reasonably be expected to constitute an unwarranted  
17 invasion of the personal privacy of a suspect, defendant, victim, or witness;

18 (D) could reasonably be expected to disclose the identity of a  
19 confidential source;

20 (E) would disclose confidential techniques and procedures for  
21 law enforcement investigations or prosecutions;

22 (F) would disclose guidelines for law enforcement  
23 investigations or prosecutions if the disclosure could reasonably be expected to  
24 risk circumvention of the law; or

25 (G) could reasonably be expected to endanger the life or  
26 physical safety of an individual;

27 (7) names, addresses, and other information identifying a person as a  
28 participant in the Alaska Higher Education Savings Trust under AS 14.40.802 or the  
29 advance college tuition savings program under AS 14.40.803 - 14.40.817;

30 (8) public records containing information that would disclose or might  
31 lead to the disclosure of a component in the process used to execute or adopt an

1 electronic signature if the disclosure would or might cause the electronic signature to  
2 cease being under the sole control of the person using it;

3 (9) reports submitted under AS 05.25.030 concerning certain  
4 collisions, accidents, or other casualties involving boats;

5 (10) records or information pertaining to a plan, program, or  
6 procedures for establishing, maintaining, or restoring security in the state, or to a  
7 detailed description or evaluation of systems, facilities, or infrastructure in the state,  
8 but only to the extent that the production of the records or information

9 (A) could reasonably be expected to interfere with the  
10 implementation or enforcement of the security plan, program, or procedures;

11 (B) would disclose confidential guidelines for investigations or  
12 enforcement and the disclosure could reasonably be expected to risk  
13 circumvention of the law; or

14 (C) could reasonably be expected to endanger the life or  
15 physical safety of an individual or to present a real and substantial risk to the  
16 public health and welfare;

17 (11) the written notification regarding a proposed regulation provided  
18 under AS 24.20.105 to the Department of Law and the affected state agency and  
19 communications between the Legislative Affairs Agency, the Department of Law, and  
20 the affected state agency under AS 24.20.105;

21 (12) records that are

22 (A) proprietary, privileged, or a trade secret in accordance with  
23 AS 43.90.150 or 43.90.220(e);

24 (B) applications that are received under AS 43.90 until notice is  
25 published under AS 43.90.160;

26 (13) information of the Alaska Gasline Development Corporation  
27 created under AS 31.25.010 or a subsidiary of the Alaska Gasline Development  
28 Corporation that is confidential by law or under a valid confidentiality agreement;

29 (14) information under AS 38.05.020(b)(11) that is subject to a  
30 confidentiality agreement under AS 38.05.020(b)(12);

31 **(15) records that are**

1 **(A) investigative files under AS 45.55.910; or**

2 **(B) confidential under AS 45.56.615.**

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

4 (a) This chapter does not apply to

5 (1) a fisheries business;

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

7 (3) an insurance business;

8 (4) a mining business;

9 (5) supplying services as an employee;

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

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

13 (A) "investment club" means a group of individuals,  
14 incorporated or otherwise organized, that engages primarily in investing in  
15 securities, that does not sell investment services to another person, that does  
16 not advertise, and the primary purpose of which is educational;

17 (B) "security" has the meaning given in **AS 45.56.900**  
18 [AS 45.55.990].

19 \* **Sec. 13.** AS 44.64.030(a)(39) is repealed and reenacted to read:

20 (39) AS 45.56 (Alaska Securities Act);

21 \* **Sec. 14.** AS 44.64.030(a) is amended by adding a new paragraph to read:

22 (51) AS 45.55 (Alaska Native Claims Settlement Act Corporations  
23 Proxy Solicitations and Initial Issuance of Stock).

24 \* **Sec. 15.** AS 45.55.138 is amended to read:

25 **Sec. 45.55.138. Application to Alaska Native Claims Settlement Act**  
26 **corporations.** The initial issue of stock of a corporation organized under Alaska law  
27 **under** [PURSUANT TO] 43 U.S.C. 1601 et seq. (Alaska Native Claims Settlement  
28 Act) is not a sale of a security under **AS 45.56.105** [AS 45.55.070] and **45.56.900(29)**  
29 [45.55.990(28)].

30 \* **Sec. 16.** AS 45.55.139 is amended to read:

31 **Sec. 45.55.139. Reports of corporations.** A copy of all annual reports,

1 proxies, consents or authorizations, proxy statements, and other materials relating to  
2 proxy solicitations distributed, published, or made available by any person to at least  
3 30 Alaska resident shareholders of a corporation **organized under Alaska law under**  
4 **43 U.S.C. 1601 et. seq. (Alaska Native Claims Settlement Act)** that has total assets  
5 exceeding \$1,000,000 and a class of equity security held of record by 500 or more  
6 persons [AND WHICH IS EXEMPTED FROM THE REGISTRATION  
7 REQUIREMENTS OF AS 45.55.070 BY AS 45.55.138,] shall be filed with the  
8 administrator concurrently with its distribution to shareholders.

9 \* **Sec. 17.** AS 45.55.920(a) is amended to read:

10 (a) If it appears to the administrator that a person has engaged or is about to  
11 engage in an act or practice in violation of a provision of this chapter or regulation or  
12 order under this chapter, the administrator may

13 (1) in the public interest [OR FOR THE PROTECTION OF  
14 INVESTORS,] issue an order

15 (A) directing the person to cease and desist from continuing the  
16 act or practice;

17 (B) directing the person, for a period not to exceed three years,  
18 to file the annual reports, proxies, consents or authorizations, proxy statements,  
19 or other materials relating to proxy solicitations required under AS 45.55.139  
20 with the administrator for examination and review 10 working days before a  
21 distribution to shareholders; and

22 (C) voiding the proxies obtained by a person required to file  
23 under AS 45.55.139, including their future exercise or actions resulting from  
24 their past exercise, if the proxies were solicited by means of an untrue or  
25 misleading statement prohibited under AS 45.55.160; or

26 (2) bring an action in the superior court to enjoin the acts or practices  
27 and to enforce compliance with this chapter or regulation or order under this chapter,  
28 and upon a proper showing, the appropriate remedy must be granted and a receiver or  
29 conservator may be appointed for the defendant or the defendant's assets; the court  
30 may not require the administrator to post a bond.

31 \* **Sec. 18.** AS 45.55.920(b) is amended to read:

1 (b) The administrator may issue an order against **a person** [AN APPLICANT,  
2 REGISTERED PERSON, OR OTHER PERSON] who [KNOWINGLY OR]  
3 intentionally violates this chapter or a regulation or order of the administrator under  
4 this chapter, imposing a civil penalty of not more than \$2,500 for a single violation, or  
5 not more than \$25,000 for multiple violations, in a single proceeding or a series of  
6 related proceedings. **In this subsection, "intentionally" has the meaning given in**  
7 **AS 11.81.900(a).**

8 \* **Sec. 19.** AS 45.55.920(c) is amended to read:

9 (c) For violations not covered by (b) of this section, the administrator may  
10 issue an order against **a person** [AN APPLICANT, REGISTERED PERSON, OR  
11 OTHER PERSON] who violates this chapter or a regulation or order of the  
12 administrator under this chapter, imposing a civil penalty of not more than \$500 for a  
13 single violation, or not more than \$5,000 for multiple violations, in a single  
14 proceeding or a series of related proceedings.

15 \* **Sec. 20.** AS 45.55.925(a) is amended to read:

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

28 \* **Sec. 21.** AS 45.55.935(a) is repealed and reenacted to read:

29 (a) The administrator shall adopt regulations, consistent with the provisions of  
30 this chapter and with regulations adopted under AS 44.64.060, governing  
31 administrative hearings conducted by the office of administrative hearings

1 (AS 44.64.010) for orders issued under AS 45.55.920.

2 \* **Sec. 22.** AS 45.55.950(a) is amended to read:

3 (a) The administrator may make, adopt, amend, and rescind the regulations,  
4 forms, and orders that are necessary to carry out this chapter [, INCLUDING  
5 REGULATIONS AND FORMS GOVERNING REGISTRATION STATEMENTS,  
6 APPLICATIONS, AND REPORTS, AND DEFINING TERMS, WHETHER OR  
7 NOT USED IN THIS CHAPTER INSOFAR AS THE DEFINITIONS ARE NOT  
8 INCONSISTENT WITH THIS CHAPTER. FOR THE PURPOSE OF  
9 REGULATIONS AND FORMS, THE ADMINISTRATOR MAY CLASSIFY  
10 SECURITIES, PERSONS, AND MATTERS WITHIN THE JURISDICTION OF  
11 THE ADMINISTRATOR, AND PRESCRIBE DIFFERENT REQUIREMENTS FOR  
12 DIFFERENT CLASSES].

13 \* **Sec. 23.** AS 45.55.950(b) is amended to read:

14 (b) A regulation, form, or order may not be made, adopted, amended, or  
15 rescinded unless the administrator finds that the action is necessary or appropriate in  
16 the public interest [OR FOR THE PROTECTION OF INVESTORS AND  
17 CONSISTENT WITH THE PURPOSES FAIRLY INTENDED BY THE POLICY  
18 AND PROVISIONS OF THIS CHAPTER. IN ADOPTING REGULATIONS AND  
19 FORMS THE ADMINISTRATOR MAY COOPERATE WITH THE SECURITIES  
20 ADMINISTRATORS OF THE OTHER STATES AND THE SECURITIES AND  
21 EXCHANGE COMMISSION WITH A VIEW TO EFFECTUATING THE POLICY  
22 OF THIS SECTION TO ACHIEVE MAXIMUM UNIFORMITY IN THE FORM  
23 AND CONTENT OF REGISTRATION STATEMENTS, APPLICATIONS, AND  
24 REPORTS WHEREVER PRACTICABLE].

25 \* **Sec. 24.** AS 45.55 is amended by adding a new section to read:

26 **Sec. 45.55.985. Definition.** In this chapter, unless the context otherwise  
27 requires, "administrator" means the commissioner of commerce, community, and  
28 economic development or a designee of the commissioner.

29 \* **Sec. 25.** AS 45 is amended by adding a new chapter to read:

30 **Chapter 56. Alaska Securities Act.**

31 **Article 1. General Provisions.**

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**Sec. 45.56.105. Securities registration requirement.** A person may not offer or sell a security in this state unless the security

- (1) is a federal covered security;
- (2) is registered under this chapter; or
- (3) or transaction is exempt from registration under AS 45.56.205 - 45.56.250.

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

**Sec. 45.56.205. Exempt securities.** The following securities are exempt from the requirements of AS 45.56.105, 45.56.305 - 45.56.360, and 45.56.550:

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

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

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

(A) an international banking institution;

(B) a banking institution organized under the laws of the United States; a member bank of the Federal Reserve System; or a depository institution a substantial portion of the business of which consists or will consist of receiving deposits or share accounts that are insured to the maximum amount authorized by statute by the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund, or a successor authorized by federal law or exercising fiduciary powers that are similar to those permitted

1 for national banks under the authority of the United States Comptroller of the  
2 Currency under 12 U.S.C. 92a; or

3 (C) any other depository institution, unless, by a regulation or  
4 order, the administrator proceeds under AS 45.56.250;

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

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

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

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

15 (C) a public utility holding company registered under 42  
16 U.S.C. 16451 - 16481 (Energy Policy Act of 2005) or a subsidiary of the  
17 registered holding company within the meaning of that Act;

18 (6) a federal covered security specified in 15 U.S.C. 77r(b)(1)  
19 (Securities Act of 1933) or adopted by rule under that provision or a security listed or  
20 approved for listing on another securities market specified by regulation under this  
21 chapter; a put or call option contract; a warrant; a subscription right on or with respect  
22 to the security; an option or similar derivative security on a security or an index of  
23 securities or foreign currencies issued by a clearing agency registered under 15 U.S.C.  
24 78a - 78pp (Securities Exchange Act of 1934) and listed or designated for trading on a  
25 national securities exchange, a facility of a national securities exchange, or a facility of  
26 a national securities association registered under 15 U.S.C. 78a - 78pp (Securities  
27 Exchange Act of 1934) or an offer or sale of the underlying security in connection  
28 with the offer, sale, or exercise of an option or other security that was exempt when  
29 the option or other security was written or issued; or an option or a derivative security  
30 designated by the Securities and Exchange Commission under 15 U.S.C. 78i(b)  
31 (Securities Exchange Act of 1934);

1 (7) a security issued by a person organized and operated exclusively  
2 for religious, educational, benevolent, fraternal, charitable, social, athletic, or  
3 reformatory purposes, or as a chamber of commerce, and not for pecuniary profit, no  
4 part of the net earnings of which inures to the benefit of a private stockholder or other  
5 person, or a security of a company that is excluded from the definition of an  
6 investment company under 15 U.S.C. 80a-3(c)(10)(B) (Investment Company Act of  
7 1940), except that, with respect to the offer or sale of a note, bond, debenture, or other  
8 evidence of indebtedness issued by the person, a regulation may be adopted under this  
9 chapter limiting the availability of this exemption by classifying securities, persons,  
10 and transactions, imposing different requirements for different classes, specifying,  
11 with respect to (B) of this paragraph, the scope of the exemption and the grounds for  
12 denial or suspension, and requiring an issuer to

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

18 (B) file a request for exemption authorization for which a  
19 regulation adopted under this chapter may specify the

20 (i) scope of the exemption;

21 (ii) requirement of an offering statement;

22 (iii) filing of sales and advertising literature;

23 (iv) filing of consent to service of process complying  
24 with AS 45.56.630; and

25 (v) grounds for denial or suspension of the exemption;

26 or

27 (C) register under AS 45.56.310;

28 (8) a member's or owner's interest in, or a retention certificate or like  
29 security given in lieu of a cash patronage dividend issued by, a cooperative organized  
30 and operated as a nonprofit membership cooperative under the cooperative laws of a  
31 state, but not a member's or owner's interest, retention certificate, or like security sold

1 to persons other than bona fide members of the cooperative;

2 (9) an equipment trust certificate with respect to equipment leased or  
3 conditionally sold to a person if any security issued by the person would be exempt  
4 under this section or would be a federal covered security under 15 U.S.C. 77r(b)(1)  
5 (Securities Act of 1933); and

6 (10) shares of membership stock in the Alaska Commercial Fishing  
7 and Agriculture Bank issued under AS 44.81.010 and other securities issued by that  
8 bank to members or in connection with loans to members.

9 **Sec. 45.56.210. Exempt transactions.** The following transactions are exempt  
10 from the requirements of AS 45.56.105, 45.56.305 - 45.56.360, and 45.56.550:

11 (1) an isolated nonissuer transaction, whether effected by or through a  
12 broker-dealer, if the seller is not a promoter or controlling person; the administrator  
13 may define by regulation or order who is a promoter or a controlling person;

14 (2) a nonissuer transaction by or through a broker-dealer registered, or  
15 exempt from registration under this chapter, and a resale transaction by a sponsor of a  
16 unit investment trust registered under 15 U.S.C. 80a-1 - 80a-64 (Investment Company  
17 Act of 1940), in a security of a class that has been outstanding in the hands of the  
18 public for at least 90 days, if, at the date of the transaction,

19 (A) the issuer of the security is engaged in business, the issuer  
20 is not in the organizational stage or in bankruptcy or receivership, and the  
21 issuer is not a blank check, blind pool, or shell company that does not have a  
22 specific business plan or purpose or has indicated that its primary business plan  
23 is to engage in a merger or combination of the business with or an acquisition  
24 of an unidentified person;

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

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

30 (D) a nationally recognized securities manual or its electronic  
31 equivalent designated by a regulation adopted or order issued under this

1 chapter or a record filed with the Securities and Exchange Commission that is  
2 publicly available contains

3 (i) a description of the business and operations of the  
4 issuer;

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

7 (iii) an audited balance sheet of the issuer as of a date  
8 within 18 months before the date of the transaction or, in the case of a  
9 reorganization or merger when the parties to the reorganization or  
10 merger each had an audited balance sheet, a pro forma balance sheet for  
11 the combined organization; and

12 (iv) an audited income statement for each of the issuer's  
13 two immediately previous fiscal years or for the period of existence of  
14 the issuer, whichever is shorter, or, in the case of a reorganization or  
15 merger when each party to the reorganization or merger had audited  
16 income statements, a pro forma income statement; and

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

18 (i) the issuer of the security has a class of equity  
19 securities listed on a national securities exchange registered under 15  
20 U.S.C. 78f (Securities Exchange Act of 1934) or designated for trading  
21 on the National Association of Securities Dealers Automated Quotation  
22 System;

23 (ii) the issuer of the security is a unit investment trust  
24 registered under 15 U.S.C. 80a-1 - 80a-64 (Investment Company Act of  
25 1940);

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

29 (iv) the issuer of the security has total assets of at least  
30 \$2,000,000 based on an audited balance sheet as of a date within 18  
31 months before the date of the transaction or, in the case of a

1 reorganization or merger when the parties to the reorganization or  
2 merger each had an audited balance sheet, a pro forma balance sheet for  
3 the combined organization;

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

8 (4) a nonissuer transaction by or through a broker-dealer registered or  
9 exempt from registration under this chapter in an outstanding security if the guarantor  
10 of the security files reports with the Securities and Exchange Commission under the  
11 reporting requirements of 15 U.S.C. 78m or 15 U.S.C. 78o (Securities Exchange Act  
12 of 1934);

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

15 (A) is rated at the time of the transaction by a nationally  
16 recognized statistical rating organization as identified by regulations of the  
17 administrator in one of its four highest rating categories; or

18 (B) has a fixed maturity or a fixed interest or dividend, if

19 (i) a default has not occurred during the current fiscal  
20 year or within the three previous fiscal years or, if the issuer has been in  
21 business less than three fiscal years, during the existence of the issuer  
22 and any predecessor in the payment of principal, interest, or dividends  
23 on the security; and

24 (ii) the issuer is engaged in business, is not in the  
25 organizational stage or in bankruptcy or receivership, and is not and has  
26 not, within the previous 12 months, been a blank check, blind pool, or  
27 shell company that does not have a specific business plan or purpose or  
28 has indicated that its primary business plan is to engage in a merger or  
29 combination of the business with, or an acquisition of, an unidentified  
30 person;

31 (6) a nonissuer transaction by or through a broker-dealer registered or

1 exempt from registration under this chapter effecting an unsolicited order or offer to  
2 purchase;

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

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

8 (9) a transaction in a security, whether or not the security or  
9 transaction is otherwise exempt, in exchange for one or more bona fide outstanding  
10 securities, claims, or property interests, or partly in exchange for one or more bona  
11 fide outstanding securities, claims, or property interests and partly for cash if the terms  
12 and conditions of the issuance and exchange or the delivery and exchange and the  
13 fairness of the terms and conditions have been approved by the administrator after a  
14 hearing;

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

17 (11) a transaction in a bond or other evidence of indebtedness secured  
18 by a real or chattel mortgage or deed of trust or by an agreement for the sale of real  
19 estate or chattels, if

20 (A) the entire mortgage, deed of trust, or agreement, together  
21 with all the bonds or other evidence of indebtedness, secured under those  
22 documents, is offered and sold as a unit;

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

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

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

30 (13) a sale or offer to sell to

31 (A) an institutional investor;

- 1 (B) a federal covered investment adviser; or  
2 (C) any other person exempted by a regulation adopted or order  
3 issued under this chapter;
- 4 (14) a sale or offer to sell securities by or on behalf of an issuer if the  
5 transaction is part of a single issue in which
- 6 (A) not more than 25 purchasers in this state during any 12  
7 consecutive months, other than a person designated in (13) of this section,  
8 regardless of whether the seller or any of the buyers is then present in this  
9 state;
- 10 (B) a general solicitation or general advertising is not made in  
11 connection with the sale of or offer to sell the securities;
- 12 (C) a commission or other remuneration is not paid or given,  
13 directly or indirectly, to a person other than a broker-dealer registered under  
14 this chapter or an agent registered under this chapter for soliciting a  
15 prospective purchaser in this state;
- 16 (D) the issuer reasonably believes that all the purchasers in this  
17 state, other than those designated in (13) of this section, are purchasing for  
18 investment and not with a view to distribution;
- 19 (E) a legend is placed on the certificate or other document  
20 evidencing ownership of the security, and the legend states that the security is  
21 not registered under this chapter and cannot be resold without registration  
22 under this chapter or exemption from this chapter; and
- 23 (F) before a sale, each prospective buyer is furnished with  
24 information that is sufficient to make an informed investment decision; the  
25 information shall be furnished to the administrator upon request; in this  
26 subparagraph, "information that is sufficient to make an informed investment  
27 decision" includes a business plan, an income and expense statement, a balance  
28 sheet, a statement of risks, and a disclosure of any significant negative factors  
29 that may affect the outcome of the investment;
- 30 (15) a transaction under an offer to existing security holders of the  
31 issuer, including persons that, at the date of the transaction, are holders of convertible

1 securities, options, or warrants, if a commission or other remuneration, other than a  
2 standby commission, is not paid or given, directly or indirectly, for soliciting a  
3 security holder in this state;

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

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

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

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

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

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

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

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

30 (19) a rescission offer, sale, or purchase under AS 45.56.665;

31 (20) an offer to sell or sale of a security to a person not a resident of

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

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

10 (A) directors; general partners; managers and members if the  
11 issuer is a limited liability company; trustees, if the issuer is a business trust;  
12 officers; consultants; and advisors;

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

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

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

22 (22) a transaction involving

23 (A) a stock dividend or equivalent equity distribution,  
24 regardless of whether the corporation or other business organization  
25 distributing the dividend or equivalent equity distribution is the issuer, if  
26 nothing of value is given by stockholders or other equity holders for the  
27 dividend or equivalent equity distribution other than the surrender of a right to  
28 a cash or property dividend if each stockholder or other equity holder may  
29 elect to take the dividend or equivalent equity distribution in cash, property, or  
30 stock;

31 (B) a transaction incident to a right of conversion or judicially

1 approved reorganization in which a security is issued in exchange for one or  
2 more outstanding securities, claims, or property interests, or partly in exchange  
3 for one or more outstanding securities, claims, or property interests and partly  
4 for cash; or

5 (C) the solicitation of tenders of securities by an offeror in a  
6 tender offer in compliance with 17 C.F.R. 230.162, adopted under 15 U.S.C.  
7 77a - 77aa (Securities Act of 1933);

8 (23) a nonissuer transaction in an outstanding security by or through a  
9 broker-dealer registered or exempt from registration under this chapter, if the issuer is  
10 a reporting issuer in a foreign jurisdiction designated by this paragraph or by a  
11 regulation adopted or order issued under this chapter; the issuer has been subject to  
12 continuous reporting requirements in the foreign jurisdiction for not less than 180 days  
13 before the transaction; and the security is listed on the foreign jurisdiction's securities  
14 exchange that has been designated by this paragraph or by a regulation adopted or  
15 order issued under this chapter, or is a security of the same issuer that is of senior or  
16 substantially equal rank to the listed security or is a warrant or right to purchase or  
17 subscribe to any of the foregoing; for purposes of this paragraph, Canada, together  
18 with its provinces and territories, is a designated foreign jurisdiction, and TSX, Inc.,  
19 formerly known as the Toronto Stock Exchange, Inc., is a designated securities  
20 exchange; after an administrative hearing in compliance with AS 45.56.650(c), the  
21 administrator, by a regulation adopted or order issued under this chapter, may revoke  
22 the designation of a securities exchange under this paragraph if the administrator finds  
23 that revocation is necessary or appropriate in the public interest and for the protection  
24 of investors;

25 (24) a sale by an issuer to the buyer of an enterprise or a business and  
26 the assets and liabilities of the enterprise or business if

27 (A) the transfer of stock to the buyer is solely incidental to the  
28 sale of the enterprise or business and its assets and liabilities;

29 (B) the seller provides the buyer with full access to the books  
30 and records of the enterprise or business; and

31 (C) a legend is placed on the certificate or other document

1           evidencing ownership of the security, stating that the security is not registered  
2           under this chapter and cannot be resold without registration under this chapter  
3           or exemption from it;

4           (25) an offer or sale of a certificate of interest or participation in oil,  
5           gas, or mining rights, titles, or leases, or in payments out of production under the  
6           rights, titles, or leases, if the purchaser

7           (A) is or has been, during the preceding two years, engaged  
8           primarily in the business of exploring for, mining, producing, or refining oil,  
9           gas, or minerals; or

10          (B) has been found by the administrator upon written  
11          application to be substantially engaged in the business of exploring for,  
12          mining, producing, or refining oil, gas, or minerals so as not to require the  
13          protection provided by this chapter;

14          (26) a transaction involving only family members, or involving only  
15          family members and the corporations, partnerships, limited liability companies,  
16          limited partnerships, limited liability partnerships, associations, joint-stock companies,  
17          or trusts that are organized, formed, or created by family members or at the direction  
18          of family members; in this paragraph, "family members" means persons who are  
19          related, including related by adoption, within the fourth degree of affinity or  
20          consanguinity; or

21          (27) a transaction relating to a security that is not part of an initial issue  
22          of stock covered by AS 45.55.138, but that is issued by a corporation organized under  
23          Alaska law under 43 U.S.C. 1601 et seq. (Alaska Native Claims Settlement Act), if the  
24          corporation qualifies for exempt status under 43 U.S.C. 1625(a).

25          **Sec. 45.56.220. Small intrastate securities offerings.** (a) An offer or sale of  
26          securities conducted solely in this state to a person who has established residency in  
27          this state, by an issuer in a transaction that meets the requirements of this section, is  
28          exempt from the requirements of AS 45.56.105, 45.56.305 - 45.56.360, and 45.56.550  
29          and is subject to the following limitations:

30          (1) the issuer of the security shall be a for-profit corporation, another  
31          for-profit entity, or a business cooperative, have its principal place of business in this

1 state, and be licensed by the department;

2 (2) the transaction must meet the requirements of the federal  
3 exemption for intrastate offerings in 15 U.S.C. 77c(a)(11) (Securities Act of 1933) and  
4 17 C.F.R. 230.147; the securities must be offered to and sold only to persons who  
5 have established residency in this state at the time of purchase; before any offer or sale  
6 under this exemption, the seller shall obtain documentary evidence from each  
7 prospective purchaser that provides the seller with a reasonable basis to believe the  
8 investor has established residency in this state;

9 (3) the sum of all cash and other consideration to be received for all  
10 sales of the security in reliance on this exemption may not exceed \$1,000,000, less the  
11 aggregate amount received for all sales of securities by the issuer within the 12 months  
12 before the first offer or sale made in reliance on this exemption;

13 (4) the issuer may not accept more than \$10,000 from any single  
14 purchaser unless the purchaser is an accredited investor as defined by 17 C.F.R.  
15 230.501;

16 (5) the issuer must reasonably believe that all purchasers of securities  
17 are purchasing for investment and not for sale in connection with a distribution of the  
18 security;

19 (6) a commission or remuneration may not be paid or given, directly or  
20 indirectly, for any person's participation in the offer or sale of securities for the issuer  
21 unless the person is registered as a broker-dealer, agent, investment adviser  
22 representative, or investment adviser under AS 45.56.405 - 45.56.440;

23 (7) all funds received from investors shall be deposited into a bank or  
24 depository institution authorized to do business in this state, and all funds shall be  
25 used in accordance with representations made to investors;

26 (8) not less than 10 days before the use of any general solicitation or  
27 within 15 days after the first sale of the security under this exemption, if general  
28 solicitation has not been used before the sale, whichever occurs first, the issuer shall  
29 provide a notice to the administrator as prescribed in regulations for this section; the  
30 notice must specify that the issuer is conducting an offering in reliance on this  
31 exemption and must contain the names and addresses of

- 1 (A) the issuer;
- 2 (B) officers, directors, and any control person of the issuer;
- 3 (C) all persons who will be involved in the offer or sale of
- 4 securities on behalf of the issuer; and
- 5 (D) the bank or other depository institution in which investor
- 6 funds will be deposited;
- 7 (9) the issuer may not be, either before or as a result of the offering,
- 8 (A) an investment company as defined by 15 U.S.C. 80a-1 -
- 9 80a-64 (Investment Company Act of 1940), or subject to the reporting
- 10 requirements of 15 U.S.C. 78m or 78o (Securities Exchange Act of 1934); or
- 11 (B) a broker-dealer, agent, investment adviser representative, or
- 12 investment adviser subject to AS 45.56.405 - 45.56.440;
- 13 (10) the issuer shall inform all purchasers that the securities have not
- 14 been registered under AS 45.56.105, 45.56.305 - 45.56.360, and 45.56.550 and may
- 15 not be resold unless the securities are registered or qualify for an exemption from
- 16 registration under AS 45.56.205, 45.56.210, or 45.56.240; in addition, the issuer shall
- 17 make the disclosures required by 17 C.F.R. 230.147(f);
- 18 (11) the issuer shall require all purchasers to sign the following
- 19 statement at the time of sale: "I acknowledge that I am investing in a high-risk,
- 20 speculative business venture, that I may lose all of my investment, and that I can
- 21 afford the loss of my investment";
- 22 (12) this exemption may not be used in conjunction with any other
- 23 exemption under this chapter, except the exemption to institutional investors under
- 24 AS 45.56.405 and 45.56.435 and for offers and sales to controlling persons of the
- 25 issuer; sales to controlling persons may not count toward the limitation in (3) of this
- 26 subsection;
- 27 (13) this exemption may not be construed to remove any person from
- 28 the anti-fraud provisions under AS 45.56.505 - 45.56.560, and the exemption may not
- 29 be construed to provide relief from any other provision of this chapter other than as
- 30 expressly stated.
- 31 (b) The administrator may by order deny or revoke the exemption specified in

1 this section with respect to a specific security if the administrator finds that the sale of  
2 the security would work or tend to work a fraud on the purchasers of the security. An  
3 order under this subsection may not operate retroactively. A person may not be  
4 considered to have violated AS 45.56.205 - 45.56.250 because of any offer or sale  
5 effected after the entry of an order under this subsection if the person sustains the  
6 burden of proof that the person did not know and, in the exercise of reasonable care,  
7 could not have known of the order.

8 (c) A person who makes application to the department for an exemption under  
9 this section shall be assessed a filing fee as prescribed in regulations for this section.

10 (d) In this section, "residency" has the meaning given in AS 01.10.055.

11 **Sec. 45.56.230. Disqualifier.** Exemption from registration under AS 45.56.205  
12 - 45.56.250 is not available for a security or transaction if the issuer, or any of its  
13 officers, controlling persons, or promoters, is subject to a disqualifier described in the  
14 regulations adopted under 15 U.S.C. 78c(a)(39) (Dodd-Frank Wall Street Reform and  
15 Consumer Protection Act) as of the date of the transaction or offer.

16 **Sec. 45.56.240. Waiver and modification.** For any security or transaction or  
17 any type of security or transaction, the administrator may by order, waive, withdraw,  
18 or modify any of the requirements or conditions of AS 45.56.205 - 45.56.250.

19 **Sec. 45.56.250. Denial, suspension, revocation, condition, or limitation of**  
20 **exemptions.** (a) Except with respect to a federal covered security or a transaction  
21 involving a federal covered security, an order under this chapter may deny, suspend  
22 application of, condition, limit, or revoke an exemption created under  
23 AS 45.56.205(3)(C), (7), or (8), 45.56.210, or 45.56.220, or an exemption or waiver  
24 created under AS 45.56.240 with respect to a specific security, transaction, or offer.  
25 An order under this subsection may be issued only under the procedures in  
26 AS 45.56.360(d) or 45.56.650 and only prospectively.

27 (b) A person does not violate AS 45.56.105, 45.56.305 - 45.56.320, 45.56.340,  
28 45.56.360, 45.56.550, or 45.56.665 by an offer to sell, offer to purchase, sale, or  
29 purchase effected after the entry of an order issued under this section if the person did  
30 not know and, in the exercise of reasonable care, could not have known, of the order.

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

1           **Sec. 45.56.305. Securities registration by coordination.** (a) A security for  
2           which a registration statement has been filed under 15 U.S.C. 77a - 77aa (Securities  
3           Act of 1933) in connection with the same offering may be registered by coordination  
4           under this section.

5           (b) A registration statement and accompanying records under this section must  
6           contain or be accompanied by the following records, in addition to the information  
7           specified in AS 45.56.320, and a consent to service of process complying with  
8           AS 45.56.630:

9                     (1) a copy of the latest form of prospectus filed under 15 U.S.C. 77a -  
10                    77aa (Securities Act of 1933);

11                   (2) if the administrator requires, a copy of the articles of incorporation  
12                   and bylaws or their substantial equivalents currently in effect; a copy of any other  
13                   information or any other records filed by the issuer under 15 U.S.C. 77a - 77aa  
14                   (Securities Act of 1933) requested by the administrator; a copy of any agreement with  
15                   or among underwriters; a copy of any indenture or other instrument governing the  
16                   issuance of the security to be registered; and a specimen, copy, or description of the  
17                   security that is required by a regulation adopted or order issued under this chapter; and

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

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

24                   (1) a stop order under (d) of this section or AS 45.56.360 or issued by  
25                   the Securities and Exchange Commission is not in effect, and a proceeding is not  
26                   pending against the issuer under AS 45.56.480; and

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

29           (d) The registrant shall promptly notify the administrator in a record of the  
30           date when the federal registration statement becomes effective and the content of any  
31           price amendment and shall promptly file a record containing the price amendment. If

1 the notice is not timely received, the administrator may issue a stop order, without  
2 prior notice or hearing, retroactively denying effectiveness to the registration  
3 statement or suspending its effectiveness until compliance with this section. The  
4 administrator shall promptly notify the registrant of an order by telephone or  
5 electronic means and promptly confirm this notice by a record. If the registrant later  
6 complies with the notice requirements of this subsection, the stop order is void as of  
7 the date of its issuance.

8 (e) If the federal registration statement becomes effective before each of the  
9 conditions in this section is satisfied or is waived by the administrator, the registration  
10 statement is automatically effective under this chapter when all the conditions are  
11 satisfied or waived. If the registrant notifies the administrator of the date when the  
12 federal registration statement is expected to become effective, the administrator shall  
13 promptly notify the registrant by telephone or electronic means and promptly confirm  
14 this notice by a record, indicating whether all the conditions are satisfied or waived  
15 and whether the administrator intends the institution of a proceeding under  
16 AS 45.56.360. The notice by the administrator does not preclude the institution of a  
17 proceeding under AS 45.56.360.

18 **Sec. 45.56.310. Securities registration by qualification.** (a) A security may  
19 be registered by qualification under this section.

20 (b) A registration statement under this section must contain the information or  
21 records specified in AS 45.56.320, a consent to service of process complying with  
22 AS 45.56.630, and the following information or records:

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

30 (2) with respect to each director and officer of the issuer and other  
31 person having a similar status or performing similar functions, the person's name,

1 address, and principal occupation for the previous five years; the amount of securities  
2 of the issuer held by the person as of the 30th day before the filing of the registration  
3 statement; the amount of the securities covered by the registration statement to which  
4 the person has indicated an intention to subscribe; and a description of any material  
5 interest of the person in any material transaction with the issuer or a significant  
6 subsidiary effected within the previous three years or proposed to be effected;

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

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

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

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

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

1 issue its securities;

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

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

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

1 the aggregate of those options;

2 (11) the dates of, parties to, and general effect, concisely stated, of  
3 each managerial or other material contract made or to be made other than in the  
4 ordinary course of business to be performed in whole or in part at or after the filing of  
5 the registration statement or that was made within the previous two years, and a copy  
6 of each contract;

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

10 (13) a copy of any prospectus, pamphlet, circular, form letter,  
11 advertisement, or other sales literature intended as of the effective date of the  
12 registration statement to be used in connection with the offering and any solicitation of  
13 interest used in compliance with AS 45.56.210(17)(B);

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

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

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

28 (17) a balance sheet of the issuer as of a date within four months  
29 before the filing of the registration statement; a statement of income and a statement of  
30 cash flows for each of the three fiscal years preceding the date of the balance sheet and  
31 for any period between the close of the immediately previous fiscal year and the date

1 of the balance sheet, or for the period of the issuer's and any predecessor's existence if  
2 less than three years; and, if any part of the proceeds of the offering is to be applied to  
3 the purchase of a business, the financial statements that would be required if that  
4 business were the registrant; and

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

7 (c) A registration statement under this section becomes effective when the  
8 administrator orders that the registration is effective.

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

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

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

19 (3) payment under the sale; or

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

21 **Sec. 45.56.320. Securities registration filings.** (a) A registration statement  
22 may be filed by the issuer, a person on whose behalf the offering is to be made, or a  
23 broker-dealer registered under this chapter.

24 (b) A person filing a registration statement shall pay a filing fee established by  
25 a regulation adopted under this chapter and consent to service of process as described  
26 under AS 45.56.630.

27 (c) A registration statement filed under AS 45.56.305 or 45.56.310 must  
28 specify

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

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

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

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

7 (e) In the case of a nonissuer distribution, information or a record may not be  
8 required under (i) of this section or AS 45.56.310 unless it is known to the person  
9 filing the registration statement or to the person on whose behalf the distribution is to  
10 be made or unless it can be furnished by those persons without unreasonable effort or  
11 expense.

12 (f) A regulation adopted or order issued under this chapter may require as a  
13 condition of registration that a security issued within the previous five years or to be  
14 issued to a promoter for a consideration substantially less than the public offering  
15 price or to a person for a consideration other than cash be deposited in escrow and that  
16 the proceeds from the sale of the registered security in this state be impounded until  
17 the issuer receives a specified amount from the sale of the security, either in this state  
18 or elsewhere. The conditions of any escrow or impoundment required under this  
19 subsection may be established by a regulation adopted or order issued under this  
20 chapter, but the administrator may not reject a depository institution solely because of  
21 its location in another state.

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

27 (h) Except while a stop order is in effect under AS 45.56.360, a registration  
28 statement is effective for one year after the effective date of the registration statement  
29 or for any longer period designated in an order under this chapter during which the  
30 security is being offered or distributed in a nonexempted transaction by or for the  
31 account of the issuer or other person on whose behalf the offering is being made or by

1 an underwriter or broker-dealer that is still offering part of an unsold allotment or  
2 subscription taken as a participant in the distribution. For the purposes of a nonissuer  
3 transaction, all outstanding securities of the same class identified in the registration  
4 statement as a security registered under this chapter are considered to be registered  
5 while the registration statement is effective. If any securities of the same class are  
6 outstanding, a registration statement may not be withdrawn until one year after the  
7 effective date of the registration statement. A registration statement may be withdrawn  
8 only with the approval of the administrator.

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

14 (j) A registration statement may be amended after the effective date of the  
15 registration statement. The post-effective amendment becomes effective when the  
16 administrator so orders. If a post-effective amendment is made to increase the number  
17 of securities specified to be offered or sold, the person filing the amendment shall pay  
18 a registration fee established by a regulation adopted under this chapter. A post-  
19 effective amendment relates back to the date of the offering of the additional securities  
20 being registered if, within one year after the date of the sale, the amendment is filed  
21 and the additional registration fee is paid.

22 **Sec. 45.56.330. Notice filing of federal covered securities.** (a) With respect to  
23 a federal covered security, as defined in 15 U.S.C. 77r(b) (Securities Act of 1933), that  
24 is not otherwise exempt under AS 45.56.205 - 45.56.240, a regulation adopted or order  
25 issued under this chapter may require the filing of any or all of the following records:

26 (1) before the initial offer of a federal covered security in this state, all  
27 records that are part of a federal registration statement filed with the Securities and  
28 Exchange Commission under 15 U.S.C. 77a - 77aa (Securities Act of 1933), a consent  
29 to service of process complying with AS 45.56.630 signed by the issuer, and the  
30 payment of a fee established in a regulation adopted under this chapter;

31 (2) after the initial offer of the federal covered security in this state, all

1 records that are part of an amendment to a federal registration statement filed with the  
2 Securities and Exchange Commission under 15 U.S.C. 77a - 77aa (Securities Act of  
3 1933); and

4 (3) to the extent necessary or appropriate to compute fees, a report of  
5 the value of the federal covered securities sold or offered to persons present in this  
6 state if the sales data are not included in records filed with the Securities and  
7 Exchange Commission and payment of a fee established in a regulation adopted under  
8 this chapter.

9 (b) A notice filing under (a) of this section is effective for one year  
10 commencing on the later of the notice filing or the effectiveness of the offering filed  
11 with the Securities and Exchange Commission. On or before expiration, the issuer  
12 may renew a notice filing by filing with the Securities and Exchange Commission a  
13 copy of those records filed by the issuer that are required by a regulation adopted or  
14 order issued under this chapter to be filed and by paying a renewal fee established in a  
15 regulation adopted under this chapter. A previously filed consent to service of process  
16 complying with AS 45.56.630 may be incorporated by reference in a renewal. A  
17 renewed notice filing becomes effective upon the expiration of the filing being  
18 renewed.

19 (c) With respect to a security that is a federal covered security under 15 U.S.C.  
20 77r(b)(4)(D) (Securities Act of 1933), a regulation adopted under this chapter may  
21 require a notice filing by or on behalf of an issuer to include a copy of Form D,  
22 including the Appendix, as adopted by the Securities and Exchange Commission, and  
23 a consent to service of process complying with AS 45.56.630 signed by the issuer not  
24 later than 15 days after the first sale of the federal covered security in this state and the  
25 payment of a fee established in a regulation adopted under this chapter; and the  
26 payment of a fee established in a regulation adopted under this chapter for any late  
27 filing.

28 (d) Except with respect to a federal covered security under 15 U.S.C. 77r(b)(1)  
29 (Securities Act of 1933), if the administrator finds that there is a failure to comply  
30 with a notice or fee requirement of this section, the administrator may issue a stop  
31 order suspending the offer and sale of a federal covered security in this state. If the

1 deficiency is corrected, the stop order is void as of the time of its issuance and a  
2 penalty may not be imposed by the administrator.

3 **Sec. 45.56.340. Viatical settlement interests.** (a) Before the sale of a viatical  
4 settlement interest, an issuer shall provide a prospective buyer with information that is  
5 sufficient to make an informed investment decision. The issuer shall also provide the  
6 information to the administrator upon request if the issuer is not otherwise required to  
7 file the information with the administrator. In this subsection, "information that is  
8 sufficient to make an informed investment decision" includes state-mandated  
9 disclosure forms and a disclosure of any significant factors that may affect the  
10 outcome of the investment.

11 (b) Except as may be required in the course of conduct of the responsibilities  
12 of the administrator, an issuer of a viatical settlement interest may not disclose to  
13 another person the identity of the viator or insured of the insurance policy that is the  
14 subject of the viatical settlement interest. The viator may waive this prohibition  
15 against disclosure if the waiver is in writing and signed by the viator.

16 (c) The administrator shall regulate transactions between a viatical settlement  
17 provider or person acting as an agent of a viatical settlement provider and a  
18 subsequent investor, while the authority of the director of the division of insurance  
19 extends to the regulation of viatical settlement contracts under AS 21.96.110.

20 (d) In this section,

21 (1) "viatical settlement contract" has the meaning given in  
22 AS 21.96.110(h);

23 (2) "viatical settlement interest"

24 (A) means the entire interest or any fractional interest in a life  
25 insurance policy or in the death benefit under a life insurance policy that is the  
26 subject of a viatical settlement contract;

27 (B) does not include the initial purchase from the viator by a  
28 viatical settlement provider;

29 (3) "viatical settlement provider" has the meaning given in  
30 AS 21.96.110(h);

31 (4) "viator" has the meaning given in AS 21.96.110(h).

1           **Sec. 45.56.350. Waiver and modification.** The administrator may waive or  
2 modify, in whole or in part, any or all of the requirements of AS 45.56.305 and  
3 45.56.320 or the requirement of any information or record in a registration statement  
4 or in a periodic report filed under AS 45.56.320(i).

5           **Sec. 45.56.360. Denial, suspension, and revocation of securities**  
6 **registration.** (a) The administrator may issue a stop order denying effectiveness to, or  
7 suspending or revoking the effectiveness of, a registration statement if the  
8 administrator finds that the order is in the public interest and that

9                   (1) the registration statement as of the effective date of the registration  
10 statement or before the effective date in the case of an order denying effectiveness, an  
11 amendment under AS 45.56.320(j) as of the effective date of the amendment, or a  
12 report under AS 45.56.320(i) is incomplete in a material respect or contains a  
13 statement that, in the light of the circumstances under which it was made, was false or  
14 misleading with respect to a material fact;

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

18                           (A) the person filing the registration statement;

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

21                           (C) a promoter of the issuer;

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

25                           (E) an underwriter;

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

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

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

7 (5) with respect to a security sought to be registered under  
8 AS 45.56.305, there has been a failure to comply with the undertaking required by  
9 AS 45.56.305(b)(3);

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

13 (7) the offering

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

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

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

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

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

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

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

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

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

12 (2) an opportunity for hearing conducted in the manner provided in  
13 AS 45.56.650(c); and

14 (3) findings of fact and conclusions of law in a record.

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

19 **Article 4. Broker-Dealers, Agents, Investment Advisers, Investment Adviser**  
20 **Representatives, and Federal Covered Investment Advisers.**

21 **Sec. 45.56.405. Broker-dealer registration requirement and exemptions.**

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

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

27 (1) a broker-dealer without a place of business in this state if the  
28 broker-dealer's only transactions effected in this state are with

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

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

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(C) an institutional investor;

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

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

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

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

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

(G) not more than three customers in this state during the previous 12 months, in addition to those customers specified in (A) - (F) of this paragraph and under (H) of this paragraph if the broker-dealer is registered under 15 U.S.C. 78a - 78pp (Securities Exchange Act of 1934) or not required to be registered under 15 U.S.C. 78a - 78pp (Securities Exchange Act of 1934)

1 and is registered under the securities act of the state in which the broker-dealer  
2 has its principal place of business; and

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

5 (2) a person that deals solely in United States government securities  
6 and is supervised as a dealer in government securities by the Board of Governors of  
7 the Federal Reserve System, the United States Comptroller of the Currency, or the  
8 Federal Deposit Insurance Corporation.

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

22 **Sec. 45.56.410. Limited registration of Canadian broker-dealers and**  
23 **agents.** (a) If a broker-dealer is registered under this section and its principal office is  
24 located in a province or territory of Canada that provides at least equivalent  
25 registration for a broker-dealer that is resident in the United States, a broker-dealer  
26 that is resident in Canada and does not have an office or other physical presence in this  
27 state may effect transactions in securities with or for or induce or attempt to induce the  
28 purchase or sale of a security by a person from Canada who is

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

1 (2) resident in this state and whose transactions are in a self-directed  
2 tax-advantaged retirement plan in Canada if the person is the holder of or contributor  
3 to the plan.

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

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

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

11 (2) files a written consent to service of process under AS 45.56.630;

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

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

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

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

22 (2) files a written consent to service of process under AS 45.56.630;  
23 and

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

26 (e) Registration under this section becomes effective on the 30th day after an  
27 application is filed unless it is made effective earlier by the administrator or a denial  
28 order is in effect and a proceeding is pending under AS 45.56.480.

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

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

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

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

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

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

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

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

15 (h) A Canadian broker-dealer or agent registered under this section may renew  
16 its registration by filing by midnight on December 31 of each year the most recent  
17 renewal application, if any, filed in the jurisdiction in which the broker-dealer or agent  
18 has its principal office or, if a renewal application is not required, the most recent  
19 application filed under (c)(1) or (d)(1) of this section.

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

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

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

25 (2) with or through

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

27 (B) other broker-dealers; or

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

1 or

2 (3) as otherwise permitted by this chapter.

3 (k) A Canadian broker-dealer or agent registered under this section and acting  
4 in accordance with the limitations in (j) of this section is exempt from all of the  
5 requirements of this chapter except the anti-fraud provisions under AS 45.56.505 and  
6 the requirements of this section. The registration of a Canadian broker-dealer or agent  
7 under this section may not be denied, suspended, or revoked except in accordance with  
8 the provisions of AS 45.56.480 for a breach of the anti-fraud provisions under  
9 AS 45.56.505 or the requirements of this section.

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

12 **Sec. 45.56.420. Registration exemption for merger and acquisition broker.**

13 (a) Except as provided in (b) and (c) of this section, a merger and acquisition broker is  
14 exempt from registration under AS 45.56.405.

15 (b) A merger and acquisition broker is not exempt from registration under  
16 AS 45.56.405 if the broker

17 (1) directly or indirectly, in connection with the transfer of ownership  
18 of an eligible privately held company, receives, holds, transmits, or has custody of the  
19 funds or securities to be exchanged by the parties to the transaction;

20 (2) engages on behalf of an issuer in a public offering of any class of  
21 securities that is registered, or is required to be registered, with the United States  
22 Securities and Exchange Commission under 15 U.S.C. 78l(b) (Securities Exchange  
23 Act of 1934) or with respect to which the issuer files, or is required to file, periodic  
24 information, documents, and reports under 15 U.S.C. 78o(d) (Securities Exchange Act  
25 of 1934); or

26 (3) engages on behalf of any party in a transaction involving a public  
27 shell company.

28 (c) A merger and acquisition broker is not exempt from registration under  
29 AS 45.56.405 if the broker is subject to

30 (1) suspension or revocation of registration under 15 U.S.C. 78o(b)(4)  
31 (Securities Exchange Act of 1934);

1 (2) a statutory disqualification described in 15 U.S.C. 78c(a)(39)  
2 (Securities Exchange Act of 1934);

3 (3) a disqualification under the rules adopted by the United States  
4 Securities and Exchange Commission under 15 U.S.C. 77d note (Dodd-Frank Wall  
5 Street Reform and Consumer Protection Act); or

6 (4) a final order described in 15 U.S.C. 78o(b)(4)(H) (Securities  
7 Exchange Act of 1934).

8 (d) This section may not be construed to limit any other authority of the  
9 department to exempt any person, or any class of persons, from a provision of this  
10 chapter, or a provision of a rule or regulation adopted under this chapter.

11 (e) In this section,

12 (1) "control" means the power, directly or indirectly, to direct the  
13 management or policies of a company, whether through ownership of securities, by  
14 contract, or otherwise; there is a presumption of control for any person who

15 (A) is a director, general partner, limited liability company  
16 member, limited liability company manager, an officer who exercises  
17 executive responsibility, or an officer who has status or functions similar to an  
18 officer who exercises executive responsibility;

19 (B) has the right to vote 20 percent or more of a class of voting  
20 securities or the power to sell or direct the sale of 20 percent or more of a class  
21 of voting securities; or

22 (C) in the case of a partnership or limited liability company,  
23 has the right to receive upon dissolution, or has contributed, 20 percent or more  
24 of the capital;

25 (2) "eligible privately held company" means a company that

26 (A) does not have any class of securities registered, or required  
27 to be registered, with the United States Securities and Exchange Commission  
28 under 15 U.S.C. 78l(b) (Securities Exchange Act of 1934), or with respect to  
29 which the company files, or is required to file, periodic information,  
30 documents, and reports under 15 U.S.C. 78o(d) (Securities Exchange Act of  
31 1934); and

1 (B) in the fiscal year ending immediately before the fiscal year  
2 in which the services of the merger and acquisition broker are initially engaged  
3 with respect to the securities transaction, meets either or both of the following  
4 conditions, determined in accordance with the historical financial accounting  
5 records of the company:

6 (i) the earnings of the company before interest, taxes,  
7 depreciation, and amortization are less than \$25,000,000;

8 (ii) the gross revenue of the company is less than  
9 \$250,000,000;

10 (3) "merger and acquisition broker" means a broker, and a person  
11 associated with the broker, engaged in the business of effecting securities transactions  
12 solely in connection with the transfer of ownership of an eligible privately held  
13 company, regardless of whether that broker acts on behalf of a seller or buyer, through  
14 the purchase, sale, exchange, issuance, repurchase, or redemption of, or a business  
15 combination involving, securities or assets of the eligible privately held company, if  
16 the broker reasonably believes that

17 (A) upon consummation of the transaction, a person acquiring  
18 securities or assets of the eligible privately held company, acting alone or in  
19 concert, will control and, directly or indirectly, be active in the management of  
20 the eligible privately held company or the business conducted with the assets  
21 of the eligible privately held company; and

22 (B) if a person is offered securities in exchange for securities or  
23 assets of the eligible privately held company, the person will, before becoming  
24 legally bound to consummate the transaction, receive or have reasonable  
25 access to the most recent fiscal year-end financial statements of the issuer of  
26 the securities as customarily prepared by its management in the normal course  
27 of operations and, if the financial statements of the issuer are audited,  
28 reviewed, or compiled, any related statement by the independent accountant; a  
29 balance sheet dated not more than 120 days before the date of the exchange  
30 offer; and information pertaining to the management, business, results of  
31 operations for the period covered by the foregoing financial statements, and

1 any material loss contingencies of the issuer;

2 (4) "public shell company" means a company that, at the time of a  
3 transaction with an eligible privately held company,

4 (A) has any class of securities registered, or required to be  
5 registered, with the United States Securities and Exchange Commission under  
6 15 U.S.C. 78l(b), or with respect to which the company files, or is required to  
7 file, periodic information, documents, and reports under 15 U.S.C. 78o(d);

8 (B) has no assets or has nominal operations; and

9 (C) has

10 (i) no assets or has nominal assets;

11 (ii) assets consisting solely of cash and cash  
12 equivalents; or

13 (iii) assets consisting of any amount of cash and cash  
14 equivalents and nominal other assets.

15 **Sec. 45.56.430. Agent registration requirement and exemptions.** (a) An  
16 individual may not transact business in this state as an agent unless the individual is  
17 registered under this chapter as an agent or is exempt from registration as an agent  
18 under (b) of this section.

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

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

23 (2) an individual who represents a broker-dealer that is exempt under  
24 AS 45.56.405(b) or 45.56.410;

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

30 (4) an individual who represents an issuer and who effects transactions  
31 in the issuer's securities exempted by AS 45.56.210, other than AS 45.56.210(11) and

1 (14);

2 (5) an individual who represents an issuer that effects transactions  
3 solely in federal covered securities of the issuer, but an individual who effects  
4 transactions in a federal covered security under 15 U.S.C. 77r(b)(3) or (b)(4)(D)  
5 (Securities Act of 1933) is not exempt if the individual is compensated in connection  
6 with the agent's participation by the payment of commissions or other remuneration  
7 based, directly or indirectly, on transactions in those securities;

8 (6) an individual who represents a broker-dealer registered in this state  
9 under AS 45.56.405(a) or exempt from registration under AS 45.56.405(b) in the offer  
10 and sale of securities for an account of a nonaffiliated federal covered investment  
11 adviser with investments under management in excess of \$100,000,000 acting for the  
12 account of others under discretionary authority in a signed record;

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

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

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

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

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

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

31 **Sec. 45.56.435. Investment adviser registration requirement and**

1 **exemptions.** (a) A person may not transact business in this state as an investment  
2 adviser unless the person is registered under this chapter as an investment adviser or is  
3 exempt from registration as an investment adviser under (b) of this section.

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

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

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

11 (B) institutional investors;

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

16 (D) exempt by a regulation adopted or order issued under this  
17 chapter;

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

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

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

1 of the prohibitions of this subsection to the investment adviser.

2 (d) An investment adviser may not employ or associate with an individual  
3 required to be registered under this chapter as an investment adviser representative  
4 who transacts business in this state on behalf of the investment adviser unless the  
5 individual is registered under AS 45.56.440(a) or is exempt from registration under  
6 AS 45.56.440(b).

7 **Sec. 45.56.440. Investment adviser representative registration requirement**  
8 **and exemptions.** (a) An individual may not transact business in this state as an  
9 investment adviser representative unless the individual is registered under this chapter  
10 as an investment adviser representative or is exempt from registration as an investment  
11 adviser representative under (b) of this section.

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

14 (1) an individual who is employed by or associated with an investment  
15 adviser that is exempt from registration under AS 45.56.435(b) or a federal covered  
16 investment adviser that is excluded from the notice filing requirements of  
17 AS 45.56.445; and

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

20 (c) The registration of an investment adviser representative is not effective  
21 while the investment adviser representative is not employed by or associated with an  
22 investment adviser registered under this chapter or a federal covered investment  
23 adviser that has made or is required to make a notice filing under AS 45.56.445.

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

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

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

8 (f) An investment adviser registered under this chapter, a federal covered  
9 investment adviser that has filed a notice under AS 45.56.445, or a broker-dealer  
10 registered under this chapter is not required to employ or associate with an individual  
11 as an investment adviser representative if the only compensation paid to the individual  
12 for a referral of investment advisory clients is paid to an investment adviser registered  
13 under this chapter, a federal covered investment adviser who has filed a notice under  
14 AS 45.56.445, or a broker-dealer registered under this chapter with which the  
15 individual is employed or associated as an investment adviser representative.

16 **Sec. 45.56.445. Federal covered investment adviser notice filing**  
17 **requirement.** (a) Except with respect to a federal covered investment adviser  
18 described in (b) of this section, a federal covered investment adviser may not transact  
19 business in this state as a federal covered investment adviser unless the federal  
20 covered investment adviser complies with (c) of this section.

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

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

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

27 (B) institutional investors;

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

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

1 (2) a federal covered investment adviser without a place of business in  
2 this state if the person has had, during the preceding 12 months, not more than five  
3 clients that are resident in this state in addition to those specified under (1) of this  
4 subsection; and

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

7 (c) A person acting as a federal covered investment adviser not excluded  
8 under (b) of this section shall file a notice, a consent to service of process complying  
9 with AS 45.56.630, and the records that have been filed with the Securities and  
10 Exchange Commission under 15 U.S.C. 80b-1 - 80b-21 (Investment Advisers Act of  
11 1940) as required by a regulation adopted or order issued under this chapter and shall  
12 pay the fees specified by regulation adopted under AS 45.56.470.

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

14 **Sec. 45.56.450. Registration by broker-dealer, agent, investment adviser,**  
15 **and investment adviser representative.** (a) A person shall register as a broker-dealer,  
16 agent, investment adviser, or investment adviser representative by filing an application  
17 and a consent to service of process complying with AS 45.56.630 and by paying the  
18 fee specified in AS 45.56.470 and any reasonable fees charged by the designee of the  
19 administrator for processing the filing. The application must contain

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

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

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

27 (c) If an order is not in effect, and a proceeding is not pending under  
28 AS 45.56.480, and the administrator has not initiated an investigation, registration  
29 becomes effective at noon on the 45th day after a completed application is filed, unless  
30 the registration is denied. A regulation adopted or order issued under this chapter may  
31 set an earlier effective date or may defer the effective date until noon on the 45th day

1 after the filing of any amendment completing the application.

2 (d) A registration is effective until midnight on December 31 of the year for  
3 which the application for registration is filed. Unless an order is in effect under  
4 AS 45.56.480, a registration may be automatically renewed each year by filing the  
5 records required by a regulation adopted or order issued under this chapter, by paying  
6 the fee specified in AS 45.56.470, and by paying costs charged by the designee of the  
7 administrator for processing the filings.

8 (e) A regulation adopted or order issued under this chapter may impose other  
9 conditions, not inconsistent with 15 U.S.C. 77b, 77c, 77e, 77f, 77r, 77z-3, 77ddd, 78b  
10 - 78d, 78g, 78h, 78n, 78o, 78q, 78bb, 78ee, 78kk, 78mm, 80a-2, 80a-3, 80a-6, 80a-12,  
11 80a-24, 80a-26, 80a-27, 80a-29, 80a-30, 80a-34, 80a-51, 80a-54, 80a-60, 80a-63, 80b-  
12 2, 80b-3a, 80b-5, 80b-10, 80b-18a, and 80b-20, and 29 U.S.C. 1002 (National  
13 Securities Markets Improvement Act of 1996). An order issued under this chapter may  
14 waive, in whole or in part, specific requirements in connection with registration that  
15 are in the public interest and for the protection of investors.

16 **Sec. 45.56.455. Succession and change in registration of broker-dealer or**  
17 **investment adviser.** (a) A broker-dealer or investment adviser may succeed to the  
18 current registration of another broker-dealer or investment adviser or a notice filing of  
19 a federal covered investment adviser, and a federal covered investment adviser may  
20 succeed to the current registration of an investment adviser or notice filing of another  
21 federal covered investment adviser, by filing as a successor an application for  
22 registration under AS 45.56.405 or 45.56.435 or a notice under AS 45.56.445 for the  
23 unexpired portion of the current registration or notice filing.

24 (b) A broker-dealer or investment adviser that changes its form of  
25 organization or state of incorporation or organization may continue its registration by  
26 filing an amendment to its registration if the change does not involve a material  
27 change in its financial condition or management. The amendment becomes effective  
28 when filed or on a date designated by the registrant in its filing. The new organization  
29 is a successor to the original registrant for the purposes of this chapter. If there is a  
30 material change in financial condition or management, the broker-dealer or investment  
31 adviser shall file a new application for registration. A predecessor registered under this

1 chapter shall stop conducting its securities business other than winding down  
2 transactions and shall file for withdrawal of broker-dealer or investment adviser  
3 registration within 45 days after filing its amendment to effect succession.

4 (c) A broker-dealer or investment adviser that changes its name may continue  
5 its registration by filing an amendment to its registration. The amendment becomes  
6 effective when filed or on a date designated by the registrant.

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

9 **Sec. 45.56.460. Termination of employment or association of agent and**  
10 **investment adviser representative and transfer of employment or association.** (a)

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

20 (b) If an agent registered under this chapter terminates employment by or  
21 association with a broker-dealer registered under this chapter and begins employment  
22 by or association with another broker-dealer registered under this chapter, or if an  
23 investment adviser representative registered under this chapter terminates employment  
24 by or association with an investment adviser registered under this chapter or a federal  
25 covered investment adviser that has filed a notice under AS 45.56.445 and begins  
26 employment by or association with another investment adviser registered under this  
27 chapter or a federal covered investment adviser that has filed a notice under  
28 AS 45.56.445, then, within 30 days after the termination, upon the filing by or on  
29 behalf of the registrant of an application for registration that complies with the  
30 requirement of AS 45.56.450(a) and payment of the filing fee required under  
31 AS 45.56.470, the registration of the agent or investment adviser representative is

1 (1) immediately effective as of the date of the completed filing, if the  
2 agent's record or successor record in the Central Registration Depository operated by  
3 the Financial Industry Regulatory Authority or the investment adviser representative's  
4 record or successor record in the Investment Adviser Registration Depository operated  
5 by the Financial Industry Regulatory Authority does not contain a new or amended  
6 disciplinary disclosure within the previous 12 months; or

7 (2) temporarily effective as of the date of the completed filing, if the  
8 agent's record or successor record in the Central Registration Depository operated by  
9 the Financial Industry Regulatory Authority or the investment adviser representative's  
10 record or successor record in the Investment Adviser Registration Depository operated  
11 by the Financial Industry Regulatory Authority contains a new or amended  
12 disciplinary disclosure within the preceding 12 months.

13 (c) The administrator may withdraw a temporary registration if there are or  
14 were grounds for discipline as specified in AS 45.56.480 and the administrator does so  
15 within 30 days after the filing of the application. If the administrator does not  
16 withdraw the temporary registration within the 30-day period, registration becomes  
17 automatically effective on the 31st day after filing.

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

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

29 **Sec. 45.56.465. Withdrawal of registration of broker-dealer, agent,**  
30 **investment adviser, and investment adviser representative.** Withdrawal of  
31 registration by a broker-dealer, agent, investment adviser, or investment adviser

1 representative becomes effective 60 days after the filing of the application to withdraw  
2 or within any shorter period as provided by a regulation adopted or order issued under  
3 this chapter unless a revocation or suspension proceeding is pending when the  
4 application is filed. If a proceeding is pending, withdrawal becomes effective when  
5 and upon the conditions required by a regulation adopted or order issued under this  
6 chapter. The administrator may institute a revocation or suspension proceeding under  
7 AS 45.56.480 within one year after the withdrawal became effective automatically and  
8 issue a revocation or suspension order as of the last date on which registration was  
9 effective if a proceeding is not pending.

10 **Sec. 45.56.470. Filing fees.** (a) The administrator shall establish fees by  
11 regulation for

12 (1) an initial filing of an application as a broker-dealer and renewal of  
13 an application by a broker-dealer for registration;

14 (2) an application for registration as an agent and renewal of  
15 registration as an agent;

16 (3) an application for registration as an investment adviser and renewal  
17 of registration as an investment adviser;

18 (4) an application for registration as an investment adviser  
19 representative, a renewal of registration as an investment adviser representative, and a  
20 change of registration as an investment adviser representative; and

21 (5) an initial fee and annual notice fee for a federal covered investment  
22 adviser required to file a notice under AS 45.56.445.

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

26 **Sec. 45.56.475. Post registration requirements.** (a) Subject to 15 U.S.C.  
27 78o(i) or 80b-18a, a regulation adopted or order issued under this chapter may  
28 establish minimum financial requirements for broker-dealers registered or required to  
29 be registered under this chapter and investment advisers registered or required to be  
30 registered under this chapter.

31 (b) Subject to 15 U.S.C. 78o(i) or 80b-18a, a broker-dealer registered or

1 required to be registered under this chapter and an investment adviser registered or  
2 required to be registered under this chapter shall file the financial reports required by a  
3 regulation adopted or order issued under this chapter. If the information contained in a  
4 record filed under this subsection is or becomes inaccurate or incomplete in a material  
5 respect, the registrant shall promptly file a correcting amendment.

6 (c) Subject to 15 U.S.C. 78o(i) or 80b-18a,

7 (1) a broker-dealer registered or required to be registered under this  
8 chapter and an investment adviser registered or required to be registered under this  
9 chapter shall make and maintain the accounts, correspondence, memoranda, papers,  
10 books, and other records required by a regulation adopted or order issued under this  
11 chapter;

12 (2) broker-dealer records required to be maintained under (1) of this  
13 subsection may be maintained in any form of data storage acceptable under 15 U.S.C.  
14 78q(a) if they are readily accessible to the administrator; and

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

18 (d) The records of a broker-dealer registered or required to be registered under  
19 this chapter and of an investment adviser registered or required to be registered under  
20 this chapter are subject to the reasonable periodic, special, or other audits or  
21 inspections by a representative of the administrator, in or outside this state, that the  
22 administrator considers necessary or appropriate in the public interest and for the  
23 protection of investors. An audit or inspection may be made at any time and without  
24 prior notice. The administrator may copy and remove for audit or inspection copies of  
25 all records the administrator reasonably considers necessary or appropriate to conduct  
26 the audit or inspection. The administrator may assess a reasonable charge for  
27 conducting an audit or inspection under this subsection.

28 (e) Subject to 15 U.S.C. 78o(i) or 80b-18a, a regulation adopted or order  
29 issued under this chapter may require a broker-dealer or investment adviser that has  
30 custody of or discretionary authority over funds or securities of a customer or client to  
31 obtain insurance or post a bond or other satisfactory form of security in an amount

1 established by a regulation adopted under this chapter. The administrator may  
2 determine the requirements of the insurance, bond, or other satisfactory form of  
3 security. Insurance or a bond or other satisfactory form of security may not be required  
4 of a broker-dealer registered under this chapter whose net capital exceeds, or of an  
5 investment adviser registered under this chapter whose minimum financial  
6 requirements exceed, the amounts required by a regulation adopted or order issued  
7 under this chapter. The insurance, bond, or other satisfactory form of security must  
8 permit an action by a person to enforce any liability on the insurance, bond, or other  
9 satisfactory form of security if instituted within the time limitations in  
10 AS 45.56.660(j)(2).

11 (f) Subject to 15 U.S.C. 78o(i) or 80b-18a, an agent may not have custody of  
12 funds or securities of a customer except under the supervision of a broker-dealer, and  
13 an investment adviser representative may not have custody of funds or securities of a  
14 client except under the supervision of an investment adviser or a federal covered  
15 investment adviser. A regulation adopted or order issued under this chapter may  
16 prohibit, limit, or impose conditions on a broker-dealer regarding custody of funds or  
17 securities of a customer and on an investment adviser regarding custody of securities  
18 or funds of a client.

19 (g) With respect to an investment adviser registered or required to be  
20 registered under this chapter, a regulation adopted or order issued under this chapter  
21 may require that information or other records be furnished or disseminated to clients  
22 or prospective clients in this state as necessary or appropriate in the public interest and  
23 for the protection of investors and advisory clients.

24 (h) A regulation adopted or order issued under this chapter may require an  
25 individual registered under AS 45.56.430 or 45.56.440 to participate in a continuing  
26 education program approved by the Securities and Exchange Commission and  
27 administered by a self-regulatory organization, or, in the absence of a continuing  
28 education program, a regulation adopted or order issued under this chapter may  
29 require continuing education for an individual registered under AS 45.56.440.

30 **Sec. 45.56.480. Denial, revocation, suspension, withdrawal, restriction,**  
31 **condition, or limitation of registration.** (a) If the administrator finds that the order is

1 in the public interest and (d) of this section authorizes the action, an order issued under  
2 this chapter may deny an application, or may condition or limit registration of an  
3 applicant to be a broker-dealer, agent, investment adviser, or investment adviser  
4 representative, and, if the applicant is a broker-dealer or investment adviser, of a  
5 partner, officer, director, or person having a similar status or performing similar  
6 functions, or a person directly or indirectly in control, of the broker-dealer or  
7 investment adviser.

8 (b) If the administrator finds that the order is in the public interest and (d) of  
9 this section authorizes the action, an order issued under this chapter may revoke,  
10 suspend, condition, or limit the registration of a registrant, and, if the registrant is a  
11 broker-dealer or investment adviser, of a partner, officer, director, or person having a  
12 similar status or performing similar functions, or a person directly or indirectly in  
13 control, of the broker-dealer or investment adviser. However, the administrator may  
14 not

15 (1) institute a revocation or suspension proceeding under this  
16 subsection based on an order issued under a law of another state that is reported to the  
17 administrator or a designee of the administrator more than three years after the date of  
18 the order on which it is based; or

19 (2) under (d)(5)(A) and (B) of this section, issue an order based on an  
20 order issued under the securities act of another state unless the other order was based  
21 on conduct for which (d) of this section would authorize the action had the conduct  
22 occurred in this state.

23 (c) If the administrator finds that the order is in the public interest and (d)(1) -  
24 (6), (8) - (10), (12), or (13) of this section authorize the action, an order under this  
25 chapter may censure, impose a bar, or impose a civil penalty of not more than  
26 \$100,000 for a single violation on a registrant and, if the registrant is a broker-dealer  
27 or investment adviser, on a partner, officer, director, or person having a similar status  
28 or performing similar functions, or on a person directly or indirectly in control of the  
29 broker-dealer or investment adviser.

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

31 (1) has filed, within the previous 10 years under this chapter or former

1 AS 45.55, an application for registration in this state that, as of the effective date of  
2 registration or as of any date after filing in the case of an order denying effectiveness,  
3 was incomplete in any material respect or contained a statement that, in light of the  
4 circumstances under which it was made, was false or misleading with respect to a  
5 material fact;

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

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

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

19 (5) is the subject of an order issued after notice and opportunity for  
20 hearing by

21 (A) the securities or other financial services regulator of a state  
22 or the Securities and Exchange Commission or other federal agency denying,  
23 revoking, barring, or suspending registration as a broker-dealer, agent,  
24 investment adviser, federal covered investment adviser, or investment adviser  
25 representative;

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

29 (C) the Securities and Exchange Commission or a self-  
30 regulatory organization suspending or expelling the registrant from  
31 membership in the self-regulatory organization;

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

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

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

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

(7) is insolvent, either because the person's liabilities exceed the person's assets or because the person cannot meet the person's obligations as they mature, but the administrator may not enter an order against an applicant or registrant under this paragraph without a finding of insolvency as to the applicant or registrant;

(8) refuses to allow or otherwise impedes the administrator from conducting an audit or inspection under AS 45.56.475(d) or refuses access to a registrant's office to conduct an audit or inspection under AS 45.56.475(d);

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

(10) has not paid the proper filing fee within 30 days after having been notified by the administrator of a deficiency, but the administrator shall vacate an

1 order under this paragraph when the deficiency is corrected;

2 (11) after notice and opportunity for a hearing, has been found

3 (A) by a court of competent jurisdiction to have wilfully  
4 violated the laws of a foreign jurisdiction under which the business of  
5 securities, commodities, investment, franchises, insurance, banking, or finance  
6 is regulated;

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

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

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

17 (13) has engaged in dishonest or unethical practices in the securities,  
18 commodities, investment, franchise, banking, finance, or insurance business;

19 (14) is not qualified based on factors that may include training,  
20 experience, and knowledge of the securities business; however, in the case of an  
21 application by an agent for a broker-dealer that is a member of a self-regulatory  
22 organization or by an individual for registration as an investment adviser  
23 representative, a denial order may not be based on this paragraph if the individual has  
24 successfully completed all examinations required by (e) of this section; the  
25 administrator may require an applicant for registration under AS 45.56.430 or  
26 45.56.440 who has not been registered in a state within the two years preceding the  
27 filing of an application in this state to complete successfully an examination; or

28 (15) is a person whose license renewal is denied under AS 14.43.148  
29 or whose license issuance or renewal is denied under AS 25.27.244.

30 (e) A regulation adopted or order issued under this chapter may require that an  
31 examination, including an examination developed or approved by an organization of

1 securities regulators, be successfully completed by a class of individuals or all  
2 individuals. An order issued under this chapter may waive, in whole or in part, an  
3 examination as to an individual and a regulation adopted under this chapter may  
4 waive, in whole or in part, an examination as to a class of individuals if the  
5 administrator determines that the examination is not necessary or appropriate in the  
6 public interest and for the protection of investors.

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

18 (g) An order may not be issued under this section, except under (f) of this  
19 section, without appropriate notice to the applicant or registrant, and an opportunity  
20 for hearing under AS 45.56.650(c).

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

26 (i) The administrator may not institute a proceeding under (a) - (c) of this  
27 section based solely on material facts actually known by the administrator unless an  
28 investigation or the proceeding is instituted within one year after the administrator  
29 actually acquires knowledge of the material facts.

### 30 **Article 5. Fraud and Liabilities.**

31 **Sec. 45.56.505. General fraud.** A person may not, in connection with the

1 offer, sale, or purchase of a security, directly or indirectly,

2 (1) employ a device, scheme, or artifice to defraud;

3 (2) make an untrue statement of a material fact or omit to state a  
4 material fact necessary to make the statements made, in light of the circumstances  
5 under which they were made, not misleading; or

6 (3) engage in an act, practice, or course of business that operates or  
7 would operate as a fraud or deceit on another person.

8 **Sec. 45.56.510. Prohibited conduct in providing investment advice.** (a) A  
9 person that advises others for compensation, either directly or indirectly or through  
10 publications or writings, as to the value of securities or the advisability of investing in,  
11 purchasing, or selling securities or that, for compensation and as part of a regular  
12 business, issues or adopts analyses or reports relating to securities may not

13 (1) employ a device, scheme, or artifice to defraud another person; or

14 (2) engage in an act, practice, or course of business that operates or  
15 would operate as a fraud or deceit on another person.

16 (b) A regulation adopted under this chapter may define an act, practice, or  
17 course of business of an investment adviser or an investment adviser representative,  
18 other than a supervised person of a federal covered investment adviser, as fraudulent,  
19 deceptive, or manipulative and may prescribe means reasonably designed to prevent  
20 investment advisers and investment adviser representatives, other than supervised  
21 persons of a federal covered investment adviser, from engaging in acts, practices, and  
22 courses of business defined as fraudulent, deceptive, or manipulative.

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

26 **Sec. 45.56.520. Misleading filings.** A person may not, in a document filed  
27 with the administrator or in a proceeding under this chapter, make or cause to be made  
28 an untrue statement of a material fact or omit to state a material fact necessary in order  
29 to make the statements made, in the light of the circumstances under which they are  
30 made, not misleading.

31 **Sec. 45.56.530. Misrepresentations concerning registration or exemption.**

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

11 **Sec. 45.56.540. Evidentiary burden.** (a) In a civil action or administrative  
12 proceeding under this chapter, a person claiming an exemption, exception,  
13 preemption, or exclusion has the burden to prove the applicability of the claim.

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

17 **Sec. 45.56.550. Filing of sales and advertising literature.** (a) Except as  
18 otherwise provided in (b) of this section, a regulation adopted or order issued under  
19 this chapter may require the filing of a prospectus, pamphlet, circular, form letter,  
20 advertisement, sales literature, or other advertising record relating to a security or  
21 investment advice, addressed or intended for distribution to prospective investors,  
22 including clients or prospective clients of a person registered or required to be  
23 registered as an investment adviser under this chapter.

24 (b) This section does not apply to sales and advertising literature specified in  
25 (a) of this section that relates to a federal covered security, a federal covered  
26 investment adviser, or a security or transaction exempted by AS 45.56.205, 45.56.210,  
27 45.56.220, or 45.56.240, except as required under AS 45.56.205(7).

28 (c) The administrator may by regulation or order prohibit the publication,  
29 circulation, or use of any advertising considered false or misleading.

30 **Sec. 45.56.560. Qualified immunity.** A broker-dealer, agent, investment  
31 adviser, federal covered investment adviser, or investment adviser representative is not

1 liable to another broker-dealer, agent, investment adviser, federal covered investment  
2 adviser, or investment adviser representative for defamation relating to a statement  
3 that is contained in a record required by the administrator, a designee of the  
4 administrator, the Securities and Exchange Commission, or a self-regulatory  
5 organization, unless the person knew, or should have known at the time the statement  
6 was made, that it was false in a material respect or the person acted in reckless  
7 disregard of the statement's truth or falsity.

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

9 **Sec. 45.56.605. Administration.** (a) The department shall administer this  
10 chapter.

11 (b) The administrator or an officer, employee, or designee of the administrator  
12 may not use for personal benefit or the benefit of others records or other information  
13 obtained by or filed with the administrator that is not public under AS 45.56.615(b).  
14 This chapter does not authorize the administrator or an officer, employee, or designee  
15 of the administrator to disclose the record or information, except in accordance with  
16 AS 45.56.615(c), 45.56.620, or 45.56.645.

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

19 (d) The administrator may develop and implement investor education  
20 initiatives to inform the public about investing in securities, with particular emphasis  
21 on the prevention and detection of securities fraud. In developing and implementing  
22 these initiatives, the administrator may collaborate with public and nonprofit  
23 organizations with an interest in investor education. The administrator may accept a  
24 grant or donation from a person that is not affiliated with the securities industry or  
25 from a nonprofit organization, regardless of whether the organization is affiliated with  
26 the securities industry, to develop and implement investor education initiatives. This  
27 subsection does not authorize the administrator to require participation or monetary  
28 contributions of a registrant in an investor education program.

29 **Sec. 45.56.610. Administrative files and opinions.** (a) The administrator shall  
30 maintain, or designate a person to maintain, a register of applications for registration  
31 of securities; registration statements; notice filings; applications for registration of

1 broker-dealers, agents, investment advisors, and investment adviser representatives;  
2 notice filings by federal covered investment advisors that are or have been effective  
3 under this chapter or former AS 45.55; notices of claims of exemption from  
4 registration or notice filing requirements contained in a record; orders issued under  
5 this chapter or former AS 45.55; and interpretative opinions or no-action  
6 determinations issued under this chapter. The register must be kept according to the  
7 existing retention schedule mandated by the department.

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

10 (c) The administrator shall furnish a copy of a record that is a public record or  
11 a certification that the public record does not exist to a person upon request. A copy of  
12 the record certified or a certificate by the administrator of a record's nonexistence is  
13 prima facie evidence of a record or its nonexistence.

14 **Sec. 45.56.615. Public records; confidentiality.** (a) Except as otherwise  
15 provided in (b) of this section, records obtained by the administrator or filed under this  
16 chapter, including a record contained in or filed with a registration statement,  
17 application, notice filing, or report are public records and are available for public  
18 examination under AS 40.25.100 - 40.25.295 (Alaska Public Records Act).

19 (b) The following records are not public records under AS 40.25.100 -  
20 40.25.295 (Alaska Public Records Act) and are not available for public examination  
21 under (a) of this section:

22 (1) a record obtained by the administrator in connection with an audit,  
23 examination or inspection under AS 45.56.475(d) or an investigation under  
24 AS 45.56.645;

25 (2) a part of a record filed in connection with a registration statement  
26 under AS 45.56.105 and 45.56.305 - 45.56.320 or a record under AS 45.56.475(d) that  
27 contains trade secrets or confidential information if the person filing the registration  
28 statement or report has asserted a claim of confidentiality or privilege that is  
29 authorized by law;

30 (3) a record that is not required to be provided to the administrator or  
31 filed under this chapter and is provided to the administrator only on the condition that

1 the record may not be subject to public examination or disclosure;

2 (4) a nonpublic record received from a person specified in  
3 AS 45.56.620(a); and

4 (5) a social security number, residential address unless used as a  
5 business address, and residential telephone number unless used as a business  
6 telephone number, contained in a record that is filed.

7 (c) If disclosure is for the purpose of a civil, administrative, or criminal  
8 investigation, action, or proceeding or to a person specified in AS 45.56.620(a), the  
9 administrator may disclose a record obtained in connection with an audit or inspection  
10 under AS 45.56.475(d) or a record obtained in connection with an investigation under  
11 AS 45.56.645.

12 **Sec. 45.56.620. Uniformity and cooperation with other agencies.** (a) The  
13 administrator may cooperate, coordinate, consult, and, subject to AS 45.56.615, share  
14 records and information with the securities regulator of another state, Canada, a  
15 Canadian province or territory, a foreign jurisdiction, the Securities and Exchange  
16 Commission, the United States Department of Justice, the Commodity Futures  
17 Trading Commission, the Federal Trade Commission, the Securities Investor  
18 Protection Corporation, a self-regulatory organization, a national or international  
19 organization of securities regulators, a federal or state banking and insurance  
20 regulator, and a governmental law enforcement agency to bring about greater  
21 uniformity in securities matters among the federal government, self-regulatory  
22 organizations, states, and foreign governments.

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

27 (1) maximizing effectiveness of regulation for the protection of  
28 investors;

29 (2) maximizing uniformity in federal and state regulatory standards;  
30 and

31 (3) minimizing burdens on the business of capital formation, without

1 adversely affecting essentials of investor protection.

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

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

7 (2) developing and maintaining uniform forms;

8 (3) conducting a joint examination or investigation;

9 (4) holding a joint administrative hearing;

10 (5) instituting and prosecuting a joint civil or administrative  
11 proceeding;

12 (6) sharing and exchanging personnel;

13 (7) coordinating registrations under AS 45.56.105 and 45.56.405 -  
14 45.56.440 and exemptions under AS 45.56.240;

15 (8) sharing and exchanging records, subject to AS 45.56.615;

16 (9) formulating regulations, statements of policy, guidelines, forms,  
17 and interpretative opinions and releases;

18 (10) formulating common systems and procedures;

19 (11) notifying the public of proposed regulations, forms, statements of  
20 policy, and guidelines;

21 (12) attending conferences and other meetings among securities  
22 regulators, that may include representatives of governmental and private sector  
23 organizations involved in capital formation, considered necessary or appropriate to  
24 promote or achieve uniformity; and

25 (13) developing and maintaining a uniform exemption from  
26 registration for small issuers and taking other steps to reduce the burden of raising  
27 investment capital by small businesses.

28 **Sec. 45.56.625. Securities investor education and training fund.** The  
29 securities investor education and training fund is created as a special fund in the  
30 general fund to provide funds for the purposes specified in 45.56.605(d). The  
31 legislature may appropriate 33 percent of the money received by this state from civil

1 penalties under this chapter into the fund for securities investor education and training.  
2 Nothing in this section exempts money deposited into the fund from the requirements  
3 of AS 37.07 (Executive Budget Act) or dedicates money for a specific purpose.

4 **Sec. 45.56.630. Service of process.** (a) A consent to service of process  
5 complying with this section required by this chapter shall be signed and filed in the  
6 form required by a regulation adopted or order issued under this chapter. A consent  
7 appointing the administrator the person's agent for service of process in a noncriminal  
8 action or proceeding against the person or the person's successor or personal  
9 representative under this chapter or a regulation adopted or order issued under this  
10 chapter after the consent is filed has the same force and validity as if the service were  
11 made personally on the person filing the consent. A person that has filed a consent  
12 under this subsection in connection with a previous application for registration or  
13 notice filing need not file an additional consent.

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

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

23 (1) the plaintiff, which may be the administrator, promptly sends  
24 notice of the service and a copy of the process, return receipt requested, to the  
25 defendant or respondent at the address set out in the consent to service of process or, if  
26 a consent to service of process has not been filed, at the last known address, or takes  
27 other reasonable steps to give notice; and

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

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

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

7 **Sec. 45.56.635. Applicability of the chapter.** (a) Unless the persons are  
8 exempt elsewhere in this chapter, this chapter applies to persons who buy or offer to  
9 buy when an offer to

10 (1) buy is made in this state; or

11 (2) sell is made and accepted in this state.

12 (b) Unless the person is exempt elsewhere in this chapter, this chapter applies  
13 to a person who sells or offers to sell when an offer to

14 (1) sell is made in this state; or

15 (2) buy is made and accepted in this state.

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

18 (1) originates from this state;

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

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

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

27 (5) is for an interest or participation in real property located in this  
28 state, or in a corporation, a partnership, a limited liability company, a limited  
29 partnership, a limited liability partnership, an association, or a joint-stock company;  
30 jurisdiction under this paragraph may be exercised only when the exercise is  
31 consistent with the constitution of this state or of the United States.

1 (d) For the purpose of this section, an offer to buy or to sell is accepted in this  
2 state when acceptance is communicated to the offeror in this state and has not  
3 previously been communicated to the offeror, orally or in writing, outside this state.  
4 Acceptance is communicated to the offeror in this state, whether or not either party is  
5 then present in this state, when the offeree directs the acceptance to the offeror in this  
6 state reasonably believing the offeror to be in this state and the acceptance is received  
7 at the place to which it is directed or, in the case of a mailed acceptance, at a post  
8 office in this state.

9 (e) This chapter applies to investment advisers, federal covered advisers, and  
10 investment adviser representatives when any act instrumental in effecting prohibited  
11 conduct is done in this state, regardless of whether either party is then present in this  
12 state.

13 **Sec. 45.56.640. Regulations, forms, orders, interpretative opinions, and**  
14 **hearings.** (a) The administrator may

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

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

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

23 (b) Under this chapter, a regulation or form may not be adopted or amended,  
24 or an order issued or amended, unless the administrator finds that the regulation, form,  
25 order, or amendment is necessary or appropriate in the public interest or for the  
26 protection of investors and is consistent with the purposes intended by this chapter. In  
27 adopting, amending, and repealing regulations and forms, AS 45.56.620 applies to  
28 achieve uniformity among the states and coordination with federal laws in the form  
29 and content of registration statements, applications, reports, and other records,  
30 including the adoption of uniform rules, forms, and procedures.

31 (c) Subject to 15 U.S.C. 78o(i) and 80b-18a, the administrator may require

1 that a financial statement filed under this chapter be prepared in accordance with  
2 generally accepted accounting principles in the United States and comply with other  
3 requirements specified by regulation adopted or order issued under this chapter. A  
4 regulation adopted or order issued under this chapter may establish

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

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

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

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

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

21 (f) AS 44.62 (Administrative Procedure Act) applies to all regulations adopted  
22 or authorized under this chapter.

23 **Sec. 45.56.645. Investigations and subpoenas.** (a) The administrator may

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

29 (2) require or permit a person to testify, file a statement, or produce a  
30 record, under oath or otherwise as the administrator determines, as to all the facts and  
31 circumstances concerning a matter to be investigated or about which an action or

1 proceeding is to be instituted; and

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

6 (b) For the purpose of an investigation under this chapter, the administrator or  
7 the designated officer of the administrator may administer oaths and affirmations,  
8 subpoena witnesses, seek compulsion of attendance, take evidence, require the filing  
9 of statements, and require the production of any records that the administrator  
10 considers relevant or material to the investigation.

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

16 (1) hold the person in contempt;

17 (2) order the person to appear before the administrator;

18 (3) order the person to testify about the matter under investigation or in  
19 question;

20 (4) order the production of records;

21 (5) grant injunctive relief, including restricting or prohibiting the offer  
22 or sale of securities or the providing of investment advice;

23 (6) impose a civil penalty of not more than \$100,000 for a single  
24 violation; and

25 (7) grant any other necessary or appropriate relief.

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

29 (e) A person is not excused from attending, testifying, filing a statement,  
30 producing a record or other evidence, or obeying a subpoena of the administrator  
31 under this chapter or in an action or proceeding instituted by the administrator under

1 this chapter on the ground that the required testimony, statement, record, or other  
 2 evidence, directly or indirectly, may tend to incriminate the individual or subject the  
 3 individual to a criminal fine, penalty, or forfeiture. If the person refuses to testify, file  
 4 a statement, or produce a record or other evidence based on the individual's privilege  
 5 against self-incrimination, the administrator may apply to the superior court to compel  
 6 the testimony, the filing of the statement, the production of the record, or the giving of  
 7 other evidence. The testimony, record, or other evidence compelled under an order of  
 8 the superior court may not be used, directly or indirectly, against the individual in a  
 9 criminal case, except in a prosecution for perjury, contempt, or otherwise failing to  
 10 comply with the order.

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

27 **Sec. 45.56.650. Administrative enforcement.** (a) If the administrator  
 28 determines that a person has engaged, is engaging, or is about to engage in an act,  
 29 practice, or course of business constituting a violation of this chapter or a regulation  
 30 adopted or order issued under this chapter or that a person has materially aided, is  
 31 materially aiding, or is about to aid materially an act, practice, or course of business

1 constituting a violation of this chapter or a regulation adopted or order issued under  
2 this chapter, the administrator may issue an order

3 (1) directing the person to cease and desist from engaging in the act,  
4 practice, or course of business or to take other action necessary or appropriate to  
5 comply with this chapter;

6 (2) denying, suspending, revoking, or conditioning the exemptions for  
7 a broker-dealer under AS 45.56.405(b)(1)(D) or (F) or an investment adviser under  
8 AS 45.56.435(b)(1)(C); or

9 (3) denying, suspending, conditioning, or limiting an exemption as  
10 provided under AS 45.56.250.

11 (b) An order under (a) of this section is effective on the date of issuance. Upon  
12 issuance of the order, the administrator shall promptly serve each person subject to the  
13 order with a copy of the order and a notice that the order has been entered. The order  
14 must include a statement of any civil penalty, restitution, or costs of investigation the  
15 administrator will seek, a statement of the reasons for the order, and notice that, within  
16 15 days after receipt of a request in a record from the person, the matter will be  
17 scheduled for a hearing. If a person subject to the order does not request a hearing and  
18 none is ordered by the administrator within 30 days after the date of service of the  
19 order, the order, including the imposition of a civil penalty, the imposition of  
20 restitution, or requirement for payment of the costs of investigation sought in a  
21 statement in the order, becomes final as to that person by operation of law. If a hearing  
22 is requested or ordered, the administrator, after notice of and opportunity for hearing  
23 provided to each person subject to the order, may modify or vacate the order or extend  
24 it until final determination.

25 (c) If a hearing is requested or ordered under (b) of this section, a hearing shall  
26 be conducted by the office of administrative hearings (AS 44.64.010), and  
27 AS 44.64.040 - 44.64.200 apply to and govern the hearing.

28 (d) In a final order under (b) of this section, the administrator may impose a  
29 civil penalty of not more than \$100,000 for a single violation, unless the violation of  
30 this chapter is against an older person or a vulnerable adult. In addition to a civil  
31 penalty imposed under this subsection, a person or entity who engages in conduct

1 prohibited under this chapter against an older person or a vulnerable adult may be  
2 liable for an additional civil penalty of treble statutory damages. In determining  
3 whether to impose a supplemental civil penalty under this subsection, the  
4 administrator shall consider, in addition to other appropriate factors, the extent to  
5 which the following factors are present:

6 (1) whether the respondent knew that the respondent's conduct was  
7 directed to an older person or a vulnerable adult;

8 (2) whether the respondent's conduct caused an older person or a  
9 vulnerable adult to suffer

10 (A) severe loss or encumbrance of a primary residence,  
11 principal employment, or source of income; or

12 (B) substantial loss of property set aside for retirement or for  
13 personal and family care and maintenance; or

14 (3) whether the respondent's conduct caused substantial loss of  
15 payments received under a pension or retirement plan or a government benefits  
16 program.

17 (e) In a final order under (b) of this section, the administrator may

18 (1) impose restitution to any person in interest for any money or  
19 property, real or personal, that may have been acquired or transferred in violation of  
20 this chapter;

21 (2) charge the actual cost of an investigation or proceeding for a  
22 violation of this chapter or a regulation adopted or order issued under this chapter; and

23 (3) deny the violator of the use of any exemptions listed under this  
24 chapter.

25 (f) The administrator may petition the superior court to enter a judgment  
26 against a person who is a respondent in the order for the amount of the civil penalty  
27 levied against the person. Subject to AS 44.62.570, the filing of the petition for a  
28 judgment does not reopen the final order to further substantive review. A judgment  
29 entered under this subsection may be executed on and levied under in the manner  
30 provided in AS 09.35.

31 (g) If a person does not comply with an order under this section, the

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

9 **Sec. 45.56.655. Civil enforcement.** (a) If the administrator believes that a  
10 person has engaged, is engaging, or is about to engage in an act, practice, or course of  
11 business constituting a violation of this chapter or a regulation adopted or order issued  
12 under this chapter, or that a person has engaged, is engaging, or is about to engage in  
13 an act, practice, or course of business that materially aids a violation of this chapter or  
14 a regulation adopted or order issued under this chapter, the administrator may maintain  
15 an action in the superior court to enjoin the act, practice, or course of business and to  
16 enforce compliance with this chapter or a regulation adopted or order issued under this  
17 chapter.

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

19 (1) issue a permanent or temporary injunction, restraining order, or  
20 declaratory judgment;

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

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

25 (B) ordering the administrator to take charge and control of a  
26 defendant's property, including investment accounts and accounts in a  
27 depository institution, rents, and profits; to collect debts; and to acquire and  
28 dispose of property;

29 (C) imposing a civil penalty of not more than \$100,000 for a  
30 single violation, unless the violation of this chapter is against an older person  
31 or a vulnerable adult; in determining whether to impose a supplemental civil

1 penalty for a violation of this chapter against an older person or a vulnerable  
2 adult, the court shall consider, in addition to other appropriate factors, the  
3 extent to which the following factors are present:

4 (i) whether the respondent knew that the respondent's  
5 conduct was directed to an older person or a vulnerable adult;

6 (ii) whether the respondent's conduct caused an older  
7 person or a vulnerable adult to suffer severe loss or encumbrance of a  
8 primary residence, principal employment, or source of income; or  
9 substantial loss of property set aside for retirement or for personal and  
10 family care and maintenance; or

11 (iii) whether the respondent's conduct caused  
12 substantial loss of payments received under a pension or retirement  
13 plan or a government benefits program;

14 (D) imposing an order of rescission, or disgorgement directed  
15 to a person that has engaged in an act, practice, or course of business  
16 constituting a violation of this chapter or former AS 45.55 or a regulation  
17 adopted or order issued under this chapter or former AS 45.55;

18 (E) imposing an order of restitution to any person in interest for  
19 any money or property, real or personal, that may have been acquired or  
20 transferred in violation of this chapter; and

21 (F) ordering the payment of prejudgment and post judgment  
22 interest; or

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

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

26 (d) After an order issued by the court under (b) of this section becomes final  
27 and all rights of appeal are exhausted, the administrator may petition the superior court  
28 to enter a judgment against a person who is a respondent in the order for the amount of  
29 the civil penalty levied against the person. Subject to AS 44.62.570, the filing of the  
30 petition for a judgment does not reopen the final order to further substantive review. A  
31 judgment entered under this subsection may be executed on and levied under in the

1 manner provided in AS 09.35.

2 **Sec. 45.56.660. Civil liability.** (a) Enforcement of civil liability under this  
3 section is subject to P.L. 105-353 (Securities Litigation Uniform Standards Act of  
4 1998).

5 (b) A person is liable to the purchaser if the person sells a security in violation  
6 of AS 45.56.105, or by means of an untrue statement of a material fact or an omission  
7 to state a material fact necessary to make the statement made, in light of the  
8 circumstances under which it is made, not misleading, the purchaser not knowing the  
9 untruth or omission and the seller not sustaining the burden of proof that the seller did  
10 not know and, in the exercise of reasonable care, could not have known of the untruth  
11 or omission. An action under this subsection is governed by the following:

12 (1) the purchaser may maintain an action to recover the consideration  
13 paid for the security, less the amount of any income received on the security, and  
14 interest at the legal rate of interest under AS 09.30.070, or eight percent a year,  
15 whichever is greater, from the date of the purchase, costs, and attorney fees as  
16 determined by the court, upon the tender of the security, or for actual damages as  
17 provided in (3) of this subsection;

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

23 (3) actual damages in an action arising under this subsection are the  
24 amount that would be recoverable upon a tender less the value of the security when the  
25 purchaser disposed of it, and interest at the legal rate of interest under AS 09.30.070,  
26 or eight percent a year, whichever is greater, from the date of the purchase, costs, and  
27 attorney fees as determined by the court.

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

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

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

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

13 (3) actual damages in an action arising under this subsection are the  
14 difference between the price at which the security was sold and the value the security  
15 would have had at the time of the sale in the absence of the purchaser's conduct  
16 causing liability, and interest at the legal rate of interest under AS 09.30.070, or eight  
17 percent a year, whichever is greater, from the date of the sale of the security, costs,  
18 and attorney fees as determined by the court.

19 (d) A person acting as a broker-dealer or agent that sells or buys a security in  
20 violation of AS 45.56.405(a), 45.56.435(a), or 45.56.530 is liable to the customer. The  
21 customer, if a purchaser, may maintain an action for recovery of actual damages as  
22 specified in (b)(1) - (3) of this section or, if a seller, for a remedy as specified in (c)(1)  
23 - (3) of this section.

24 (e) A person acting as an investment adviser or investment adviser  
25 representative that provides investment advice for compensation in violation of  
26 AS 45.56.435(a), 45.56.440(a), or 45.56.530 is liable to the client. The client may  
27 maintain an action to recover the consideration paid for the advice, interest at the legal  
28 rate of interest under AS 09.30.070, or eight percent a year, whichever is greater, from  
29 the date of payment, costs, and attorney fees as determined by the court.

30 (f) A person that receives, directly or indirectly, any consideration for  
31 providing investment advice to another person and that employs a device, scheme, or

1 artifice to defraud the other person or engages in an act, practice, or course of business  
2 that operates or would operate as a fraud or deceit on the other person is liable to the  
3 other person. An action under this subsection is governed by the following:

4 (1) the person defrauded may maintain an action to recover the  
5 consideration paid for the advice and the amount of any actual damages caused by the  
6 fraudulent conduct, interest at the legal rate of interest under AS 09.30.070, or eight  
7 percent a year, whichever is greater, from the date of the fraudulent conduct, costs,  
8 and reasonable attorney fees as determined by the court, less the amount of any  
9 income received as a result of the fraudulent conduct;

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

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

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

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

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

30 (4) a person that is a broker-dealer, agent, investment adviser, or  
31 investment adviser representative that materially aids the conduct giving rise to the

1 liability under (b) - (f) of this section, unless the person sustains the burden of proof  
2 that the person did not know and, in the exercise of reasonable care, could not have  
3 known of the existence of conduct because of which the liability is alleged to exist.

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

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

8 (j) A person may not obtain relief under (b) of this section

9 (1) for a violation of AS 45.56.105, or under (d) or (e) of this section,  
10 unless the action is instituted within three years after the violation occurred; or

11 (2) other than for a violation of AS 45.56.105, or under (c) or (f) of this  
12 section, unless the action is instituted within the earlier of two years after discovery of  
13 the facts constituting the violation or five years after the violation.

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

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

22 (m) The rights and remedies provided by this chapter are in addition to any  
23 other rights or remedies that may exist, but this chapter does not create a cause of  
24 action not specified in this section or AS 45.56.475(e).

25 **Sec. 45.56.665. Rescission offers.** (a) A purchaser, seller, or recipient of  
26 investment advice may not maintain an action under AS 45.56.660 if

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

29 (A) an offer stating the respect in which liability under  
30 AS 45.56.660 may have arisen and fairly advising the purchaser, seller, or  
31 recipient of investment advice of that person's rights in connection with the

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

5 (B) if the basis for relief under this section may have been a  
6 violation of AS 45.56.660(b), an offer to repurchase the security for cash,  
7 payable on delivery of the security, equal to the consideration paid, and interest  
8 at the legal rate of interest under AS 09.30.070, or eight percent a year,  
9 whichever is greater, from the date of the purchase, less the amount of any  
10 income received on the security, or, if the purchaser no longer owns the  
11 security, an offer to pay the purchaser, upon acceptance of the offer, damages  
12 in an amount that would be recoverable upon a tender, less the value of the  
13 security when the purchaser disposed of it, and interest at the legal rate of  
14 interest under AS 09.30.070, or eight percent a year, whichever is greater, from  
15 the date of the purchase in cash equal to the damages computed in the manner  
16 provided in this subparagraph;

17 (C) if the basis for relief under this section may have been a  
18 violation of AS 45.56.660(c), an offer to tender the security, on payment by the  
19 seller of an amount equal to the purchase price paid, less income received on  
20 the security by the purchaser and interest at the legal rate of interest under  
21 AS 09.30.070, or eight percent a year, whichever is greater, from the date of  
22 the sale, or, if the purchaser no longer owns the security, an offer to pay the  
23 seller, upon acceptance of the offer, in cash, damages in the amount of the  
24 difference between the price at which the security was purchased and the value  
25 the security would have had at the time of the purchase in the absence of the  
26 purchaser's conduct that may have caused liability and interest at the legal rate  
27 of interest in AS 09.30.070, or eight percent a year, whichever is greater, from  
28 the date of the sale;

29 (D) if the basis for relief under this section may have been a  
30 violation of AS 45.56.660(d); and if the customer is a purchaser, an offer to  
31 pay as specified in (B) of this paragraph; or, if the customer is a seller, an offer

1 to tender or to pay as specified in (C) of this paragraph;

2 (E) if the basis for relief under this section may have been a  
3 violation of AS 45.56.660(e), an offer to reimburse in cash the consideration  
4 paid for the advice and interest at the legal rate of interest under AS 09.30.070,  
5 or eight percent a year, whichever is greater, from the date of payment; or

6 (F) if the basis for relief under this section may have been a  
7 violation of AS 45.56.660(f), an offer to reimburse in cash the consideration  
8 paid for the advice, the amount of any actual damages that may have been  
9 caused by the conduct, and interest at the legal rate of interest under  
10 AS 09.30.070, or eight percent a year, whichever is greater, from the date of  
11 the violation causing the loss;

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

16 (3) the offeror has the present ability to pay the amount offered or to  
17 tender the security under (1) of this subsection;

18 (4) the offer under (1) of this subsection is delivered to the purchaser,  
19 seller, or recipient of investment advice or sent in a manner that ensures receipt by the  
20 purchaser, seller, or recipient of investment advice; and

21 (5) the purchaser, seller, or recipient of investment advice that accepts  
22 the offer under (1) of this subsection, in a record, within the period specified under (2)  
23 of this subsection, is paid in accordance with the terms of the offer.

24 (b) The offer under this section shall be filed with the administrator 10  
25 business days before the offering and conform in form and content with a regulation  
26 adopted under this chapter.

27 **Sec. 45.56.670. Criminal enforcement.** (a) A person who intentionally  
28 violates this chapter, a regulation adopted under this chapter, or an order issued under  
29 this chapter, except AS 45.56.550 or the notice filing requirements of AS 45.56.330 or  
30 45.56.445, is guilty of a class C felony punishable by imprisonment under  
31 AS 12.55.125 or by a fine of not more than \$100,000, or by both. A person convicted

1 of violating a regulation or order issued under this chapter may be fined, but may not  
2 be imprisoned, if the person did not know of the regulation or order.

3 (b) A person who intentionally alters, destroys, shreds, mutilates, or conceals a  
4 record, document, or other object, or attempts to do so, with the intent to alter or  
5 impair the record, document, or object for use in an official proceeding under this  
6 chapter, is guilty of a class C felony. A person convicted of violating this subsection is  
7 punishable by imprisonment as provided in AS 12.55.125, by a fine of not more than  
8 \$500,000, or by both.

9 (c) The attorney general, with or without a reference from the administrator,  
10 may institute criminal proceedings under this chapter.

11 (d) This chapter does not limit the power of this state to punish a person for  
12 conduct that constitutes a crime under other laws of this state.

13 (e) In this section, "intentionally" has the meaning given in AS 11.81.900(a).

14 **Sec. 45.56.675. Judicial review.** (a) A person may obtain judicial review by  
15 the superior court of a final order issued by the administrator under this chapter by  
16 filing a notice of appeal in accordance with the applicable rules of court governing  
17 appeals in civil matters. The notice of appeal shall be filed within 30 days after the  
18 order becomes final under AS 44.64.060.

19 (b) A regulation adopted under this chapter is subject to judicial review under  
20 AS 44.62.300.

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

22 **Sec. 45.56.710. Reimbursement of expenses incident to examination or**  
23 **investigation.** (a) The administrator may require an issuer, broker-dealer, agent,  
24 investment adviser representative, federal covered adviser, or investment adviser to  
25 reimburse the administrator for actual travel expenses and per diem incurred in  
26 connection with an examination or investigation under this chapter.

27 (b) The administrator may by regulation or order adopt a schedule of charges  
28 for annual examination and investigation of issuers, broker-dealers, agents, investment  
29 adviser representatives, federal covered advisers, and investment advisers.

30 (c) If an issuer, broker-dealer, agent, investment adviser representative, federal  
31 covered adviser, or investment adviser fails to pay the fees and expenses provided for

1 in this section, the fees and expenses shall be paid out of funds of the administrator in  
2 the same manner as other disbursements made by the administrator. The amounts paid  
3 from the funds of the administrator are a lien on all of the assets and property of the  
4 issuer, broker-dealer, agent, investment adviser representative, federal covered  
5 adviser, or investment adviser, and the amount may be recovered by the attorney  
6 general on behalf of this state.

7 (d) Failure of the issuer, broker-dealer, agent, investment adviser  
8 representative, federal covered adviser, or investment adviser to pay fees and expenses  
9 under this section is a willful violation of this chapter, and the violation falls within  
10 the provisions of AS 45.56.350, 45.56.440, and 45.56.615.

11 **Sec. 45.56.720. Electronic records and signatures.** This chapter modifies,  
12 limits, and supersedes 15 U.S.C. 7001 - 7031 (Electronic Signatures in Global and  
13 National Commerce Act), but does not modify, limit, or supersede 15 U.S.C. 7001(c)  
14 or authorize electronic delivery of any of the notices described in 15 U.S.C. 7003(b).  
15 This chapter authorizes the filing of records and signatures, when specified by  
16 provisions of this chapter or by a regulation adopted or order issued under this chapter,  
17 in a manner consistent with 15 U.S.C. 7004(a).

18 **Sec. 45.56.730. References to federal statutes.** In this chapter, a reference to  
19 the following federal statutes, including a statute within a spanned reference, means  
20 those statutes and the rules and regulations adopted under those statutes, as in effect on  
21 the date of enactment of this chapter, or as later amended:

- 22 (1) 7 U.S.C. 1 - 27 (Commodity Exchange Act);  
23 (2) 15 U.S.C. 77a - 77aa (Securities Act of 1933);  
24 (3) 15 U.S.C. 77b, 77k, 77m, 77p, 77r, 77v, 77z-1 - 77z-3, 77aa,  
25 77ccc, 77ddd, 77mmm, 77sss, 78a, 78c, 78d, 78g, 78n, 78o, 78o-4, 78o-5, 78s, 78t,  
26 78u, 78u-4, 78z, 78bb, 78ee, 78kk, 78ll, 80a-2, 80a-3, 80a-12, 80a-18, 80a-29, 80a-30,  
27 80b-3, and 80b-18a (Securities Litigation Uniform Standards Act of 1998);  
28 (4) 15 U.S.C. 78a - 78pp (Securities Exchange Act of 1934);  
29 (5) 15 U.S.C. 80a-1 - 80a-64 (Investment Company Act of 1940);  
30 (6) 15 U.S.C. 80b-1 - 80b-21 (Investment Advisers Act of 1940);  
31 (7) 15 U.S.C. 661 - 697g (Small Business Investment Act of 1958);

1 (8) 15 U.S.C. 7001 - 7031 (Electronic Signatures in Global and  
2 National Commerce Act);

3 (9) 26 U.S.C. (Internal Revenue Code);

4 (10) 29 U.S.C. 1001 - 1461 (Employee Retirement Income Security  
5 Act of 1974);

6 (11) 42 U.S.C. 16451 - 16481 (Energy Policy Act of 2005).

7 **Sec. 45.56.740. References to federal agencies.** A reference in this chapter to  
8 an agency or department of the United States is also a reference to a successor agency  
9 or department.

10 **Sec. 45.56.900. Definitions.** In this chapter, unless the context otherwise  
11 requires,

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

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

21 (3) "bank" means

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

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

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

1 evading this chapter; and

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

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

7 (A) an agent;

8 (B) an issuer;

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

14 (D) an international banking institution; or

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

17 (5) "defraud" includes engaging in common law deceit;

18 (6) "department" means the Department of Commerce, Community,  
19 and Economic Development;

20 (7) "depository institution" means

21 (A) a bank; or

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

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

- 1 (ii) a Morris Plan bank; or
- 2 (iii) an industrial loan company that is not an "insured
- 3 depository institution" as defined in 12 U.S.C. 1813(c)(2) (Federal
- 4 Deposit Insurance Act), or any successor federal statute;
- 5 (8) "federal covered investment adviser" means a person registered
- 6 under 15 U.S.C. 80b-1 - 80b-21 (Investment Advisers Act of 1940);
- 7 (9) "federal covered security" means a security that is, or upon
- 8 completion of a transaction will be, a covered security under 15 U.S.C. 77r(b)
- 9 (Securities Act of 1933) or rules or regulations adopted under that provision;
- 10 (10) "filing" means the receipt under this chapter of a record by the
- 11 administrator or a designee of the administrator;
- 12 (11) "former AS 45.55" means AS 45.55 as it existed immediately
- 13 before July 1, 2016;
- 14 (12) "fraud" and "deceit" include common law deceit;
- 15 (13) "guaranteed" means guaranteed as to payment of all principal and
- 16 all interest;
- 17 (14) "institutional investor" means any of the following, whether
- 18 acting for itself or for others in a fiduciary capacity:
- 19 (A) a depository institution, a trust company organized or
- 20 chartered under the laws of this state, or an international banking institution;
- 21 (B) an insurance company;
- 22 (C) a separate account of an insurance company;
- 23 (D) an investment company as defined in 15 U.S.C. 80a-1 -
- 24 80a-64 (Investment Company Act of 1940);
- 25 (E) a broker-dealer registered under 15 U.S.C. 78a - 78pp
- 26 (Securities Exchange Act of 1934);
- 27 (F) an employee pension, profit-sharing, or benefit plan if the
- 28 plan has total assets in excess of \$10,000,000 or its investment decisions are
- 29 made by a named fiduciary, as defined in 29 U.S.C. 1102(a)(2) (Employee
- 30 Retirement Income Security Act of 1974), that is a broker-dealer registered
- 31 under 15 U.S.C. 78a - 78pp (Securities Exchange Act of 1934), an investment

1 adviser registered or exempt from registration under 15 U.S.C. 80b-1 - 80b-21  
2 (Investment Advisers Act of 1940), an investment adviser registered under this  
3 chapter, a depository institution, or an insurance company;

4 (G) a plan established and maintained by a state, a political  
5 subdivision of a state, or an agency or instrumentality of a state or a political  
6 subdivision of a state for the benefit of its employees if the plan has total assets  
7 in excess of \$10,000,000 or its investment decisions are made by a legally  
8 designated public official or by a named fiduciary, as defined in 29 U.S.C.  
9 1102(a)(2) (Employee Retirement Income Security Act of 1974), that is a  
10 broker-dealer registered under 15 U.S.C. 78a - 78pp (Securities Exchange Act  
11 of 1934), an investment adviser registered or exempt from registration under  
12 15 U.S.C. 80b-1 - 80b-21 (Investment Advisers Act of 1940), an investment  
13 adviser registered under this chapter, a depository institution, or an insurance  
14 company;

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

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

25 (J) a small business investment company licensed by the  
26 United States Small Business Administration under 15 U.S.C. 681(c) (Small  
27 Business Investment Act of 1958) with total assets in excess of \$10,000,000;

28 (K) a private business development company as defined in 15  
29 U.S.C. 80b-2(a)(22) (Investment Advisers Act of 1940) with total assets in  
30 excess of \$10,000,000;

31 (L) a federal covered investment adviser acting for its own

1 account;

2 (M) a qualified institutional buyer, as defined in 17 C.F.R.  
3 230.144A, other than 17 C.F.R. 230.144A(a)(1)(i)(H), adopted under 15  
4 U.S.C. 77a - 77aa (Securities Act of 1933);

5 (N) a major United States institutional investor, as defined in  
6 17 C.F.R. 240.15a-6(b)(4)(i), adopted under 15 U.S.C. 78a - 78pp (Securities  
7 Exchange Act of 1934);

8 (O) any other person, other than an individual, of institutional  
9 character with total assets in excess of \$10,000,000 not organized for the  
10 specific purpose of evading this chapter; or

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

13 (15) "insurance company" means a company organized as an insurance  
14 company whose primary business is writing insurance or reinsuring risks underwritten  
15 by insurance companies and that is subject to supervision by the insurance  
16 commissioner or a similar official or agency of a state;

17 (16) "insured" means insured as to payment of all principal and all  
18 interest;

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

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

31 (A) an investment adviser representative;

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

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

8 (D) a publisher of a bona fide newspaper, news magazine, or  
9 business or financial publication of general and regular circulation;

10 (E) a federal covered investment adviser;

11 (F) a bank, a trust company organized or chartered under the  
12 laws of this state, or a savings institution;

13 (G) any other person that is excluded by 15 U.S.C. 80b-1 - 80b-  
14 21 (Investment Advisers Act of 1940) from the definition of investment  
15 adviser; or

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

18 (19) "investment adviser representative" means an individual  
19 employed by or associated with an investment adviser or federal covered investment  
20 adviser and who makes any recommendations or otherwise gives investment advice  
21 regarding securities, manages accounts or portfolios of clients, determines which  
22 recommendation or advice regarding securities should be given, provides investment  
23 advice or offers to provide investment advice, receives compensation to solicit, offer,  
24 or negotiate for the sale of or for selling investment advice, or supervises employees  
25 who perform any of the foregoing; the term does not include an individual who

26 (A) performs only clerical or ministerial acts;

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

30 (C) is employed by or associated with a federal covered  
31 investment adviser, unless the individual has a place of business in this state, as

1 that term is defined by rule adopted under 15 U.S.C. 80b-3a (Investment  
2 Advisers Act of 1940) and is

3 (i) an investment adviser representative, as that term is  
4 defined by rule adopted under 15 U.S.C. 80b-3a (Investment Advisers  
5 Act of 1940); or

6 (ii) not a supervised person, as that term is defined in 15  
7 U.S.C. 80b-2(a)(25) (Investment Advisers Act of 1940); or

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

10 (20) "issuer" means a person that issues or proposes to issue a security,  
11 subject to the following:

12 (A) the issuer of a voting trust certificate, collateral trust  
13 certificate, certificate of deposit for a security, or share in an investment  
14 company without a board of directors or individuals performing similar  
15 functions is the person performing the acts and assuming the duties of  
16 depositor or manager under the trust or other agreement or instrument under  
17 which the security is issued;

18 (B) the issuer of an equipment trust certificate or similar  
19 security serving the same purpose is the person by which the property is or will  
20 be used or to which the property or equipment is or will be leased or  
21 conditionally sold or that is otherwise contractually responsible for ensuring  
22 payment of the certificate;

23 (C) the issuer of a fractional undivided interest in an oil, gas, or  
24 other mineral lease or in payments out of production under a lease, right, or  
25 royalty is the owner of an interest in the lease or in payments out of production  
26 under a lease, right, or royalty, whether whole or fractional, that creates  
27 fractional interests for the purpose of sale;

28 (21) "nonissuer transaction" or "nonissuer distribution" means a  
29 transaction or distribution not directly or indirectly for the benefit of the issuer;

30 (22) "offer to purchase" includes an attempt or offer to obtain, or  
31 solicitation of an offer to sell, a security or interest in a security for value; the term

1 does not include a tender offer that is subject to 15 U.S.C. 78n(d) (Securities Exchange  
2 Act of 1934);

3 (23) "older person" means a natural person who is 60 years of age or  
4 older;

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

10 (25) "place of business" of a broker-dealer, an investment adviser, or a  
11 federal covered investment adviser means

12 (A) an office at which the broker-dealer, investment adviser, or  
13 federal covered investment adviser regularly provides brokerage or investment  
14 advice or solicits, meets with, or otherwise communicates with customers or  
15 clients; or

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

20 (26) "price amendment" means the amendment to a registration  
21 statement filed under 15 U.S.C. 77a - 77aa (Securities Act of 1933) or, if an  
22 amendment is not filed, the prospectus or prospectus supplement filed under 15 U.S.C.  
23 77a - 77aa (Securities Act of 1933) that includes a statement of the offering price,  
24 underwriting and selling discounts or commissions, amount of proceeds, conversion  
25 rates, call prices, and other matters dependent on the offering price;

26 (27) "principal place of business" of a broker-dealer or an investment  
27 adviser means the executive office of the broker-dealer or investment adviser from  
28 which the officers, partners, or managers of the broker-dealer or investment adviser  
29 direct, control, and coordinate the activities of the broker-dealer or investment adviser;

30 (28) "record," except in the phrases "of record," "official record," and  
31 "public record," means information that is inscribed on a tangible medium or that is

1 stored in an electronic or other medium and is retrievable in perceivable form;

2 (29) "sale" includes every contract of sale, contract to sell, or  
3 disposition of a security or interest in a security for value, and "offer to sell" includes  
4 every attempt or offer to dispose of, or solicitation of an offer to purchase, a security  
5 or interest in a security for value; both terms include

6 (A) a security given or delivered with, or as a bonus because of,  
7 a purchase of securities or any other thing constituting part of the subject of the  
8 purchase and having been offered and sold for value;

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

10 (C) a sale or offer of a warrant or right to purchase or subscribe  
11 to another security of the same or another issuer and a sale or offer of a  
12 security that gives the holder a present or future right or privilege to convert  
13 the security into another security of the same or another issuer, including an  
14 offer of the other security;

15 (30) "Securities and Exchange Commission" means the United States  
16 Securities and Exchange Commission;

17 (31) "securities business" means a business that provides the services  
18 provided by

19 (A) investment advisers, federal covered investment advisers,  
20 or investment adviser representatives; or

21 (B) broker-dealers, issuers, or agents of broker-dealers or  
22 issuers;

23 (32) "security" means a note; stock; treasury stock; security future;  
24 bond; debenture; evidence of indebtedness; certificate of interest or participation in a  
25 profit-sharing agreement; collateral trust certificate; preorganization certificate or  
26 subscription; transferable share; investment contract; voting trust certificate; certificate  
27 of deposit for a security; viatical settlement; fractional undivided interest in oil, gas, or  
28 other mineral rights; put, call, straddle, option, or privilege on a security, certificate of  
29 deposit, or group or index of securities, including an interest in or based on the value  
30 of a put, call, straddle, option, or privilege on a security, certificate of deposit, or  
31 group or index of securities; put, call, straddle, option, or privilege entered into on a

1 national securities exchange relating to foreign currency; or, in general, an interest or  
2 instrument commonly known as a "security"; or a certificate of interest or participation  
3 in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to  
4 subscribe to or purchase any of the foregoing; the term

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

6 (B) does not include a participation agreement entered under  
7 AS 14.40.802 or an insurance or endowment policy subject to AS 21;

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

11 (D) includes an investment in a common enterprise with the  
12 expectation of profits to be derived primarily from the efforts of a person other  
13 than the investor; in this subparagraph, "common enterprise" means an  
14 enterprise in which the fortunes of the investor are interwoven with those of  
15 the person offering the investment, a third party, or other investors;

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

19 (F) includes a viatical settlement interest;

20 (33) "self-regulatory organization" means a national securities  
21 exchange registered under 15 U.S.C. 78a - 78pp (Securities Exchange Act of 1934), a  
22 national securities association of broker-dealers registered under 15 U.S.C. 78a - 78pp  
23 (Securities Exchange Act of 1934), a clearing agency registered under 15 U.S.C. 78a -  
24 78pp (Securities Exchange Act of 1934), or the Municipal Securities Rulemaking  
25 Board established under 15 U.S.C. 78o-4 (Securities Exchange Act of 1934);

26 (34) "sign" means, with present intent to authenticate or adopt a  
27 record,

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

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

31 (35) "state" means a state of the United States, the District of

1 Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular  
2 possession subject to the jurisdiction of the United States;

3 (36) "vulnerable adult" means a person 18 years of age or older who,  
4 because of incapacity, mental illness, mental deficiency, physical illness, physical  
5 disability, advanced age, chronic use of drugs, chronic intoxication, fraud,  
6 confinement, dementia, or Alzheimer's disease, is unable to meet the person's own  
7 needs or to seek help without assistance.

8 **Sec. 45.56.995. Short title.** This chapter may be cited as the Alaska Securities  
9 Act.

10 \* **Sec. 26.** AS 45.63.080(a) is amended to read:

11 (a) AS 45.63.010, 45.63.015, 45.63.020, and AS 45.63.030(c) and (d) do not  
12 apply to a sale or attempted sale

13 (1) of a security regulated under AS 45.56 [AS 45.55] or a security that  
14 is exempted by AS 45.56.205 [AS 45.55.900] from regulation under AS 45.56  
15 [AS 45.55];

16 (2) by a person registered with the United States Securities and  
17 Exchange Commission when acting within the scope of the person's Securities and  
18 Exchange Commission license;

19 (3) by an issuer, or a subsidiary of an issuer, of a class of securities that  
20 is

21 (A) subject to 15 U.S.C. 78a - 78pp [15 U.S.C. 78a - 78lll]  
22 (Securities Exchange Act of 1934); and

23 (B) either registered under 15 U.S.C. 78a - 78pp [15 U.S.C.  
24 78a - 78lll] (Securities Exchange Act of 1934) or exempt from registration  
25 under 15 U.S.C. 78l(g)(2)(A) - (C) or (E) - (H);

26 (4) by a real estate broker, associate real estate broker, or real estate  
27 salesperson licensed under AS 08.88 and acting in a capacity covered by the license;

28 (5) by a person who has a certificate of registration under AS 08.18 to  
29 operate as a contractor and is acting in a capacity covered by the certificate of  
30 registration;

31 (6) by an embalmer or funeral director licensed under AS 08.42 and

1 acting in a capacity covered by the license;

2 (7) by an insurance agent, general agent, broker, solicitor, or adjuster  
3 licensed under AS 21.27 and acting in a capacity covered by the license;

4 (8) by a person who is primarily soliciting the sale of a subscription to,  
5 or advertising in, a newspaper of general circulation;

6 (9) by a charitable organization or paid solicitor if the organization or  
7 solicitor is registered to make charitable solicitations under AS 45.68 and is acting in a  
8 capacity that is covered by the registration;

9 (10) by a person who is primarily soliciting the sale of a sound  
10 recording or book

11 (A) if the person

12 (i) has no minimum purchase requirements;

13 (ii) provides written notice of the buyer's right to cancel  
14 at any time; and

15 (iii) allows the buyer to return the sound recording or  
16 book and obtain a full refund; or

17 (B) through a membership in a book or record club

18 (i) where the club provides the buyer with a form that  
19 the buyer may use to instruct the club not to ship the offered  
20 merchandise; and

21 (ii) that is regulated by the Federal Trade Commission  
22 as a negative option plan under 16 C.F.R. Part 425;

23 (11) by a publisher, or a publisher's agent operating under a written  
24 agreement between a publisher and the agent, who is soliciting the sale of a publisher's  
25 magazine if

26 (A) the buyer has the right to review the magazine and cancel  
27 the subscription for the magazine within seven days after receipt of the  
28 magazine or at the time the invoice is received by the buyer, whichever is later;  
29 a cancellation request is timely if the request is mailed, properly addressed and  
30 postmarked, postage prepaid, within seven days after receipt of the magazine;

31 (B) the right of cancellation and refund is fully disclosed in

1 writing to the buyer before or at the time the initial invoice is received by the  
2 buyer;

3 (12) of services provided by a cable television system operating under  
4 a franchise issued by a municipality;

5 (13) by a person who is soliciting for a business, or for an affiliate of a  
6 business, that is regulated by the Regulatory Commission of Alaska;

7 (14) by a person whose solicitation is solely for telephone answering  
8 services provided by the person or the person's employer;

9 (15) of property from a mail order catalog that is published on a  
10 regular, periodic basis and that describes or pictures the items for sale and prominently  
11 provides the specific price of each item;

12 (16) by a supervised financial institution or the parent, subsidiary, or  
13 affiliate of a supervised financial institution; in this paragraph, "supervised financial  
14 institution" means a commercial bank, savings bank, mutual savings bank, trust  
15 company, savings and loan association, credit union, industrial loan company,  
16 personal property broker, consumer finance lender, commercial finance lender, or  
17 other financial institution if the financial institution is subject to regulation by this  
18 state or the United States;

19 (17) by an insurer or the parent, subsidiary, or affiliate of an insurer;

20 (18) by a person who solicits a sale by a contact by telephonic means  
21 without intending to complete the sales presentation during the contact, who does not  
22 complete the sales presentation during the contact, and who only completes the sales  
23 presentation at a later meeting in person, unless at the later meeting the solicitor  
24 attempts to collect payment for property or services delivered before the later meeting;

25 (19) of an item of personal property, including a food product, that is  
26 made by hand by an individual, if the sale or attempted sale of the item is made by the  
27 individual who made the item; in this paragraph, "made by hand" includes the use of  
28 ordinary household devices if the majority of the value of the item is added by the  
29 labor of the individual.

30 \* **Sec. 27.** AS 45.66.220 is amended to read:

31 **Sec. 45.66.220. Exemptions.** This chapter does not apply to a sale of or an

1 offer to sell

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

4 (2) a franchise under 16 C.F.R. Part 436 [16 C.F.R. 436];

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

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

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

13 (6) a business opportunity by an executor, an administrator, a marshal,  
14 a receiver, a trustee in bankruptcy, or a guardian or conservator, or under a judicial  
15 sale;

16 (7) a security registered under AS 45.56 [AS 45.55] or a security that  
17 is exempted by AS 45.56.205 [AS 45.55.900] from registration under AS 45.56  
18 [AS 45.55];

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

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

26 (A) subject to 15 U.S.C. 78a - 78pp [15 U.S.C. 78a - 78lll]  
27 (Securities Exchange Act of 1934); and

28 (B) registered under 15 U.S.C. 78a - 78pp [15 U.S.C. 78a -  
29 78lll] (Securities Exchange Act of 1934) unless exempt from registration under  
30 15 U.S.C. 78l(g)(2)(A) - (C) or (E) - (H);

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

1 (A) a bank, savings and loan association, trust company,  
2 insurance company, credit union, or investment company under 15 U.S.C. 80a-  
3 1 - 80a-64 (Investment Company Act of 1940), pension or profit sharing trust,  
4 or other financial institution or institutional buyer; or

5 (B) a broker-dealer registered under AS 45.56.405 [AS 45.55];

6 (11) a business opportunity that involves a marketing plan made in  
7 conjunction with the registration of a trademark or service mark under 15 U.S.C. 1051  
8 - 1127 (Trademark Act of 1946) if the seller has a minimum net worth of \$1,000,000  
9 as determined on the basis of the seller's most recent audited financial statement  
10 prepared within 13 months of the first offer to sell in this state; net worth may be  
11 determined on a consolidated basis if one person owns at least 80 percent of the seller  
12 and that one person expressly guarantees the obligations of the seller that arise under  
13 the sale or offer claimed to be exempt under this paragraph; or

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

17 \* **Sec. 28.** AS 45.66.900(11) is amended to read:

18 (11) "securities or investment laws" means AS 45.56 [AS 45.55]  
19 (Alaska Securities Act) or a substantially similar statute of another jurisdiction, 15  
20 U.S.C. 77a - 77aa [15 U.S.C. 77a - 77bbbb] (Securities Exchange Act of 1933), 15  
21 U.S.C. 78a - 78pp [15 U.S.C. 78a - 78lll] (Securities Exchange Act of 1934), or 15  
22 U.S.C. 80a-1 - 80b-21 (Investment Company Act of 1940/Investment Advisers Act of  
23 1940);

24 \* **Sec. 29.** AS 45.55.010, 45.55.020, 45.55.023, 45.55.025, 45.55.027, 45.55.028, 45.55.030,  
25 45.55.035, 45.55.040, 45.55.050, 45.55.060, 45.55.070, 45.55.075, 45.55.080, 45.55.090,  
26 45.55.100, 45.55.110, 45.55.120, 45.55.150, 45.55.155, 45.55.170, 45.55.900, 45.55.905(c),  
27 45.55.915, 45.55.930, 45.55.935(b), 45.55.970, 45.55.980, 45.55.990, and 45.55.995 are  
28 repealed.

29 \* **Sec. 30.** The uncodified law of the State of Alaska is amended by adding a new section to  
30 read:

31 **INDIRECT COURT RULE AMENDMENTS.** (a) The provisions of AS 45.56.630(c)

1 - (e), enacted by sec. 25 of this Act, have the effect of changing Rules 4 and 5, Alaska Rules  
2 of Civil Procedure, by allowing service on the administrator in certain cases.

3 (b) The provisions of AS 45.56.650(f), enacted by sec. 25 of this Act, have the effect  
4 of changing Rule 54, Alaska Rules of Civil Procedure, by expanding the definition of  
5 judgments to include final judgments of the administrator issued under AS 45.56.650, enacted  
6 by sec. 25 of this Act.

7 (c) The provisions of AS 45.56.650(g), enacted by sec. 25 of this Act, have the effect  
8 of changing Rule 90, Alaska Rules of Civil Procedure, by changing the contempt procedure in  
9 certain cases.

10 (d) The provisions of AS 45.56.655(c), enacted by sec. 25 of this Act, have the effect  
11 of changing Rule 65, Alaska Rules of Civil Procedure, by changing the procedure for  
12 injunctions in certain cases by prohibiting requiring the administrator to post a bond.

13 (e) The provisions of AS 45.56.675(a), enacted by sec. 25 of this Act, have the effect  
14 of changing Rule 602, Alaska Rules of Appellate Procedure, by changing the time for filing a  
15 notice of appeal.

16 \* **Sec. 31.** The uncodified law of the State of Alaska is amended by adding a new section to  
17 read:

18 **TRANSITION: REGULATIONS.** The Department of Commerce, Community, and  
19 Economic Development may adopt regulations necessary to implement AS 45.56, enacted by  
20 sec. 25 of this Act. The regulations take effect under AS 44.62 (Administrative Procedure  
21 Act), but not before the effective date of this Act.

22 \* **Sec. 32.** The uncodified law of the State of Alaska is amended by adding a new section to  
23 read:

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

31 (b) All effective registrations under former AS 45.55 and all administrative orders

1 relating to the registrations, regulations, statements of policy, interpretative opinions,  
2 declaratory rulings, determinations to take no action, and conditions imposed on the  
3 registrations under former AS 45.55 remain in effect while they would have remained in  
4 effect if this Act had not been enacted. They are considered to have been filed, issued, or  
5 imposed under this Act, but are exclusively governed by former AS 45.55, unless removed or  
6 replaced by the administrator.

7 (c) Former AS 45.55 exclusively applies to an offer or sale made within one year after  
8 the effective date of sec. 25 of this Act under an offering made in good faith before the  
9 effective date of sec. 25 of this Act based on an exemption available under former AS 45.55.

10 (d) In this section, "former AS 45.55" means AS 45.55 as it existed immediately  
11 before July 1, 2016.

12 \* **Sec. 33.** The uncodified law of the State of Alaska is amended by adding a new section to  
13 read:

14 REVISOR'S INSTRUCTION. The revisor of statutes is requested to change the  
15 chapter heading of AS 45.55 from "Alaska Securities Act" to "Alaska Native Claims  
16 Settlement Act Corporations Proxy Solicitations and Initial Issuance of Stock."

17 \* **Sec. 34.** The uncodified law of the State of Alaska is amended by adding a new section to  
18 read:

19 CONDITIONAL EFFECT. AS 45.56.630(c) - (e), 45.56.650(f) and (g), 45.56.655(c),  
20 and 45.56.675(a), enacted by sec. 25 of this Act, take effect only if sec. 30 of this Act receives  
21 the two-thirds majority vote of each house required by art. IV, sec. 15, Constitution of the  
22 State of Alaska.

23 \* **Sec. 35.** This Act takes effect July 1, 2016.

*Adopted  
4/13/16*

29-GH1060\G  
Bannister  
4/12/16

**CS FOR HOUSE BILL NO. 194(FIN)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-NINTH LEGISLATURE - SECOND SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered:

Referred:

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to securities, registration, exempt securities, exempt transactions,  
 2 broker-dealers, agents, investment advice, investment advisers, investment adviser  
 3 representatives, federal covered securities, federal covered investment advisers, viatical  
 4 settlement interests, small intrastate security offerings, Canadian broker-dealers, and  
 5 Canadian agents; relating to administrative, civil, and criminal enforcement provisions,  
 6 including restitution and civil penalties for violations; relating to an investor training  
 7 fund; establishing increased civil penalties for harming older persons and vulnerable  
 8 adults; relating to corporations organized under the Alaska Native Claims Settlement  
 9 Act; amending Rules 4, 5, 54, 65, and 90, Alaska Rules of Civil Procedure, and Rule 602,  
 10 Alaska Rules of Appellate Procedure; and providing for an effective date."

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

12 \* **Section 1.** AS 06.05.340 is amended to read:

1           **Sec. 06.05.340. Certain remuneration prohibited.** A bank may not pay  
2 directly or indirectly a fee, commission, or bonus of any kind for its promotion and  
3 organization or for securing a subscription to the original capital or to any increase in  
4 capital. However, this section does not prohibit the payment of reasonable  
5 compensation for legal, accounting, and econometric services, or payments to a  
6 securities broker-dealer registered under AS 45.56 [AS 45.55] for services that have  
7 been performed in connection with the sale of bank securities.

8 \* **Sec. 2.** AS 06.26.020(a) is amended to read:

9           (a) Notwithstanding any other provision of this chapter, a person does not act  
10 as a fiduciary under this chapter if the person

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

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

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

21                       (4) engages in securities business activity [OR INVESTMENT  
22 ADVISORY BUSINESS ACTIVITY] as a registered broker-dealer, a broker-dealer  
23 agent, an [A STATE] investment adviser, or an investment adviser representative, or  
24 as a federal covered investment adviser who has made a notice filing under  
25 AS 45.56.445(c) [AS 45.55.040(h)], the person is acting within the scope of the  
26 person's registration or notice filing, and the activity is regulated by the department  
27 under AS 45.56 [AS 45.55] or by the United States Securities and Exchange  
28 Commission; in this paragraph, "agent," "broker-dealer," "federal covered investment  
29 adviser," "investment adviser," "investment adviser representative," and  
30 ["INVESTMENT ADVISORY BUSINESS,"] "securities business [,]" [AND "STATE  
31 INVESTMENT ADVISER"] have the meanings given in AS 45.56.900

1 [AS 45.55.990];

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

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

10 (A) "escrow transaction" has the meaning given in  
11 AS 34.80.090;

12 (B) "title insurance company" has the meaning given in  
13 AS 21.66.480;

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

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

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

19 (9) has a certified public accountant license issued under AS 08.04.105  
20 or 08.04.195, the person is acting within the scope of the license, and the person and  
21 any accounting firm of the person are not trustees of more trusts than the number  
22 established for the person and accounting firm by the department by regulation or  
23 order; in this paragraph, "accounting firm" means a partnership, a professional  
24 corporation organized under AS 10.45, or another association organized for the  
25 practice of public accounting and in which the person practices public accounting;

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

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

31 (12) holds money or other assets as a homeowners' association or

1 similar organization to pay maintenance and other related costs for commonly owned  
2 property; in this paragraph, "homeowners' association" includes an association of  
3 apartment owners under AS 34.07.450 and a unit owners' association or master  
4 association under AS 34.08.990;

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

9 (14) acts as a conservator if the person is appointed by a court of this  
10 or another state or is qualified to act as a conservator under AS 13.26.320;

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

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

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

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

24 \* **Sec. 3.** AS 06.26.990(a)(21) is amended to read:

25 (21) "issuer" has the meaning given in AS 45.56.900 [AS 45.55.990];

26 \* **Sec. 4.** AS 12.62.400(a)(17) is amended to read:

27 (17) registration as a broker-dealer, agent, investment adviser  
28 representative, or [STATE] investment adviser under AS 45.56.405 - 45.56.440  
29 [AS 45.55.030 - 45.55.060].

30 \* **Sec. 5.** AS 14.43.148(h)(1) is amended to read:

31 (1) "license"

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

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

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

9 (iii) teacher certificate under AS 14.20;

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

12 (v) asbestos worker certification under AS 18.31;

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

14 (vii) certificate of fitness under AS 18.62;

15 (viii) hazardous painting certification under AS 18.63;

16 (ix) certification as a municipal correctional,  
17 correctional, probation, or parole officer under AS 18.65.245;

18 (x) security guard license under AS 18.65.400 -  
19 18.65.490;

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

21 (xii) employment agency permit under AS 23.15.330 -  
22 23.15.520;

23 (xiii) registration as a broker-dealer, an agent, an [A  
24 STATE] investment adviser, or an investment adviser representative  
25 under AS 45.56.405 - 45.56.440 [AS 45.55.030];

26 (xiv) certification as a pesticide applicator under  
27 AS 46.03.320;

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

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

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(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) [REPEALED

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

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

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

\* **Sec. 6.** AS 21.96.110(a) is amended to read:

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

\* **Sec. 7.** 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;

- 1 (v) asbestos worker certification under AS 18.31;  
2 (vi) boiler operator's license under AS 18.60.395;  
3 (vii) certificate of fitness under AS 18.62;  
4 (viii) hazardous painting certification under AS 18.63;  
5 (ix) security guard license under AS 18.65.400 -  
6 18.65.490;  
7 (x) license relating to insurance under AS 21.27;  
8 (xi) employment agency permit under AS 23.15.330 -  
9 23.15.520;  
10 (xii) registration as a broker-dealer, an agent, an [A  
11 STATE] investment adviser, or an investment adviser representative  
12 under AS 45.56.405 - 45.56.440 [AS 45.55.030];  
13 (xiii) certification as a pesticide applicator under  
14 AS 46.03.320;  
15 (xiv) certification as a storage tank worker or contractor  
16 under AS 46.03.375;  
17 (xv) certification as a water and wastewater works  
18 operator under AS 46.30;  
19 (xvi) commercial crewmember fishing license under  
20 AS 16.05.480 other than an entry permit or interim-use permit under  
21 AS 16.43;  
22 (xvii) fish transporter permit under AS 16.05.671;  
23 [(xviii) REPEALED  
24 (xix) REPEALED]  
25 (B) does not include  
26 (i) a vessel license issued under AS 16.05.490 or  
27 16.05.530;  
28 (ii) [REPEALED  
29 (iii)] a business license issued under AS 43.70;  
30 (iii) [(iv)] an entry permit or interim-use permit issued  
31 under AS 16.43; or

1 (iv) a driver's license [(v)] issued under AS 28.15;

2 \* **Sec. 8.** AS 34.08.570 is amended to read:

3 **Sec. 34.08.570. Common interest community securities.** If an interest in a  
4 common interest community is currently registered with the Securities and Exchange  
5 Commission of the United States, a declarant satisfies each requirement relating to the  
6 preparation of a public offering statement of this chapter if the declarant delivers to the  
7 purchaser a copy of the public offering statement filed with the Securities and  
8 Exchange Commission. An interest in a common interest community is not subject to  
9 the registration requirements of AS 45.56 [AS 45.55].

10 \* **Sec. 9.** AS 37.23.010(c) is amended to read:

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

14 \* **Sec. 10.** AS 37.23.050 is amended to read:

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

18 (1) a securities broker-dealer registered under AS 45.56.405  
19 [AS 45.55.030] and under 15 U.S.C. 78o (Securities Exchange Act of 1934);

20 (2) an [A STATE] investment adviser registered under AS 45.56.435  
21 [AS 45.55.030] or a federal covered investment adviser that has made a notice filing  
22 under AS 45.56.445(c) [AS 45.55.040(h)];

23 (3) the Department of Revenue; or

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

28 \* **Sec. 11.** AS 40.25.120(a) is amended to read:

29 (a) Every person has a right to inspect a public record in the state, including  
30 public records in recorders' offices, except

31 (1) records of vital statistics and adoption proceedings, which shall be

1 treated in the manner required by AS 18.50;

2 (2) records pertaining to juveniles unless disclosure is authorized by  
3 law;

4 (3) medical and related public health records;

5 (4) records required to be kept confidential by a federal law or  
6 regulation or by state law;

7 (5) to the extent the records are required to be kept confidential under  
8 20 U.S.C. 1232g and the regulations adopted under 20 U.S.C. 1232g in order to secure  
9 or retain federal assistance;

10 (6) records or information compiled for law enforcement purposes, but  
11 only to the extent that the production of the law enforcement records or information

12 (A) could reasonably be expected to interfere with enforcement  
13 proceedings;

14 (B) would deprive a person of a right to a fair trial or an  
15 impartial adjudication;

16 (C) could reasonably be expected to constitute an unwarranted  
17 invasion of the personal privacy of a suspect, defendant, victim, or witness;

18 (D) could reasonably be expected to disclose the identity of a  
19 confidential source;

20 (E) would disclose confidential techniques and procedures for  
21 law enforcement investigations or prosecutions;

22 (F) would disclose guidelines for law enforcement  
23 investigations or prosecutions if the disclosure could reasonably be expected to  
24 risk circumvention of the law; or

25 (G) could reasonably be expected to endanger the life or  
26 physical safety of an individual;

27 (7) names, addresses, and other information identifying a person as a  
28 participant in the Alaska Higher Education Savings Trust under AS 14.40.802 or the  
29 advance college tuition savings program under AS 14.40.803 - 14.40.817;

30 (8) public records containing information that would disclose or might  
31 lead to the disclosure of a component in the process used to execute or adopt an

1 electronic signature if the disclosure would or might cause the electronic signature to  
2 cease being under the sole control of the person using it;

3 (9) reports submitted under AS 05.25.030 concerning certain  
4 collisions, accidents, or other casualties involving boats;

5 (10) records or information pertaining to a plan, program, or  
6 procedures for establishing, maintaining, or restoring security in the state, or to a  
7 detailed description or evaluation of systems, facilities, or infrastructure in the state,  
8 but only to the extent that the production of the records or information

9 (A) could reasonably be expected to interfere with the  
10 implementation or enforcement of the security plan, program, or procedures;

11 (B) would disclose confidential guidelines for investigations or  
12 enforcement and the disclosure could reasonably be expected to risk  
13 circumvention of the law; or

14 (C) could reasonably be expected to endanger the life or  
15 physical safety of an individual or to present a real and substantial risk to the  
16 public health and welfare;

17 (11) the written notification regarding a proposed regulation provided  
18 under AS 24.20.105 to the Department of Law and the affected state agency and  
19 communications between the Legislative Affairs Agency, the Department of Law, and  
20 the affected state agency under AS 24.20.105;

21 (12) records that are

22 (A) proprietary, privileged, or a trade secret in accordance with  
23 AS 43.90.150 or 43.90.220(e);

24 (B) applications that are received under AS 43.90 until notice is  
25 published under AS 43.90.160;

26 (13) information of the Alaska Gasline Development Corporation  
27 created under AS 31.25.010 or a subsidiary of the Alaska Gasline Development  
28 Corporation that is confidential by law or under a valid confidentiality agreement;

29 (14) information under AS 38.05.020(b)(11) that is subject to a  
30 confidentiality agreement under AS 38.05.020(b)(12);

31 **(15) records that are**

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**(A) investigative files under AS 45.55.910; or**

**(B) confidential under AS 45.56.615.**

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

(a) This chapter does not apply to

(1) a fisheries business;

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

(3) an insurance business;

(4) a mining business;

(5) supplying services as an employee;

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

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

(A) "investment club" means a group of individuals, incorporated or otherwise organized, that engages primarily in investing in securities, that does not sell investment services to another person, that does not advertise, and the primary purpose of which is educational;

(B) "security" has the meaning given in **AS 45.56.900** [AS 45.55.990].

\* **Sec. 13.** AS 44.64.030(a)(39) is repealed and reenacted to read:

(39) AS 45.56 (Alaska Securities Act);

\* **Sec. 14.** AS 44.64.030(a) is amended by adding a new paragraph to read:

(51) AS 45.55 (Alaska Native Claims Settlement Act Corporations Proxy Solicitations and Initial Issuance of Stock).

\* **Sec. 15.** AS 45.55.138 is amended to read:

**Sec. 45.55.138. Application to Alaska Native Claims Settlement Act corporations.** The initial issue of stock of a corporation organized under Alaska law **under** [PURSUANT TO] 43 U.S.C. 1601 et seq. (Alaska Native Claims Settlement Act) is not a sale of a security under **AS 45.56.105** [AS 45.55.070] and **45.56.900(29)** [45.55.990(28)].

\* **Sec. 16.** AS 45.55.139 is amended to read:

**Sec. 45.55.139. Reports of corporations.** A copy of all annual reports,

1 proxies, consents or authorizations, proxy statements, and other materials relating to  
2 proxy solicitations distributed, published, or made available by any person to at least  
3 30 Alaska resident shareholders of a corporation **organized under Alaska law under**  
4 **43 U.S.C. 1601 et. seq. (Alaska Native Claims Settlement Act)** that has total assets  
5 exceeding \$1,000,000 and a class of equity security held of record by 500 or more  
6 persons [AND WHICH IS EXEMPTED FROM THE REGISTRATION  
7 REQUIREMENTS OF AS 45.55.070 BY AS 45.55.138,] shall be filed with the  
8 administrator concurrently with its distribution to shareholders.

9 \* **Sec. 17.** AS 45.55.920(a) is amended to read:

10 (a) If it appears to the administrator that a person has engaged or is about to  
11 engage in an act or practice in violation of a provision of this chapter or regulation or  
12 order under this chapter, the administrator may

13 (1) in the public interest [OR FOR THE PROTECTION OF  
14 INVESTORS,] issue an order

15 (A) directing the person to cease and desist from continuing the  
16 act or practice;

17 (B) directing the person, for a period not to exceed three years,  
18 to file the annual reports, proxies, consents or authorizations, proxy statements,  
19 or other materials relating to proxy solicitations required under AS 45.55.139  
20 with the administrator for examination and review 10 working days before a  
21 distribution to shareholders; and

22 (C) voiding the proxies obtained by a person required to file  
23 under AS 45.55.139, including their future exercise or actions resulting from  
24 their past exercise, if the proxies were solicited by means of an untrue or  
25 misleading statement prohibited under AS 45.55.160; or

26 (2) bring an action in the superior court to enjoin the acts or practices  
27 and to enforce compliance with this chapter or regulation or order under this chapter,  
28 and upon a proper showing, the appropriate remedy must be granted and a receiver or  
29 conservator may be appointed for the defendant or the defendant's assets; the court  
30 may not require the administrator to post a bond.

31 \* **Sec. 18.** AS 45.55.920(b) is amended to read:

1 (b) The administrator may issue an order against a person [AN APPLICANT,  
2 REGISTERED PERSON, OR OTHER PERSON] who knowingly or intentionally  
3 violates this chapter or a regulation or order of the administrator under this chapter,  
4 imposing a civil penalty of not more than \$2,500 for a single violation, or not more  
5 than \$25,000 for multiple violations, in a single proceeding or a series of related  
6 proceedings.

7 \* **Sec. 19.** AS 45.55.920(c) is amended to read:

8 (c) For violations not covered by (b) of this section, the administrator may  
9 issue an order against a person [AN APPLICANT, REGISTERED PERSON, OR  
10 OTHER PERSON] who violates this chapter or a regulation or order of the  
11 administrator under this chapter, imposing a civil penalty of not more than \$500 for a  
12 single violation, or not more than \$5,000 for multiple violations, in a single  
13 proceeding or a series of related proceedings.

14 \* **Sec. 20.** AS 45.55.925(a) is amended to read:

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

27 \* **Sec. 21.** AS 45.55.935(a) is repealed and reenacted to read:

28 (a) The administrator shall adopt regulations, consistent with the provisions of  
29 this chapter and with regulations adopted under AS 44.64.060, governing  
30 administrative hearings conducted by the office of administrative hearings  
31 (AS 44.64.010) for orders issued under AS 45.55.920.

1 \* **Sec. 22.** AS 45.55.950(a) is amended to read:

2 (a) The administrator may make, adopt, amend, and rescind the regulations,  
3 forms, and orders that are necessary to carry out this chapter [, INCLUDING  
4 REGULATIONS AND FORMS GOVERNING REGISTRATION STATEMENTS,  
5 APPLICATIONS, AND REPORTS, AND DEFINING TERMS, WHETHER OR  
6 NOT USED IN THIS CHAPTER INsofar AS THE DEFINITIONS ARE NOT  
7 INCONSISTENT WITH THIS CHAPTER. FOR THE PURPOSE OF  
8 REGULATIONS AND FORMS, THE ADMINISTRATOR MAY CLASSIFY  
9 SECURITIES, PERSONS, AND MATTERS WITHIN THE JURISDICTION OF  
10 THE ADMINISTRATOR, AND PRESCRIBE DIFFERENT REQUIREMENTS FOR  
11 DIFFERENT CLASSES].

12 \* **Sec. 23.** AS 45.55.950(b) is amended to read:

13 (b) A regulation, form, or order may not be made, adopted, amended, or  
14 rescinded unless the administrator finds that the action is necessary or appropriate in  
15 the public interest [OR FOR THE PROTECTION OF INVESTORS AND  
16 CONSISTENT WITH THE PURPOSES FAIRLY INTENDED BY THE POLICY  
17 AND PROVISIONS OF THIS CHAPTER. IN ADOPTING REGULATIONS AND  
18 FORMS THE ADMINISTRATOR MAY COOPERATE WITH THE SECURITIES  
19 ADMINISTRATORS OF THE OTHER STATES AND THE SECURITIES AND  
20 EXCHANGE COMMISSION WITH A VIEW TO EFFECTUATING THE POLICY  
21 OF THIS SECTION TO ACHIEVE MAXIMUM UNIFORMITY IN THE FORM  
22 AND CONTENT OF REGISTRATION STATEMENTS, APPLICATIONS, AND  
23 REPORTS WHEREVER PRACTICABLE].

24 \* **Sec. 24.** AS 45.55 is amended by adding a new section to read:

25 **Sec. 45.55.985. Definition.** In this chapter, unless the context otherwise  
26 requires, "administrator" means the commissioner of commerce, community, and  
27 economic development or a designee of the commissioner.

28 \* **Sec. 25.** AS 45 is amended by adding a new chapter to read:

29 **Chapter 56. Alaska Securities Act.**

30 **Article 1. General Provisions.**

31 **Sec. 45.56.105. Securities registration requirement.** A person may not offer

1 or sell a security in this state unless the security

2 (1) is a federal covered security;

3 (2) is registered under this chapter; or

4 (3) or transaction is exempt from registration under AS 45.56.205 -  
5 45.56.250.

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

7 **Sec. 45.56.205. Exempt securities.** The following securities are exempt from  
8 the requirements of AS 45.56.105, 45.56.305 - 45.56.360, and 45.56.550:

9 (1) a security, including a revenue obligation or a separate security as  
10 defined in 17 C.F.R. 230.131 adopted under 15 U.S.C. 77a - 77aa (Securities Act of  
11 1933), issued, insured, or guaranteed by the United States; by a state; by a political  
12 subdivision of a state; by a public authority, agency, or instrumentality of one or more  
13 states; by a political subdivision of one or more states; or by a person controlled or  
14 supervised by and acting as an instrumentality of the United States under authority  
15 granted by the United States Congress; or a certificate of deposit for any of the  
16 foregoing;

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

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

23 (A) an international banking institution;

24 (B) a banking institution organized under the laws of the  
25 United States; a member bank of the Federal Reserve System; or a depository  
26 institution a substantial portion of the business of which consists or will consist  
27 of receiving deposits or share accounts that are insured to the maximum  
28 amount authorized by statute by the Federal Deposit Insurance Corporation,  
29 the National Credit Union Share Insurance Fund, or a successor authorized by  
30 federal law or exercising fiduciary powers that are similar to those permitted  
31 for national banks under the authority of the United States Comptroller of the

1 Currency under 12 U.S.C. 92a; or

2 (C) any other depository institution, unless, by a regulation or  
3 order, the administrator proceeds under AS 45.56.250;

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

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

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

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

14 (C) a public utility holding company registered under 42  
15 U.S.C. 16451 - 16481 (Energy Policy Act of 2005) or a subsidiary of the  
16 registered holding company within the meaning of that Act;

17 (6) a federal covered security specified in 15 U.S.C. 77r(b)(1)  
18 (Securities Act of 1933) or adopted by rule under that provision or a security listed or  
19 approved for listing on another securities market specified by regulation under this  
20 chapter; a put or call option contract; a warrant; a subscription right on or with respect  
21 to the security; an option or similar derivative security on a security or an index of  
22 securities or foreign currencies issued by a clearing agency registered under 15 U.S.C.  
23 78a - 78pp (Securities Exchange Act of 1934) and listed or designated for trading on a  
24 national securities exchange, a facility of a national securities exchange, or a facility of  
25 a national securities association registered under 15 U.S.C. 78a - 78pp (Securities  
26 Exchange Act of 1934) or an offer or sale of the underlying security in connection  
27 with the offer, sale, or exercise of an option or other security that was exempt when  
28 the option or other security was written or issued; or an option or a derivative security  
29 designated by the Securities and Exchange Commission under 15 U.S.C. 78i(b)  
30 (Securities Exchange Act of 1934);

31 (7) a security issued by a person organized and operated exclusively

1 for religious, educational, benevolent, fraternal, charitable, social, athletic, or  
2 reformatory purposes, or as a chamber of commerce, and not for pecuniary profit, no  
3 part of the net earnings of which inures to the benefit of a private stockholder or other  
4 person, or a security of a company that is excluded from the definition of an  
5 investment company under 15 U.S.C. 80a-3(c)(10)(B) (Investment Company Act of  
6 1940), except that, with respect to the offer or sale of a note, bond, debenture, or other  
7 evidence of indebtedness issued by the person, a regulation may be adopted under this  
8 chapter limiting the availability of this exemption by classifying securities, persons,  
9 and transactions, imposing different requirements for different classes, specifying,  
10 with respect to (B) of this paragraph, the scope of the exemption and the grounds for  
11 denial or suspension, and requiring an issuer to

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

17 (B) file a request for exemption authorization for which a  
18 regulation adopted under this chapter may specify the

- 19 (i) scope of the exemption;  
20 (ii) requirement of an offering statement;  
21 (iii) filing of sales and advertising literature;  
22 (iv) filing of consent to service of process complying  
23 with AS 45.56.630; and  
24 (v) grounds for denial or suspension of the exemption;

25 or

26 (C) register under AS 45.56.310;

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

1 (9) an equipment trust certificate with respect to equipment leased or  
2 conditionally sold to a person if any security issued by the person would be exempt  
3 under this section or would be a federal covered security under 15 U.S.C. 77r(b)(1)  
4 (Securities Act of 1933); and

5 (10) shares of membership stock in the Alaska Commercial Fishing  
6 and Agriculture Bank issued under AS 44.81.010 and other securities issued by that  
7 bank to members or in connection with loans to members.

8 **Sec. 45.56.210. Exempt transactions.** The following transactions are exempt  
9 from the requirements of AS 45.56.105, 45.56.305 - 45.56.360, and 45.56.550:

10 (1) an isolated nonissuer transaction, whether effected by or through a  
11 broker-dealer, if the seller is not a promoter or controlling person; the administrator  
12 may define by regulation or order who is a promoter or a controlling person;

13 (2) a nonissuer transaction by or through a broker-dealer registered, or  
14 exempt from registration under this chapter, and a resale transaction by a sponsor of a  
15 unit investment trust registered under 15 U.S.C. 80a-1 - 80a-64 (Investment Company  
16 Act of 1940), in a security of a class that has been outstanding in the hands of the  
17 public for at least 90 days, if, at the date of the transaction,

18 (A) the issuer of the security is engaged in business, the issuer  
19 is not in the organizational stage or in bankruptcy or receivership, and the  
20 issuer is not a blank check, blind pool, or shell company that does not have a  
21 specific business plan or purpose or has indicated that its primary business plan  
22 is to engage in a merger or combination of the business with or an acquisition  
23 of an unidentified person;

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

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

29 (D) a nationally recognized securities manual or its electronic  
30 equivalent designated by a regulation adopted or order issued under this  
31 chapter or a record filed with the Securities and Exchange Commission that is

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publicly available contains

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

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

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

(iv) an audited income statement for each of the issuer's two immediately previous fiscal years or for the period of existence of the issuer, whichever is shorter, or, in the case of a reorganization or merger when each party to the reorganization or merger had audited income statements, a pro forma income statement; and

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

(i) the issuer of the security has a class of equity securities listed on a national securities exchange registered under 15 U.S.C. 78f (Securities Exchange Act of 1934) or designated for trading on the National Association of Securities Dealers Automated Quotation System;

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

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

(iv) the issuer of the security has total assets of at least \$2,000,000 based on an audited balance sheet as of a date within 18 months before the date of the transaction or, in the case of a reorganization or merger when the parties to the reorganization or

1 merger each had an audited balance sheet, a pro forma balance sheet for  
2 the combined organization;

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

7 (4) a nonissuer transaction by or through a broker-dealer registered or  
8 exempt from registration under this chapter in an outstanding security if the guarantor  
9 of the security files reports with the Securities and Exchange Commission under the  
10 reporting requirements of 15 U.S.C. 78m or 15 U.S.C. 78o (Securities Exchange Act  
11 of 1934);

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

14 (A) is rated at the time of the transaction by a nationally  
15 recognized statistical rating organization as identified by regulations of the  
16 administrator in one of its four highest rating categories; or

17 (B) has a fixed maturity or a fixed interest or dividend, if

18 (i) a default has not occurred during the current fiscal  
19 year or within the three previous fiscal years or, if the issuer has been in  
20 business less than three fiscal years, during the existence of the issuer  
21 and any predecessor in the payment of principal, interest, or dividends  
22 on the security; and

23 (ii) the issuer is engaged in business, is not in the  
24 organizational stage or in bankruptcy or receivership, and is not and has  
25 not, within the previous 12 months, been a blank check, blind pool, or  
26 shell company that does not have a specific business plan or purpose or  
27 has indicated that its primary business plan is to engage in a merger or  
28 combination of the business with, or an acquisition of, an unidentified  
29 person;

30 (6) a nonissuer transaction by or through a broker-dealer registered or  
31 exempt from registration under this chapter effecting an unsolicited order or offer to

1 purchase;

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

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

7 (9) a transaction in a security, whether or not the security or  
8 transaction is otherwise exempt, in exchange for one or more bona fide outstanding  
9 securities, claims, or property interests, or partly in exchange for one or more bona  
10 fide outstanding securities, claims, or property interests and partly for cash if the terms  
11 and conditions of the issuance and exchange or the delivery and exchange and the  
12 fairness of the terms and conditions have been approved by the administrator after a  
13 hearing;

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

16 (11) 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

19 (A) the entire mortgage, deed of trust, or agreement, together  
20 with all the bonds or other evidence of indebtedness, secured under those  
21 documents, is offered and sold as a unit;

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

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

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

29 (13) a sale or offer to sell to

30 (A) an institutional investor;

31 (B) a federal covered investment adviser; or

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

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

5 (A) not more than 25 purchasers in this state during any 12  
6 consecutive months, other than a person designated in (13) of this section,  
7 regardless of whether the seller or any of the buyers is then present in this  
8 state;

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

11 (C) a commission or other remuneration is not paid or given,  
12 directly or indirectly, to a person other than a broker-dealer registered under  
13 this chapter or an agent registered under this chapter for soliciting a  
14 prospective purchaser in this state;

15 (D) the issuer reasonably believes that all the purchasers in this  
16 state, other than those designated in (13) of this section, are purchasing for  
17 investment and not with a view to distribution;

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

22 (F) before a sale, each prospective buyer is furnished with  
23 information that is sufficient to make an informed investment decision; the  
24 information shall be furnished to the administrator upon request; in this  
25 subparagraph, "information that is sufficient to make an informed investment  
26 decision" includes a business plan, an income and expense statement, a balance  
27 sheet, a statement of risks, and a disclosure of any significant negative factors  
28 that may affect the outcome of the investment;

29 (15) a transaction under an offer to existing security holders of the  
30 issuer, including persons that, at the date of the transaction, are holders of convertible  
31 securities, options, or warrants, if a commission or other remuneration, other than a

1 standby commission, is not paid or given, directly or indirectly, for soliciting a  
2 security holder in this state;

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

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

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

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

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

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

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

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

29 (19) a rescission offer, sale, or purchase under AS 45.56.665;

30 (20) an offer to sell or sale of a security to a person not a resident of  
31 this state and not present in this state if the offer or sale does not constitute a violation

1 of the laws of this state or foreign jurisdiction in which the offeree or purchaser is  
2 present and is not part of an unlawful plan or scheme to evade this chapter;

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

9 (A) directors; general partners; managers and members if the  
10 issuer is a limited liability company; trustees, if the issuer is a business trust;  
11 officers; consultants; and advisors;

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

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

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

21 (22) a transaction involving

22 (A) a stock dividend or equivalent equity distribution,  
23 regardless of whether the corporation or other business organization  
24 distributing the dividend or equivalent equity distribution is the issuer, if  
25 nothing of value is given by stockholders or other equity holders for the  
26 dividend or equivalent equity distribution other than the surrender of a right to  
27 a cash or property dividend if each stockholder or other equity holder may  
28 elect to take the dividend or equivalent equity distribution in cash, property, or  
29 stock;

30 (B) a transaction incident to a right of conversion or judicially  
31 approved reorganization in which a security is issued in exchange for one or

1 more outstanding securities, claims, or property interests, or partly in exchange  
2 for one or more outstanding securities, claims, or property interests and partly  
3 for cash; or

4 (C) the solicitation of tenders of securities by an offeror in a  
5 tender offer in compliance with 17 C.F.R. 230.162, adopted under 15 U.S.C.  
6 77a - 77aa (Securities Act of 1933);

7 (23) a nonissuer transaction in an outstanding security by or through a  
8 broker-dealer registered or exempt from registration under this chapter, if the issuer is  
9 a reporting issuer in a foreign jurisdiction designated by this paragraph or by a  
10 regulation adopted or order issued under this chapter; the issuer has been subject to  
11 continuous reporting requirements in the foreign jurisdiction for not less than 180 days  
12 before the transaction; and the security is listed on the foreign jurisdiction's securities  
13 exchange that has been designated by this paragraph or by a regulation adopted or  
14 order issued under this chapter, or is a security of the same issuer that is of senior or  
15 substantially equal rank to the listed security or is a warrant or right to purchase or  
16 subscribe to any of the foregoing; for purposes of this paragraph, Canada, together  
17 with its provinces and territories, is a designated foreign jurisdiction, and TSX, Inc.,  
18 formerly known as the Toronto Stock Exchange, Inc., is a designated securities  
19 exchange; after an administrative hearing in compliance with AS 45.56.650(c), the  
20 administrator, by a regulation adopted or order issued under this chapter, may revoke  
21 the designation of a securities exchange under this paragraph if the administrator finds  
22 that revocation is necessary or appropriate in the public interest and for the protection  
23 of investors;

24 (24) a sale by an issuer to the buyer of an enterprise or a business and  
25 the assets and liabilities of the enterprise or business if

26 (A) the transfer of stock to the buyer is solely incidental to the  
27 sale of the enterprise or business and its assets and liabilities;

28 (B) the seller provides the buyer with full access to the books  
29 and records of the enterprise or business; and

30 (C) a legend is placed on the certificate or other document  
31 evidencing ownership of the security, stating that the security is not registered

1 under this chapter and cannot be resold without registration under this chapter  
2 or exemption from it;

3 (25) an offer or sale of a certificate of interest or participation in oil,  
4 gas, or mining rights, titles, or leases, or in payments out of production under the  
5 rights, titles, or leases, if the purchaser

6 (A) is or has been, during the preceding two years, engaged  
7 primarily in the business of exploring for, mining, producing, or refining oil,  
8 gas, or minerals; or

9 (B) has been found by the administrator upon written  
10 application to be substantially engaged in the business of exploring for,  
11 mining, producing, or refining oil, gas, or minerals so as not to require the  
12 protection provided by this chapter;

13 (26) a transaction involving only family members, or involving only  
14 family members and the corporations, partnerships, limited liability companies,  
15 limited partnerships, limited liability partnerships, associations, joint-stock companies,  
16 or trusts that are organized, formed, or created by family members or at the direction  
17 of family members; in this paragraph, "family members" means persons who are  
18 related, including related by adoption, within the fourth degree of affinity or  
19 consanguinity; or

20 (27) a transaction relating to a security that is not part of an initial issue  
21 of stock covered by AS 45.55.138, but that is issued by a corporation organized under  
22 Alaska law under 43 U.S.C. 1601 et seq. (Alaska Native Claims Settlement Act), if the  
23 corporation qualifies for exempt status under 43 U.S.C. 1625(a).

24 **Sec. 45.56.220. Small intrastate securities offerings.** (a) An offer or sale of  
25 securities conducted solely in this state to a person who has established residency in  
26 this state, by an issuer in a transaction that meets the requirements of this section, is  
27 exempt from the requirements of AS 45.56.105, 45.56.305 - 45.56.360, and 45.56.550  
28 and is subject to the following limitations:

29 (1) the issuer of the security shall be a for-profit corporation, another  
30 for-profit entity, or a business cooperative, have its principal place of business in this  
31 state, and be licensed by the department;

1 (2) the transaction must meet the requirements of the federal  
2 exemption for intrastate offerings in 15 U.S.C. 77c(a)(11) (Securities Act of 1933) and  
3 17 C.F.R. 230.147; the securities must be offered to and sold only to persons who  
4 have established residency in this state at the time of purchase; before any offer or sale  
5 under this exemption, the seller shall obtain documentary evidence from each  
6 prospective purchaser that provides the seller with a reasonable basis to believe the  
7 investor has established residency in this state;

8 (3) the sum of all cash and other consideration to be received for all  
9 sales of the security in reliance on this exemption may not exceed \$1,000,000, less the  
10 aggregate amount received for all sales of securities by the issuer within the 12 months  
11 before the first offer or sale made in reliance on this exemption;

12 (4) the issuer may not accept more than \$10,000 from any single  
13 purchaser unless the purchaser is an accredited investor as defined by 17 C.F.R.  
14 230.501;

15 (5) the issuer must reasonably believe that all purchasers of securities  
16 are purchasing for investment and not for sale in connection with a distribution of the  
17 security;

18 (6) a commission or remuneration may not be paid or given, directly or  
19 indirectly, for any person's participation in the offer or sale of securities for the issuer  
20 unless the person is registered as a broker-dealer, agent, investment adviser  
21 representative, or investment adviser under AS 45.56.405 - 45.56.440;

22 (7) all funds received from investors shall be deposited into a bank or  
23 depository institution authorized to do business in this state, and all funds shall be  
24 used in accordance with representations made to investors;

25 (8) not less than 10 days before the use of any general solicitation or  
26 within 15 days after the first sale of the security under this exemption, if general  
27 solicitation has not been used before the sale, whichever occurs first, the issuer shall  
28 provide a notice to the administrator as prescribed in regulations for this section; the  
29 notice must specify that the issuer is conducting an offering in reliance on this  
30 exemption and must contain the names and addresses of

31 (A) the issuer;

- 1 (B) officers, directors, and any control person of the issuer;
- 2 (C) all persons who will be involved in the offer or sale of
- 3 securities on behalf of the issuer; and
- 4 (D) the bank or other depository institution in which investor
- 5 funds will be deposited;
- 6 (9) the issuer may not be, either before or as a result of the offering,
- 7 (A) an investment company as defined by 15 U.S.C. 80a-1 -
- 8 80a-64 (Investment Company Act of 1940), or subject to the reporting
- 9 requirements of 15 U.S.C. 78m or 78o (Securities Exchange Act of 1934); or
- 10 (B) a broker-dealer, agent, investment adviser representative, or
- 11 investment adviser subject to AS 45.56.405 - 45.56.440;
- 12 (10) the issuer shall inform all purchasers that the securities have not
- 13 been registered under AS 45.56.105, 45.56.305 - 45.56.360, and 45.56.550 and may
- 14 not be resold unless the securities are registered or qualify for an exemption from
- 15 registration under AS 45.56.205, 45.56.210, or 45.56.240; in addition, the issuer shall
- 16 make the disclosures required by 17 C.F.R. 230.147(f);
- 17 (11) the issuer shall require all purchasers to sign the following
- 18 statement at the time of sale: "I acknowledge that I am investing in a high-risk,
- 19 speculative business venture, that I may lose all of my investment, and that I can
- 20 afford the loss of my investment";
- 21 (12) this exemption may not be used in conjunction with any other
- 22 exemption under this chapter, except the exemption to institutional investors under
- 23 AS 45.56.405 and 45.56.435 and for offers and sales to controlling persons of the
- 24 issuer; sales to controlling persons may not count toward the limitation in (3) of this
- 25 subsection;
- 26 (13) this exemption may not be construed to remove any person from
- 27 the anti-fraud provisions under AS 45.56.505 - 45.56.560, and the exemption may not
- 28 be construed to provide relief from any other provision of this chapter other than as
- 29 expressly stated.
- 30 (b) The administrator may by order deny or revoke the exemption specified in
- 31 this section with respect to a specific security if the administrator finds that the sale of

1 the security would work or tend to work a fraud on the purchasers of the security. An  
 2 order under this subsection may not operate retroactively. A person may not be  
 3 considered to have violated AS 45.56.205 - 45.56.250 because of any offer or sale  
 4 effected after the entry of an order under this subsection if the person sustains the  
 5 burden of proof that the person did not know and, in the exercise of reasonable care,  
 6 could not have known of the order.

7 (c) A person who makes application to the department for an exemption under  
 8 this section shall be assessed a filing fee as prescribed in regulations for this section.

9 (d) In this section, "residency" has the meaning given in AS 01.10.055.

10 **Sec. 45.56.230. Disqualifier.** Exemption from registration under AS 45.56.205  
 11 - 45.56.250 is not available for a security or transaction if the issuer, or any of its  
 12 officers, controlling persons, or promoters, is subject to a disqualifier described in the  
 13 regulations adopted under 15 U.S.C. 78c(a)(39) (Dodd-Frank Wall Street Reform and  
 14 Consumer Protection Act) as of the date of the transaction or offer.

15 **Sec. 45.56.240. Waiver and modification.** For any security or transaction or  
 16 any type of security or transaction, the administrator may by order, waive, withdraw,  
 17 or modify any of the requirements or conditions of AS 45.56.205 - 45.56.250.

18 **Sec. 45.56.250. Denial, suspension, revocation, condition, or limitation of**  
 19 **exemptions.** (a) Except with respect to a federal covered security or a transaction  
 20 involving a federal covered security, an order under this chapter may deny, suspend  
 21 application of, condition, limit, or revoke an exemption created under  
 22 AS 45.56.205(3)(C), (7), or (8), 45.56.210, or 45.56.220, or an exemption or waiver  
 23 created under AS 45.56.240 with respect to a specific security, transaction, or offer.  
 24 An order under this subsection may be issued only under the procedures in  
 25 AS 45.56.360(d) or 45.56.650 and only prospectively.

26 (b) A person does not violate AS 45.56.105, 45.56.305 - 45.56.320, 45.56.340,  
 27 45.56.360, 45.56.550, or 45.56.665 by an offer to sell, offer to purchase, sale, or  
 28 purchase effected after the entry of an order issued under this section if the person did  
 29 not know and, in the exercise of reasonable care, could not have known, of the order.

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

31 **Sec. 45.56.305. Securities registration by coordination.** (a) A security for

1 which a registration statement has been filed under 15 U.S.C. 77a - 77aa (Securities  
2 Act of 1933) in connection with the same offering may be registered by coordination  
3 under this section.

4 (b) A registration statement and accompanying records under this section must  
5 contain or be accompanied by the following records, in addition to the information  
6 specified in AS 45.56.320, and a consent to service of process complying with  
7 AS 45.56.630:

8 (1) a copy of the latest form of prospectus filed under 15 U.S.C. 77a -  
9 77aa (Securities Act of 1933);

10 (2) if the administrator requires, a copy of the articles of incorporation  
11 and bylaws or their substantial equivalents currently in effect; a copy of any other  
12 information or any other records filed by the issuer under 15 U.S.C. 77a - 77aa  
13 (Securities Act of 1933) requested by the administrator; a copy of any agreement with  
14 or among underwriters; a copy of any indenture or other instrument governing the  
15 issuance of the security to be registered; and a specimen, copy, or description of the  
16 security that is required by a regulation adopted or order issued under this chapter; and

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

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

23 (1) a stop order under (d) of this section or AS 45.56.360 or issued by  
24 the Securities and Exchange Commission is not in effect, and a proceeding is not  
25 pending against the issuer under AS 45.56.480; and

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

28 (d) The registrant shall promptly notify the administrator in a record of the  
29 date when the federal registration statement becomes effective and the content of any  
30 price amendment and shall promptly file a record containing the price amendment. If  
31 the notice is not timely received, the administrator may issue a stop order, without

1 prior notice or hearing, retroactively denying effectiveness to the registration  
2 statement or suspending its effectiveness until compliance with this section. The  
3 administrator shall promptly notify the registrant of an order by telephone or  
4 electronic means and promptly confirm this notice by a record. If the registrant later  
5 complies with the notice requirements of this subsection, the stop order is void as of  
6 the date of its issuance.

7 (e) If the federal registration statement becomes effective before each of the  
8 conditions in this section is satisfied or is waived by the administrator, the registration  
9 statement is automatically effective under this chapter when all the conditions are  
10 satisfied or waived. If the registrant notifies the administrator of the date when the  
11 federal registration statement is expected to become effective, the administrator shall  
12 promptly notify the registrant by telephone or electronic means and promptly confirm  
13 this notice by a record, indicating whether all the conditions are satisfied or waived  
14 and whether the administrator intends the institution of a proceeding under  
15 AS 45.56.360. The notice by the administrator does not preclude the institution of a  
16 proceeding under AS 45.56.360.

17 **Sec. 45.56.310. Securities registration by qualification.** (a) A security may  
18 be registered by qualification under this section.

19 (b) A registration statement under this section must contain the information or  
20 records specified in AS 45.56.320, a consent to service of process complying with  
21 AS 45.56.630, and the following information or records:

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

29 (2) with respect to each director and officer of the issuer and other  
30 person having a similar status or performing similar functions, the person's name,  
31 address, and principal occupation for the previous five years; the amount of securities

1 of the issuer held by the person as of the 30th day before the filing of the registration  
2 statement; the amount of the securities covered by the registration statement to which  
3 the person has indicated an intention to subscribe; and a description of any material  
4 interest of the person in any material transaction with the issuer or a significant  
5 subsidiary effected within the previous three years or proposed to be effected;

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

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

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

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

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

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

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

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

1 (11) the dates of, parties to, and general effect, concisely stated, of  
2 each managerial or other material contract made or to be made other than in the  
3 ordinary course of business to be performed in whole or in part at or after the filing of  
4 the registration statement or that was made within the previous two years, and a copy  
5 of each contract;

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

9 (13) a copy of any prospectus, pamphlet, circular, form letter,  
10 advertisement, or other sales literature intended as of the effective date of the  
11 registration statement to be used in connection with the offering and any solicitation of  
12 interest used in compliance with AS 45.56.210(17)(B);

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

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

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

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

1 less than three years; and, if any part of the proceeds of the offering is to be applied to  
2 the purchase of a business, the financial statements that would be required if that  
3 business were the registrant; and

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

6 (c) A registration statement under this section becomes effective when the  
7 administrator orders that the registration is effective.

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

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

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

18 (3) payment under the sale; or

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

20 **Sec. 45.56.320. Securities registration filings.** (a) A registration statement  
21 may be filed by the issuer, a person on whose behalf the offering is to be made, or a  
22 broker-dealer registered under this chapter.

23 (b) A person filing a registration statement shall pay a filing fee established by  
24 a regulation adopted under this chapter and consent to service of process as described  
25 under AS 45.56.630.

26 (c) A registration statement filed under AS 45.56.305 or 45.56.310 must  
27 specify

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

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

31 (3) any adverse order, judgment, or decree issued in connection with

1 the offering by a state securities regulator, the Securities and Exchange Commission,  
2 or a court.

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

6 (e) In the case of a nonissuer distribution, information or a record may not be  
7 required under (i) of this section or AS 45.56.310 unless it is known to the person  
8 filing the registration statement or to the person on whose behalf the distribution is to  
9 be made or unless it can be furnished by those persons without unreasonable effort or  
10 expense.

11 (f) A regulation adopted or order issued under this chapter may require as a  
12 condition of registration that a security issued within the previous five years or to be  
13 issued to a promoter for a consideration substantially less than the public offering  
14 price or to a person for a consideration other than cash be deposited in escrow and that  
15 the proceeds from the sale of the registered security in this state be impounded until  
16 the issuer receives a specified amount from the sale of the security, either in this state  
17 or elsewhere. The conditions of any escrow or impoundment required under this  
18 subsection may be established by a regulation adopted or order issued under this  
19 chapter, but the administrator may not reject a depository institution solely because of  
20 its location in another state.

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

26 (h) Except while a stop order is in effect under AS 45.56.360, a registration  
27 statement is effective for one year after the effective date of the registration statement  
28 or for any longer period designated in an order under this chapter during which the  
29 security is being offered or distributed in a nonexempted transaction by or for the  
30 account of the issuer or other person on whose behalf the offering is being made or by  
31 an underwriter or broker-dealer that is still offering part of an unsold allotment or

1 subscription taken as a participant in the distribution. For the purposes of a nonissuer  
2 transaction, all outstanding securities of the same class identified in the registration  
3 statement as a security registered under this chapter are considered to be registered  
4 while the registration statement is effective. If any securities of the same class are  
5 outstanding, a registration statement may not be withdrawn until one year after the  
6 effective date of the registration statement. A registration statement may be withdrawn  
7 only with the approval of the administrator.

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

13 (j) A registration statement may be amended after the effective date of the  
14 registration statement. The post-effective amendment becomes effective when the  
15 administrator so orders. If a post-effective amendment is made to increase the number  
16 of securities specified to be offered or sold, the person filing the amendment shall pay  
17 a registration fee established by a regulation adopted under this chapter. A post-  
18 effective amendment relates back to the date of the offering of the additional securities  
19 being registered if, within one year after the date of the sale, the amendment is filed  
20 and the additional registration fee is paid.

21 **Sec. 45.56.330. Notice filing of federal covered securities.** (a) With respect to  
22 a federal covered security, as defined in 15 U.S.C. 77r(b) (Securities Act of 1933), that  
23 is not otherwise exempt under AS 45.56.205 - 45.56.240, a regulation adopted or order  
24 issued under this chapter may require the filing of any or all of the following records:

25 (1) before the initial offer of a federal covered security in this state, all  
26 records that are part of a federal registration statement filed with the Securities and  
27 Exchange Commission under 15 U.S.C. 77a - 77aa (Securities Act of 1933), a consent  
28 to service of process complying with AS 45.56.630 signed by the issuer, and the  
29 payment of a fee established in a regulation adopted under this chapter;

30 (2) after the initial offer of the federal covered security in this state, all  
31 records that are part of an amendment to a federal registration statement filed with the

1 Securities and Exchange Commission under 15 U.S.C. 77a - 77aa (Securities Act of  
2 1933); and

3 (3) to the extent necessary or appropriate to compute fees, a report of  
4 the value of the federal covered securities sold or offered to persons present in this  
5 state if the sales data are not included in records filed with the Securities and  
6 Exchange Commission and payment of a fee established in a regulation adopted under  
7 this chapter.

8 (b) A notice filing under (a) of this section is effective for one year  
9 commencing on the later of the notice filing or the effectiveness of the offering filed  
10 with the Securities and Exchange Commission. On or before expiration, the issuer  
11 may renew a notice filing by filing with the Securities and Exchange Commission a  
12 copy of those records filed by the issuer that are required by a regulation adopted or  
13 order issued under this chapter to be filed and by paying a renewal fee established in a  
14 regulation adopted under this chapter. A previously filed consent to service of process  
15 complying with AS 45.56.630 may be incorporated by reference in a renewal. A  
16 renewed notice filing becomes effective upon the expiration of the filing being  
17 renewed.

18 (c) With respect to a security that is a federal covered security under 15 U.S.C.  
19 77r(b)(4)(D) (Securities Act of 1933), a regulation adopted under this chapter may  
20 require a notice filing by or on behalf of an issuer to include a copy of Form D,  
21 including the Appendix, as adopted by the Securities and Exchange Commission, and  
22 a consent to service of process complying with AS 45.56.630 signed by the issuer not  
23 later than 15 days after the first sale of the federal covered security in this state and the  
24 payment of a fee established in a regulation adopted under this chapter; and the  
25 payment of a fee established in a regulation adopted under this chapter for any late  
26 filing.

27 (d) Except with respect to a federal covered security under 15 U.S.C. 77r(b)(1)  
28 (Securities Act of 1933), if the administrator finds that there is a failure to comply  
29 with a notice or fee requirement of this section, the administrator may issue a stop  
30 order suspending the offer and sale of a federal covered security in this state. If the  
31 deficiency is corrected, the stop order is void as of the time of its issuance and a

1 penalty may not be imposed by the administrator.

2 **Sec. 45.56.340. Viatical settlement interests.** (a) Before the sale of a viatical  
3 settlement interest, an issuer shall provide a prospective buyer with information that is  
4 sufficient to make an informed investment decision. The issuer shall also provide the  
5 information to the administrator upon request if the issuer is not otherwise required to  
6 file the information with the administrator. In this subsection, "information that is  
7 sufficient to make an informed investment decision" includes state-mandated  
8 disclosure forms and a disclosure of any significant factors that may affect the  
9 outcome of the investment.

10 (b) Except as may be required in the course of conduct of the responsibilities  
11 of the administrator, an issuer of a viatical settlement interest may not disclose to  
12 another person the identity of the viator or insured of the insurance policy that is the  
13 subject of the viatical settlement interest. The viator may waive this prohibition  
14 against disclosure if the waiver is in writing and signed by the viator.

15 (c) The administrator shall regulate transactions between a viatical settlement  
16 provider or person acting as an agent of a viatical settlement provider and a  
17 subsequent investor, while the authority of the director of the division of insurance  
18 extends to the regulation of viatical settlement contracts under AS 21.96.110.

19 (d) In this section,

20 (1) "viatical settlement contract" has the meaning given in  
21 AS 21.96.110(h);

22 (2) "viatical settlement interest"

23 (A) means the entire interest or any fractional interest in a life  
24 insurance policy or in the death benefit under a life insurance policy that is the  
25 subject of a viatical settlement contract;

26 (B) does not include the initial purchase from the viator by a  
27 viatical settlement provider;

28 (3) "viatical settlement provider" has the meaning given in  
29 AS 21.96.110(h);

30 (4) "viator" has the meaning given in AS 21.96.110(h).

31 **Sec. 45.56.350. Waiver and modification.** The administrator may waive or

1 modify, in whole or in part, any or all of the requirements of AS 45.56.305 and  
2 45.56.320 or the requirement of any information or record in a registration statement  
3 or in a periodic report filed under AS 45.56.320(i).

4 **Sec. 45.56.360. Denial, suspension, and revocation of securities**  
5 **registration.** (a) The administrator may issue a stop order denying effectiveness to, or  
6 suspending or revoking the effectiveness of, a registration statement if the  
7 administrator finds that the order is in the public interest and that

8 (1) the registration statement as of the effective date of the registration  
9 statement or before the effective date in the case of an order denying effectiveness, an  
10 amendment under AS 45.56.320(j) as of the effective date of the amendment, or a  
11 report under AS 45.56.320(i) is incomplete in a material respect or contains a  
12 statement that, in the light of the circumstances under which it was made, was false or  
13 misleading with respect to a material fact;

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

17 (A) the person filing the registration statement;

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

20 (C) a promoter of the issuer;

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

24 (E) an underwriter;

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

1 injunction issued under the securities act of another state unless the order or injunction  
2 was based on conduct that would constitute, as of the date of the order, a ground for a  
3 stop order under this section;

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

6 (5) with respect to a security sought to be registered under  
7 AS 45.56.305, there has been a failure to comply with the undertaking required by  
8 AS 45.56.305(b)(3);

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

12 (7) the offering

13 (A) will work or tend to work a fraud on purchasers or would  
14 operate to work or tend to work a fraud on purchasers;

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

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

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

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

28 (d) The administrator may summarily revoke, deny, postpone, or suspend the  
29 effectiveness of a registration statement pending final determination of an  
30 administrative proceeding. Upon the issuance of the order, the administrator shall  
31 promptly notify each person specified in (e) of this section that the order has been

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

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

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

11 (2) an opportunity for hearing conducted in the manner provided in  
12 AS 45.56.650(c); and

13 (3) findings of fact and conclusions of law in a record.

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

18 **Article 4. Broker-Dealers, Agents, Investment Advisers, Investment Adviser**  
19 **Representatives, and Federal Covered Investment Advisers.**

20 **Sec. 45.56.405. Broker-dealer registration requirement and exemptions.**

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

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

26 (1) a broker-dealer without a place of business in this state if the  
27 broker-dealer's only transactions effected in this state are with

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

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

31 (C) an institutional investor;

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

4 (E) a bona fide preexisting customer whose principal place of  
5 residence is not in this state if the person is registered as a broker-dealer under  
6 15 U.S.C. 78a - 78pp (Securities Exchange Act of 1934) or not required to be  
7 registered under 15 U.S.C. 78a - 78pp (Securities Exchange Act of 1934) and  
8 is registered under the securities act of the state in which the customer  
9 maintains a principal place of residence;

10 (F) a bona fide preexisting customer whose principal place of  
11 residence is in this state but who was not present in this state when the  
12 customer relationship was established if

13 (i) the broker-dealer is registered under 15 U.S.C. 78a -  
14 78pp (Securities Exchange Act of 1934) or not required to be registered  
15 under 15 U.S.C. 78a - 78pp (Securities Exchange Act of 1934) and is  
16 registered under the securities act of the state in which the customer  
17 relationship was established and where the customer had maintained a  
18 principal place of residence; and

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

26 (G) not more than three customers in this state during the  
27 previous 12 months, in addition to those customers specified in (A) - (F) of this  
28 paragraph and under (H) of this paragraph if the broker-dealer is registered  
29 under 15 U.S.C. 78a - 78pp (Securities Exchange Act of 1934) or not required  
30 to be registered under 15 U.S.C. 78a - 78pp (Securities Exchange Act of 1934)  
31 and is registered under the securities act of the state in which the broker-dealer

1 has its principal place of business; and

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

4 (2) a person that deals solely in United States government securities  
5 and is supervised as a dealer in government securities by the Board of Governors of  
6 the Federal Reserve System, the United States Comptroller of the Currency, or the  
7 Federal Deposit Insurance Corporation.

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

21 **Sec. 45.56.410. Limited registration of Canadian broker-dealers and**  
22 **agents.** (a) If a broker-dealer is registered under this section and its principal office is  
23 located in a province or territory of Canada that provides at least equivalent  
24 registration for a broker-dealer that is resident in the United States, a broker-dealer  
25 that is resident in Canada and does not have an office or other physical presence in this  
26 state may effect transactions in securities with or for or induce or attempt to induce the  
27 purchase or sale of a security by a person from Canada who is

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

31 (2) resident in this state and whose transactions are in a self-directed

1 tax-advantaged retirement plan in Canada if the person is the holder of or contributor  
2 to the plan.

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

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

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

10 (2) files a written consent to service of process under AS 45.56.630;

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

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

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

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

21 (2) files a written consent to service of process under AS 45.56.630;  
22 and

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

25 (e) Registration under this section becomes effective on the 30th day after an  
26 application is filed unless it is made effective earlier by the administrator or a denial  
27 order is in effect and a proceeding is pending under AS 45.56.480.

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

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

31 (2) provide the administrator on request with books and records

1 relating to its business in this state as a broker-dealer;

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

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

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

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

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

14 (h) A Canadian broker-dealer or agent registered under this section may renew  
15 its registration by filing by midnight on December 31 of each year the most recent  
16 renewal application, if any, filed in the jurisdiction in which the broker-dealer or agent  
17 has its principal office or, if a renewal application is not required, the most recent  
18 application filed under (c)(1) or (d)(1) of this section.

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

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

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

24 (2) with or through

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

26 (B) other broker-dealers; or

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

31 or

1 (3) as otherwise permitted by this chapter.

2 (k) A Canadian broker-dealer or agent registered under this section and acting  
3 in accordance with the limitations in (j) of this section is exempt from all of the  
4 requirements of this chapter except the anti-fraud provisions under AS 45.56.505 and  
5 the requirements of this section. The registration of a Canadian broker-dealer or agent  
6 under this section may not be denied, suspended, or revoked except in accordance with  
7 the provisions of AS 45.56.480 for a breach of the anti-fraud provisions under  
8 AS 45.56.505 or the requirements of this section.

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

11 **Sec. 45.56.420. Registration exemption for merger and acquisition broker.**

12 (a) Except as provided in (b) and (c) of this section, a merger and acquisition broker is  
13 exempt from registration under AS 45.56.405.

14 (b) A merger and acquisition broker is not exempt from registration under  
15 AS 45.56.405 if the broker

16 (1) directly or indirectly, in connection with the transfer of ownership  
17 of an eligible privately held company, receives, holds, transmits, or has custody of the  
18 funds or securities to be exchanged by the parties to the transaction;

19 (2) engages on behalf of an issuer in a public offering of any class of  
20 securities that is registered, or is required to be registered, with the United States  
21 Securities and Exchange Commission under 15 U.S.C. 78l(b) (Securities Exchange  
22 Act of 1934) or with respect to which the issuer files, or is required to file, periodic  
23 information, documents, and reports under 15 U.S.C. 78o(d) (Securities Exchange Act  
24 of 1934); or

25 (3) engages on behalf of any party in a transaction involving a public  
26 shell company.

27 (c) A merger and acquisition broker is not exempt from registration under  
28 AS 45.56.405 if the broker is subject to

29 (1) suspension or revocation of registration under 15 U.S.C. 78o(b)(4)  
30 (Securities Exchange Act of 1934);

31 (2) a statutory disqualification described in 15 U.S.C. 78c(a)(39)

1 (Securities Exchange Act of 1934);

2 (3) a disqualification under the rules adopted by the United States  
3 Securities and Exchange Commission under 15 U.S.C. 77d note (Dodd-Frank Wall  
4 Street Reform and Consumer Protection Act); or

5 (4) a final order described in 15 U.S.C. 78o(b)(4)(H) (Securities  
6 Exchange Act of 1934).

7 (d) This section may not be construed to limit any other authority of the  
8 department to exempt any person, or any class of persons, from a provision of this  
9 chapter, or a provision of a rule or regulation adopted under this chapter.

10 (e) In this section,

11 (1) "control" means the power, directly or indirectly, to direct the  
12 management or policies of a company, whether through ownership of securities, by  
13 contract, or otherwise; there is a presumption of control for any person who

14 (A) is a director, general partner, limited liability company  
15 member, limited liability company manager, an officer who exercises  
16 executive responsibility, or an officer who has status or functions similar to an  
17 officer who exercises executive responsibility;

18 (B) has the right to vote 20 percent or more of a class of voting  
19 securities or the power to sell or direct the sale of 20 percent or more of a class  
20 of voting securities; or

21 (C) in the case of a partnership or limited liability company,  
22 has the right to receive upon dissolution, or has contributed, 20 percent or more  
23 of the capital;

24 (2) "eligible privately held company" means a company that

25 (A) does not have any class of securities registered, or required  
26 to be registered, with the United States Securities and Exchange Commission  
27 under 15 U.S.C. 78l(b) (Securities Exchange Act of 1934), or with respect to  
28 which the company files, or is required to file, periodic information,  
29 documents, and reports under 15 U.S.C. 78o(d) (Securities Exchange Act of  
30 1934); and

31 (B) in the fiscal year ending immediately before the fiscal year

1 in which the services of the merger and acquisition broker are initially engaged  
2 with respect to the securities transaction, meets either or both of the following  
3 conditions, determined in accordance with the historical financial accounting  
4 records of the company:

5 (i) the earnings of the company before interest, taxes,  
6 depreciation, and amortization are less than \$25,000,000;

7 (ii) the gross revenue of the company is less than  
8 \$250,000,000;

9 (3) "merger and acquisition broker" means a broker, and a person  
10 associated with the broker, engaged in the business of effecting securities transactions  
11 solely in connection with the transfer of ownership of an eligible privately held  
12 company, regardless of whether that broker acts on behalf of a seller or buyer, through  
13 the purchase, sale, exchange, issuance, repurchase, or redemption of, or a business  
14 combination involving, securities or assets of the eligible privately held company, if  
15 the broker reasonably believes that

16 (A) upon consummation of the transaction, a person acquiring  
17 securities or assets of the eligible privately held company, acting alone or in  
18 concert, will control and, directly or indirectly, be active in the management of  
19 the eligible privately held company or the business conducted with the assets  
20 of the eligible privately held company; and

21 (B) if a person is offered securities in exchange for securities or  
22 assets of the eligible privately held company, the person will, before becoming  
23 legally bound to consummate the transaction, receive or have reasonable  
24 access to the most recent fiscal year-end financial statements of the issuer of  
25 the securities as customarily prepared by its management in the normal course  
26 of operations and, if the financial statements of the issuer are audited,  
27 reviewed, or compiled, any related statement by the independent accountant; a  
28 balance sheet dated not more than 120 days before the date of the exchange  
29 offer; and information pertaining to the management, business, results of  
30 operations for the period covered by the foregoing financial statements, and  
31 any material loss contingencies of the issuer;

1 (4) "public shell company" means a company that, at the time of a  
2 transaction with an eligible privately held company,

3 (A) has any class of securities registered, or required to be  
4 registered, with the United States Securities and Exchange Commission under  
5 15 U.S.C. 78l(b), or with respect to which the company files, or is required to  
6 file, periodic information, documents, and reports under 15 U.S.C. 78o(d);

7 (B) has no assets or has nominal operations; and

8 (C) has

9 (i) no assets or has nominal assets;

10 (ii) assets consisting solely of cash and cash  
11 equivalents; or

12 (iii) assets consisting of any amount of cash and cash  
13 equivalents and nominal other assets.

14 **Sec. 45.56.430. Agent registration requirement and exemptions.** (a) An  
15 individual may not transact business in this state as an agent unless the individual is  
16 registered under this chapter as an agent or is exempt from registration as an agent  
17 under (b) of this section.

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

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

22 (2) an individual who represents a broker-dealer that is exempt under  
23 AS 45.56.405(b) or 45.56.410;

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

29 (4) an individual who represents an issuer and who effects transactions  
30 in the issuer's securities exempted by AS 45.56.210, other than AS 45.56.210(11) and  
31 (14);

1 (5) an individual who represents an issuer that effects transactions  
2 solely in federal covered securities of the issuer, but an individual who effects  
3 transactions in a federal covered security under 15 U.S.C. 77r(b)(3) or (b)(4)(D)  
4 (Securities Act of 1933) is not exempt if the individual is compensated in connection  
5 with the agent's participation by the payment of commissions or other remuneration  
6 based, directly or indirectly, on transactions in those securities;

7 (6) an individual who represents a broker-dealer registered in this state  
8 under AS 45.56.405(a) or exempt from registration under AS 45.56.405(b) in the offer  
9 and sale of securities for an account of a nonaffiliated federal covered investment  
10 adviser with investments under management in excess of \$100,000,000 acting for the  
11 account of others under discretionary authority in a signed record;

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

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

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

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

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

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

30 **Sec. 45.56.435. Investment adviser registration requirement and**  
31 **exemptions.** (a) A person may not transact business in this state as an investment

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

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

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

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

10 (B) institutional investors;

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

15 (D) exempt by a regulation adopted or order issued under this  
16 chapter;

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

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

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

1 (d) An investment adviser may not employ or associate with an individual  
2 required to be registered under this chapter as an investment adviser representative  
3 who transacts business in this state on behalf of the investment adviser unless the  
4 individual is registered under AS 45.56.440(a) or is exempt from registration under  
5 AS 45.56.440(b).

6 **Sec. 45.56.440. Investment adviser representative registration requirement**  
7 **and exemptions.** (a) An individual may not transact business in this state as an  
8 investment adviser representative unless the individual is registered under this chapter  
9 as an investment adviser representative or is exempt from registration as an investment  
10 adviser representative under (b) of this section.

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

13 (1) an individual who is employed by or associated with an investment  
14 adviser that is exempt from registration under AS 45.56.435(b) or a federal covered  
15 investment adviser that is excluded from the notice filing requirements of  
16 AS 45.56.445; and

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

19 (c) The registration of an investment adviser representative is not effective  
20 while the investment adviser representative is not employed by or associated with an  
21 investment adviser registered under this chapter or a federal covered investment  
22 adviser that has made or is required to make a notice filing under AS 45.56.445.

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

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

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

7 (f) An investment adviser registered under this chapter, a federal covered  
8 investment adviser that has filed a notice under AS 45.56.445, or a broker-dealer  
9 registered under this chapter is not required to employ or associate with an individual  
10 as an investment adviser representative if the only compensation paid to the individual  
11 for a referral of investment advisory clients is paid to an investment adviser registered  
12 under this chapter, a federal covered investment adviser who has filed a notice under  
13 AS 45.56.445, or a broker-dealer registered under this chapter with which the  
14 individual is employed or associated as an investment adviser representative.

15 **Sec. 45.56.445. Federal covered investment adviser notice filing**  
16 **requirement.** (a) Except with respect to a federal covered investment adviser  
17 described in (b) of this section, a federal covered investment adviser may not transact  
18 business in this state as a federal covered investment adviser unless the federal  
19 covered investment adviser complies with (c) of this section.

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

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

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

26 (B) institutional investors;

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

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

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

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

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

6 (c) A person acting as a federal covered investment adviser not excluded  
7 under (b) of this section shall file a notice, a consent to service of process complying  
8 with AS 45.56.630, and the records that have been filed with the Securities and  
9 Exchange Commission under 15 U.S.C. 80b-1 - 80b-21 (Investment Advisers Act of  
10 1940) as required by a regulation adopted or order issued under this chapter and shall  
11 pay the fees specified by regulation adopted under AS 45.56.470.

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

13 **Sec. 45.56.450. Registration by broker-dealer, agent, investment adviser,**  
14 **and investment adviser representative.** (a) A person shall register as a broker-dealer,  
15 agent, investment adviser, or investment adviser representative by filing an application  
16 and a consent to service of process complying with AS 45.56.630 and by paying the  
17 fee specified in AS 45.56.470 and any reasonable fees charged by the designee of the  
18 administrator for processing the filing. The application must contain

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

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

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

26 (c) If an order is not in effect, and a proceeding is not pending under  
27 AS 45.56.480, and the administrator has not initiated an investigation, registration  
28 becomes effective at noon on the 45th day after a completed application is filed, unless  
29 the registration is denied. A regulation adopted or order issued under this chapter may  
30 set an earlier effective date or may defer the effective date until noon on the 45th day  
31 after the filing of any amendment completing the application.

1 (d) A registration is effective until midnight on December 31 of the year for  
2 which the application for registration is filed. Unless an order is in effect under  
3 AS 45.56.480, a registration may be automatically renewed each year by filing the  
4 records required by a regulation adopted or order issued under this chapter, by paying  
5 the fee specified in AS 45.56.470, and by paying costs charged by the designee of the  
6 administrator for processing the filings.

7 (e) A regulation adopted or order issued under this chapter may impose other  
8 conditions, not inconsistent with 15 U.S.C. 77b, 77c, 77e, 77f, 77r, 77z-3, 77ddd, 78b  
9 - 78d, 78g, 78h, 78n, 78o, 78q, 78bb, 78ee, 78kk, 78mm, 80a-2, 80a-3, 80a-6, 80a-12,  
10 80a-24, 80a-26, 80a-27, 80a-29, 80a-30, 80a-34, 80a-51, 80a-54, 80a-60, 80a-63, 80b-  
11 2, 80b-3a, 80b-5, 80b-10, 80b-18a, and 80b-20, and 29 U.S.C. 1002 (National  
12 Securities Markets Improvement Act of 1996). An order issued under this chapter may  
13 waive, in whole or in part, specific requirements in connection with registration that  
14 are in the public interest and for the protection of investors.

15 **Sec. 45.56.455. Succession and change in registration of broker-dealer or**  
16 **investment adviser.** (a) A broker-dealer or investment adviser may succeed to the  
17 current registration of another broker-dealer or investment adviser or a notice filing of  
18 a federal covered investment adviser, and a federal covered investment adviser may  
19 succeed to the current registration of an investment adviser or notice filing of another  
20 federal covered investment adviser, by filing as a successor an application for  
21 registration under AS 45.56.405 or 45.56.435 or a notice under AS 45.56.445 for the  
22 unexpired portion of the current registration or notice filing.

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

1 transactions and shall file for withdrawal of broker-dealer or investment adviser  
2 registration within 45 days after filing its amendment to effect succession.

3 (c) A broker-dealer or investment adviser that changes its name may continue  
4 its registration by filing an amendment to its registration. The amendment becomes  
5 effective when filed or on a date designated by the registrant.

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

8 **Sec. 45.56.460. Termination of employment or association of agent and**  
9 **investment adviser representative and transfer of employment or association.** (a)

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

19 (b) If an agent registered under this chapter terminates employment by or  
20 association with a broker-dealer registered under this chapter and begins employment  
21 by or association with another broker-dealer registered under this chapter, or if an  
22 investment adviser representative registered under this chapter terminates employment  
23 by or association with an investment adviser registered under this chapter or a federal  
24 covered investment adviser that has filed a notice under AS 45.56.445 and begins  
25 employment by or association with another investment adviser registered under this  
26 chapter or a federal covered investment adviser that has filed a notice under  
27 AS 45.56.445, then, within 30 days after the termination, upon the filing by or on  
28 behalf of the registrant of an application for registration that complies with the  
29 requirement of AS 45.56.450(a) and payment of the filing fee required under  
30 AS 45.56.470, the registration of the agent or investment adviser representative is

31 (1) immediately effective as of the date of the completed filing, if the

1 agent's record or successor record in the Central Registration Depository operated by  
2 the Financial Industry Regulatory Authority or the investment adviser representative's  
3 record or successor record in the Investment Adviser Registration Depository operated  
4 by the Financial Industry Regulatory Authority does not contain a new or amended  
5 disciplinary disclosure within the previous 12 months; or

6 (2) temporarily effective as of the date of the completed filing, if the  
7 agent's record or successor record in the Central Registration Depository operated by  
8 the Financial Industry Regulatory Authority or the investment adviser representative's  
9 record or successor record in the Investment Adviser Registration Depository operated  
10 by the Financial Industry Regulatory Authority contains a new or amended  
11 disciplinary disclosure within the preceding 12 months.

12 (c) The administrator may withdraw a temporary registration if there are or  
13 were grounds for discipline as specified in AS 45.56.480 and the administrator does so  
14 within 30 days after the filing of the application. If the administrator does not  
15 withdraw the temporary registration within the 30-day period, registration becomes  
16 automatically effective on the 31st day after filing.

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

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

28 **Sec. 45.56.465. Withdrawal of registration of broker-dealer, agent,**  
29 **investment adviser, and investment adviser representative.** Withdrawal of  
30 registration by a broker-dealer, agent, investment adviser, or investment adviser  
31 representative becomes effective 60 days after the filing of the application to withdraw

1 or within any shorter period as provided by a regulation adopted or order issued under  
2 this chapter unless a revocation or suspension proceeding is pending when the  
3 application is filed. If a proceeding is pending, withdrawal becomes effective when  
4 and upon the conditions required by a regulation adopted or order issued under this  
5 chapter. The administrator may institute a revocation or suspension proceeding under  
6 AS 45.56.480 within one year after the withdrawal became effective automatically and  
7 issue a revocation or suspension order as of the last date on which registration was  
8 effective if a proceeding is not pending.

9 **Sec. 45.56.470. Filing fees.** (a) The administrator shall establish fees by  
10 regulation for

11 (1) an initial filing of an application as a broker-dealer and renewal of  
12 an application by a broker-dealer for registration;

13 (2) an application for registration as an agent and renewal of  
14 registration as an agent;

15 (3) an application for registration as an investment adviser and renewal  
16 of registration as an investment adviser;

17 (4) an application for registration as an investment adviser  
18 representative, a renewal of registration as an investment adviser representative, and a  
19 change of registration as an investment adviser representative; and

20 (5) an initial fee and annual notice fee for a federal covered investment  
21 adviser required to file a notice under AS 45.56.445.

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

25 **Sec. 45.56.475. Post registration requirements.** (a) Subject to 15 U.S.C.  
26 78o(i) or 80b-18a, a regulation adopted or order issued under this chapter may  
27 establish minimum financial requirements for broker-dealers registered or required to  
28 be registered under this chapter and investment advisers registered or required to be  
29 registered under this chapter.

30 (b) Subject to 15 U.S.C. 78o(i) or 80b-18a, a broker-dealer registered or  
31 required to be registered under this chapter and an investment adviser registered or

1 required to be registered under this chapter shall file the financial reports required by a  
2 regulation adopted or order issued under this chapter. If the information contained in a  
3 record filed under this subsection is or becomes inaccurate or incomplete in a material  
4 respect, the registrant shall promptly file a correcting amendment.

5 (c) Subject to 15 U.S.C. 78o(i) or 80b-18a,

6 (1) a broker-dealer registered or required to be registered under this  
7 chapter and an investment adviser registered or required to be registered under this  
8 chapter shall make and maintain the accounts, correspondence, memoranda, papers,  
9 books, and other records required by a regulation adopted or order issued under this  
10 chapter;

11 (2) broker-dealer records required to be maintained under (1) of this  
12 subsection may be maintained in any form of data storage acceptable under 15 U.S.C.  
13 78q(a) if they are readily accessible to the administrator; and

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

17 (d) The records of a broker-dealer registered or required to be registered under  
18 this chapter and of an investment adviser registered or required to be registered under  
19 this chapter are subject to the reasonable periodic, special, or other audits or  
20 inspections by a representative of the administrator, in or outside this state, that the  
21 administrator considers necessary or appropriate in the public interest and for the  
22 protection of investors. An audit or inspection may be made at any time and without  
23 prior notice. The administrator may copy and remove for audit or inspection copies of  
24 all records the administrator reasonably considers necessary or appropriate to conduct  
25 the audit or inspection. The administrator may assess a reasonable charge for  
26 conducting an audit or inspection under this subsection.

27 (e) Subject to 15 U.S.C. 78o(i) or 80b-18a, a regulation adopted or order  
28 issued under this chapter may require a broker-dealer or investment adviser that has  
29 custody of or discretionary authority over funds or securities of a customer or client to  
30 obtain insurance or post a bond or other satisfactory form of security in an amount  
31 established by a regulation adopted under this chapter. The administrator may

1 determine the requirements of the insurance, bond, or other satisfactory form of  
2 security. Insurance or a bond or other satisfactory form of security may not be required  
3 of a broker-dealer registered under this chapter whose net capital exceeds, or of an  
4 investment adviser registered under this chapter whose minimum financial  
5 requirements exceed, the amounts required by a regulation adopted or order issued  
6 under this chapter. The insurance, bond, or other satisfactory form of security must  
7 permit an action by a person to enforce any liability on the insurance, bond, or other  
8 satisfactory form of security if instituted within the time limitations in  
9 AS 45.56.660(j)(2).

10 (f) Subject to 15 U.S.C. 78o(i) or 80b-18a, an agent may not have custody of  
11 funds or securities of a customer except under the supervision of a broker-dealer, and  
12 an investment adviser representative may not have custody of funds or securities of a  
13 client except under the supervision of an investment adviser or a federal covered  
14 investment adviser. A regulation adopted or order issued under this chapter may  
15 prohibit, limit, or impose conditions on a broker-dealer regarding custody of funds or  
16 securities of a customer and on an investment adviser regarding custody of securities  
17 or funds of a client.

18 (g) With respect to an investment adviser registered or required to be  
19 registered under this chapter, a regulation adopted or order issued under this chapter  
20 may require that information or other records be furnished or disseminated to clients  
21 or prospective clients in this state as necessary or appropriate in the public interest and  
22 for the protection of investors and advisory clients.

23 (h) A regulation adopted or order issued under this chapter may require an  
24 individual registered under AS 45.56.430 or 45.56.440 to participate in a continuing  
25 education program approved by the Securities and Exchange Commission and  
26 administered by a self-regulatory organization, or, in the absence of a continuing  
27 education program, a regulation adopted or order issued under this chapter may  
28 require continuing education for an individual registered under AS 45.56.440.

29 **Sec. 45.56.480. Denial, revocation, suspension, withdrawal, restriction,**  
30 **condition, or limitation of registration.** (a) If the administrator finds that the order is  
31 in the public interest and (d) of this section authorizes the action, an order issued under

1 this chapter may deny an application, or may condition or limit registration of an  
2 applicant to be a broker-dealer, agent, investment adviser, or investment adviser  
3 representative, and, if the applicant is a broker-dealer or investment adviser, of a  
4 partner, officer, director, or person having a similar status or performing similar  
5 functions, or a person directly or indirectly in control, of the broker-dealer or  
6 investment adviser.

7 (b) If the administrator finds that the order is in the public interest and (d) of  
8 this section authorizes the action, an order issued under this chapter may revoke,  
9 suspend, condition, or limit the registration of a registrant, and, if the registrant is a  
10 broker-dealer or investment adviser, of a partner, officer, director, or person having a  
11 similar status or performing similar functions, or a person directly or indirectly in  
12 control, of the broker-dealer or investment adviser. However, the administrator may  
13 not

14 (1) institute a revocation or suspension proceeding under this  
15 subsection based on an order issued under a law of another state that is reported to the  
16 administrator or a designee of the administrator more than three years after the date of  
17 the order on which it is based; or

18 (2) under (d)(5)(A) and (B) of this section, issue an order based on an  
19 order issued under the securities act of another state unless the other order was based  
20 on conduct for which (d) of this section would authorize the action had the conduct  
21 occurred in this state.

22 (c) If the administrator finds that the order is in the public interest and (d)(1) -  
23 (6), (8) - (10), (12), or (13) of this section authorize the action, an order under this  
24 chapter may censure, impose a bar, or impose a civil penalty of not more than  
25 \$100,000 for a single violation on a registrant and, if the registrant is a broker-dealer  
26 or investment adviser, on a partner, officer, director, or person having a similar status  
27 or performing similar functions, or on a person directly or indirectly in control of the  
28 broker-dealer or investment adviser.

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

30 (1) has filed, within the previous 10 years under this chapter or former  
31 AS 45.55, an application for registration in this state that, as of the effective date of

1 registration or as of any date after filing in the case of an order denying effectiveness,  
2 was incomplete in any material respect or contained a statement that, in light of the  
3 circumstances under which it was made, was false or misleading with respect to a  
4 material fact;

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

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

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

18 (5) is the subject of an order issued after notice and opportunity for  
19 hearing by

20 (A) the securities or other financial services regulator of a state  
21 or the Securities and Exchange Commission or other federal agency denying,  
22 revoking, barring, or suspending registration as a broker-dealer, agent,  
23 investment adviser, federal covered investment adviser, or investment adviser  
24 representative;

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

28 (C) the Securities and Exchange Commission or a self-  
29 regulatory organization suspending or expelling the registrant from  
30 membership in the self-regulatory organization;

31 (D) a court adjudicating a United States Postal Service fraud

1 order;

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

4 (F) a depository institution or financial services regulator  
5 suspending or barring the person from the depository institution or other  
6 financial services business;

7 (6) is the subject of an adjudication or determination, after notice and  
8 opportunity for hearing, by the Securities and Exchange Commission, the Commodity  
9 Futures Trading Commission, the Federal Trade Commission, a federal depository  
10 institution regulator, or a depository institution, insurance, or other financial services  
11 regulator of a state that the person wilfully violated 15 U.S.C. 77a - 77aa (Securities  
12 Act of 1933), 15 U.S.C. 78a - 78pp (Securities Exchange Act of 1934), 15 U.S.C. 80b-  
13 1 - 80b-21 (Investment Advisers Act of 1940), 15 U.S.C. 80a-1 - 80a-64 (Investment  
14 Company Act of 1940), or 7 U.S.C. 1 - 27 (Commodity Exchange Act), the securities  
15 or commodities law of a state, or a federal or state law under which a business  
16 involving investments, franchises, insurance, banking, or finance is regulated;

17 (7) is insolvent, either because the person's liabilities exceed the  
18 person's assets or because the person cannot meet the person's obligations as they  
19 mature, but the administrator may not enter an order against an applicant or registrant  
20 under this paragraph without a finding of insolvency as to the applicant or registrant;

21 (8) refuses to allow or otherwise impedes the administrator from  
22 conducting an audit or inspection under AS 45.56.475(d) or refuses access to a  
23 registrant's office to conduct an audit or inspection under AS 45.56.475(d);

24 (9) has failed to reasonably supervise an agent, investment adviser  
25 representative, or other individual, if the agent, investment adviser representative, or  
26 other individual was subject to the person's supervision and committed a violation of  
27 this chapter or former AS 45.55 or a regulation adopted or order issued under this  
28 chapter or former AS 45.55;

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

1 (11) after notice and opportunity for a hearing, has been found

2 (A) by a court of competent jurisdiction to have wilfully  
3 violated the laws of a foreign jurisdiction under which the business of  
4 securities, commodities, investment, franchises, insurance, banking, or finance  
5 is regulated;

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

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

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

16 (13) has engaged in dishonest or unethical practices in the securities,  
17 commodities, investment, franchise, banking, finance, or insurance business;

18 (14) is not qualified based on factors that may include training,  
19 experience, and knowledge of the securities business; however, in the case of an  
20 application by an agent for a broker-dealer that is a member of a self-regulatory  
21 organization or by an individual for registration as an investment adviser  
22 representative, a denial order may not be based on this paragraph if the individual has  
23 successfully completed all examinations required by (e) of this section; the  
24 administrator may require an applicant for registration under AS 45.56.430 or  
25 45.56.440 who has not been registered in a state within the two years preceding the  
26 filing of an application in this state to complete successfully an examination; or

27 (15) is a person whose license renewal is denied under AS 14.43.148  
28 or whose license issuance or renewal is denied under AS 25.27.244.

29 (e) A regulation adopted or order issued under this chapter may require that an  
30 examination, including an examination developed or approved by an organization of  
31 securities regulators, be successfully completed by a class of individuals or all

1 individuals. An order issued under this chapter may waive, in whole or in part, an  
2 examination as to an individual and a regulation adopted under this chapter may  
3 waive, in whole or in part, an examination as to a class of individuals if the  
4 administrator determines that the examination is not necessary or appropriate in the  
5 public interest and for the protection of investors.

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

17 (g) An order may not be issued under this section, except under (f) of this  
18 section, without appropriate notice to the applicant or registrant, and an opportunity  
19 for hearing under AS 45.56.650(c).

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

25 (i) The administrator may not institute a proceeding under (a) - (c) of this  
26 section based solely on material facts actually known by the administrator unless an  
27 investigation or the proceeding is instituted within one year after the administrator  
28 actually acquires knowledge of the material facts.

#### 29 **Article 5. Fraud and Liabilities.**

30 **Sec. 45.56.505. General fraud.** A person may not, in connection with the  
31 offer, sale, or purchase of a security, directly or indirectly,

1 (1) employ a device, scheme, or artifice to defraud;

2 (2) make an untrue statement of a material fact or omit to state a  
3 material fact necessary to make the statements made, in light of the circumstances  
4 under which they were made, not misleading; or

5 (3) engage in an act, practice, or course of business that operates or  
6 would operate as a fraud or deceit on another person.

7 **Sec. 45.56.510. Prohibited conduct in providing investment advice.** (a) A  
8 person that advises others for compensation, either directly or indirectly or through  
9 publications or writings, as to the value of securities or the advisability of investing in,  
10 purchasing, or selling securities or that, for compensation and as part of a regular  
11 business, issues or adopts analyses or reports relating to securities may not

12 (1) employ a device, scheme, or artifice to defraud another person; or

13 (2) engage in an act, practice, or course of business that operates or  
14 would operate as a fraud or deceit on another person.

15 (b) A regulation adopted under this chapter may define an act, practice, or  
16 course of business of an investment adviser or an investment adviser representative,  
17 other than a supervised person of a federal covered investment adviser, as fraudulent,  
18 deceptive, or manipulative and may prescribe means reasonably designed to prevent  
19 investment advisers and investment adviser representatives, other than supervised  
20 persons of a federal covered investment adviser, from engaging in acts, practices, and  
21 courses of business defined as fraudulent, deceptive, or manipulative.

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

25 **Sec. 45.56.520. Misleading filings.** A person may not, in a document filed  
26 with the administrator or in a proceeding under this chapter, make or cause to be made  
27 an untrue statement of a material fact or omit to state a material fact necessary in order  
28 to make the statements made, in the light of the circumstances under which they are  
29 made, not misleading.

30 **Sec. 45.56.530. Misrepresentations concerning registration or exemption.**  
31 The filing of an application for registration, a registration statement, a notice filing

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

10 **Sec. 45.56.540. Evidentiary burden.** (a) In a civil action or administrative  
11 proceeding under this chapter, a person claiming an exemption, exception,  
12 preemption, or exclusion has the burden to prove the applicability of the claim.

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

16 **Sec. 45.56.550. Filing of sales and advertising literature.** (a) Except as  
17 otherwise provided in (b) of this section, a regulation adopted or order issued under  
18 this chapter may require the filing of a prospectus, pamphlet, circular, form letter,  
19 advertisement, sales literature, or other advertising record relating to a security or  
20 investment advice, addressed or intended for distribution to prospective investors,  
21 including clients or prospective clients of a person registered or required to be  
22 registered as an investment adviser under this chapter.

23 (b) This section does not apply to sales and advertising literature specified in  
24 (a) of this section that relates to a federal covered security, a federal covered  
25 investment adviser, or a security or transaction exempted by AS 45.56.205, 45.56.210,  
26 45.56.220, or 45.56.240, except as required under AS 45.56.205(7).

27 (c) The administrator may by regulation or order prohibit the publication,  
28 circulation, or use of any advertising considered false or misleading.

29 **Sec. 45.56.560. Qualified immunity.** A broker-dealer, agent, investment  
30 adviser, federal covered investment adviser, or investment adviser representative is not  
31 liable to another broker-dealer, agent, investment adviser, federal covered investment

1 adviser, or investment adviser representative for defamation relating to a statement  
2 that is contained in a record required by the administrator, a designee of the  
3 administrator, the Securities and Exchange Commission, or a self-regulatory  
4 organization, unless the person knew, or should have known at the time the statement  
5 was made, that it was false in a material respect or the person acted in reckless  
6 disregard of the statement's truth or falsity.

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

8 **Sec. 45.56.605. Administration.** (a) The department shall administer this  
9 chapter.

10 (b) The administrator or an officer, employee, or designee of the administrator  
11 may not use for personal benefit or the benefit of others records or other information  
12 obtained by or filed with the administrator that is not public under AS 45.56.615(b).  
13 This chapter does not authorize the administrator or an officer, employee, or designee  
14 of the administrator to disclose the record or information, except in accordance with  
15 AS 45.56.615(c), 45.56.620, or 45.56.645.

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

18 (d) The administrator may develop and implement investor education  
19 initiatives to inform the public about investing in securities, with particular emphasis  
20 on the prevention and detection of securities fraud. In developing and implementing  
21 these initiatives, the administrator may collaborate with public and nonprofit  
22 organizations with an interest in investor education. The administrator may accept a  
23 grant or donation from a person that is not affiliated with the securities industry or  
24 from a nonprofit organization, regardless of whether the organization is affiliated with  
25 the securities industry, to develop and implement investor education initiatives. This  
26 subsection does not authorize the administrator to require participation or monetary  
27 contributions of a registrant in an investor education program.

28 **Sec. 45.56.610. Administrative files and opinions.** (a) The administrator shall  
29 maintain, or designate a person to maintain, a register of applications for registration  
30 of securities; registration statements; notice filings; applications for registration of  
31 broker-dealers, agents, investment advisors, and investment adviser representatives;

1 notice filings by federal covered investment advisors that are or have been effective  
2 under this chapter or former AS 45.55; notices of claims of exemption from  
3 registration or notice filing requirements contained in a record; orders issued under  
4 this chapter or former AS 45.55; and interpretative opinions or no-action  
5 determinations issued under this chapter. The register must be kept according to the  
6 existing retention schedule mandated by the department.

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

9 (c) The administrator shall furnish a copy of a record that is a public record or  
10 a certification that the public record does not exist to a person upon request. A copy of  
11 the record certified or a certificate by the administrator of a record's nonexistence is  
12 prima facie evidence of a record or its nonexistence.

13 **Sec. 45.56.615. Public records; confidentiality.** (a) Except as otherwise  
14 provided in (b) of this section, records obtained by the administrator or filed under this  
15 chapter, including a record contained in or filed with a registration statement,  
16 application, notice filing, or report are public records and are available for public  
17 examination under AS 40.25.100 - 40.25.295 (Alaska Public Records Act).

18 (b) The following records are not public records under AS 40.25.100 -  
19 40.25.295 (Alaska Public Records Act) and are not available for public examination  
20 under (a) of this section:

21 (1) a record obtained by the administrator in connection with an audit,  
22 examination or inspection under AS 45.56.475(d) or an investigation under  
23 AS 45.56.645;

24 (2) a part of a record filed in connection with a registration statement  
25 under AS 45.56.105 and 45.56.305 - 45.56.320 or a record under AS 45.56.475(d) that  
26 contains trade secrets or confidential information if the person filing the registration  
27 statement or report has asserted a claim of confidentiality or privilege that is  
28 authorized by law;

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

1 (4) a nonpublic record received from a person specified in  
2 AS 45.56.620(a); and

3 (5) a social security number, residential address unless used as a  
4 business address, and residential telephone number unless used as a business  
5 telephone number, contained in a record that is filed.

6 (c) If disclosure is for the purpose of a civil, administrative, or criminal  
7 investigation, action, or proceeding or to a person specified in AS 45.56.620(a), the  
8 administrator may disclose a record obtained in connection with an audit or inspection  
9 under AS 45.56.475(d) or a record obtained in connection with an investigation under  
10 AS 45.56.645.

11 **Sec. 45.56.620. Uniformity and cooperation with other agencies.** (a) The  
12 administrator may cooperate, coordinate, consult, and, subject to AS 45.56.615, share  
13 records and information with the securities regulator of another state, Canada, a  
14 Canadian province or territory, a foreign jurisdiction, the Securities and Exchange  
15 Commission, the United States Department of Justice, the Commodity Futures  
16 Trading Commission, the Federal Trade Commission, the Securities Investor  
17 Protection Corporation, a self-regulatory organization, a national or international  
18 organization of securities regulators, a federal or state banking and insurance  
19 regulator, and a governmental law enforcement agency to bring about greater  
20 uniformity in securities matters among the federal government, self-regulatory  
21 organizations, states, and foreign governments.

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

26 (1) maximizing effectiveness of regulation for the protection of  
27 investors;

28 (2) maximizing uniformity in federal and state regulatory standards;  
29 and

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

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

3 (1) establishing or employing one or more designees as a central  
4 depository for registration and notice filings under this chapter and for records  
5 required or allowed to be maintained under this chapter;

6 (2) developing and maintaining uniform forms;

7 (3) conducting a joint examination or investigation;

8 (4) holding a joint administrative hearing;

9 (5) instituting and prosecuting a joint civil or administrative  
10 proceeding;

11 (6) sharing and exchanging personnel;

12 (7) coordinating registrations under AS 45.56.105 and 45.56.405 -  
13 45.56.440 and exemptions under AS 45.56.240;

14 (8) sharing and exchanging records, subject to AS 45.56.615;

15 (9) formulating regulations, statements of policy, guidelines, forms,  
16 and interpretative opinions and releases;

17 (10) formulating common systems and procedures;

18 (11) notifying the public of proposed regulations, forms, statements of  
19 policy, and guidelines;

20 (12) attending conferences and other meetings among securities  
21 regulators, that may include representatives of governmental and private sector  
22 organizations involved in capital formation, considered necessary or appropriate to  
23 promote or achieve uniformity; and

24 (13) developing and maintaining a uniform exemption from  
25 registration for small issuers and taking other steps to reduce the burden of raising  
26 investment capital by small businesses.

27 **Sec. 45.56.625. Securities investor education and training fund.** The  
28 securities investor education and training fund is created as a special fund in the  
29 general fund to provide funds for the purposes specified in 45.56.605(d). The  
30 legislature may appropriate 33 percent of the money received by this state from civil  
31 penalties under this chapter into the fund for securities investor education and training.

1 Nothing in this section exempts money deposited into the fund from the requirements  
2 of AS 37.07 (Executive Budget Act) or dedicates money for a specific purpose.

3 **Sec. 45.56.630. Service of process.** (a) A consent to service of process  
4 complying with this section required by this chapter shall be signed and filed in the  
5 form required by a regulation adopted or order issued under this chapter. A consent  
6 appointing the administrator the person's agent for service of process in a noncriminal  
7 action or proceeding against the person or the person's successor or personal  
8 representative under this chapter or a regulation adopted or order issued under this  
9 chapter after the consent is filed has the same force and validity as if the service were  
10 made personally on the person filing the consent. A person that has filed a consent  
11 under this subsection in connection with a previous application for registration or  
12 notice filing need not file an additional consent.

13 (b) If a person, including a nonresident of this state, engages in an act,  
14 practice, or course of business prohibited or made actionable by this chapter or a  
15 regulation adopted or order issued under this chapter and the person has not filed a  
16 consent to service of process under (a) of this section, the act, practice, or course of  
17 business constitutes the appointment of the administrator as the person's agent for  
18 service of process in a noncriminal action or proceeding against the person or the  
19 person's successor or personal representative.

20 (c) Service under (a) or (b) of this section may be made by providing a copy of  
21 the process to the office of the administrator, but the service is not effective unless

22 (1) the plaintiff, which may be the administrator, promptly sends  
23 notice of the service and a copy of the process, return receipt requested, to the  
24 defendant or respondent at the address set out in the consent to service of process or, if  
25 a consent to service of process has not been filed, at the last known address, or takes  
26 other reasonable steps to give notice; and

27 (2) the plaintiff files an affidavit of compliance with this subsection in  
28 the action or proceeding on or before the return day of the process, if any, or within  
29 the time that the court, or the administrator in a proceeding before the administrator,  
30 allows.

31 (d) Service under (c) of this section may be used in a proceeding before the

1 administrator or by the administrator in a civil action in which the administrator is the  
2 moving party.

3 (e) If process is served under (c) of this section, the court, or the administrator  
4 in a proceeding before the administrator, shall order continuances as are necessary or  
5 appropriate to afford the defendant or respondent reasonable opportunity to defend.

6 **Sec. 45.56.635. Applicability of the chapter.** (a) Unless the persons are  
7 exempt elsewhere in this chapter, this chapter applies to persons who buy or offer to  
8 buy when an offer to

9 (1) buy is made in this state; or

10 (2) sell is made and accepted in this state.

11 (b) Unless the person is exempt elsewhere in this chapter, this chapter applies  
12 to a person who sells or offers to sell when an offer to

13 (1) sell is made in this state; or

14 (2) buy is made and accepted in this state.

15 (c) For the purpose of this section, an offer to sell or to buy is made in this  
16 state, whether or not either party is then present in this state, when the offer

17 (1) originates from this state;

18 (2) is directed by the offeror to this state and received at the place to  
19 which it is directed or at a post office in this state in the case of a mailed offer;

20 (3) is for an interest or participation in an oil, gas, or mining right, title,  
21 or lease on land in this state, including submerged land, regardless of where the offer  
22 is made;

23 (4) is for an interest or participation in payments out of production  
24 under an oil, gas, or mining right, title, or lease on land in this state, including  
25 submerged land, regardless of where the offer is made;

26 (5) is for an interest or participation in real property located in this  
27 state, or in a corporation, a partnership, a limited liability company, a limited  
28 partnership, a limited liability partnership, an association, or a joint-stock company;  
29 jurisdiction under this paragraph may be exercised only when the exercise is  
30 consistent with the constitution of this state or of the United States.

31 (d) For the purpose of this section, an offer to buy or to sell is accepted in this

1 state when acceptance is communicated to the offeror in this state and has not  
2 previously been communicated to the offeror, orally or in writing, outside this state.  
3 Acceptance is communicated to the offeror in this state, whether or not either party is  
4 then present in this state, when the offeree directs the acceptance to the offeror in this  
5 state reasonably believing the offeror to be in this state and the acceptance is received  
6 at the place to which it is directed or, in the case of a mailed acceptance, at a post  
7 office in this state.

8 (e) This chapter applies to investment advisers, federal covered advisers, and  
9 investment adviser representatives when any act instrumental in effecting prohibited  
10 conduct is done in this state, regardless of whether either party is then present in this  
11 state.

12 **Sec. 45.56.640. Regulations, forms, orders, interpretative opinions, and**  
13 **hearings.** (a) The administrator may

14 (1) issue forms and orders; after notice and comment, adopt and amend  
15 regulations necessary or appropriate to carry out this chapter; and repeal regulations,  
16 including regulations and forms governing registration statements, applications, notice  
17 filings, reports, and other records;

18 (2) by regulation, define terms, whether or not used in this chapter, but  
19 those definitions may not be inconsistent with this chapter; and

20 (3) by regulation, classify securities, persons, and transactions and  
21 adopt different requirements for different classes.

22 (b) Under this chapter, a regulation or form may not be adopted or amended,  
23 or an order issued or amended, unless the administrator finds that the regulation, form,  
24 order, or amendment is necessary or appropriate in the public interest or for the  
25 protection of investors and is consistent with the purposes intended by this chapter. In  
26 adopting, amending, and repealing regulations and forms, AS 45.56.620 applies to  
27 achieve uniformity among the states and coordination with federal laws in the form  
28 and content of registration statements, applications, reports, and other records,  
29 including the adoption of uniform rules, forms, and procedures.

30 (c) Subject to 15 U.S.C. 78o(i) and 80b-18a, the administrator may require  
31 that a financial statement filed under this chapter be prepared in accordance with

1 (5) an individual who represents an issuer that effects transactions  
2 solely in federal covered securities of the issuer, but an individual who effects  
3 transactions in a federal covered security under 15 U.S.C. 77r(b)(3) or (b)(4)(D)  
4 (Securities Act of 1933) is not exempt if the individual is compensated in connection  
5 with the agent's participation by the payment of commissions or other remuneration  
6 based, directly or indirectly, on transactions in those securities;

7 (6) an individual who represents a broker-dealer registered in this state  
8 under AS 45.56.405(a) or exempt from registration under AS 45.56.405(b) in the offer  
9 and sale of securities for an account of a nonaffiliated federal covered investment  
10 adviser with investments under management in excess of \$100,000,000 acting for the  
11 account of others under discretionary authority in a signed record;

12 (7) an individual who represents an issuer in connection with the  
13 purchase of the issuer's own securities;

14 (8) an individual who represents an issuer and who restricts  
15 participation to performing clerical or ministerial acts; or

16 (9) any other individual exempted by a regulation adopted or order  
17 issued under this chapter.

18 (c) The registration of an agent is effective only while the agent is employed  
19 by or associated with a broker-dealer registered under this chapter or an issuer that is  
20 offering, selling, or purchasing the issuer's securities in this state.

21 (d) A broker-dealer or an issuer engaged in offering, selling, or purchasing  
22 securities in this state may not employ or associate with an agent who transacts  
23 business in this state on behalf of broker-dealers or issuers unless the agent is  
24 registered under (a) of this section or exempt from registration under (b) of this  
25 section.

26 (e) An individual may not act as an agent for more than one broker-dealer or  
27 one issuer at a time, unless the broker-dealer or the issuer for which the agent acts is  
28 affiliated by direct or indirect common control or is authorized by a regulation or order  
29 issued under this chapter.

30 **Sec. 45.56.435. Investment adviser registration requirement and**  
31 **exemptions.** (a) A person may not transact business in this state as an investment

1 adviser unless the person is registered under this chapter as an investment adviser or is  
2 exempt from registration as an investment adviser under (b) of this section.

3 (b) The following persons are exempt from the registration requirement in (a)  
4 of this section:

5 (1) a person without a place of business in this state that is registered  
6 under the securities act of the state in which the person has the person's principal place  
7 of business if the person's only clients in this state are

8 (A) federal covered investment advisers, investment advisers  
9 registered under this chapter, or broker-dealers registered under this chapter;

10 (B) institutional investors;

11 (C) bona fide preexisting clients whose principal places of  
12 residence are not in this state if the investment adviser is registered under the  
13 securities act of the state in which the clients maintain principal places of  
14 residence; or

15 (D) exempt by a regulation adopted or order issued under this  
16 chapter;

17 (2) a person without a place of business in this state if the person has  
18 had, during the preceding 12 months, not more than five clients that are resident in this  
19 state in addition to those specified under (1) of this subsection; or

20 (3) any other person exempted by a regulation adopted or order issued  
21 under this chapter.

22 (c) An investment adviser may not, directly or indirectly, employ or associate  
23 with an individual to engage in an activity related to investment advice in this state if  
24 the registration of the individual is suspended or revoked or the individual is barred  
25 from employment or association with an investment adviser, federal covered  
26 investment adviser, or broker-dealer by an order under this chapter, the Securities and  
27 Exchange Commission, or a self-regulatory organization, unless the investment  
28 adviser did not know and, in the exercise of reasonable care, could not have known of  
29 the suspension, revocation, or bar. Upon request from the investment adviser and for  
30 good cause, the administrator may by order, waive, in whole or in part, the application  
31 of the prohibitions of this subsection to the investment adviser.

1 (d) An investment adviser may not employ or associate with an individual  
2 required to be registered under this chapter as an investment adviser representative  
3 who transacts business in this state on behalf of the investment adviser unless the  
4 individual is registered under AS 45.56.440(a) or is exempt from registration under  
5 AS 45.56.440(b).

6 **Sec. 45.56.440. Investment adviser representative registration requirement**  
7 **and exemptions.** (a) An individual may not transact business in this state as an  
8 investment adviser representative unless the individual is registered under this chapter  
9 as an investment adviser representative or is exempt from registration as an investment  
10 adviser representative under (b) of this section.

11 (b) The following individuals are exempt from the registration requirement of  
12 (a) of this section:

13 (1) an individual who is employed by or associated with an investment  
14 adviser that is exempt from registration under AS 45.56.435(b) or a federal covered  
15 investment adviser that is excluded from the notice filing requirements of  
16 AS 45.56.445; and

17 (2) any other individual exempted by a regulation adopted or order  
18 issued under this chapter.

19 (c) The registration of an investment adviser representative is not effective  
20 while the investment adviser representative is not employed by or associated with an  
21 investment adviser registered under this chapter or a federal covered investment  
22 adviser that has made or is required to make a notice filing under AS 45.56.445.

23 (d) An individual may transact business as an investment adviser  
24 representative for more than one investment adviser or federal covered investment  
25 adviser unless a regulation adopted or order issued under this chapter prohibits or  
26 limits an individual from acting as an investment adviser representative for more than  
27 one investment adviser or federal covered investment adviser.

28 (e) An individual acting as an investment adviser representative may not,  
29 directly or indirectly, conduct business in this state on behalf of an investment adviser  
30 or a federal covered investment adviser if the registration of the individual as an  
31 investment adviser representative is suspended or revoked or the individual is barred

1 from employment or association with an investment adviser or a federal covered  
2 investment adviser by an order under this chapter, the Securities and Exchange  
3 Commission, or a self-regulatory organization. Upon request from a federal covered  
4 investment adviser and for good cause, the administrator may by order, waive, in  
5 whole or in part, the application of the requirements of this subsection to the federal  
6 covered investment adviser.

7 (f) An investment adviser registered under this chapter, a federal covered  
8 investment adviser that has filed a notice under AS 45.56.445, or a broker-dealer  
9 registered under this chapter is not required to employ or associate with an individual  
10 as an investment adviser representative if the only compensation paid to the individual  
11 for a referral of investment advisory clients is paid to an investment adviser registered  
12 under this chapter, a federal covered investment adviser who has filed a notice under  
13 AS 45.56.445, or a broker-dealer registered under this chapter with which the  
14 individual is employed or associated as an investment adviser representative.

15 **Sec. 45.56.445. Federal covered investment adviser notice filing**  
16 **requirement.** (a) Except with respect to a federal covered investment adviser  
17 described in (b) of this section, a federal covered investment adviser may not transact  
18 business in this state as a federal covered investment adviser unless the federal  
19 covered investment adviser complies with (c) of this section.

20 (b) The following federal covered investment advisers are not required to  
21 comply with (c) of this section:

22 (1) a federal covered investment adviser without a place of business in  
23 this state if the only clients of the federal covered investment adviser in this state are

24 (A) federal covered investment advisers, investment advisers  
25 registered under this chapter, and broker-dealers registered under this chapter;

26 (B) institutional investors;

27 (C) bona fide preexisting clients whose principal places of  
28 residence are not in this state; or

29 (D) other clients specified by a regulation adopted or order  
30 issued under this chapter;

31 (2) a federal covered investment adviser without a place of business in

1 this state if the person has had, during the preceding 12 months, not more than five  
2 clients that are resident in this state in addition to those specified under (1) of this  
3 subsection; and

4 (3) any other person excluded by a regulation adopted or order issued  
5 under this chapter.

6 (c) A person acting as a federal covered investment adviser not excluded  
7 under (b) of this section shall file a notice, a consent to service of process complying  
8 with AS 45.56.630, and the records that have been filed with the Securities and  
9 Exchange Commission under 15 U.S.C. 80b-1 - 80b-21 (Investment Advisers Act of  
10 1940) as required by a regulation adopted or order issued under this chapter and shall  
11 pay the fees specified by regulation adopted under AS 45.56.470.

12 (d) The notice under (c) of this section becomes effective upon filing.

13 **Sec. 45.56.450. Registration by broker-dealer, agent, investment adviser,**  
14 **and investment adviser representative.** (a) A person shall register as a broker-dealer,  
15 agent, investment adviser, or investment adviser representative by filing an application  
16 and a consent to service of process complying with AS 45.56.630 and by paying the  
17 fee specified in AS 45.56.470 and any reasonable fees charged by the designee of the  
18 administrator for processing the filing. The application must contain

19 (1) the information or record required for the filing of a uniform  
20 application; and

21 (2) upon request by the administrator, any other financial or other  
22 information or record that the administrator determines is appropriate.

23 (b) If the information or record contained in an application filed under (a) of  
24 this section is or becomes inaccurate or incomplete in a material respect, the registrant  
25 shall promptly file a correcting amendment.

26 (c) If an order is not in effect, and a proceeding is not pending under  
27 AS 45.56.480, and the administrator has not initiated an investigation, registration  
28 becomes effective at noon on the 45th day after a completed application is filed, unless  
29 the registration is denied. A regulation adopted or order issued under this chapter may  
30 set an earlier effective date or may defer the effective date until noon on the 45th day  
31 after the filing of any amendment completing the application.

1 (d) A registration is effective until midnight on December 31 of the year for  
2 which the application for registration is filed. Unless an order is in effect under  
3 AS 45.56.480, a registration may be automatically renewed each year by filing the  
4 records required by a regulation adopted or order issued under this chapter, by paying  
5 the fee specified in AS 45.56.470, and by paying costs charged by the designee of the  
6 administrator for processing the filings.

7 (e) A regulation adopted or order issued under this chapter may impose other  
8 conditions, not inconsistent with 15 U.S.C. 77b, 77c, 77e, 77f, 77r, 77z-3, 77ddd, 78b  
9 - 78d, 78g, 78h, 78n, 78o, 78q, 78bb, 78ee, 78kk, 78mm, 80a-2, 80a-3, 80a-6, 80a-12,  
10 80a-24, 80a-26, 80a-27, 80a-29, 80a-30, 80a-34, 80a-51, 80a-54, 80a-60, 80a-63, 80b-  
11 2, 80b-3a, 80b-5, 80b-10, 80b-18a, and 80b-20, and 29 U.S.C. 1002 (National  
12 Securities Markets Improvement Act of 1996). An order issued under this chapter may  
13 waive, in whole or in part, specific requirements in connection with registration that  
14 are in the public interest and for the protection of investors.

15 **Sec. 45.56.455. Succession and change in registration of broker-dealer or**  
16 **investment adviser.** (a) A broker-dealer or investment adviser may succeed to the  
17 current registration of another broker-dealer or investment adviser or a notice filing of  
18 a federal covered investment adviser, and a federal covered investment adviser may  
19 succeed to the current registration of an investment adviser or notice filing of another  
20 federal covered investment adviser, by filing as a successor an application for  
21 registration under AS 45.56.405 or 45.56.435 or a notice under AS 45.56.445 for the  
22 unexpired portion of the current registration or notice filing.

23 (b) A broker-dealer or investment adviser that changes its form of  
24 organization or state of incorporation or organization may continue its registration by  
25 filing an amendment to its registration if the change does not involve a material  
26 change in its financial condition or management. The amendment becomes effective  
27 when filed or on a date designated by the registrant in its filing. The new organization  
28 is a successor to the original registrant for the purposes of this chapter. If there is a  
29 material change in financial condition or management, the broker-dealer or investment  
30 adviser shall file a new application for registration. A predecessor registered under this  
31 chapter shall stop conducting its securities business other than winding down

1 transactions and shall file for withdrawal of broker-dealer or investment adviser  
2 registration within 45 days after filing its amendment to effect succession.

3 (c) A broker-dealer or investment adviser that changes its name may continue  
4 its registration by filing an amendment to its registration. The amendment becomes  
5 effective when filed or on a date designated by the registrant.

6 (d) A change of control of a broker-dealer or investment adviser may be made  
7 in accordance with a regulation adopted or order issued under this chapter.

8 **Sec. 45.56.460. Termination of employment or association of agent and**  
9 **investment adviser representative and transfer of employment or association.** (a)

10 If an agent registered under this chapter terminates employment by or association with  
11 a broker-dealer or issuer, or if an investment adviser representative registered under  
12 this chapter terminates employment by or association with an investment adviser or  
13 federal covered investment adviser, or if either registrant terminates activities that  
14 require registration as an agent or investment adviser representative, the broker-dealer,  
15 issuer, investment adviser, or federal covered investment adviser shall promptly file a  
16 notice of termination. The registrant may file the notice of termination if the registrant  
17 learns that the broker-dealer, issuer, investment adviser, or federal covered investment  
18 adviser has not filed the notice.

19 (b) If an agent registered under this chapter terminates employment by or  
20 association with a broker-dealer registered under this chapter and begins employment  
21 by or association with another broker-dealer registered under this chapter, or if an  
22 investment adviser representative registered under this chapter terminates employment  
23 by or association with an investment adviser registered under this chapter or a federal  
24 covered investment adviser that has filed a notice under AS 45.56.445 and begins  
25 employment by or association with another investment adviser registered under this  
26 chapter or a federal covered investment adviser that has filed a notice under  
27 AS 45.56.445, then, within 30 days after the termination, upon the filing by or on  
28 behalf of the registrant of an application for registration that complies with the  
29 requirement of AS 45.56.450(a) and payment of the filing fee required under  
30 AS 45.56.470, the registration of the agent or investment adviser representative is

31 (1) immediately effective as of the date of the completed filing, if the

1 agent's record or successor record in the Central Registration Depository operated by  
2 the Financial Industry Regulatory Authority or the investment adviser representative's  
3 record or successor record in the Investment Adviser Registration Depository operated  
4 by the Financial Industry Regulatory Authority does not contain a new or amended  
5 disciplinary disclosure within the previous 12 months; or

6 (2) temporarily effective as of the date of the completed filing, if the  
7 agent's record or successor record in the Central Registration Depository operated by  
8 the Financial Industry Regulatory Authority or the investment adviser representative's  
9 record or successor record in the Investment Adviser Registration Depository operated  
10 by the Financial Industry Regulatory Authority contains a new or amended  
11 disciplinary disclosure within the preceding 12 months.

12 (c) The administrator may withdraw a temporary registration if there are or  
13 were grounds for discipline as specified in AS 45.56.480 and the administrator does so  
14 within 30 days after the filing of the application. If the administrator does not  
15 withdraw the temporary registration within the 30-day period, registration becomes  
16 automatically effective on the 31st day after filing.

17 (d) The administrator may prevent the effectiveness of a transfer of an agent  
18 or investment adviser representative under (b)(1) or (2) of this section based on the  
19 public interest and the protection of investors.

20 (e) If the administrator determines that a registrant or applicant for registration  
21 is no longer in existence, has ceased to act as a broker-dealer, agent, investment  
22 adviser, or investment adviser representative, is the subject of an adjudication of  
23 incapacity, is subject to the control of a committee, conservator, or guardian, or cannot  
24 reasonably be located, a regulation adopted or order issued under this chapter may  
25 require that the registration be cancelled or terminated or the application be denied.  
26 The administrator may reinstate a cancelled or terminated registration, with or without  
27 hearing, and may make the registration retroactive.

28 **Sec. 45.56.465. Withdrawal of registration of broker-dealer, agent,**  
29 **investment adviser, and investment adviser representative.** Withdrawal of  
30 registration by a broker-dealer, agent, investment adviser, or investment adviser  
31 representative becomes effective 60 days after the filing of the application to withdraw

1 or within any shorter period as provided by a regulation adopted or order issued under  
2 this chapter unless a revocation or suspension proceeding is pending when the  
3 application is filed. If a proceeding is pending, withdrawal becomes effective when  
4 and upon the conditions required by a regulation adopted or order issued under this  
5 chapter. The administrator may institute a revocation or suspension proceeding under  
6 AS 45.56.480 within one year after the withdrawal became effective automatically and  
7 issue a revocation or suspension order as of the last date on which registration was  
8 effective if a proceeding is not pending.

9 **Sec. 45.56.470. Filing fees.** (a) The administrator shall establish fees by  
10 regulation for

11 (1) an initial filing of an application as a broker-dealer and renewal of  
12 an application by a broker-dealer for registration;

13 (2) an application for registration as an agent and renewal of  
14 registration as an agent;

15 (3) an application for registration as an investment adviser and renewal  
16 of registration as an investment adviser;

17 (4) an application for registration as an investment adviser  
18 representative, a renewal of registration as an investment adviser representative, and a  
19 change of registration as an investment adviser representative; and

20 (5) an initial fee and annual notice fee for a federal covered investment  
21 adviser required to file a notice under AS 45.56.445.

22 (b) A person required to pay a filing or notice fee under this section may  
23 transmit the fee through or to a designee as provided by a regulation adopted or order  
24 issued under this chapter.

25 **Sec. 45.56.475. Post registration requirements.** (a) Subject to 15 U.S.C.  
26 78o(i) or 80b-18a, a regulation adopted or order issued under this chapter may  
27 establish minimum financial requirements for broker-dealers registered or required to  
28 be registered under this chapter and investment advisers registered or required to be  
29 registered under this chapter.

30 (b) Subject to 15 U.S.C. 78o(i) or 80b-18a, a broker-dealer registered or  
31 required to be registered under this chapter and an investment adviser registered or

1 required to be registered under this chapter shall file the financial reports required by a  
2 regulation adopted or order issued under this chapter. If the information contained in a  
3 record filed under this subsection is or becomes inaccurate or incomplete in a material  
4 respect, the registrant shall promptly file a correcting amendment.

5 (c) Subject to 15 U.S.C. 78o(i) or 80b-18a,

6 (1) a broker-dealer registered or required to be registered under this  
7 chapter and an investment adviser registered or required to be registered under this  
8 chapter shall make and maintain the accounts, correspondence, memoranda, papers,  
9 books, and other records required by a regulation adopted or order issued under this  
10 chapter;

11 (2) broker-dealer records required to be maintained under (1) of this  
12 subsection may be maintained in any form of data storage acceptable under 15 U.S.C.  
13 78q(a) if they are readily accessible to the administrator; and

14 (3) investment adviser records required to be maintained under (1) of  
15 this subsection may be maintained in any form of data storage required by a regulation  
16 adopted or order issued under this chapter.

17 (d) The records of a broker-dealer registered or required to be registered under  
18 this chapter and of an investment adviser registered or required to be registered under  
19 this chapter are subject to the reasonable periodic, special, or other audits or  
20 inspections by a representative of the administrator, in or outside this state, that the  
21 administrator considers necessary or appropriate in the public interest and for the  
22 protection of investors. An audit or inspection may be made at any time and without  
23 prior notice. The administrator may copy and remove for audit or inspection copies of  
24 all records the administrator reasonably considers necessary or appropriate to conduct  
25 the audit or inspection. The administrator may assess a reasonable charge for  
26 conducting an audit or inspection under this subsection.

27 (e) Subject to 15 U.S.C. 78o(i) or 80b-18a, a regulation adopted or order  
28 issued under this chapter may require a broker-dealer or investment adviser that has  
29 custody of or discretionary authority over funds or securities of a customer or client to  
30 obtain insurance or post a bond or other satisfactory form of security in an amount  
31 established by a regulation adopted under this chapter. The administrator may

1 determine the requirements of the insurance, bond, or other satisfactory form of  
2 security. Insurance or a bond or other satisfactory form of security may not be required  
3 of a broker-dealer registered under this chapter whose net capital exceeds, or of an  
4 investment adviser registered under this chapter whose minimum financial  
5 requirements exceed, the amounts required by a regulation adopted or order issued  
6 under this chapter. The insurance, bond, or other satisfactory form of security must  
7 permit an action by a person to enforce any liability on the insurance, bond, or other  
8 satisfactory form of security if instituted within the time limitations in  
9 AS 45.56.660(j)(2).

10 (f) Subject to 15 U.S.C. 78o(i) or 80b-18a, an agent may not have custody of  
11 funds or securities of a customer except under the supervision of a broker-dealer, and  
12 an investment adviser representative may not have custody of funds or securities of a  
13 client except under the supervision of an investment adviser or a federal covered  
14 investment adviser. A regulation adopted or order issued under this chapter may  
15 prohibit, limit, or impose conditions on a broker-dealer regarding custody of funds or  
16 securities of a customer and on an investment adviser regarding custody of securities  
17 or funds of a client.

18 (g) With respect to an investment adviser registered or required to be  
19 registered under this chapter, a regulation adopted or order issued under this chapter  
20 may require that information or other records be furnished or disseminated to clients  
21 or prospective clients in this state as necessary or appropriate in the public interest and  
22 for the protection of investors and advisory clients.

23 (h) A regulation adopted or order issued under this chapter may require an  
24 individual registered under AS 45.56.430 or 45.56.440 to participate in a continuing  
25 education program approved by the Securities and Exchange Commission and  
26 administered by a self-regulatory organization, or, in the absence of a continuing  
27 education program, a regulation adopted or order issued under this chapter may  
28 require continuing education for an individual registered under AS 45.56.440.

29 **Sec. 45.56.480. Denial, revocation, suspension, withdrawal, restriction,**  
30 **condition, or limitation of registration.** (a) If the administrator finds that the order is  
31 in the public interest and (d) of this section authorizes the action, an order issued under

1 this chapter may deny an application, or may condition or limit registration of an  
2 applicant to be a broker-dealer, agent, investment adviser, or investment adviser  
3 representative, and, if the applicant is a broker-dealer or investment adviser, of a  
4 partner, officer, director, or person having a similar status or performing similar  
5 functions, or a person directly or indirectly in control, of the broker-dealer or  
6 investment adviser.

7 (b) If the administrator finds that the order is in the public interest and (d) of  
8 this section authorizes the action, an order issued under this chapter may revoke,  
9 suspend, condition, or limit the registration of a registrant, and, if the registrant is a  
10 broker-dealer or investment adviser, of a partner, officer, director, or person having a  
11 similar status or performing similar functions, or a person directly or indirectly in  
12 control, of the broker-dealer or investment adviser. However, the administrator may  
13 not

14 (1) institute a revocation or suspension proceeding under this  
15 subsection based on an order issued under a law of another state that is reported to the  
16 administrator or a designee of the administrator more than three years after the date of  
17 the order on which it is based; or

18 (2) under (d)(5)(A) and (B) of this section, issue an order based on an  
19 order issued under the securities act of another state unless the other order was based  
20 on conduct for which (d) of this section would authorize the action had the conduct  
21 occurred in this state.

22 (c) If the administrator finds that the order is in the public interest and (d)(1) -  
23 (6), (8) - (10), (12), or (13) of this section authorize the action, an order under this  
24 chapter may censure, impose a bar, or impose a civil penalty of not more than  
25 \$100,000 for a single violation on a registrant and, if the registrant is a broker-dealer  
26 or investment adviser, on a partner, officer, director, or person having a similar status  
27 or performing similar functions, or on a person directly or indirectly in control of the  
28 broker-dealer or investment adviser.

29 (d) A person may be disciplined under (a) - (c) of this section if the person

30 (1) has filed, within the previous 10 years under this chapter or former  
31 AS 45.55, an application for registration in this state that, as of the effective date of

1 registration or as of any date after filing in the case of an order denying effectiveness,  
2 was incomplete in any material respect or contained a statement that, in light of the  
3 circumstances under which it was made, was false or misleading with respect to a  
4 material fact;

5 (2) wilfully violated or wilfully failed to comply with this chapter or  
6 former AS 45.55 or a regulation adopted or order issued under this chapter or former  
7 AS 45.55 within the previous 10 years;

8 (3) has been convicted of a felony or within the previous 10 years has  
9 been convicted of a misdemeanor involving a security, a commodity future or option  
10 contract, or an aspect of a business involving securities, commodities, investments,  
11 franchises, insurance, banking, or finance;

12 (4) is enjoined or restrained by a court of competent jurisdiction in an  
13 action instituted by the administrator under this chapter or former AS 45.55, by a state,  
14 by the Securities and Exchange Commission, or by the United States from engaging in  
15 or continuing an act, practice, or course of business involving an aspect of a business  
16 involving securities, commodities, investments, franchises, insurance, banking, or  
17 finance;

18 (5) is the subject of an order issued after notice and opportunity for  
19 hearing by

20 (A) the securities or other financial services regulator of a state  
21 or the Securities and Exchange Commission or other federal agency denying,  
22 revoking, barring, or suspending registration as a broker-dealer, agent,  
23 investment adviser, federal covered investment adviser, or investment adviser  
24 representative;

25 (B) the securities regulator of a state or the Securities and  
26 Exchange Commission against a broker-dealer, agent, investment adviser,  
27 investment adviser representative, or federal covered investment adviser;

28 (C) the Securities and Exchange Commission or a self-  
29 regulatory organization suspending or expelling the registrant from  
30 membership in the self-regulatory organization;

31 (D) a court adjudicating a United States Postal Service fraud

1 order;

2 (E) the insurance regulator of a state denying, suspending, or  
3 revoking registration as an insurance agent; or

4 (F) a depository institution or financial services regulator  
5 suspending or barring the person from the depository institution or other  
6 financial services business;

7 (6) is the subject of an adjudication or determination, after notice and  
8 opportunity for hearing, by the Securities and Exchange Commission, the Commodity  
9 Futures Trading Commission, the Federal Trade Commission, a federal depository  
10 institution regulator, or a depository institution, insurance, or other financial services  
11 regulator of a state that the person wilfully violated 15 U.S.C. 77a - 77aa (Securities  
12 Act of 1933), 15 U.S.C. 78a - 78pp (Securities Exchange Act of 1934), 15 U.S.C. 80b-  
13 1 - 80b-21 (Investment Advisers Act of 1940), 15 U.S.C. 80a-1 - 80a-64 (Investment  
14 Company Act of 1940), or 7 U.S.C. 1 - 27 (Commodity Exchange Act), the securities  
15 or commodities law of a state, or a federal or state law under which a business  
16 involving investments, franchises, insurance, banking, or finance is regulated;

17 (7) is insolvent, either because the person's liabilities exceed the  
18 person's assets or because the person cannot meet the person's obligations as they  
19 mature, but the administrator may not enter an order against an applicant or registrant  
20 under this paragraph without a finding of insolvency as to the applicant or registrant;

21 (8) refuses to allow or otherwise impedes the administrator from  
22 conducting an audit or inspection under AS 45.56.475(d) or refuses access to a  
23 registrant's office to conduct an audit or inspection under AS 45.56.475(d);

24 (9) has failed to reasonably supervise an agent, investment adviser  
25 representative, or other individual, if the agent, investment adviser representative, or  
26 other individual was subject to the person's supervision and committed a violation of  
27 this chapter or former AS 45.55 or a regulation adopted or order issued under this  
28 chapter or former AS 45.55;

29 (10) has not paid the proper filing fee within 30 days after having been  
30 notified by the administrator of a deficiency, but the administrator shall vacate an  
31 order under this paragraph when the deficiency is corrected;

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(11) after notice and opportunity for a hearing, has been found  
(A) by a court of competent jurisdiction to have wilfully violated the laws of a foreign jurisdiction under which the business of securities, commodities, investment, franchises, insurance, banking, or finance is regulated;

(B) to have been the subject of an order of a securities regulator of a foreign jurisdiction denying, revoking, or suspending the right to engage in the business of securities as a broker-dealer, agent, investment adviser, investment adviser representative, or similar person; or

(C) to have been suspended or expelled from membership by or participation in a securities exchange or securities association operating under the securities laws of a foreign jurisdiction;

(12) is the subject of a cease and desist order issued by the Securities and Exchange Commission or issued under the securities, commodities, investment, franchise, banking, finance, or insurance laws of a state;

(13) has engaged in dishonest or unethical practices in the securities, commodities, investment, franchise, banking, finance, or insurance business;

(14) is not qualified based on factors that may include training, experience, and knowledge of the securities business; however, in the case of an application by an agent for a broker-dealer that is a member of a self-regulatory organization or by an individual for registration as an investment adviser representative, a denial order may not be based on this paragraph if the individual has successfully completed all examinations required by (e) of this section; the administrator may require an applicant for registration under AS 45.56.430 or 45.56.440 who has not been registered in a state within the two years preceding the filing of an application in this state to complete successfully an examination; or

(15) is a person whose license renewal is denied under AS 14.43.148 or whose license issuance or renewal is denied under AS 25.27.244.

(e) A regulation adopted or order issued under this chapter may require that an examination, including an examination developed or approved by an organization of securities regulators, be successfully completed by a class of individuals or all

1 individuals. An order issued under this chapter may waive, in whole or in part, an  
2 examination as to an individual and a regulation adopted under this chapter may  
3 waive, in whole or in part, an examination as to a class of individuals if the  
4 administrator determines that the examination is not necessary or appropriate in the  
5 public interest and for the protection of investors.

6 (f) The administrator may suspend or deny an application summarily; restrict,  
7 condition, limit, or suspend a registration; or censure, bar, or impose a civil penalty on  
8 a registrant before final determination of an administrative proceeding. Upon the  
9 issuance of an order, the administrator shall promptly notify each person subject to the  
10 order that the order has been issued, the reasons for the action, and that, within 15 days  
11 after the receipt of a request in a record from the person, the matter will be scheduled  
12 for a hearing. If a hearing is not requested and none is ordered by the administrator  
13 within 30 days after the date of service of the order, the order becomes final by  
14 operation of law. If a hearing is requested or ordered, the administrator, after notice of  
15 and opportunity for hearing to each person subject to the order, may modify or vacate  
16 the order or extend the order until final determination.

17 (g) An order may not be issued under this section, except under (f) of this  
18 section, without appropriate notice to the applicant or registrant, and an opportunity  
19 for hearing under AS 45.56.650(c).

20 (h) A person that controls, directly or indirectly, a person not in compliance  
21 with this section may be disciplined by order of the administrator under (a) - (c) of this  
22 section to the same extent as the noncomplying person, unless the controlling person  
23 did not know, and in the exercise of reasonable care could not have known, of the  
24 existence of conduct that is a ground for discipline under this section.

25 (i) The administrator may not institute a proceeding under (a) - (c) of this  
26 section based solely on material facts actually known by the administrator unless an  
27 investigation or the proceeding is instituted within one year after the administrator  
28 actually acquires knowledge of the material facts.

#### 29 **Article 5. Fraud and Liabilities.**

30 **Sec. 45.56.505. General fraud.** A person may not, in connection with the  
31 offer, sale, or purchase of a security, directly or indirectly,

1 (1) employ a device, scheme, or artifice to defraud;

2 (2) make an untrue statement of a material fact or omit to state a  
3 material fact necessary to make the statements made, in light of the circumstances  
4 under which they were made, not misleading; or

5 (3) engage in an act, practice, or course of business that operates or  
6 would operate as a fraud or deceit on another person.

7 **Sec. 45.56.510. Prohibited conduct in providing investment advice.** (a) A  
8 person that advises others for compensation, either directly or indirectly or through  
9 publications or writings, as to the value of securities or the advisability of investing in,  
10 purchasing, or selling securities or that, for compensation and as part of a regular  
11 business, issues or adopts analyses or reports relating to securities may not

12 (1) employ a device, scheme, or artifice to defraud another person; or

13 (2) engage in an act, practice, or course of business that operates or  
14 would operate as a fraud or deceit on another person.

15 (b) A regulation adopted under this chapter may define an act, practice, or  
16 course of business of an investment adviser or an investment adviser representative,  
17 other than a supervised person of a federal covered investment adviser, as fraudulent,  
18 deceptive, or manipulative and may prescribe means reasonably designed to prevent  
19 investment advisers and investment adviser representatives, other than supervised  
20 persons of a federal covered investment adviser, from engaging in acts, practices, and  
21 courses of business defined as fraudulent, deceptive, or manipulative.

22 (c) A regulation adopted under this chapter may specify the contents of an  
23 investment advisory contract entered into, extended, or renewed by an investment  
24 adviser.

25 **Sec. 45.56.520. Misleading filings.** A person may not, in a document filed  
26 with the administrator or in a proceeding under this chapter, make or cause to be made  
27 an untrue statement of a material fact or omit to state a material fact necessary in order  
28 to make the statements made, in the light of the circumstances under which they are  
29 made, not misleading.

30 **Sec. 45.56.530. Misrepresentations concerning registration or exemption.**  
31 The filing of an application for registration, a registration statement, a notice filing

1 under this chapter, the registration of a person, the notice filing by a person, or the  
2 registration of a security under this chapter does not constitute a finding by the  
3 administrator that a record filed under this chapter is true, complete, and not  
4 misleading. The filing or registration or the availability of an exemption, exception,  
5 preemption, or exclusion for a security or a transaction does not mean that the  
6 administrator has passed on the merits or qualifications of, or recommended or given  
7 approval to, a person, security, or transaction. A person may not make, or cause to be  
8 made, to a purchaser, customer, client, or prospective customer or client a  
9 representation inconsistent with this section.

10 **Sec. 45.56.540. Evidentiary burden.** (a) In a civil action or administrative  
11 proceeding under this chapter, a person claiming an exemption, exception,  
12 preemption, or exclusion has the burden to prove the applicability of the claim.

13 (b) In a criminal proceeding under this chapter, a person claiming an  
14 exemption, exception, preemption, or exclusion has the burden of going forward with  
15 evidence of the claim.

16 **Sec. 45.56.550. Filing of sales and advertising literature.** (a) Except as  
17 otherwise provided in (b) of this section, a regulation adopted or order issued under  
18 this chapter may require the filing of a prospectus, pamphlet, circular, form letter,  
19 advertisement, sales literature, or other advertising record relating to a security or  
20 investment advice, addressed or intended for distribution to prospective investors,  
21 including clients or prospective clients of a person registered or required to be  
22 registered as an investment adviser under this chapter.

23 (b) This section does not apply to sales and advertising literature specified in  
24 (a) of this section that relates to a federal covered security, a federal covered  
25 investment adviser, or a security or transaction exempted by AS 45.56.205, 45.56.210,  
26 45.56.220, or 45.56.240, except as required under AS 45.56.205(7).

27 (c) The administrator may by regulation or order prohibit the publication,  
28 circulation, or use of any advertising considered false or misleading.

29 **Sec. 45.56.560. Qualified immunity.** A broker-dealer, agent, investment  
30 adviser, federal covered investment adviser, or investment adviser representative is not  
31 liable to another broker-dealer, agent, investment adviser, federal covered investment

1 adviser, or investment adviser representative for defamation relating to a statement  
2 that is contained in a record required by the administrator, a designee of the  
3 administrator, the Securities and Exchange Commission, or a self-regulatory  
4 organization, unless the person knew, or should have known at the time the statement  
5 was made, that it was false in a material respect or the person acted in reckless  
6 disregard of the statement's truth or falsity.

7 **Article 6. Administration and Judicial Review.**

8 **Sec. 45.56.605. Administration.** (a) The department shall administer this  
9 chapter.

10 (b) The administrator or an officer, employee, or designee of the administrator  
11 may not use for personal benefit or the benefit of others records or other information  
12 obtained by or filed with the administrator that is not public under AS 45.56.615(b).  
13 This chapter does not authorize the administrator or an officer, employee, or designee  
14 of the administrator to disclose the record or information, except in accordance with  
15 AS 45.56.615(c), 45.56.620, or 45.56.645.

16 (c) This chapter does not create or diminish a privilege or exemption that  
17 exists at common law, by statute or regulation, or otherwise.

18 (d) The administrator may develop and implement investor education  
19 initiatives to inform the public about investing in securities, with particular emphasis  
20 on the prevention and detection of securities fraud. In developing and implementing  
21 these initiatives, the administrator may collaborate with public and nonprofit  
22 organizations with an interest in investor education. The administrator may accept a  
23 grant or donation from a person that is not affiliated with the securities industry or  
24 from a nonprofit organization, regardless of whether the organization is affiliated with  
25 the securities industry, to develop and implement investor education initiatives. This  
26 subsection does not authorize the administrator to require participation or monetary  
27 contributions of a registrant in an investor education program.

28 **Sec. 45.56.610. Administrative files and opinions.** (a) The administrator shall  
29 maintain, or designate a person to maintain, a register of applications for registration  
30 of securities; registration statements; notice filings; applications for registration of  
31 broker-dealers, agents, investment advisors, and investment adviser representatives;

1 notice filings by federal covered investment advisors that are or have been effective  
2 under this chapter or former AS 45.55; notices of claims of exemption from  
3 registration or notice filing requirements contained in a record; orders issued under  
4 this chapter or former AS 45.55; and interpretative opinions or no-action  
5 determinations issued under this chapter. The register must be kept according to the  
6 existing retention schedule mandated by the department.

7 (b) The administrator shall make all regulations, forms, interpretative  
8 opinions, and orders available to the public.

9 (c) The administrator shall furnish a copy of a record that is a public record or  
10 a certification that the public record does not exist to a person upon request. A copy of  
11 the record certified or a certificate by the administrator of a record's nonexistence is  
12 prima facie evidence of a record or its nonexistence.

13 **Sec. 45.56.615. Public records; confidentiality.** (a) Except as otherwise  
14 provided in (b) of this section, records obtained by the administrator or filed under this  
15 chapter, including a record contained in or filed with a registration statement,  
16 application, notice filing, or report are public records and are available for public  
17 examination under AS 40.25.100 - 40.25.295 (Alaska Public Records Act).

18 (b) The following records are not public records under AS 40.25.100 -  
19 40.25.295 (Alaska Public Records Act) and are not available for public examination  
20 under (a) of this section:

21 (1) a record obtained by the administrator in connection with an audit,  
22 examination or inspection under AS 45.56.475(d) or an investigation under  
23 AS 45.56.645;

24 (2) a part of a record filed in connection with a registration statement  
25 under AS 45.56.105 and 45.56.305 - 45.56.320 or a record under AS 45.56.475(d) that  
26 contains trade secrets or confidential information if the person filing the registration  
27 statement or report has asserted a claim of confidentiality or privilege that is  
28 authorized by law;

29 (3) a record that is not required to be provided to the administrator or  
30 filed under this chapter and is provided to the administrator only on the condition that  
31 the record may not be subject to public examination or disclosure;

1 (4) a nonpublic record received from a person specified in  
2 AS 45.56.620(a); and

3 (5) a social security number, residential address unless used as a  
4 business address, and residential telephone number unless used as a business  
5 telephone number, contained in a record that is filed.

6 (c) If disclosure is for the purpose of a civil, administrative, or criminal  
7 investigation, action, or proceeding or to a person specified in AS 45.56.620(a), the  
8 administrator may disclose a record obtained in connection with an audit or inspection  
9 under AS 45.56.475(d) or a record obtained in connection with an investigation under  
10 AS 45.56.645.

11 **Sec. 45.56.620. Uniformity and cooperation with other agencies.** (a) The  
12 administrator may cooperate, coordinate, consult, and, subject to AS 45.56.615, share  
13 records and information with the securities regulator of another state, Canada, a  
14 Canadian province or territory, a foreign jurisdiction, the Securities and Exchange  
15 Commission, the United States Department of Justice, the Commodity Futures  
16 Trading Commission, the Federal Trade Commission, the Securities Investor  
17 Protection Corporation, a self-regulatory organization, a national or international  
18 organization of securities regulators, a federal or state banking and insurance  
19 regulator, and a governmental law enforcement agency to bring about greater  
20 uniformity in securities matters among the federal government, self-regulatory  
21 organizations, states, and foreign governments.

22 (b) In cooperating, coordinating, consulting, and sharing records and  
23 information under this section and in acting by regulation, order, or waiver under this  
24 chapter, the administrator may take into consideration in carrying out the public  
25 interest the following general policies:

26 (1) maximizing effectiveness of regulation for the protection of  
27 investors;

28 (2) maximizing uniformity in federal and state regulatory standards;  
29 and

30 (3) minimizing burdens on the business of capital formation, without  
31 adversely affecting essentials of investor protection.

1 (c) The cooperation, coordination, consultation, and sharing of records and  
2 information authorized by this section includes

3 (1) establishing or employing one or more designees as a central  
4 depository for registration and notice filings under this chapter and for records  
5 required or allowed to be maintained under this chapter;

6 (2) developing and maintaining uniform forms;

7 (3) conducting a joint examination or investigation;

8 (4) holding a joint administrative hearing;

9 (5) instituting and prosecuting a joint civil or administrative  
10 proceeding;

11 (6) sharing and exchanging personnel;

12 (7) coordinating registrations under AS 45.56.105 and 45.56.405 -  
13 45.56.440 and exemptions under AS 45.56.240;

14 (8) sharing and exchanging records, subject to AS 45.56.615;

15 (9) formulating regulations, statements of policy, guidelines, forms,  
16 and interpretative opinions and releases;

17 (10) formulating common systems and procedures;

18 (11) notifying the public of proposed regulations, forms, statements of  
19 policy, and guidelines;

20 (12) attending conferences and other meetings among securities  
21 regulators, that may include representatives of governmental and private sector  
22 organizations involved in capital formation, considered necessary or appropriate to  
23 promote or achieve uniformity; and

24 (13) developing and maintaining a uniform exemption from  
25 registration for small issuers and taking other steps to reduce the burden of raising  
26 investment capital by small businesses.

27 **Sec. 45.56.625. Securities investor education and training fund.** The  
28 securities investor education and training fund is created as a special fund in the  
29 general fund to provide funds for the purposes specified in 45.56.605(d). The  
30 legislature may appropriate 33 percent of the money received by this state from civil  
31 penalties under this chapter into the fund for securities investor education and training.

1 Nothing in this section exempts money deposited into the fund from the requirements  
2 of AS 37.07 (Executive Budget Act) or dedicates money for a specific purpose.

3 **Sec. 45.56.630. Service of process.** (a) A consent to service of process  
4 complying with this section required by this chapter shall be signed and filed in the  
5 form required by a regulation adopted or order issued under this chapter. A consent  
6 appointing the administrator the person's agent for service of process in a noncriminal  
7 action or proceeding against the person or the person's successor or personal  
8 representative under this chapter or a regulation adopted or order issued under this  
9 chapter after the consent is filed has the same force and validity as if the service were  
10 made personally on the person filing the consent. A person that has filed a consent  
11 under this subsection in connection with a previous application for registration or  
12 notice filing need not file an additional consent.

13 (b) If a person, including a nonresident of this state, engages in an act,  
14 practice, or course of business prohibited or made actionable by this chapter or a  
15 regulation adopted or order issued under this chapter and the person has not filed a  
16 consent to service of process under (a) of this section, the act, practice, or course of  
17 business constitutes the appointment of the administrator as the person's agent for  
18 service of process in a noncriminal action or proceeding against the person or the  
19 person's successor or personal representative.

20 (c) Service under (a) or (b) of this section may be made by providing a copy of  
21 the process to the office of the administrator, but the service is not effective unless

22 (1) the plaintiff, which may be the administrator, promptly sends  
23 notice of the service and a copy of the process, return receipt requested, to the  
24 defendant or respondent at the address set out in the consent to service of process or, if  
25 a consent to service of process has not been filed, at the last known address, or takes  
26 other reasonable steps to give notice; and

27 (2) the plaintiff files an affidavit of compliance with this subsection in  
28 the action or proceeding on or before the return day of the process, if any, or within  
29 the time that the court, or the administrator in a proceeding before the administrator,  
30 allows.

31 (d) Service under (c) of this section may be used in a proceeding before the

1 administrator or by the administrator in a civil action in which the administrator is the  
2 moving party.

3 (e) If process is served under (c) of this section, the court, or the administrator  
4 in a proceeding before the administrator, shall order continuances as are necessary or  
5 appropriate to afford the defendant or respondent reasonable opportunity to defend.

6 **Sec. 45.56.635. Applicability of the chapter.** (a) Unless the persons are  
7 exempt elsewhere in this chapter, this chapter applies to persons who buy or offer to  
8 buy when an offer to

9 (1) buy is made in this state; or

10 (2) sell is made and accepted in this state.

11 (b) Unless the person is exempt elsewhere in this chapter, this chapter applies  
12 to a person who sells or offers to sell when an offer to

13 (1) sell is made in this state; or

14 (2) buy is made and accepted in this state.

15 (c) For the purpose of this section, an offer to sell or to buy is made in this  
16 state, whether or not either party is then present in this state, when the offer

17 (1) originates from this state;

18 (2) is directed by the offeror to this state and received at the place to  
19 which it is directed or at a post office in this state in the case of a mailed offer;

20 (3) is for an interest or participation in an oil, gas, or mining right, title,  
21 or lease on land in this state, including submerged land, regardless of where the offer  
22 is made;

23 (4) is for an interest or participation in payments out of production  
24 under an oil, gas, or mining right, title, or lease on land in this state, including  
25 submerged land, regardless of where the offer is made;

26 (5) is for an interest or participation in real property located in this  
27 state, or in a corporation, a partnership, a limited liability company, a limited  
28 partnership, a limited liability partnership, an association, or a joint-stock company;  
29 jurisdiction under this paragraph may be exercised only when the exercise is  
30 consistent with the constitution of this state or of the United States.

31 (d) For the purpose of this section, an offer to buy or to sell is accepted in this

1 state when acceptance is communicated to the offeror in this state and has not  
2 previously been communicated to the offeror, orally or in writing, outside this state.  
3 Acceptance is communicated to the offeror in this state, whether or not either party is  
4 then present in this state, when the offeree directs the acceptance to the offeror in this  
5 state reasonably believing the offeror to be in this state and the acceptance is received  
6 at the place to which it is directed or, in the case of a mailed acceptance, at a post  
7 office in this state.

8 (e) This chapter applies to investment advisers, federal covered advisers, and  
9 investment adviser representatives when any act instrumental in effecting prohibited  
10 conduct is done in this state, regardless of whether either party is then present in this  
11 state.

12 **Sec. 45.56.640. Regulations, forms, orders, interpretative opinions, and**  
13 **hearings.** (a) The administrator may

14 (1) issue forms and orders; after notice and comment, adopt and amend  
15 regulations necessary or appropriate to carry out this chapter; and repeal regulations,  
16 including regulations and forms governing registration statements, applications, notice  
17 filings, reports, and other records;

18 (2) by regulation, define terms, whether or not used in this chapter, but  
19 those definitions may not be inconsistent with this chapter; and

20 (3) by regulation, classify securities, persons, and transactions and  
21 adopt different requirements for different classes.

22 (b) Under this chapter, a regulation or form may not be adopted or amended,  
23 or an order issued or amended, unless the administrator finds that the regulation, form,  
24 order, or amendment is necessary or appropriate in the public interest or for the  
25 protection of investors and is consistent with the purposes intended by this chapter. In  
26 adopting, amending, and repealing regulations and forms, AS 45.56.620 applies to  
27 achieve uniformity among the states and coordination with federal laws in the form  
28 and content of registration statements, applications, reports, and other records,  
29 including the adoption of uniform rules, forms, and procedures.

30 (c) Subject to 15 U.S.C. 78o(i) and 80b-18a, the administrator may require  
31 that a financial statement filed under this chapter be prepared in accordance with

1 generally accepted accounting principles in the United States and comply with other  
2 requirements specified by regulation adopted or order issued under this chapter. A  
3 regulation adopted or order issued under this chapter may establish

4 (1) subject to 15 U.S.C. 78o(i) and 80b-18a, the form and content of  
5 financial statements required under this chapter;

6 (2) whether unconsolidated financial statements must be filed; and

7 (3) whether required financial statements must be audited by an  
8 independent certified public accountant.

9 (d) The administrator may provide interpretative opinions or issue  
10 determinations that the administrator will not institute a proceeding or an action under  
11 this chapter against a specified person for engaging in a specified act, practice, or  
12 course of business if the determination is consistent with this chapter. A regulation  
13 adopted or order issued under this chapter may establish a reasonable charge for  
14 interpretative opinions or determinations that the administrator will not institute an  
15 action or a proceeding under this chapter.

16 (e) A hearing in an administrative proceeding under this chapter shall be  
17 conducted in public unless the administrative law judge or the administrator for good  
18 cause consistent with this chapter determines that the hearing may not be conducted in  
19 public.

20 (f) AS 44.62 (Administrative Procedure Act) applies to all regulations adopted  
21 or authorized under this chapter.

22 **Sec. 45.56.645. Investigations and subpoenas.** (a) The administrator may

23 (1) conduct public or private investigations in or outside of this state  
24 that the administrator considers necessary or appropriate to determine whether a  
25 person has violated, is violating, or is about to violate this chapter or a regulation  
26 adopted or order issued under this chapter, or to aid in the enforcement of this chapter  
27 or in the adoption of regulations and forms under this chapter;

28 (2) require or permit a person to testify, file a statement, or produce a  
29 record, under oath or otherwise as the administrator determines, as to all the facts and  
30 circumstances concerning a matter to be investigated or about which an action or  
31 proceeding is to be instituted; and

1 (3) publish a record concerning an action, proceeding, or an  
2 investigation under, or a violation of, this chapter or a regulation adopted or order  
3 issued under this chapter if the administrator determines it is necessary or appropriate  
4 in the public interest and for the protection of investors.

5 (b) For the purpose of an investigation under this chapter, the administrator or  
6 the designated officer of the administrator may administer oaths and affirmations,  
7 subpoena witnesses, seek compulsion of attendance, take evidence, require the filing  
8 of statements, and require the production of any records that the administrator  
9 considers relevant or material to the investigation.

10 (c) If a person does not appear or refuses to testify, file a statement, produce  
11 records, or otherwise obey a subpoena as required by the administrator under this  
12 chapter, the administrator may refer the matter to the attorney general, who may bring  
13 an action in the superior court or a court of another state to enforce compliance. The  
14 court may

- 15 (1) hold the person in contempt;  
16 (2) order the person to appear before the administrator;  
17 (3) order the person to testify about the matter under investigation or in  
18 question;  
19 (4) order the production of records;  
20 (5) grant injunctive relief, including restricting or prohibiting the offer  
21 or sale of securities or the providing of investment advice;  
22 (6) impose a civil penalty of not more than \$100,000 for a single  
23 violation; and  
24 (7) grant any other necessary or appropriate relief.

25 (d) This section does not preclude a person from applying to the superior court  
26 or a court of another state for relief from a request to appear, testify, file a statement,  
27 produce records, or obey a subpoena.

28 (e) A person is not excused from attending, testifying, filing a statement,  
29 producing a record or other evidence, or obeying a subpoena of the administrator  
30 under this chapter or in an action or proceeding instituted by the administrator under  
31 this chapter on the ground that the required testimony, statement, record, or other

1 evidence, directly or indirectly, may tend to incriminate the individual or subject the  
 2 individual to a criminal fine, penalty, or forfeiture. If the person refuses to testify, file  
 3 a statement, or produce a record or other evidence based on the individual's privilege  
 4 against self-incrimination, the administrator may apply to the superior court to compel  
 5 the testimony, the filing of the statement, the production of the record, or the giving of  
 6 other evidence. The testimony, record, or other evidence compelled under an order of  
 7 the superior court may not be used, directly or indirectly, against the individual in a  
 8 criminal case, except in a prosecution for perjury, contempt, or otherwise failing to  
 9 comply with the order.

10 (f) At the request of the securities regulator of another state or a foreign  
 11 jurisdiction, the administrator may provide assistance if the requesting regulator states  
 12 that it is conducting an investigation to determine whether a person has violated, is  
 13 violating, or is about to violate a law or regulation of the other state or foreign  
 14 jurisdiction relating to securities matters that the requesting regulator administers or  
 15 enforces. The administrator may provide the assistance by using the authority to  
 16 investigate and the powers conferred by this section as the administrator determines is  
 17 necessary or appropriate. The assistance may be provided without regard to whether  
 18 the conduct described in the request would also constitute a violation of this chapter or  
 19 other law of this state if occurring in this state. In deciding whether to provide the  
 20 assistance, the administrator may consider whether the requesting regulator is  
 21 permitted and has agreed to provide assistance reciprocally within its state or foreign  
 22 jurisdiction to the administrator on securities matters when requested, whether  
 23 compliance with the request would violate or prejudice the public policy of this state,  
 24 and the availability of resources and employees of the administrator to carry out the  
 25 request for assistance.

26 **Sec. 45.56.650. Administrative enforcement.** (a) If the administrator  
 27 determines that a person has engaged, is engaging, or is about to engage in an act,  
 28 practice, or course of business constituting a violation of this chapter or a regulation  
 29 adopted or order issued under this chapter or that a person has materially aided, is  
 30 materially aiding, or is about to aid materially an act, practice, or course of business  
 31 constituting a violation of this chapter or a regulation adopted or order issued under

1 this chapter, the administrator may issue an order

2 (1) directing the person to cease and desist from engaging in the act,  
3 practice, or course of business or to take other action necessary or appropriate to  
4 comply with this chapter;

5 (2) denying, suspending, revoking, or conditioning the exemptions for  
6 a broker-dealer under AS 45.56.405(b)(1)(D) or (F) or an investment adviser under  
7 AS 45.56.435(b)(1)(C); or

8 (3) denying, suspending, conditioning, or limiting an exemption as  
9 provided under AS 45.56.250.

10 (b) An order under (a) of this section is effective on the date of issuance. Upon  
11 issuance of the order, the administrator shall promptly serve each person subject to the  
12 order with a copy of the order and a notice that the order has been entered. The order  
13 must include a statement of any civil penalty, restitution, or costs of investigation the  
14 administrator will seek, a statement of the reasons for the order, and notice that, within  
15 15 days after receipt of a request in a record from the person, the matter will be  
16 scheduled for a hearing. If a person subject to the order does not request a hearing and  
17 none is ordered by the administrator within 30 days after the date of service of the  
18 order, the order, including the imposition of a civil penalty, the imposition of  
19 restitution, or requirement for payment of the costs of investigation sought in a  
20 statement in the order, becomes final as to that person by operation of law. If a hearing  
21 is requested or ordered, the administrator, after notice of and opportunity for hearing  
22 provided to each person subject to the order, may modify or vacate the order or extend  
23 it until final determination.

24 (c) If a hearing is requested or ordered under (b) of this section, a hearing shall  
25 be conducted by the office of administrative hearings (AS 44.64.010), and  
26 AS 44.64.040 - 44.64.200 apply to and govern the hearing.

27 (d) In a final order under (b) of this section, the administrator may impose a  
28 civil penalty of not more than \$100,000 for a single violation, unless the violation of  
29 this chapter is against an older person or a vulnerable adult. In addition to a civil  
30 penalty imposed under this subsection, a person or entity who engages in conduct  
31 prohibited under this chapter against an older person or a vulnerable adult may be

1 liable for an additional civil penalty of treble statutory damages. In determining  
2 whether to impose a supplemental civil penalty under this subsection, the  
3 administrator shall consider, in addition to other appropriate factors, the extent to  
4 which the following factors are present:

5 (1) whether the respondent knew that the respondent's conduct was  
6 directed to an older person or a vulnerable adult;

7 (2) whether the respondent's conduct caused an older person or a  
8 vulnerable adult to suffer

9 (A) severe loss or encumbrance of a primary residence,  
10 principal employment, or source of income; or

11 (B) substantial loss of property set aside for retirement or for  
12 personal and family care and maintenance; or

13 (3) whether the respondent's conduct caused substantial loss of  
14 payments received under a pension or retirement plan or a government benefits  
15 program.

16 (e) In a final order under (b) of this section, the administrator may

17 (1) impose restitution to any person in interest for any money or  
18 property, real or personal, that may have been acquired or transferred in violation of  
19 this chapter;

20 (2) charge the actual cost of an investigation or proceeding for a  
21 violation of this chapter or a regulation adopted or order issued under this chapter; and

22 (3) deny the violator of the use of any exemptions listed under this  
23 chapter.

24 (f) The administrator may petition the superior court to enter a judgment  
25 against a person who is a respondent in the order for the amount of the civil penalty  
26 levied against the person. Subject to AS 44.62.570, the filing of the petition for a  
27 judgment does not reopen the final order to further substantive review. A judgment  
28 entered under this subsection may be executed on and levied under in the manner  
29 provided in AS 09.35.

30 (g) If a person does not comply with an order under this section, the  
31 administrator may petition a court of competent jurisdiction to enforce the order. The

1 court may not require the administrator to post a bond in an action or proceeding under  
2 this section. If the court finds, after service and opportunity for hearing, that the person  
3 was not in compliance with the order, the court may adjudge the person in civil  
4 contempt of the order. The court may impose a further civil penalty against the person  
5 for contempt in an amount not less than \$5,000 but not greater than \$100,000 for each  
6 violation and may grant any other relief the court determines is just and proper in the  
7 circumstances.

8 **Sec. 45.56.655. Civil enforcement.** (a) If the administrator believes that a  
9 person has engaged, is engaging, or is about to engage in an act, practice, or course of  
10 business constituting a violation of this chapter or a regulation adopted or order issued  
11 under this chapter, or that a person has engaged, is engaging, or is about to engage in  
12 an act, practice, or course of business that materially aids a violation of this chapter or  
13 a regulation adopted or order issued under this chapter, the administrator may maintain  
14 an action in the superior court to enjoin the act, practice, or course of business and to  
15 enforce compliance with this chapter or a regulation adopted or order issued under this  
16 chapter.

17 (b) In an action under this section and on a proper showing, the court may

18 (1) issue a permanent or temporary injunction, restraining order, or  
19 declaratory judgment;

20 (2) order other appropriate or ancillary relief, which may include

21 (A) an asset freeze, accounting, writ of attachment, writ of  
22 general or specific execution, and appointment of a receiver or conservator that  
23 may be the administrator for the defendant or the defendant's assets;

24 (B) ordering the administrator to take charge and control of a  
25 defendant's property, including investment accounts and accounts in a  
26 depository institution, rents, and profits; to collect debts; and to acquire and  
27 dispose of property;

28 (C) imposing a civil penalty of not more than \$100,000 for a  
29 single violation, unless the violation of this chapter is against an older person  
30 or a vulnerable adult; in determining whether to impose a supplemental civil  
31 penalty for a violation of this chapter against an older person or a vulnerable

1 adult, the court shall consider, in addition to other appropriate factors, the  
2 extent to which the following factors are present:

3 (i) whether the respondent knew that the respondent's  
4 conduct was directed to an older person or a vulnerable adult;

5 (ii) whether the respondent's conduct caused an older  
6 person or a vulnerable adult to suffer severe loss or encumbrance of a  
7 primary residence, principal employment, or source of income; or  
8 substantial loss of property set aside for retirement or for personal and  
9 family care and maintenance; or

10 (iii) whether the respondent's conduct caused  
11 substantial loss of payments received under a pension or retirement  
12 plan or a government benefits program;

13 (D) imposing an order of rescission, or disgorgement directed  
14 to a person that has engaged in an act, practice, or course of business  
15 constituting a violation of this chapter or former AS 45.55 or a regulation  
16 adopted or order issued under this chapter or former AS 45.55;

17 (E) imposing an order of restitution to any person in interest for  
18 any money or property, real or personal, that may have been acquired or  
19 transferred in violation of this chapter; and

20 (F) ordering the payment of prejudgment and post judgment  
21 interest; or

22 (3) order other relief that the court considers appropriate.

23 (c) The administrator may not be required to post a bond in an action or  
24 proceeding under this chapter.

25 (d) After an order issued by the court under (b) of this section becomes final  
26 and all rights of appeal are exhausted, the administrator may petition the superior court  
27 to enter a judgment against a person who is a respondent in the order for the amount of  
28 the civil penalty levied against the person. Subject to AS 44.62.570, the filing of the  
29 petition for a judgment does not reopen the final order to further substantive review. A  
30 judgment entered under this subsection may be executed on and levied under in the  
31 manner provided in AS 09.35.

1           **Sec. 45.56.660. Civil liability.** (a) Enforcement of civil liability under this  
2 section is subject to P.L. 105-353 (Securities Litigation Uniform Standards Act of  
3 1998).

4           (b) A person is liable to the purchaser if the person sells a security in violation  
5 of AS 45.56.105, or by means of an untrue statement of a material fact or an omission  
6 to state a material fact necessary to make the statement made, in light of the  
7 circumstances under which it is made, not misleading, the purchaser not knowing the  
8 untruth or omission and the seller not sustaining the burden of proof that the seller did  
9 not know and, in the exercise of reasonable care, could not have known of the untruth  
10 or omission. An action under this subsection is governed by the following:

11           (1) the purchaser may maintain an action to recover the consideration  
12 paid for the security, less the amount of any income received on the security, and  
13 interest at the legal rate of interest under AS 09.30.070, or eight percent a year,  
14 whichever is greater, from the date of the purchase, costs, and attorney fees as  
15 determined by the court, upon the tender of the security, or for actual damages as  
16 provided in (3) of this subsection;

17           (2) the tender referred to in (1) of this subsection may be made any  
18 time before entry of judgment; tender requires only notice in a record of ownership of  
19 the security and willingness to exchange the security for the amount specified; a  
20 purchaser that no longer owns the security may recover actual damages as provided in  
21 (3) of this subsection;

22           (3) actual damages in an action arising under this subsection are the  
23 amount that would be recoverable upon a tender less the value of the security when the  
24 purchaser disposed of it, and interest at the legal rate of interest under AS 09.30.070,  
25 or eight percent a year, whichever is greater, from the date of the purchase, costs, and  
26 attorney fees as determined by the court.

27           (c) A person is liable to the seller if the person buys a security by means of an  
28 untrue statement of a material fact or omission to state a material fact necessary to  
29 make the statement made, in light of the circumstances under which it is made, not  
30 misleading, the seller not knowing of the untruth or omission, and the purchaser not  
31 sustaining the burden of proof that the purchaser did not know and, in the exercise of

1 reasonable care, could not have known of the untruth or omission. An action under  
2 this subsection is governed by the following:

3 (1) the seller may maintain an action to recover the security and any  
4 income received on the security, costs, and attorney fees as determined by the court,  
5 upon the tender of the purchase price, or for actual damages as provided in (3) of this  
6 subsection;

7 (2) the tender referred to in (1) of this subsection may be made any  
8 time before entry of judgment; tender requires only notice in a record of the present  
9 ability to pay the amount tendered and willingness to take delivery of the security for  
10 the amount specified; if the purchaser no longer owns the security, the seller may  
11 recover actual damages as provided in (3) of this subsection;

12 (3) actual damages in an action arising under this subsection are the  
13 difference between the price at which the security was sold and the value the security  
14 would have had at the time of the sale in the absence of the purchaser's conduct  
15 causing liability, and interest at the legal rate of interest under AS 09.30.070, or eight  
16 percent a year, whichever is greater, from the date of the sale of the security, costs,  
17 and attorney fees as determined by the court.

18 (d) A person acting as a broker-dealer or agent that sells or buys a security in  
19 violation of AS 45.56.405(a), 45.56.435(a), or 45.56.530 is liable to the customer. The  
20 customer, if a purchaser, may maintain an action for recovery of actual damages as  
21 specified in (b)(1) - (3) of this section or, if a seller, for a remedy as specified in (c)(1)  
22 - (3) of this section.

23 (e) A person acting as an investment adviser or investment adviser  
24 representative that provides investment advice for compensation in violation of  
25 AS 45.56.435(a), 45.56.440(a), or 45.56.530 is liable to the client. The client may  
26 maintain an action to recover the consideration paid for the advice, interest at the legal  
27 rate of interest under AS 09.30.070, or eight percent a year, whichever is greater, from  
28 the date of payment, costs, and attorney fees as determined by the court.

29 (f) A person that receives, directly or indirectly, any consideration for  
30 providing investment advice to another person and that employs a device, scheme, or  
31 artifice to defraud the other person or engages in an act, practice, or course of business

1 that operates or would operate as a fraud or deceit on the other person is liable to the  
2 other person. An action under this subsection is governed by the following:

3 (1) the person defrauded may maintain an action to recover the  
4 consideration paid for the advice and the amount of any actual damages caused by the  
5 fraudulent conduct, interest at the legal rate of interest under AS 09.30.070, or eight  
6 percent a year, whichever is greater, from the date of the fraudulent conduct, costs,  
7 and reasonable attorney fees as determined by the court, less the amount of any  
8 income received as a result of the fraudulent conduct;

9 (2) this subsection does not apply to a broker-dealer or its agents if the  
10 investment advice provided is solely incidental to transacting business as a broker-  
11 dealer and special compensation is not received for the investment advice.

12 (g) The following persons are liable jointly and severally with and to the same  
13 extent as persons liable under (b) - (f) of this section:

14 (1) a person that directly or indirectly controls a person liable under (b)  
15 - (f) of this section, unless the controlling person sustains the burden of proof that the  
16 person did not know and, in the exercise of reasonable care, could not have known of  
17 the existence of conduct because of which the liability is alleged to exist;

18 (2) an individual who is a managing partner, executive officer, or  
19 director of a person liable under (b) - (f) of this section, including an individual having  
20 a similar status or performing similar functions, unless the individual sustains the  
21 burden of proof that the individual did not know and, in the exercise of reasonable  
22 care, could not have known of the existence of conduct because of which the liability  
23 is alleged to exist;

24 (3) an individual who is an employee of or associated with a person  
25 liable under (b) - (f) of this section and who materially aids the conduct giving rise to  
26 the liability, unless the individual sustains the burden of proof that the individual did  
27 not know and, in the exercise of reasonable care, could not have known of the  
28 existence of conduct because of which the liability is alleged to exist; and

29 (4) a person that is a broker-dealer, agent, investment adviser, or  
30 investment adviser representative that materially aids the conduct giving rise to the  
31 liability under (b) - (f) of this section, unless the person sustains the burden of proof

1 that the person did not know and, in the exercise of reasonable care, could not have  
2 known of the existence of conduct because of which the liability is alleged to exist.

3 (h) A person liable under this section has a right of contribution as in cases of  
4 contract against any other person liable under this section for the same conduct.

5 (i) A cause of action under this section survives the death of an individual who  
6 might have been a plaintiff or defendant.

7 (j) A person may not obtain relief under (b) of this section

8 (1) for a violation of AS 45.56.105, or under (d) or (e) of this section,  
9 unless the action is instituted within three years after the violation occurred; or

10 (2) other than for a violation of AS 45.56.105, or under (c) or (f) of this  
11 section, unless the action is instituted within the earlier of two years after discovery of  
12 the facts constituting the violation or five years after the violation.

13 (k) A person that has made, or has engaged in the performance of, a contract  
14 in violation of this chapter or a regulation adopted or order issued under this chapter or  
15 that has acquired a purported right under the contract with knowledge of conduct  
16 because of which its making or performance was in violation of this chapter may not  
17 base an action on the contract.

18 (l) A condition, stipulation, or provision binding a person purchasing or  
19 selling a security or receiving investment advice to waive compliance with this chapter  
20 or a regulation adopted or order issued under this chapter is void.

21 (m) The rights and remedies provided by this chapter are in addition to any  
22 other rights or remedies that may exist, but this chapter does not create a cause of  
23 action not specified in this section or AS 45.56.475(e).

24 **Sec. 45.56.665. Rescission offers.** (a) A purchaser, seller, or recipient of  
25 investment advice may not maintain an action under AS 45.56.660 if

26 (1) the purchaser, seller, or recipient of investment advice receives, in  
27 a record, before the action is instituted,

28 (A) an offer stating the respect in which liability under  
29 AS 45.56.660 may have arisen and fairly advising the purchaser, seller, or  
30 recipient of investment advice of that person's rights in connection with the  
31 offer and any financial or other information necessary to correct all material

1           misrepresentations or omissions in the information that was required by this  
2           chapter to be furnished to that person at the time of the purchase, sale, or  
3           investment advice;

4                   (B) if the basis for relief under this section may have been a  
5           violation of AS 45.56.660(b), an offer to repurchase the security for cash,  
6           payable on delivery of the security, equal to the consideration paid, and interest  
7           at the legal rate of interest under AS 09.30.070, or eight percent a year,  
8           whichever is greater, from the date of the purchase, less the amount of any  
9           income received on the security, or, if the purchaser no longer owns the  
10          security, an offer to pay the purchaser, upon acceptance of the offer, damages  
11          in an amount that would be recoverable upon a tender, less the value of the  
12          security when the purchaser disposed of it, and interest at the legal rate of  
13          interest under AS 09.30.070, or eight percent a year, whichever is greater, from  
14          the date of the purchase in cash equal to the damages computed in the manner  
15          provided in this subparagraph;

16                   (C) if the basis for relief under this section may have been a  
17          violation of AS 45.56.660(c), an offer to tender the security, on payment by the  
18          seller of an amount equal to the purchase price paid, less income received on  
19          the security by the purchaser and interest at the legal rate of interest under  
20          AS 09.30.070, or eight percent a year, whichever is greater, from the date of  
21          the sale, or, if the purchaser no longer owns the security, an offer to pay the  
22          seller, upon acceptance of the offer, in cash, damages in the amount of the  
23          difference between the price at which the security was purchased and the value  
24          the security would have had at the time of the purchase in the absence of the  
25          purchaser's conduct that may have caused liability and interest at the legal rate  
26          of interest in AS 09.30.070, or eight percent a year, whichever is greater, from  
27          the date of the sale;

28                   (D) if the basis for relief under this section may have been a  
29          violation of AS 45.56.660(d); and if the customer is a purchaser, an offer to  
30          pay as specified in (B) of this paragraph; or, if the customer is a seller, an offer  
31          to tender or to pay as specified in (C) of this paragraph;

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(E) if the basis for relief under this section may have been a violation of AS 45.56.660(e), an offer to reimburse in cash the consideration paid for the advice and interest at the legal rate of interest under AS 09.30.070, or eight percent a year, whichever is greater, from the date of payment; or

(F) if the basis for relief under this section may have been a violation of AS 45.56.660(f), an offer to reimburse in cash the consideration paid for the advice, the amount of any actual damages that may have been caused by the conduct, and interest at the legal rate of interest under AS 09.30.070, or eight percent a year, whichever is greater, from the date of the violation causing the loss;

(2) the offer under (1) of this subsection states that it must be accepted by the purchaser, seller, or recipient of investment advice within 30 days after the date of its receipt by the purchaser, seller, or recipient of investment advice or any shorter period of not less than three days that the administrator, by order, specifies;

(3) the offeror has the present ability to pay the amount offered or to tender the security under (1) of this subsection;

(4) the offer under (1) of this subsection is delivered to the purchaser, seller, or recipient of investment advice or sent in a manner that ensures receipt by the purchaser, seller, or recipient of investment advice; and

(5) the purchaser, seller, or recipient of investment advice that accepts the offer under (1) of this subsection, in a record, within the period specified under (2) of this subsection, is paid in accordance with the terms of the offer.

(b) The offer under this section shall be filed with the administrator 10 business days before the offering and conform in form and content with a regulation adopted under this chapter.

**Sec. 45.56.670. Criminal enforcement.** (a) A person who knowingly violates this chapter, a regulation adopted under this chapter, or an order issued under this chapter, except AS 45.56.550 or the notice filing requirements of AS 45.56.330 or 45.56.445, is guilty of a class C felony punishable by imprisonment under AS 12.55.125 or by a fine of not more than \$100,000, or by both. A person convicted of violating a regulation or order issued under this chapter may be fined, but may not

1 be imprisoned, if the person did not know of the regulation or order.

2 (b) A person who knowingly alters, destroys, shreds, mutilates, or conceals a  
3 record, document, or other object, or attempts to do so, with the intent to alter or  
4 impair the record, document, or object for use in an official proceeding under this  
5 chapter, is guilty of a class C felony. A person convicted of violating this subsection is  
6 punishable by imprisonment as provided in AS 12.55.125, by a fine of not more than  
7 \$500,000, or by both.

8 (c) The attorney general, with or without a reference from the administrator,  
9 may institute criminal proceedings under this chapter.

10 (d) This chapter does not limit the power of this state to punish a person for  
11 conduct that constitutes a crime under other laws of this state.

12 (e) In this section, "knowingly" has the meaning given in AS 11.81.900(a).

13 **Sec. 45.56.675. Judicial review.** (a) A person may obtain judicial review by  
14 the superior court of a final order issued by the administrator under this chapter by  
15 filing a notice of appeal in accordance with the applicable rules of court governing  
16 appeals in civil matters. The notice of appeal shall be filed within 30 days after the  
17 order becomes final under AS 44.64.060.

18 (b) A regulation adopted under this chapter is subject to judicial review under  
19 AS 44.62.300.

20 **Article 7. Miscellaneous and Additional General Provisions.**

21 **Sec. 45.56.710. Reimbursement of expenses incident to examination or**  
22 **investigation.** (a) The administrator may require an issuer, broker-dealer, agent,  
23 investment adviser representative, federal covered adviser, or investment adviser to  
24 reimburse the administrator for actual travel expenses and per diem incurred in  
25 connection with an examination or investigation under this chapter.

26 (b) The administrator may by regulation or order adopt a schedule of charges  
27 for annual examination and investigation of issuers, broker-dealers, agents, investment  
28 adviser representatives, federal covered advisers, and investment advisers.

29 (c) If an issuer, broker-dealer, agent, investment adviser representative, federal  
30 covered adviser, or investment adviser fails to pay the fees and expenses provided for  
31 in this section, the fees and expenses shall be paid out of funds of the administrator in

1 the same manner as other disbursements made by the administrator. The amounts paid  
2 from the funds of the administrator are a lien on all of the assets and property of the  
3 issuer, broker-dealer, agent, investment adviser representative, federal covered  
4 adviser, or investment adviser, and the amount may be recovered by the attorney  
5 general on behalf of this state.

6 (d) Failure of the issuer, broker-dealer, agent, investment adviser  
7 representative, federal covered adviser, or investment adviser to pay fees and expenses  
8 under this section is a willful violation of this chapter, and the violation falls within  
9 the provisions of AS 45.56.350, 45.56.440, and 45.56.615.

10 **Sec. 45.56.720. Electronic records and signatures.** This chapter modifies,  
11 limits, and supersedes 15 U.S.C. 7001 - 7031 (Electronic Signatures in Global and  
12 National Commerce Act), but does not modify, limit, or supersede 15 U.S.C. 7001(c)  
13 or authorize electronic delivery of any of the notices described in 15 U.S.C. 7003(b).  
14 This chapter authorizes the filing of records and signatures, when specified by  
15 provisions of this chapter or by a regulation adopted or order issued under this chapter,  
16 in a manner consistent with 15 U.S.C. 7004(a).

17 **Sec. 45.56.730. References to federal statutes.** In this chapter, a reference to  
18 the following federal statutes, including a statute within a spanned reference, means  
19 those statutes and the rules and regulations adopted under those statutes, as in effect on  
20 the date of enactment of this chapter, or as later amended:

- 21 (1) 7 U.S.C. 1 - 27 (Commodity Exchange Act);
- 22 (2) 15 U.S.C. 77a - 77aa (Securities Act of 1933);
- 23 (3) 15 U.S.C. 77b, 77k, 77m, 77p, 77r, 77v, 77z-1 - 77z-3, 77aa,  
24 77ccc, 77ddd, 77mmm, 77sss, 78a, 78c, 78d, 78g, 78n, 78o, 78o-4, 78o-5, 78s, 78t,  
25 78u, 78u-4, 78z, 78bb, 78ee, 78kk, 78ll, 80a-2, 80a-3, 80a-12, 80a-18, 80a-29, 80a-30,  
26 80b-3, and 80b-18a (Securities Litigation Uniform Standards Act of 1998);
- 27 (4) 15 U.S.C. 78a - 78pp (Securities Exchange Act of 1934);
- 28 (5) 15 U.S.C. 80a-1 - 80a-64 (Investment Company Act of 1940);
- 29 (6) 15 U.S.C. 80b-1 - 80b-21 (Investment Advisers Act of 1940);
- 30 (7) 15 U.S.C. 661 - 697g (Small Business Investment Act of 1958);
- 31 (8) 15 U.S.C. 7001 - 7031 (Electronic Signatures in Global and

1 National Commerce Act);

2 (9) 26 U.S.C. (Internal Revenue Code);

3 (10) 29 U.S.C. 1001 - 1461 (Employee Retirement Income Security  
4 Act of 1974);

5 (11) 42 U.S.C. 16451 - 16481 (Energy Policy Act of 2005).

6 **Sec. 45.56.740. References to federal agencies.** A reference in this chapter to  
7 an agency or department of the United States is also a reference to a successor agency  
8 or department.

9 **Sec. 45.56.900. Definitions.** In this chapter, unless the context otherwise  
10 requires,

11 (1) "administrator" means the commissioner of commerce, community,  
12 and economic development or a designee of the commissioner;

13 (2) "agent" means an individual, other than a broker-dealer, who  
14 represents a broker-dealer in effecting or attempting to effect purchases or sales of  
15 securities or represents an issuer in effecting or attempting to effect purchases or sales  
16 of the issuer's securities; however, a partner, officer, or director of a broker-dealer or  
17 issuer, or an individual having a similar status or performing similar functions is an  
18 agent only if the individual otherwise comes within the term; "agent" does not include  
19 an individual excluded by a regulation adopted or order issued under this chapter;

20 (3) "bank" means

21 (A) a banking institution organized under the laws of the  
22 United States;

23 (B) a member bank of the Federal Reserve System;

24 (C) any other banking institution, whether incorporated or not,  
25 doing business under the laws of a state or of the United States, a substantial  
26 portion of the business of which consists of receiving deposits or exercising  
27 fiduciary powers similar to those permitted to be exercised by national banks  
28 under the authority of the United States Comptroller of the Currency under 12  
29 U.S.C. 92a, that is supervised and examined by a state or federal agency  
30 having supervision over banks, and that is not operated for the purpose of  
31 evading this chapter; and

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(D) a receiver, conservator, or other liquidating agent of any institution or firm included in (A), (B), or (C) of this paragraph;

(4) "broker-dealer" means a person engaged in the business of effecting transactions in securities for the accounts of others or for the person's own account; the term does not include

(A) an agent;

(B) an issuer;

(C) a bank, trust company organized or chartered under the laws of this state, or savings institution if its activities as a broker-dealer are limited to those specified in 15 U.S.C. 78c(a)(4)(B)(i) - (vi), (viii) - (x), and (xi) if limited to unsolicited transactions, or 15 U.S.C. 78c(a)(5)(B) and (C), or a bank that satisfies the conditions described in 15 U.S.C. 78c(a)(4);

(D) an international banking institution; or

(E) a person excluded by a regulation adopted or order issued under this chapter;

(5) "defraud" includes engaging in common law deceit;

(6) "department" means the Department of Commerce, Community, and Economic Development;

(7) "depository institution" means

(A) a bank; or

(B) a savings institution, trust company, credit union, or similar institution that is organized or chartered under the laws of a state or of the United States, authorized to receive deposits and supervised and examined by an official or agency of a state or the United States if its deposits or share accounts are insured to the maximum amount authorized by statute by the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund, or a successor authorized by federal law; the term does not include

(i) an insurance company or other organization primarily engaged in the business of insurance;

(ii) a Morris Plan bank; or

- 1 (iii) an industrial loan company that is not an "insured  
2 depository institution" as defined in 12 U.S.C. 1813(c)(2) (Federal  
3 Deposit Insurance Act), or any successor federal statute;
- 4 (8) "federal covered investment adviser" means a person registered  
5 under 15 U.S.C. 80b-1 - 80b-21 (Investment Advisers Act of 1940);
- 6 (9) "federal covered security" means a security that is, or upon  
7 completion of a transaction will be, a covered security under 15 U.S.C. 77r(b)  
8 (Securities Act of 1933) or rules or regulations adopted under that provision;
- 9 (10) "filing" means the receipt under this chapter of a record by the  
10 administrator or a designee of the administrator;
- 11 (11) "former AS 45.55" means AS 45.55 as it existed immediately  
12 before July 1, 2016;
- 13 (12) "fraud" and "deceit" include common law deceit;
- 14 (13) "guaranteed" means guaranteed as to payment of all principal and  
15 all interest;
- 16 (14) "institutional investor" means any of the following, whether  
17 acting for itself or for others in a fiduciary capacity:
- 18 (A) a depository institution, a trust company organized or  
19 chartered under the laws of this state, or an international banking institution;
- 20 (B) an insurance company;
- 21 (C) a separate account of an insurance company;
- 22 (D) an investment company as defined in 15 U.S.C. 80a-1 -  
23 80a-64 (Investment Company Act of 1940);
- 24 (E) a broker-dealer registered under 15 U.S.C. 78a - 78pp  
25 (Securities Exchange Act of 1934);
- 26 (F) an employee pension, profit-sharing, or benefit plan if the  
27 plan has total assets in excess of \$10,000,000 or its investment decisions are  
28 made by a named fiduciary, as defined in 29 U.S.C. 1102(a)(2) (Employee  
29 Retirement Income Security Act of 1974), that is a broker-dealer registered  
30 under 15 U.S.C. 78a - 78pp (Securities Exchange Act of 1934), an investment  
31 adviser registered or exempt from registration under 15 U.S.C. 80b-1 - 80b-21

1 (Investment Advisers Act of 1940), an investment adviser registered under this  
2 chapter, a depository institution, or an insurance company;

3 (G) a plan established and maintained by a state, a political  
4 subdivision of a state, or an agency or instrumentality of a state or a political  
5 subdivision of a state for the benefit of its employees if the plan has total assets  
6 in excess of \$10,000,000 or its investment decisions are made by a legally  
7 designated public official or by a named fiduciary, as defined in 29 U.S.C.  
8 1102(a)(2) (Employee Retirement Income Security Act of 1974), that is a  
9 broker-dealer registered under 15 U.S.C. 78a - 78pp (Securities Exchange Act  
10 of 1934), an investment adviser registered or exempt from registration under  
11 15 U.S.C. 80b-1 - 80b-21 (Investment Advisers Act of 1940), an investment  
12 adviser registered under this chapter, a depository institution, or an insurance  
13 company;

14 (H) a trust if that trust has total assets in excess of \$10,000,000,  
15 the trustee of the trust is a depository institution, and the participants in the  
16 trust are exclusively plans of the types identified in (F) or (G) of this  
17 paragraph, regardless of the size of their assets, except a trust that includes as  
18 participants self-directed individual retirement accounts or similar self-directed  
19 plans;

20 (I) an organization described in 26 U.S.C. 501(c)(3) (Internal  
21 Revenue Code), corporation, Massachusetts trust or similar business trust,  
22 limited liability company, or partnership, not formed for the specific purpose  
23 of acquiring the securities offered, with total assets in excess of \$10,000,000;

24 (J) a small business investment company licensed by the  
25 United States Small Business Administration under 15 U.S.C. 681(c) (Small  
26 Business Investment Act of 1958) with total assets in excess of \$10,000,000;

27 (K) a private business development company as defined in 15  
28 U.S.C. 80b-2(a)(22) (Investment Advisers Act of 1940) with total assets in  
29 excess of \$10,000,000;

30 (L) a federal covered investment adviser acting for its own  
31 account;

1 (M) a qualified institutional buyer, as defined in 17 C.F.R.  
2 230.144A, other than 17 C.F.R. 230.144A(a)(1)(i)(H), adopted under 15  
3 U.S.C. 77a - 77aa (Securities Act of 1933);

4 (N) a major United States institutional investor, as defined in  
5 17 C.F.R. 240.15a-6(b)(4)(i), adopted under 15 U.S.C. 78a - 78pp (Securities  
6 Exchange Act of 1934);

7 (O) any other person, other than an individual, of institutional  
8 character with total assets in excess of \$10,000,000 not organized for the  
9 specific purpose of evading this chapter; or

10 (P) any other person specified by regulation adopted or order  
11 issued under this chapter;

12 (15) "insurance company" means a company organized as an insurance  
13 company whose primary business is writing insurance or reinsuring risks underwritten  
14 by insurance companies and that is subject to supervision by the insurance  
15 commissioner or a similar official or agency of a state;

16 (16) "insured" means insured as to payment of all principal and all  
17 interest;

18 (17) "international banking institution" means an international  
19 financial institution of which the United States is a member and whose securities are  
20 exempt from registration under 15 U.S.C. 77a - 77aa (Securities Act of 1933);

21 (18) "investment adviser" means a person that, for compensation,  
22 engages in the business of advising others, either directly or through publications or  
23 writings, as to the value of securities or the advisability of investing in, purchasing, or  
24 selling securities or that, for compensation and as a part of a regular business, issues or  
25 produces analyses or reports concerning securities; the term includes a financial  
26 planner or other person that, as an integral component of other financially related  
27 services, provides investment advice to others for compensation as part of a business  
28 or that holds itself out as providing investment advice to others for compensation; the  
29 term does not include

30 (A) an investment adviser representative;

31 (B) a lawyer, accountant, engineer, or teacher whose

1 performance of investment advice is solely incidental to the practice of the  
2 person's profession;

3 (C) a broker-dealer or its agents whose performance of  
4 investment advice is solely incidental to the conduct of business as a broker-  
5 dealer and that does not receive special compensation for the investment  
6 advice;

7 (D) a publisher of a bona fide newspaper, news magazine, or  
8 business or financial publication of general and regular circulation;

9 (E) a federal covered investment adviser;

10 (F) a bank, a trust company organized or chartered under the  
11 laws of this state, or a savings institution;

12 (G) any other person that is excluded by 15 U.S.C. 80b-1 - 80b-  
13 21 (Investment Advisers Act of 1940) from the definition of investment  
14 adviser; or

15 (H) any other person excluded by a regulation adopted or order  
16 issued under this chapter;

17 (19) "investment adviser representative" means an individual  
18 employed by or associated with an investment adviser or federal covered investment  
19 adviser and who makes any recommendations or otherwise gives investment advice  
20 regarding securities, manages accounts or portfolios of clients, determines which  
21 recommendation or advice regarding securities should be given, provides investment  
22 advice or offers to provide investment advice, receives compensation to solicit, offer,  
23 or negotiate for the sale of or for selling investment advice, or supervises employees  
24 who perform any of the foregoing; the term does not include an individual who

25 (A) performs only clerical or ministerial acts;

26 (B) is an agent whose performance of investment advice is  
27 solely incidental to the individual's acting as an agent and who does not receive  
28 special compensation for investment advisory services;

29 (C) is employed by or associated with a federal covered  
30 investment adviser, unless the individual has a place of business in this state, as  
31 that term is defined by rule adopted under 15 U.S.C. 80b-3a (Investment

1           Advisers Act of 1940) and is

2                           (i) an investment adviser representative, as that term is  
3           defined by rule adopted under 15 U.S.C. 80b-3a (Investment Advisers  
4           Act of 1940); or

5                           (ii) not a supervised person, as that term is defined in 15  
6           U.S.C. 80b-2(a)(25) (Investment Advisers Act of 1940); or

7                           (D) is excluded by a regulation adopted or order issued under  
8           this chapter;

9                           (20) "issuer" means a person that issues or proposes to issue a security,  
10          subject to the following:

11                           (A) the issuer of a voting trust certificate, collateral trust  
12          certificate, certificate of deposit for a security, or share in an investment  
13          company without a board of directors or individuals performing similar  
14          functions is the person performing the acts and assuming the duties of  
15          depositor or manager under the trust or other agreement or instrument under  
16          which the security is issued;

17                           (B) the issuer of an equipment trust certificate or similar  
18          security serving the same purpose is the person by which the property is or will  
19          be used or to which the property or equipment is or will be leased or  
20          conditionally sold or that is otherwise contractually responsible for ensuring  
21          payment of the certificate;

22                           (C) the issuer of a fractional undivided interest in an oil, gas, or  
23          other mineral lease or in payments out of production under a lease, right, or  
24          royalty is the owner of an interest in the lease or in payments out of production  
25          under a lease, right, or royalty, whether whole or fractional, that creates  
26          fractional interests for the purpose of sale;

27                           (21) "nonissuer transaction" or "nonissuer distribution" means a  
28          transaction or distribution not directly or indirectly for the benefit of the issuer;

29                           (22) "offer to purchase" includes an attempt or offer to obtain, or  
30          solicitation of an offer to sell, a security or interest in a security for value; the term  
31          does not include a tender offer that is subject to 15 U.S.C. 78n(d) (Securities Exchange

1 Act of 1934);

2 (23) "older person" means a natural person who is 60 years of age or  
3 older;

4 (24) "person" means an individual, a corporation, a partnership, a  
5 limited liability company, a limited partnership, a limited liability partnership, an  
6 association, a joint-stock company, a trust in which the interests of the beneficiaries  
7 are evidenced by a security, an unincorporated organization, a government, or a  
8 political subdivision of a government;

9 (25) "place of business" of a broker-dealer, an investment adviser, or a  
10 federal covered investment adviser means

11 (A) an office at which the broker-dealer, investment adviser, or  
12 federal covered investment adviser regularly provides brokerage or investment  
13 advice or solicits, meets with, or otherwise communicates with customers or  
14 clients; or

15 (B) any other location that is held out to the general public as a  
16 location at which the broker-dealer, investment adviser, or federal covered  
17 investment adviser provides brokerage or investment advice or solicits, meets  
18 with, or otherwise communicates with customers or clients;

19 (26) "price amendment" means the amendment to a registration  
20 statement filed under 15 U.S.C. 77a - 77aa (Securities Act of 1933) or, if an  
21 amendment is not filed, the prospectus or prospectus supplement filed under 15 U.S.C.  
22 77a - 77aa (Securities Act of 1933) that includes a statement of the offering price,  
23 underwriting and selling discounts or commissions, amount of proceeds, conversion  
24 rates, call prices, and other matters dependent on the offering price;

25 (27) "principal place of business" of a broker-dealer or an investment  
26 adviser means the executive office of the broker-dealer or investment adviser from  
27 which the officers, partners, or managers of the broker-dealer or investment adviser  
28 direct, control, and coordinate the activities of the broker-dealer or investment adviser;

29 (28) "record," except in the phrases "of record," "official record," and  
30 "public record," means information that is inscribed on a tangible medium or that is  
31 stored in an electronic or other medium and is retrievable in perceivable form;

1 (29) "sale" includes every contract of sale, contract to sell, or  
2 disposition of a security or interest in a security for value, and "offer to sell" includes  
3 every attempt or offer to dispose of, or solicitation of an offer to purchase, a security  
4 or interest in a security for value; both terms include

5 (A) a security given or delivered with, or as a bonus because of,  
6 a purchase of securities or any other thing constituting part of the subject of the  
7 purchase and having been offered and sold for value;

8 (B) a gift of assessable stock involving an offer and sale; and

9 (C) a sale or offer of a warrant or right to purchase or subscribe  
10 to another security of the same or another issuer and a sale or offer of a  
11 security that gives the holder a present or future right or privilege to convert  
12 the security into another security of the same or another issuer, including an  
13 offer of the other security;

14 (30) "Securities and Exchange Commission" means the United States  
15 Securities and Exchange Commission;

16 (31) "securities business" means a business that provides the services  
17 provided by

18 (A) investment advisers, federal covered investment advisers,  
19 or investment adviser representatives; or

20 (B) broker-dealers, issuers, or agents of broker-dealers or  
21 issuers;

22 (32) "security" means a note; stock; treasury stock; security future;  
23 bond; debenture; evidence of indebtedness; certificate of interest or participation in a  
24 profit-sharing agreement; collateral trust certificate; preorganization certificate or  
25 subscription; transferable share; investment contract; voting trust certificate; certificate  
26 of deposit for a security; viatical settlement; fractional undivided interest in oil, gas, or  
27 other mineral rights; put, call, straddle, option, or privilege on a security, certificate of  
28 deposit, or group or index of securities, including an interest in or based on the value  
29 of a put, call, straddle, option, or privilege on a security, certificate of deposit, or  
30 group or index of securities; put, call, straddle, option, or privilege entered into on a  
31 national securities exchange relating to foreign currency; or, in general, an interest or

1 instrument commonly known as a "security"; or a certificate of interest or participation  
2 in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to  
3 subscribe to or purchase any of the foregoing; the term

4 (A) includes both a certificated and an uncertificated security;

5 (B) does not include a participation agreement entered under  
6 AS 14.40.802 or an insurance or endowment policy subject to AS 21;

7 (C) does not include an interest in a contributory or  
8 noncontributory pension or welfare plan subject to 29 U.S.C. 1001 - 1461  
9 (Employee Retirement Income Security Act of 1974);

10 (D) includes an investment in a common enterprise with the  
11 expectation of profits to be derived primarily from the efforts of a person other  
12 than the investor; in this subparagraph, "common enterprise" means an  
13 enterprise in which the fortunes of the investor are interwoven with those of  
14 the person offering the investment, a third party, or other investors;

15 (E) includes as an investment contract, among other contracts,  
16 an interest in a limited partnership and a limited liability company, and an  
17 investment in a viatical settlement or similar agreement; and

18 (F) includes a viatical settlement interest;

19 (33) "self-regulatory organization" means a national securities  
20 exchange registered under 15 U.S.C. 78a - 78pp (Securities Exchange Act of 1934), a  
21 national securities association of broker-dealers registered under 15 U.S.C. 78a - 78pp  
22 (Securities Exchange Act of 1934), a clearing agency registered under 15 U.S.C. 78a -  
23 78pp (Securities Exchange Act of 1934), or the Municipal Securities Rulemaking  
24 Board established under 15 U.S.C. 78o-4 (Securities Exchange Act of 1934);

25 (34) "sign" means, with present intent to authenticate or adopt a  
26 record,

27 (A) to execute or adopt a tangible symbol; or

28 (B) to attach or logically associate with the record an electronic  
29 symbol, sound, or process;

30 (35) "state" means a state of the United States, the District of  
31 Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular

1 possession subject to the jurisdiction of the United States;

2 (36) "vulnerable adult" means a person 18 years of age or older who,  
3 because of incapacity, mental illness, mental deficiency, physical illness, physical  
4 disability, advanced age, chronic use of drugs, chronic intoxication, fraud,  
5 confinement, dementia, or Alzheimer's disease, is unable to meet the person's own  
6 needs or to seek help without assistance.

7 **Sec. 45.56.995. Short title.** This chapter may be cited as the Alaska Securities  
8 Act.

9 \* **Sec. 26.** AS 45.63.080(a) is amended to read:

10 (a) AS 45.63.010, 45.63.015, 45.63.020, and AS 45.63.030(c) and (d) do not  
11 apply to a sale or attempted sale

12 (1) of a security regulated under AS 45.56 [AS 45.55] or a security that  
13 is exempted by AS 45.56.205 [AS 45.55.900] from regulation under AS 45.56  
14 [AS 45.55];

15 (2) by a person registered with the United States Securities and  
16 Exchange Commission when acting within the scope of the person's Securities and  
17 Exchange Commission license;

18 (3) by an issuer, or a subsidiary of an issuer, of a class of securities that  
19 is

20 (A) subject to 15 U.S.C. 78a - 78pp [15 U.S.C. 78a - 78lll]  
21 (Securities Exchange Act of 1934); and

22 (B) either registered under 15 U.S.C. 78a - 78pp [15 U.S.C.  
23 78a - 78lll] (Securities Exchange Act of 1934) or exempt from registration  
24 under 15 U.S.C. 78l(g)(2)(A) - (C) or (E) - (H);

25 (4) by a real estate broker, associate real estate broker, or real estate  
26 salesperson licensed under AS 08.88 and acting in a capacity covered by the license;

27 (5) by a person who has a certificate of registration under AS 08.18 to  
28 operate as a contractor and is acting in a capacity covered by the certificate of  
29 registration;

30 (6) by an embalmer or funeral director licensed under AS 08.42 and  
31 acting in a capacity covered by the license;

1 (7) by an insurance agent, general agent, broker, solicitor, or adjuster  
2 licensed under AS 21.27 and acting in a capacity covered by the license;

3 (8) by a person who is primarily soliciting the sale of a subscription to,  
4 or advertising in, a newspaper of general circulation;

5 (9) by a charitable organization or paid solicitor if the organization or  
6 solicitor is registered to make charitable solicitations under AS 45.68 and is acting in a  
7 capacity that is covered by the registration;

8 (10) by a person who is primarily soliciting the sale of a sound  
9 recording or book

10 (A) if the person

11 (i) has no minimum purchase requirements;

12 (ii) provides written notice of the buyer's right to cancel  
13 at any time; and

14 (iii) allows the buyer to return the sound recording or  
15 book and obtain a full refund; or

16 (B) through a membership in a book or record club

17 (i) where the club provides the buyer with a form that  
18 the buyer may use to instruct the club not to ship the offered  
19 merchandise; and

20 (ii) that is regulated by the Federal Trade Commission  
21 as a negative option plan under 16 C.F.R. Part 425;

22 (11) by a publisher, or a publisher's agent operating under a written  
23 agreement between a publisher and the agent, who is soliciting the sale of a publisher's  
24 magazine if

25 (A) the buyer has the right to review the magazine and cancel  
26 the subscription for the magazine within seven days after receipt of the  
27 magazine or at the time the invoice is received by the buyer, whichever is later;  
28 a cancellation request is timely if the request is mailed, properly addressed and  
29 postmarked, postage prepaid, within seven days after receipt of the magazine;

30 (B) the right of cancellation and refund is fully disclosed in  
31 writing to the buyer before or at the time the initial invoice is received by the

1                   buyer;

2                   (12) of services provided by a cable television system operating under  
3 a franchise issued by a municipality;

4                   (13) by a person who is soliciting for a business, or for an affiliate of a  
5 business, that is regulated by the Regulatory Commission of Alaska;

6                   (14) by a person whose solicitation is solely for telephone answering  
7 services provided by the person or the person's employer;

8                   (15) of property from a mail order catalog that is published on a  
9 regular, periodic basis and that describes or pictures the items for sale and prominently  
10 provides the specific price of each item;

11                   (16) by a supervised financial institution or the parent, subsidiary, or  
12 affiliate of a supervised financial institution; in this paragraph, "supervised financial  
13 institution" means a commercial bank, savings bank, mutual savings bank, trust  
14 company, savings and loan association, credit union, industrial loan company,  
15 personal property broker, consumer finance lender, commercial finance lender, or  
16 other financial institution if the financial institution is subject to regulation by this  
17 state or the United States;

18                   (17) by an insurer or the parent, subsidiary, or affiliate of an insurer;

19                   (18) by a person who solicits a sale by a contact by telephonic means  
20 without intending to complete the sales presentation during the contact, who does not  
21 complete the sales presentation during the contact, and who only completes the sales  
22 presentation at a later meeting in person, unless at the later meeting the solicitor  
23 attempts to collect payment for property or services delivered before the later meeting;

24                   (19) of an item of personal property, including a food product, that is  
25 made by hand by an individual, if the sale or attempted sale of the item is made by the  
26 individual who made the item; in this paragraph, "made by hand" includes the use of  
27 ordinary household devices if the majority of the value of the item is added by the  
28 labor of the individual.

29 \* **Sec. 27.** AS 45.66.220 is amended to read:

30                   **Sec. 45.66.220. Exemptions.** This chapter does not apply to a sale of or an  
31 offer to sell

1 (1) a business opportunity if the total amount of the payments to be  
2 made by the buyer under the contract is less than \$250;

3 (2) a franchise under 16 C.F.R. Part 436 [16 C.F.R. 436];

4 (3) an ongoing business operated by the seller that is to be sold in its  
5 entirety;

6 (4) a business opportunity to an ongoing business if the seller will  
7 provide products, equipment, supplies, or services that are to be sold by the buyer in  
8 connection with the buyer's ongoing business;

9 (5) sales demonstration equipment, materials, or samples for use in  
10 sales demonstrations and not for resale, or product inventory sold to the buyer at a  
11 bona fide wholesale price;

12 (6) a business opportunity by an executor, an administrator, a marshal,  
13 a receiver, a trustee in bankruptcy, or a guardian or conservator, or under a judicial  
14 sale;

15 (7) a security registered under AS 45.56 [AS 45.55] or a security that  
16 is exempted by AS 45.56.205 [AS 45.55.900] from registration under AS 45.56  
17 [AS 45.55];

18 (8) a business opportunity if the sale or offer is made by a person  
19 registered with the United States Securities and Exchange Commission when acting  
20 within the scope of the person's Securities and Exchange Commission license or by a  
21 person registered by the state under AS 45.56 [AS 45.55] when acting within the  
22 scope of registration;

23 (9) a business opportunity by an issuer or a subsidiary of an issuer of a  
24 class of securities that is

25 (A) subject to 15 U.S.C. 78a - 78pp [15 U.S.C. 78a - 78lll]  
26 (Securities Exchange Act of 1934); and

27 (B) registered under 15 U.S.C. 78a - 78pp [15 U.S.C. 78a -  
28 78lll] (Securities Exchange Act of 1934) unless exempt from registration under  
29 15 U.S.C. 78l(g)(2)(A) - (C) or (E) - (H);

30 (10) a business opportunity in which the buyer is

31 (A) a bank, savings and loan association, trust company,

1 insurance company, credit union, or investment company under 15 U.S.C. 80a-  
2 1 - 80a-64 (Investment Company Act of 1940), pension or profit sharing trust,  
3 or other financial institution or institutional buyer; or

4 (B) a broker-dealer registered under AS 45.56.405 [AS 45.55];

5 (11) a business opportunity that involves a marketing plan made in  
6 conjunction with the registration of a trademark or service mark under 15 U.S.C. 1051  
7 - 1127 (Trademark Act of 1946) if the seller has a minimum net worth of \$1,000,000  
8 as determined on the basis of the seller's most recent audited financial statement  
9 prepared within 13 months of the first offer to sell in this state; net worth may be  
10 determined on a consolidated basis if one person owns at least 80 percent of the seller  
11 and that one person expressly guarantees the obligations of the seller that arise under  
12 the sale or offer claimed to be exempt under this paragraph; or

13 (12) a business opportunity in which either the seller or the buyer is  
14 licensed as a real estate broker, associate real estate broker, or real estate salesperson  
15 under AS 08.88 and the sale or offer is regulated by AS 08.88.

16 \* **Sec. 28.** AS 45.66.900(11) is amended to read:

17 (11) "securities or investment laws" means AS 45.56 [AS 45.55]  
18 (Alaska Securities Act) or a substantially similar statute of another jurisdiction, 15  
19 U.S.C. 77a - 77aa [15 U.S.C. 77a - 77bbbb] (Securities Exchange Act of 1933), 15  
20 U.S.C. 78a - 78pp [15 U.S.C. 78a - 78lll] (Securities Exchange Act of 1934), or 15  
21 U.S.C. 80a-1 - 80b-21 (Investment Company Act of 1940/Investment Advisers Act of  
22 1940);

23 \* **Sec. 29.** AS 45.55.010, 45.55.020, 45.55.023, 45.55.025, 45.55.027, 45.55.028, 45.55.030,  
24 45.55.035, 45.55.040, 45.55.050, 45.55.060, 45.55.070, 45.55.075, 45.55.080, 45.55.090,  
25 45.55.100, 45.55.110, 45.55.120, 45.55.150, 45.55.155, 45.55.170, 45.55.900, 45.55.905(c),  
26 45.55.915, 45.55.930, 45.55.935(b), 45.55.970, 45.55.980, 45.55.990, and 45.55.995 are  
27 repealed.

28 \* **Sec. 30.** The uncodified law of the State of Alaska is amended by adding a new section to  
29 read:

30 **INDIRECT COURT RULE AMENDMENTS.** (a) The provisions of AS 45.56.630(c)  
31 - (e), enacted by sec. 25 of this Act, have the effect of changing Rules 4 and 5, Alaska Rules

1 of Civil Procedure, by allowing service on the administrator in certain cases.

2 (b) The provisions of AS 45.56.650(f), enacted by sec. 25 of this Act, have the effect  
3 of changing Rule 54, Alaska Rules of Civil Procedure, by expanding the definition of  
4 judgments to include final judgments of the administrator issued under AS 45.56.650, enacted  
5 by sec. 25 of this Act.

6 (c) The provisions of AS 45.56.650(g), enacted by sec. 25 of this Act, have the effect  
7 of changing Rule 90, Alaska Rules of Civil Procedure, by changing the contempt procedure in  
8 certain cases.

9 (d) The provisions of AS 45.56.655(c), enacted by sec. 25 of this Act, have the effect  
10 of changing Rule 65, Alaska Rules of Civil Procedure, by changing the procedure for  
11 injunctions in certain cases by prohibiting requiring the administrator to post a bond.

12 (e) The provisions of AS 45.56.675(a), enacted by sec. 25 of this Act, have the effect  
13 of changing Rule 602, Alaska Rules of Appellate Procedure, by changing the time for filing a  
14 notice of appeal.

15 \* **Sec. 31.** The uncodified law of the State of Alaska is amended by adding a new section to  
16 read:

17 **TRANSITION: REGULATIONS.** The Department of Commerce, Community, and  
18 Economic Development may adopt regulations necessary to implement AS 45.56, enacted by  
19 sec. 25 of this Act. The regulations take effect under AS 44.62 (Administrative Procedure  
20 Act), but not before the effective date of this Act.

21 \* **Sec. 32.** The uncodified law of the State of Alaska is amended by adding a new section to  
22 read:

23 **TRANSITION: APPLICATION OF ACT TO EXISTING PROCEEDINGS AND**  
24 **EXISTING RIGHTS AND DUTIES.** (a) Former AS 45.55 exclusively governs all actions or  
25 proceedings that are pending on the effective date of sec. 25 of this Act or that may be  
26 instituted based on conduct occurring before the effective date of sec. 25 of this Act, but a  
27 civil action may not be maintained to enforce any liability under former AS 45.55, unless  
28 instituted within any period of limitation that applied when the cause of action accrued or  
29 within five years after the effective date of this Act, whichever is earlier.

30 (b) All effective registrations under former AS 45.55 and all administrative orders  
31 relating to the registrations, regulations, statements of policy, interpretative opinions,

1 declaratory rulings, determinations to take no action, and conditions imposed on the  
2 registrations under former AS 45.55 remain in effect while they would have remained in  
3 effect if this Act had not been enacted. They are considered to have been filed, issued, or  
4 imposed under this Act, but are exclusively governed by former AS 45.55, unless removed or  
5 replaced by the administrator.

6 (c) Former AS 45.55 exclusively applies to an offer or sale made within one year after  
7 the effective date of sec. 25 of this Act under an offering made in good faith before the  
8 effective date of sec. 25 of this Act based on an exemption available under former AS 45.55.

9 (d) In this section, "former AS 45.55" means AS 45.55 as it existed immediately  
10 before July 1, 2016.

11 \* **Sec. 33.** The uncodified law of the State of Alaska is amended by adding a new section to  
12 read:

13 REVISOR'S INSTRUCTION. The revisor of statutes is requested to change the  
14 chapter heading of AS 45.55 from "Alaska Securities Act" to "Alaska Native Claims  
15 Settlement Act Corporations Proxy Solicitations and Initial Issuance of Stock."

16 \* **Sec. 34.** The uncodified law of the State of Alaska is amended by adding a new section to  
17 read:

18 CONDITIONAL EFFECT. AS 45.56.630(c) - (e), 45.56.650(f) and (g), 45.56.655(c),  
19 and 45.56.675(a), enacted by sec. 25 of this Act, take effect only if sec. 30 of this Act receives  
20 the two-thirds majority vote of each house required by art. IV, sec. 15, Constitution of the  
21 State of Alaska.

22 \* **Sec. 35.** This Act takes effect July 1, 2016.

Comparison of HB 194CS\P to Existing Alaska Securities Act (AS 45.55)

HB 194CS- <del>I</del> Proposed AS 45.56	Alaska Securities Act AS 45.55	Comments	Page number
Sections 1-14: Substantive Additions to Other Chapters in the Alaska Statutes		Only certain provisions are highlighted here; most of the changes are numbering updates with the Securities Act moving to 45.56.	
<p><b>Sections 15-23 Alaska Native Claims Settlement Act Corporations Proxy Solicitations</b></p> <p><b>Sec. 15.</b> AS 45.55.138 is amended to read: <b>Sec. 45.55.138. Application to Alaska Native Claims Settlement Act corporations.</b> The initial issue of stock of a corporation organized under Alaska law under [PURSUANT TO] 43 U.S.C. 1601 et seq. (Alaska Native Claims Settlement Act) is not a sale of a security under <b>AS 45.56.105</b> [AS 45.55.070] and <b>AS 45.56.900(27)</b> [45.55.990(28)].</p> <p><b>Sec. 16.</b> AS 45.55.139 is amended to read: <b>Sec. 45.55.139. Reports of corporations.</b> A copy of all annual reports, proxies, consents or authorizations, proxy statements, and other materials relating to proxy solicitations distributed, published, or made available by any person to at least 30 Alaska resident shareholders of a corporation <u>organized under Alaska law under 43 U.S.C. 1601 et. seq. (Alaska Native Claims Settlement Act)</u> that has total assets exceeding \$1,000,000 and a class of equity security held of record by 500 or more 3 persons [AND WHICH IS EXEMPTED FROM THE REGISTRATION 4 REQUIREMENTS OF AS 45.55.070 BY 45.55.138], shall be filed with the administrator concurrently with its distribution to shareholders.</p> <p><b>Sec. 17.</b> AS 45.55.920(a) is amended to read: (a) If it appears</p>		All provisions related to Alaska Native Claims Settlement Act (ANCSA) corporations' proxy solicitations from 45.55 are retained. A few of the provisions had to be modified to remove references to general securities as these provisions now only relate to the ANCSA corporations' proxy solicitations. No substantive changes to these provisions were made, and the ANCSA corporate proxy solicitations will continue to be regulated by the Division as they have been since ANCSA's inception.	11

to the administrator that a person has engaged or is about to engage in an act or practice in violation of a provision of this chapter or regulation or order under this chapter, the administrator may (1) in the public interest [OR FOR THE PROTECTION OF INVESTORS,] issue an order (A) directing the person to cease and desist from continuing the act or practice; (B) directing the person, for a period not to exceed three years, to file the annual reports, proxies, consents or authorizations, proxy statements, or other materials relating to proxy solicitations required under AS 45.55.139 with the administrator for examination and review 10 working days before a distribution to shareholders; and (C) voiding the proxies obtained by a person required to file under AS 45.55.139, including their future exercise or actions resulting from their past exercise, if the proxies were solicited by means of an untrue or misleading statement prohibited under AS 45.55.160; or (2) bring an action in the superior court to enjoin the acts or practices and to enforce compliance with this chapter or regulation or order under this chapter, and upon a proper showing, the appropriate remedy must be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets; the court may not require the administrator to post a bond.

**Sec. 18.** AS 45.55.920(b) is amended to read: (b) The administrator may issue an order against **a person** [AN APPLICANT, REGISTERED PERSON, OR OTHER PERSON] who knowingly or intentionally violates this chapter or a regulation or order of the administrator under this chapter, imposing a civil penalty of not more than \$2,500 for a single violation, or not more than \$25,000 for multiple violations, in a single proceeding or a series of related proceedings.

<p><b>Sec. 19.</b> AS 45.55.920(c) is amended to read: (c) For violations not covered by (b) of this section, the administrator may issue an order against <b>a person</b> [AN APPLICANT, REGISTERED PERSON, OR OTHER PERSON] who violates this chapter or a regulation or order of the administrator under this chapter, imposing a civil penalty of not more than \$500 for a single violation, or not more than \$5,000 for multiple violations, in a single proceeding or a series of related proceedings.</p> <p><b>Sec. 20.</b> AS 45.55.925(a) is amended to read: (a) In addition to the civil penalties assessed under AS 45.55.920, a person who wilfully violates a provision of this chapter except <b>AS 45.55.160</b> [AS 45.55.030(e), 45.55.040(h), 45.55.075, or 45.55.160], or who wilfully violates a regulation or order under this chapter, or who wilfully violates AS 45.55.160 knowing the statement made to be false or misleading in a material respect or the omission to be misleading by any material respect, upon conviction, is punishable by a fine of not more than \$5,000, or by imprisonment of not less than one year nor more than five years, or both. Upon conviction of an individual for a felony under this chapter, imprisonment for not less than one year is mandatory. However, an individual may not be imprisoned for the violation of a regulation or order if the individual proves that the individual had no knowledge of the regulation or order. An indictment or information may not be returned under this chapter more than five years after the alleged violation.</p> <p><b>Sec. 21.</b> AS 45.55.935(a) is repealed and reenacted to read: (a) The administrator shall adopt regulations, consistent with the provisions of this chapter and with regulations adopted under AS 44.64.060, governing administrative hearings conducted by the office of administrative hearings (AS 44.64.010) for</p>			
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orders issued under AS 45.55.920.

**Sec. 22.** AS 45.55.950(a) is amended to read: (a) The administrator may make, adopt, amend, and rescind the regulations, forms, and orders that are necessary to carry out this chapter [INCLUDING REGULATIONS AND FORMS GOVERNING REGISTRATION STATEMENTS, APPLICATIONS, AND REPORTS, AND DEFINING TERMS, WHETHER OR NOT USED IN THIS CHAPTER INsofar as the definitions are not inconsistent with this chapter. FOR THE PURPOSE OF REGULATIONS AND FORMS, THE ADMINISTRATOR MAY CLASSIFY SECURITIES, PERSONS, AND MATTERS WITHIN THE JURISDICTION OF THE ADMINISTRATOR, AND PRESCRIBE DIFFERENT REQUIREMENTS FOR DIFFERENT CLASSES].

**Sec. 23.** AS 45.55.950(b) is amended to read: (b) A regulation, form, or order may not be made, adopted, amended, or rescinded unless the administrator finds that the action is necessary or appropriate in the public interest [OR FOR THE PROTECTION OF INVESTORS AND CONSISTENT WITH THE PURPOSES FAIRLY INTENDED BY THE POLICY AND PROVISIONS OF THIS CHAPTER. IN ADOPTING REGULATIONS AND FORMS THE ADMINISTRATOR MAY COOPERATE WITH THE SECURITIES ADMINISTRATORS OF THE OTHER STATES AND THE SECURITIES AND EXCHANGE COMMISSION WITH A VIEW TO EFFECTUATING THE POLICY OF THIS SECTION TO ACHIEVE MAXIMUM UNIFORMITY IN THE FORM AND CONTENT OF REGISTRATION STATEMENTS, APPLICATIONS, AND REPORTS

WHEREVER PRACTICABLE].			
<b>Sec. 24.</b> AS 45.55 is amended by adding a new section to read: <b>Sec. 45.55.985. Definitions.</b> In this chapter, unless the context otherwise requires, "administrator" means the commissioner of commerce, community, and economic development or a designee of the commissioner.			
<b>Section 25</b> <b>Proposed AS 45.56</b>	<b>Alaska Securities Act</b> <b>AS 45.55</b>	<b>Comments</b>	<b>Page number</b>
Article 1. General Provisions Sec. 45.56.105. Securities registration requirement. A person may not offer or sell a security in the state unless (1) the security is a federal covered security; (2) is registered under this chapter; or (3) the security or transaction is exempted from registration under AS 45.56.205 – 45.56.250.	45.55.070	Same as 45.55.	14-15
<b>Article 2. Exemptions from the Registration of Securities</b>	See generally 45.55.900		
<b>45.56.205. Exempt securities.</b> The following securities are exempt from the requirements of AS 45.56.105, 45.56.305 - 45.56.360 and 45.56.550:	See generally 45.55.900(a)		15
(1) a security, including a revenue obligation or a separate security, as defined in 17 C.F.R. Part 230.131 adopted under 15 U.S.C. 77a - 77aa (Securities Act of 1933), issued, insured, or guaranteed by the United States; by a state; by a political subdivision of a state; by a public authority, agency, or instrumentality of one or more states; by a political subdivision of one or more states; or by a person controlled or supervised by and acting as an instrumentality of the United States under authority granted by the United States Congress; or a certificate of deposit for any of the foregoing;	45.55.900(a)(1)	Same as 45.55.	15
(2) a security issued, insured, or guaranteed by a foreign government with which the United States maintains diplomatic relations, or by any of its political subdivisions, if	Similar to 45.55.900(a)(2)	Adopted from the Uniform Securities Act (USA); removes redundant specific reference to Canada.	15

the security is recognized as a valid obligation by the issuer, insurer, or guarantor;			
(3) a security issued by and representing, or that will represent an interest in or a direct obligation of, or be guaranteed by, (A) an international banking institution; (B) a banking institution organized under the laws of the United States; a member bank of the Federal Reserve System; or a depository institution a substantial portion of the business of which consists or will consist of receiving deposits or share accounts that are insured to the maximum amount authorized by statute by the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund, or a successor authorized by federal law or exercising fiduciary powers that are similar to those permitted for national banks under the authority of the United States Comptroller of Currency under 12 U.S.C. 92a; or (C) any other depository institution, unless, by a regulation or order, the administrator proceeds under AS 45.56.250;	Similar to 45.55.900(a)(3), (6) and (8)	The three exemptions from 45.55.900(a) (3), (6), and (8) are combined into one.	15
(4) a security issued by and representing an interest in, or a debt of, or insured or guaranteed by, an insurance company authorized to do business in this state;	Similar to 45.55.900(a)(7)		16
(5) a security issued or guaranteed by a railroad, other common carrier, public utility, or public utility holding company that is (A) regulated with respect to its rates and charges by the United States or a state; (B) regulated with respect to the issuance or guarantee of the security by the United States, a state, Canada, or a Canadian province or territory; or (C) a public utility holding company registered under 42 U.S.C. 16451 et seq. (Energy Policy Act of 2005) or a subsidiary of the registered holding company within the meaning of that Act;	45.55.900(a)(9)	Same as 45.55.	16

<p>(6) a federal covered security specified in 15 U.S.C. 77r(b)(1) or adopted by rule under that provision or a security listed or approved for listing on another securities market specified by regulation under this chapter; a put or a call option contract; a warrant; a subscription right on or with respect to the security; an option or similar derivative security on a security or an index of securities or foreign currencies issued by a clearing agency registered under 15 U.S.C. 78a - 78pp (Securities Exchange Act of 1934) and listed or designated for trading on a national securities exchange, a facility of a national securities exchange, or a facility of a national securities association registered under 15 U.S.C. 78a – 78pp (Securities Exchange Act of 1934) or an offer or sale of the underlying security in connection with the offer, sale, or exercise of an option or other security that was exempt when the option or other security was written or issued; or an option or a derivative security designated by the Securities and Exchange Commission under 15 U.S.C. 78i(b);</p>	<p>45.55.900(a)(10)</p>	<p>45.55 provides an exemption for securities listed on specific exchanges (NYSE, American Stock Exchange, Chicago Stock Exchange, Pacific Coast Stock Exchange, Chicago Board of Options Exchange or other as designated by order of the Administrator). NSMIA expanded the definition of covered securities to additional exchanges, so the new language covers these as well.</p> <p>This exemption addresses specified options, warrants, and rights that are not federal covered securities under the Securities Act of 1933, but have generally always been exempted under the uniform securities acts (both 1956 and 2002).</p> <p>The provision also makes clear that any offer or sale of the underlying security that occurs as a result of the offer or sale of an option or other derivative security exempted under this provision or as the result of the exercise of the option or other derivative security, is covered by the exemption if the option met the terms of the exemption at the time such derivative security was written (that is, sold) or issued. Any transaction in an underlying security that results from the offer, sale, or exercise of any derivative security issued by a registered clearing agency and traded on a national securities exchange or association is exempt if the derivative security when written was exempt under 45.56. This language is consistent with federal case law (see, e.g. H. Kook &amp; Co., Inc. v. Scheinman, Hochstin &amp; Trotta, Inc., 414 F.2d 93 (2d Cir. 1969)).</p>	<p>16</p>
<p>(7) a security issued by a person organized and operated</p>	<p>Similar to</p>	<p>This exemption does not mandate any filing, but</p>	<p>17</p>

<p>exclusively for religious, educational, benevolent, fraternal, charitable, social, athletic, or reformatory purposes, or as a chamber of commerce, and not for pecuniary profit, no part of the net earnings of which inures to the benefit of a private stockholder or other person, or a security of a company that is excluded from the definition of an investment company under 15 U.S.C. 80a-3(c)(10)(B), except that, with respect to the offer or sale of a note, bond, debenture, or other evidence of indebtedness issued by the person, a regulation may be adopted under this chapter limiting the availability of this exemption by classifying securities, persons, and transactions, imposing different requirements for different classes, specifying, with respect to (B) of this paragraph, the scope of the exemption and the grounds for denial or suspension, and requiring an issuer</p> <p>(A) to file a notice specifying the material terms of the proposed offer or sale and copies of any proposed sales and advertising literature to be used and provide that the exemption becomes effective if the administrator does not disallow the exemption within the period established by the regulation;</p> <p>(B) to file a request for exemption authorization for which a regulation adopted under this chapter may specify the</p> <ul style="list-style-type: none"> <li>(i) scope of the exemption;</li> <li>(ii) requirement of an offering statement;</li> <li>(iii) filing of sales and advertising literature;</li> <li>(iv) filing of consent to service of process complying with AS 45.56.630, and</li> <li>(v) grounds for denial or suspension of the exemption; or</li> </ul> <p>(C) to register under AS 45.56.310;</p>	<p>45.55.900(a)(11)</p>	<p>adds statutory authority to allow the administrator to require either a notice filing, request for exemption, or registration by regulation or order if it deems necessary. The nonprofit exemption can be of concern due to its potential use by fraudsters and potential affinity fraud.</p>	
<p>(8) a member's or owner's interest in, or a retention certificate or like security given in lieu of a cash patronage dividend issued by, a cooperative organized and operated as a nonprofit membership cooperative under the cooperative</p>	<p>None.</p>	<p>This provision exempts securities issued by cooperatives from the registration requirement. The exemption is not available if the securities are offered or sold to the public generally.</p>	<p>17</p>

laws of a state, but not a member's or owner's interest, retention certificate, or like security sold to persons other than bona fide members of the cooperative;			
(9) an equipment trust certificate with respect to equipment leased or conditionally sold to a person if any security issued by the person would be exempt under this section or would be a federal covered security under 15 U.S.C. 77r(b)(1); and	None.	Provides an exception relating to equipment lease financing through leveraged leases, conditional sales and other devices. The premise is that if the securities of the person using such a financing device would be exempt under some other paragraph, the security used to acquire the property in question is also exempt.	18
(10) shares of membership stock in the Alaska Commercial Fishing and Agriculture Bank under AS 44.81.010, and other securities issued by that bank to members or in connection with loans to members.	45.55.900(a)(12)	Same as 45.55.	18
		<b>Additional Comments on Exempt Securities</b> 45.55.900(a)(10) is deleted and not carried over. These securities are exempt under federal law by virtue of the National Securities Markets Improvement Act of 1996 (NSMIA), Public Law 104-290, 1996.	
<b>Sec. 45.56.210. Exempt transactions.</b> The following transactions are exempt from the requirements of AS 45.56.105, 45.56.305 - 45.56.360 and 45.56.550:	See generally 45.55.900(b)		18
(1) an isolated nonissuer transaction, whether effected by or through a broker-dealer or not, if the seller is not a promoter or controlling person as the administrator may define by regulation or order;	45.55.900(b)(9)	45.56 removes the waiver process under 45.55 which allows for the seller to request a waiver for the requirement that the seller not be a promoter or controlling person. "Controlling person" is currently defined in regulation as a person who owns more than 50% of outstanding shares of a person. Formerly, a controlling person was one who owned 10%.	18
(2) a nonissuer transaction by or through a broker-dealer registered or exempt from registration under this chapter and a resale transaction by a sponsor of a unit investment trust	See generally 45.55.900(b)(17)	This section is an update of the "securities manual" exemption (45.55.900(b)(17)) that was present under 45.55. The update in the USA was	18

<p>registered under 15 U.S.C. 80a-1 - 80a-64 (Investment Company Act of 1940) in a security of a class that has been outstanding in the hands of the public for at least 90 days if, at the date of the transaction,</p> <p>(A) the issuer of the security is engaged in business, the issuer is not in the organizational stage or in bankruptcy or receivership, and the issuer is not a blank check, blind pool, or shell company that does not have a specific business plan or purpose or has indicated that its primary business plan is to engage in a merger or combination of the business with or an acquisition of an unidentified person;</p> <p>(B) the security is sold at a price reasonably related to its current market price;</p> <p>(C) the security does not constitute the whole or part of an unsold allotment to or a subscription or participation by the broker-dealer as an underwriter of the security or a redistribution;</p> <p>(D) a nationally recognized securities manual or its electronic equivalent designated by a regulation adopted or order issued under this chapter or a record filed with the Securities and Exchange Commission that is publicly available contains</p> <ul style="list-style-type: none"> <li>(i) a description of the business and operations of the issuer;</li> <li>(ii) the names of the issuer's executive officers and the names of the issuer's directors, if any;</li> <li>(iii) an audited balance sheet of the issuer as of a date within 18 months before the date of the transaction or, in the case of a reorganization or merger when the parties to the reorganization or merger each had an audited balance sheet, a pro forma balance sheet for the combined organization; and</li> <li>(iv) an audited income statement for each of the issuer's two immediately previous fiscal years or for the period of existence of the issuer, whichever is shorter, or, in the case of a reorganization or merger when each party to the reorganization or merger had audited income statements, a</li> </ul>		<p>proposed by the North American Securities Administrators Association (NASAA) and the section generally follows the NASAA amendment.</p> <p>Note: Rule 419 issued under the Securities Act of 1933 defines a "blank check company" to be a company that "is a development stage company that has no specific business plan or purpose or has indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies, or other entity or person." A "blind pool" is similar and would involve an investment in a blank check or other entity with no identified business plan or purpose. A "shell company" is also similar and would involve an entity, which, to date, has no significant business assets, plan, or purpose.</p>	
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<p>pro forma income statement; and  (E) any one of the following requirements is met:  (i) the issuer of the security has a class of equity securities listed on a national securities exchange registered under 15 U.S.C. 78f or designated for trading on the National Association of Securities Dealers Automated Quotation System;  (ii) the issuer of the security is a unit investment trust registered under 15 U.S.C. 80a-1 - 80a-64 (Investment Company Act of 1940);  (iii) the issuer of the security, including its predecessors, has been engaged in continuous business for at least three years;  or  (iv) the issuer of the security has total assets of at least \$2,000,000 based on an audited balance sheet as of a date within 18 months before the date of the transaction or, in the case of a reorganization or merger when the parties to the reorganization or merger each had an audited balance sheet, a pro forma balance sheet for the combined organization;</p>			
<p>(3) a nonissuer transaction by or through a broker-dealer registered or exempt from registration under this chapter in a security of a foreign issuer that is a margin security defined in regulations or rules adopted by the Board of Governors of the Federal Reserve System;</p>	None	This addition reflects a compromise between USA drafters and NASAA proposal (which would have required a manual exemption for specified foreign nonissuer transactions) by limiting the exemption to margin securities only, which are subject to heightened regulation by the Federal Reserve System.	20
<p>(4) a nonissuer transaction by or through a broker-dealer registered or exempt from registration under this chapter in an outstanding security if the guarantor of the security files reports with the Securities and Exchange Commission under the reporting requirements of 15 U.S.C. 78m or 15 U.S.C. 78o (Securities Exchange Act of 1934);</p>	None.	This provision allows nonissuer secondary trading in the securities of issuers subject to reporting requirements of the 1934 Act, which bars immediate secondary trading in nonregistered IPOs. This exemption is limited to guarantors only because if the issuer is a reporting company, the transaction is preempted from state regulation under NSMIA.	20

<p>(5) a nonissuer transaction by or through a broker-dealer registered or exempt from registration under this chapter in a security that</p> <p>(A) is rated at the time of the transaction by a nationally recognized statistical rating organization in one of its four highest rating categories; or</p> <p>(B) has a fixed maturity or a fixed interest or dividend if</p> <p>(i) a default has not occurred during the current fiscal year or within the three previous fiscal years or, if the issuer has been in business less than three fiscal years, during the existence of the issuer and any predecessor in the payment of principal, interest, or dividends on the security; and</p> <p>(ii) the issuer is engaged in business, is not in the organizational stage or in bankruptcy or receivership, and is not and has not, within the previous 12 months, been a blank check, blind pool, or shell company that does not have a specific business plan or purpose or has indicated that its primary business plan is to engage in a merger or combination of the business with or an acquisition of an unidentified person;</p>	<p>See generally 45.55.900(b)(17)</p>	<p>Should be read with 45.56.210(2) in the bill (explains which securities transactions would be considered “exempt under this chapter”)</p> <p>Ratings organizations include Moody’s and Standard and Poor’s and covers ratings from AAA-BBB.</p> <p>Section includes both debt securities with fixed maturity or a fixed interest rate and preferred stock with fixed dividend provisions.</p>	<p>20</p>
<p>(6) a nonissuer transaction by or through a broker-dealer registered or exempt from registration under this chapter effecting an unsolicited order or offer to purchase;</p>	<p>45.55.900(b)(10)</p>	<p>USA removes the language at the end of 45.55.900(b)(10) which stated: “however, the administrator may by regulation require that the customer acknowledge on a specified form that the sale was unsolicited, and that a signed copy of each form be preserved by the broker-dealer for a specified period.” This requirement is preempted by NSMIA for federal covered securities.</p>	<p>20</p>
<p>(7) a nonissuer transaction executed by a bona fide pledgee without the purpose of evading this chapter;</p>	<p>45.55.900(11)</p>	<p>Same as 45.55.</p>	<p>21</p>
<p>(8) a nonissuer transaction by a federal covered investment adviser with investments under management in excess of \$100,000,000 acting in the exercise of discretionary authority in a signed record for the account of others;</p>	<p>None.</p>	<p>USA added because of a recognition that federal covered investment advisers are sophisticated financial professionals capable of determining the merits of a security and do not require the</p>	<p>21</p>

		protections provided by requiring state registration.	
(9) a transaction in a security, whether or not the security or transaction is otherwise exempt, in exchange for one or more bona fide outstanding securities, claims, or property interests, or partly in exchange for one or more bona fide outstanding securities, claims, or property interests and partly for cash if the terms and conditions of the issuance and exchange or the delivery and exchange and the fairness of the terms and conditions have been approved by the administrator after a hearing;	None.	From the USA. Provides a state counterpart to the specified exchange transaction exemption in section 3(a)(10) of the Securities Act of 1933. Commonly referred to as a "fairness hearing."	21
(10) a transaction between the issuer or other person on whose behalf the offering is made and an underwriter or among underwriters;	45.55.900(b)(1)	Same as 45.55.	21
(11) a transaction in a bond or other evidence of indebtedness secured by a real or chattel mortgage or deed of trust, or by an agreement for the sale of real estate or chattels, if the entire mortgage, deed of trust, or agreement, together with all the bonds or other evidence of indebtedness, secured under those documents, is offered and sold as a unit;	45.55.900(b)(2)	Same as 45.55.	21
(12) a transaction by an executor, administrator of an estate, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator;	45.55.900(b)(3)	Same as 45.55.	21
(13) a sale or offer to sell to (A) an institutional investor; (B) a federal covered investment adviser; or (C) any other person exempted by a regulation adopted or order issued under this chapter;	See generally 45.55.900(b)(4)	The USA language contains more inclusive language than 45.55. These are sophisticated investors which generally require less protection. Note: (B) is limited to transactions for the account of the adviser and not transactions on behalf of others by the adviser.	21
(14) a sale or offer to sell securities by or on behalf of an issuer if the transaction is part of a single issue in which (A) not more than 25 purchasers in this state during any 12 consecutive months, other than a person designated in (13)	45.55.900(b)(5)(B)	Identical language to (b)(5)(B) Note (b)(5)(A), which was limited to 10 purchasers and did not include the provision that prospective buyers receive information sufficient to make an	22

<p>of this section regardless of whether the seller or any of the buyers is then present in this state;</p> <p>(B) a general solicitation or general advertising is not made in connection with the sale of or offer to sell the securities;</p> <p>(C) a commission or other remuneration is not paid or given, directly or indirectly, to a person other than a broker-dealer registered under this chapter or an agent registered under this chapter for soliciting a prospective purchaser in this state;</p> <p>(D) the issuer reasonably believes that all the purchasers in this state, other than those designated in (13) of this section, are purchasing for investment and not with a view to distribution;</p> <p>(E) a legend is placed on the certificate or other document evidencing ownership of the security, stating that the security is not registered under this chapter and cannot be resold without registration under this chapter or exemption from this chapter; and</p> <p>(F) before a sale, each prospective buyer is furnished information that is sufficient to make an informed investment decision, which information shall be furnished to the administrator upon request; in this subparagraph, "information that is sufficient to make an informed investment decision" includes a business plan, an income and expense statement, a balance sheet, a statement of risks, and a disclosure of any significant negative factors that may affect the outcome of the investment.</p>		<p>informed investment decision (but otherwise had identical requirements), has been eliminated under 45.56.</p>	
<p>(15) a transaction under an offer to existing security holders of the issuer, including persons that, at the date of the transaction, are holders of convertible securities, options, or warrants if a commission or other remuneration, other than a standby commission, is not paid or given, directly or indirectly, for soliciting a security holder in this state;</p>	<p>45.55.900(b)(7)</p>	<p>45.55 required that a notice filing be made if there is a commission paid associated with these transactions. The new language simply prohibits the payment of commissions.</p>	<p>22</p>
<p>(16) an offer to sell, but not a sale of, a security not exempt</p>	<p>45.55.900(b)(8)</p>	<p>(b)(8) is split into two exemptions. (16) is for</p>	<p>23</p>

<p>from registration under 15 U.S.C. 77a - 77aa (Securities Act of 1933) if  (A) a registration, offering statement, or similar record as required under 15 U.S.C. 77a - 77aa (Securities Act of 1933) has been filed but is not effective, or the offer is made in compliance with 17 C.F.R. Part 230.165, adopted under 15 U.S.C. 77a - 77aa (Securities Act of 1933); and  (B) a stop order of which the offeror is aware has not been issued against the offeror by the administrator or the Securities and Exchange Commission, and an audit, inspection, or proceeding that is public and that may culminate in a stop order is not known by the offeror to be pending;</p>		<p>securities not exempt under the 33 Act and (17) is for securities that are exempt. Both only exempt offers, but not sales, and the registration statement must have been filed with the administrator. A stop order must not have been issued.</p>	
<p>(17) an offer to sell, but not a sale of, a security exempt from registration under 15 U.S.C. 77a - 77aa (Securities Act of 1933) if  (A) a registration statement has been filed under this chapter but is not effective;  (B) a solicitation of interest is provided in a record to offerees in compliance with a regulation adopted by the administrator under this chapter; and  (C) a stop order of which the offeror is aware has not been issued by the administrator under this chapter, and an audit, inspection, or proceeding that may culminate in a stop order is not known by the offeror to be pending;</p>	<p>45.55.900(b)(8)</p>	<p>(b)(8) is split into two exemptions. (16) is for securities not exempt under the 33 Act and (17) is for securities that are exempt. Both only exempt offers, but not sales, and the registration statement must have been filed with the administrator. A stop order must not have been issued.</p>	<p>23</p>
<p>(18) a transaction involving the distribution of the securities of an issuer to the security holders of another person in connection with a merger, consolidation, exchange of securities, sale of assets, or other reorganization to which the issuer or its parent or subsidiary and the other person or its parent or subsidiary are parties;</p>	<p>See generally 45.55.900(b)(14)</p>	<p>Expands prior language on mergers. Because most merger and similar transactions require shareholder approval and shareholders often have appraisal rights if they choose to dissent, the potential for abuse is less than in an offering of securities for cash. When appropriate, the administrator can deny, condition, limit or revoke this exemption under 45.56.250.</p>	<p>23</p>
<p>(19) a rescission offer, sale, or purchase under AS 45.56.665</p>	<p>45.55.900(b)(19)</p>	<p>Same as 45.55.</p>	<p>23</p>

<p>(20) an offer to sell or sale of a security to a person not a resident of this state and not present in the state if the offer or sale does not constitute a violation of the laws of the state or foreign jurisdiction in which the offeree or purchaser is present and is not part of an unlawful plan or scheme to evade this chapter;</p>	<p>None.</p>	<p>A 3<sup>rd</sup> circuit court case, A.S. Goldmen &amp; Co., Inc. v. New Jersey Bur. of Sec., 163 F.3d 780 (3d Cir. 1999), held that under the United States Constitution's Commerce Clause a State could authorize a securities administrator to prevent a broker-dealer from selling securities from a State to purchasers in other States where purchase of the securities was authorized. The concluding phrase "and is not part of an unlawful plan or scheme to evade this [Act]" is intended to preclude reliance on this exemption by boiler rooms and others engaged in illegal activities. This exemption also does not affect the administrator's ability to bring actions under the licensing or enforcement provisions of the Act.</p>	<p>23</p>
<p>(21) employees' stock purchase, savings, option, profit-sharing, pension, or similar benefit plan, including any securities, plan interests, and guarantees issued under a compensatory benefit plan or compensation contract, contained in a record, established by the issuer, the issuer's parent, the issuer's majority-owned subsidiary, or the majority-owned subsidiary of the issuer's parent for the participation of their employees, including offers to sell or sales of the securities to</p> <p>(A) directors, general partners, trustees, managers, and members if the issuer is a limited liability company, if the issuer is a business trust, officers, consultants, and advisors;</p> <p>(B) family members who acquire the securities from those persons through gifts or domestic relations orders;</p> <p>(C) former employees, directors, general partners, trustees, officers, consultants, limited liability managers or members, and advisors if those individuals were employed by or providing services to the issuer when the securities were offered; and</p>	<p>AS 45.55.900(a)(5)</p>	<p>These moved from exempt securities to exempt transactions. Employees' interests in plans subject to ERISA are not securities under the definitions (see 45.56.90(30)). For interests in benefit plans that are securities (non-ERISA), a transactional exemption is now provided.</p>	<p>24</p>

<p>(D) insurance agents who are exclusive insurance agents of the issuer or the issuer's subsidiary or parent or who derive more than 50 percent of their annual income from those organizations;</p>			
<p>(22) a transaction involving  (A) a stock dividend or equivalent equity distribution, whether the corporation or other business organization distributing the dividend or equivalent equity distribution is the issuer or not, if nothing of value is given by stockholders or other equity holders for the dividend or equivalent equity distribution other than the surrender of a right to a cash or property dividend if each stockholder or other equity holder may elect to take the dividend or equivalent equity distribution in cash, property, or stock;  (B) an act incident to a judicially approved reorganization in which a security is issued in exchange for one or more outstanding securities, claims, or property interests, or partly in exchange for one or more outstanding securities, claims, or property interests and partly for cash; or  (C) the solicitation of tenders of securities by an offeror in a tender offer in compliance with 17 C.F.R. Part 230.162, adopted under 15 U.S.C. 77a - 77aa (Securities Act of 1933);</p>	<p>(A) = 45.55.900(b)(13)  (B) = 45.55.900 (b)(12)  (C) = None.</p>	<p>(A) and (B) are carried over from 45.55. (C) is a new provision, corresponding to Rule 162 under the Securities Act of 1933, which allows the offeror in a stock exchange offer to solicit tenders of securities before a registration statement is effective as long as no securities are purchased until the registration statement is effective and the tender offer has expired.</p>	<p>24</p>
<p>(23) a nonissuer transaction in an outstanding security by or through a broker-dealer registered or exempt from registration under this chapter if the issuer is a reporting issuer in a foreign jurisdiction designated by this paragraph or by a regulation adopted or order issued under this chapter; the issuer has been subject to continuous reporting requirements in the foreign jurisdiction for not less than 180 days before the transaction; and the security is listed on the foreign jurisdiction's securities exchange that has been designated by this paragraph or by a regulation adopted or order issued under this chapter, or is a security of the same issuer that is of senior or substantially equal rank to the listed</p>	<p>None.</p>	<p>This exemption relates to nonissuer transactions involving specified foreign issuer securities traded on designated securities exchanges. The exemption expressly covers Toronto Stock Exchange issuers that are public reporting companies under Canadian securities law and meet the 180 day continuous reporting requirement. In conformance with the North American Free Trade Agreement (NAFTA) and General Agreement on Trade in Services (GATS), the exemption separately provides authority for the administrator to designate by rule or order other specific foreign</p>	<p>25</p>

<p>security or is a warrant or right to purchase or subscribe to any of the foregoing; for purposes of this paragraph, Canada, together with its provinces and territories, is a designated foreign jurisdiction, and TSX, Inc., formerly known as the Toronto Stock Exchange, Inc., is a designated securities exchange; after an administrative hearing in compliance with AS 45.56.650(c), the administrator, by a regulation adopted or order issued under this chapter, may revoke the designation of a securities exchange under this paragraph if the administrator finds that revocation is necessary or appropriate in the public interest and for the protection of investors;</p>		<p>jurisdictions and their trading exchanges upon an adequate showing. The exemption also provides authority for an administrator to revoke any designation if necessary or appropriate in the public interest and for the protection of investors.</p>	
<p>(24) sales by an issuer to the buyer of an enterprise or a business and the assets and liabilities of the enterprise or business if</p> <p>(A) the transfer of stock to the buyer is solely incidental to the sale of the enterprise or business and its assets and liabilities;</p> <p>(B) the seller provides full access to the buyer the books and records of the enterprise or business; and</p> <p>(C) a legend is placed on the certificate or other document evidencing ownership of the security, stating that the security is not registered under this chapter and cannot be resold without registration under this chapter or exemption from it;</p>	<p>45.55.900(b)(5)(D)</p>	<p>Same as 45.55.</p>	<p>25</p>
<p>(25) offers or sales of certificates of interest or participation in oil, gas, or mining rights, titles, or leases, or in payments out of production under the rights, titles, or leases, if the purchasers</p> <p>(A) are or have been during the preceding two years engaged primarily in the business of exploring for, mining, producing, refining oil, gas, or minerals; or</p> <p>(B) have been found by the administrator upon written application to be substantially engaged in the business of exploring for, mining, producing, or refining oil, gas, or</p>	<p>45.55.900(b)(16)</p>	<p>Same as 45.55.</p>	<p>26</p>

minerals so as not to require the protection provided by this chapter;			
(26) 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 partnerships, 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 members; or	45.55.900(b)(20)	Same as 45.55.	26
(27) a transaction relating to a security that is not part of an initial issue of stock covered by AS 45.55.138, but that is issued by a corporation organized under state law in accordance with 43 U.S.C. 1601 et seq. (Alaska Native Claims Settlement Act), if the corporation qualifies for exempt status under 43 U.S.C.1625(a).	45.55.900(b)(21)	New exemption added by HB 308 in 2014. Clarifies that stock issued by ANCSA corporations in accordance with federal law is exempt.	26
<b>Sec. 45.56.220. Small intrastate securities offerings.</b> (a) An offer or sale of securities conducted solely in this state, to a person who has established residency in this state, by an issuer in a transaction that meets the requirements of this section is exempted from the requirements of AS 45.56.105, 45.56.305 - 45.56.360, and 45.56.550 and is subject to the following limitations: (1) the issuer of the security shall be a for-profit corporation or other for-profit entity, or business cooperative with its principal place of business in this state and licensed with the administrator; (2) the transaction shall meet the requirements of the federal exemption for intrastate offerings in 15 U.S.C. 77c(a)(11) (Securities Act of 1933) and 17 C.F.R. Part 230.147; the securities must be offered to and sold only to persons who have established residency in this state at the time of purchase; before any offer or sale pursuant to this exemption, the seller shall obtain documentary evidence	None	This is the "Crowdfunding Exemption."  Highlights: (1) issuer must be AK business (2) purchasers must be AK residents, and issuer must have some evidence proving residency (3) total offering is capped at \$1 million (4) issuers can collect no more than \$10,000 per purchaser (*amended from \$5,000 in House Judiciary committee, offered by Rep. Claman*) (6) No commissions may be paid in connection with the sale of these securities unless salespeople are licensed in AK (8) Notice filing required (10 days before general solicitation or within 15 days of first sale if no general solicitation) (8) Notice filing must include information on the issuer, control persons, salespersons, and the bank	26

<p>from each prospective purchaser that provides the seller with a reasonable basis to believe such investor has established residency in this state;</p> <p>(3) the sum of all cash and other consideration to be received for all sales of the security in reliance upon this exemption shall not exceed \$1,000,000, less the aggregate amount received for all sales of securities by the issuer within the 12 months before the first offer or sale made in reliance upon this exemption;</p> <p>(4) the issuer shall not accept more than \$10,000 from any single purchaser unless the purchaser is an accredited investor as defined by 17 C.F.R. Part 230.501;</p> <p>(5) the issuer must reasonably believe that all purchasers of securities are purchasing for investment and not for sale in connection with a distribution of the security;</p> <p>(6) a commission or remuneration shall not be paid or given, directly or indirectly, for any person's participation in the offer or sale of securities for the issuer unless the person is registered as a broker-dealer, agent, investment adviser representative, or investment adviser under AS 45.56.405 - 45.56.440;</p> <p>(7) all funds received from investors shall be deposited into a bank or depository institution authorized to do business in Alaska, and all funds shall be used in accordance with representations made to investors;</p> <p>(8) not less than 10 days before the use of any general solicitation or within 15 days after the first sale of the security pursuant to this exemption, provided no general solicitation has been used prior to such sale, whichever occurs first, the issuer shall provide a notice to the administrator as prescribed in regulations for this section; the notice shall specify that the issuer is conducting an offering in reliance upon this exemption and shall contain the names and addresses of</p>		<p>where the funds will be deposited</p> <p>(10) Issuer must disclose that securities are not able to be resold unless exempt or registered (are illiquid)</p> <p>(11) Purchaser must acknowledge risk of investment</p> <p>Bad actor disqualifier from 45.56.230 applies.</p> <p>Disclosures required under 17 CFR 230.147(f):</p> <p>(1) The issuer shall, in connection with any securities sold by it pursuant to this rule:</p> <p>(i) Place a legend on the certificate or other document evidencing the security stating that the securities have not been registered under the Act and setting forth the limitations on resale contained in paragraph (e) of this section;</p> <p>(ii) Issue stop transfer instructions to the issuer's transfer agent, if any, with respect to the securities, or, if the issuer transfers its own securities make a notation in the appropriate records of the issuer; and</p> <p>(iii) Obtain a written representation from each purchaser as to his residence.</p> <p>(2) The issuer shall, in connection with the issuance of new certificates for any of the securities that are part of the same issue that are presented for transfer during the time period specified in paragraph (e), take the steps required by paragraphs (f)(1)(i) and (ii) of this section.</p> <p>(3) The issuer shall, in connection with any offers, offers to sell, offers for sale or sales by it pursuant to this rule, disclose, in writing, the limitations on resale contained in paragraph (e) and the</p>	
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<p>(A) the issuer;</p> <p>(B) officers, directors, and any control person of the issuer;</p> <p>(C) all persons who will be involved in the offer or sale of securities on behalf of the issuer; and</p> <p>(D) the bank or other depository institution in which investor funds will be deposited.</p> <p>(9) the issuer shall not be, either before or as a result of the offering:</p> <p>(A) an investment company as defined by 15 U.S.C. 80a-1-80a-64 (Investment Company Act of 1940), or subject to the reporting requirements of 15 U.S.C. 78m or 15 U.S.C. 78o (Securities Exchange Act of 1934); or</p> <p>(B) a broker-dealer, agent, investment adviser representative, or investment adviser as defined by AS 45.56.401 - 45.56.406;</p> <p>(10) the issuer shall inform all purchasers that the securities have not been registered under AS 45.56.105, 45.56.305 - 45.56.360, and 45.56.550, and therefore, cannot be resold unless the securities are registered or qualify for an exemption from registration under AS 45.56.205, AS 45.56.210, or 45.56.240. In addition, the issuer shall make the disclosures required by 17 C.F.R. Part 230.147(f);</p> <p>(11) the issuer shall require all purchasers to sign the following statement at the time of sale: "I acknowledge that I am investing in a high-risk, speculative business venture, that I may lose all of my investment, and that I can afford the loss of my investment."</p> <p>(12) this exemption shall not be used in conjunction with any other exemption under AS 45.56 except the exemption to institutional investors under AS 45.56.405 and 45.56.435 and for offers and sales to controlling persons of the issuer. Sales to controlling persons shall not count toward the limitation in AS 45.56.220(a)(3).</p> <p>(13) nothing in this exemption shall be construed to alleviate any person from the anti-fraud provisions under AS</p>		<p>provisions of paragraphs (f)(1)(i) and (ii) and paragraph (f)(2) of this section.</p>	
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<p>45.56.505 – AS 45.56.560, nor shall such exemption be construed to provide relief from any other provisions of AS 45.56 other than as expressly stated;</p> <p>(14) in this section, “residency” has the meaning given in AS 01.10.055.</p> <p>(b) The administrator may by order deny or revoke the exemption specified in this section with respect to a specific security if it finds that the sale of such security would work or tend to work a fraud upon the purchasers thereof. No order under this subsection may operate retroactively. No person may be considered to have violated this article by reason of any offer or sale effected after the entry of an order under this subsection if the person sustains the burden of proof that the person did not know and, in the exercise of reasonable care, could have not known of the order. In any proceeding under AS 45.56, the burden of proving an exemption from a definition is upon the person claiming the exemption.</p> <p>(c) Any individual, corporation, partnership, or association who makes application to the administrator for any exemption from full registration under AS 45.56.220 shall be assessed a filing fee as prescribed in regulations for this section.</p>			
<p><b>Sec. 45.56.230. Disqualifier.</b> A security or transaction exempted from registration under AS 45.56.205 - 45.56.250 shall not be available if the issuer, or any of its officers, controlling people or promoters is subject to a disqualifier enumerated in 15 U.S.C. 78c(a)(39) (Dodd-Frank Wall Street Reform and Consumer Protection Act) as of the date of the transaction or offer.</p>	<p>None, though bad actor provisions applied to notice filings under Reg D and exemptions under 45.55.900(b)(18)</p>	<p>Disqualifiers under Dodd Frank include:</p> <ul style="list-style-type: none"> <li>- Expulsion or suspension from self-regulatory organization (SRO)</li> <li>- Subject to SEC, CFTC, or similar regulatory authority (including foreign) order denying, suspending, or revoking registration as a broker-dealer (or similar)</li> <li>- association with a person subject to order described above</li> <li>- commission of certain crimes including securities fraud, dishonesty crimes (bribery, perjury, etc.), or</li> </ul>	<p>29</p>

		<p>any felony within past 10 years</p> <ul style="list-style-type: none"> <li>- willful violation of the Securities Act of 1933, the Investment Advisers Act of 1940, Investment Company Act of 1940 or related rules</li> <li>- subject to an order finding willful false or misleading filing with SRO</li> <li>- subject to order by state securities or banking commission barring a person from association with entity regulated by the state or from engaging in the business of securities, insurance, banking</li> <li>- subject to final order by state based on violations of law prohibiting fraudulent, manipulative or deceptive conduct.</li> </ul>	
<p><b>Sec. 45.56.240. Waiver and modification.</b> For any security or transaction or any type of security or transaction, the administrator may by order, waive, withdraw, or modify any of the requirements or conditions of AS 45.56.205-45.56.250.</p>	<p>See generally, 45.55.900(h)</p>	<p>45.55.900(h) had the same language, but limited only to (b)(5) exemptions. The 45.55 language was retained and modified rather than adopting USA language.</p>	<p>29</p>
<p><b>Sec. 45.56.250. Denial, suspension, revocation, condition, or limitation of exemptions.</b> (a) Except with respect to a federal covered security or a transaction involving a federal covered security, an order under this chapter may deny, suspend application of, condition, limit, or revoke an exemption created under AS 45.56.205(3)(C), (7), or (8) or 45.56.210 or 45.56.220, or an exemption or waiver created under AS 45.56.240 with respect to a specific security, transaction, or offer. An order under this subsection only may be issued under the procedures in AS 45.56.360(d) or 45.56.650 and only prospectively.</p> <p>(b) A person does not violate AS 45.56.105, 45.56.305, 45.56.310, 45.56.320, 45.56.340, 45.56.360, 45.56.550, or 45.56.665 by an offer to sell, offer to purchase, sale, or purchase effected after the entry of an order issued under this section if the person did not know, and in the exercise of reasonable care, could not have known, of the order.</p>	<p>See generally, 45.55.900(d)</p>	<p>Prior language included the specific rights of appeal and hearing (even though identical to the appeal rights listed in enforcement provisions). The new language refers to the procedures outlined in Article 6 rather than restating them.</p>	<p>29</p>

Article 3. Registration of Securities and Notice Filing of Federal Covered Securities.	Article 3. Registration of Securities		
<p><b>Sec. 45.56.305. Securities registration by coordination.</b></p> <p>(a) A security for which a registration statement has been filed under 15 U.S.C. 77a - 77aa (Securities Act of 1933) in connection with the same offering may be registered by coordination under this section.</p> <p>(b) A registration statement and accompanying records under this section must contain or be accompanied by the following records, in addition to the information specified in AS 45.56.320, and a consent to service of process complying with AS 45.56.630:</p> <p>(1) a copy of the latest form of prospectus filed under 15 U.S.C. 77a - 77aa (Securities Act of 1933);</p> <p>(2) if the administrator requires, a copy of the articles of incorporation and bylaws or their substantial equivalents currently in effect; a copy of any other information or any other records filed by the issuer under 15 U.S.C. 77a - 77aa (Securities Act of 1933) requested by the administrator; and a copy of any agreement with or among underwriters; a copy of any indenture or other instrument governing the issuance of the security to be registered; and a specimen, copy, or description of the security that is required by a regulation adopted or order issued under this chapter; and</p> <p>(3) an undertaking to forward each amendment to the federal prospectus, other than an amendment that delays the effective date of the registration statement, promptly after it is filed with the Securities and Exchange Commission.</p> <p>(c) A registration statement under this section becomes effective simultaneously with or subsequent to the federal registration statement when all the following conditions are satisfied:</p> <p>(1) a stop order under (d) of this section or AS 45.56.360 or</p>	45.55.090	<p>Former (d) is split into (d) and (e).</p> <p>Only material change is in (c)(2), which requires the registration statement to be on file for 20 days, or less by regulation. Prior language required only 10 days.</p> <p>References to prompt notice by telegram were deleted.</p>	29

<p>issued by the Securities and Exchange Commission is not in effect, and a proceeding is not pending against the issuer under AS 45.56.440; and</p> <p>(2) the registration statement has been on file for at least 20 days or a shorter period provided by a regulation adopted or order issued under this chapter.</p> <p>(d) The registrant shall promptly notify the administrator in a record of the date when the federal registration statement becomes effective and the content of any price amendment and shall promptly file a record containing the price amendment. If the notice is not timely received, the administrator may issue a stop order, without prior notice or hearing, retroactively denying effectiveness to the registration statement or suspending its effectiveness until compliance with this section. The administrator shall promptly notify the registrant of an order by telephone or electronic means and promptly confirm this notice by a record. If the registrant subsequently complies with the notice requirements of this subsection, the stop order is void as of the date of its issuance.</p> <p>(e) If the federal registration statement becomes effective before each of the conditions in this section is satisfied or is waived by the administrator, the registration statement is automatically effective under this chapter when all the conditions are satisfied or waived. If the registrant notifies the administrator of the date when the federal registration statement is expected to become effective, the administrator shall promptly notify the registrant by telephone or electronic means and promptly confirm this notice by a record, indicating whether all the conditions are satisfied or waived and whether the administrator intends the institution of a proceeding under AS 45.56.360. The notice by the administrator does not preclude the institution of a proceeding under AS 45.56.360.</p>			
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<p><b>Sec. 45.56.310. Securities registration by qualification.</b> (a) A security may be registered by qualification under this section.</p> <p>(b) A registration statement under this section must contain the information or records specified in AS 45.56.320, a consent to service of process complying with AS 45.56.630, and the following information or records:</p> <p>(1) with respect to the issuer and any significant subsidiary, the name, address, and form of organization of the issuer and subsidiary; the state or foreign jurisdiction and date of organization of the issuer and subsidiary; the general character and location of the business of the issuer and subsidiary; a description of the physical properties and equipment of the issuer and subsidiary; and a statement of the general competitive conditions in the industry or business in which the issuer and subsidiary are or will be engaged;</p> <p>(2) with respect to each director and officer of the issuer and other person having a similar status or performing similar functions, the person's name, address, and principal occupation for the previous five years; the amount of securities of the issuer held by the person as of the 30th day before the filing of the registration statement; the amount of the securities covered by the registration statement to which the person has indicated an intention to subscribe; and a description of any material interest of the person in any material transaction with the issuer or a significant subsidiary effected within the previous three years or proposed to be effected;</p> <p>(3) with respect to persons covered by (2) of this subsection, the aggregate sum of the remuneration paid to those persons during the previous 12 months and estimated to be paid during the next 12 months, directly or indirectly, by the issuer, and all predecessors, parents, subsidiaries, and affiliates of the issuer;</p>	<p>45.55.100</p>	<p>Identical provisions, except 45.56.310(12) adds a requirement that filers disclose pending litigation that materially affects the issuer's business or assets or any litigation, action or proceeding known to be contemplated.</p>	<p>31</p>
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<p>(4) with respect to a person owning of record or owning beneficially, if known, 10 percent or more of the outstanding shares of any class of equity security of the issuer, the information specified in (2) of this subsection, other than the person's occupation;</p> <p>(5) with respect to a promoter, if the issuer was organized within the previous three years, the information or records specified in (2) of this subsection, any amount paid to the promoter within that period or intended to be paid to the promoter, and the consideration for the payment;</p> <p>(6) with respect to a person on whose behalf any part of the offering is to be made in a nonissuer distribution, the person's name and address; the amount of securities of the issuer held by the person as of the date of the filing of the registration statement; a description of any material interest of the person in any material transaction with the issuer or any significant subsidiary effected within the previous three years or proposed to be effected; and a statement of the reasons for making the offering;</p> <p>(7) the capitalization and long-term debt, on both a current and pro forma basis, of the issuer and any significant subsidiary, including a description of each security outstanding or being registered or otherwise offered, and a statement of the amount and kind of consideration, whether in the form of cash, physical assets, services, patents, goodwill, or anything else of value, for which the issuer or any subsidiary has issued its securities within the previous two years or is obligated to issue its securities;</p> <p>(8) the kind and amount of securities to be offered; the proposed offering price or the method by which the offering price is to be computed; any variation at which a proportion of the offering is to be made to a person or class of persons other than the underwriters, with a specification of the person or class; the basis on which the offering is to be made</p>			
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<p>if otherwise than for cash; the estimated aggregate underwriting and selling discounts or commissions and finders' fees, including separately cash, securities, contracts, or anything else of value to accrue to the underwriters or finders in connection with the offering or, if the selling discounts or commissions are variable, the basis of determining them and their maximum and minimum amounts; the estimated amounts of other selling expenses, including legal, engineering, and accounting charges; the name and address of each underwriter and each recipient of a finder's fee; a copy of any underwriting or selling group agreement under which the distribution is to be made, or the proposed form of an underwriting or selling group agreement whose terms have not yet been determined; and a description of the plan of distribution of any securities that are to be offered other than through an underwriter;</p> <p>(9) the estimated monetary proceeds to be received by the issuer from the offering; the purposes for which the proceeds are to be used by the issuer; the estimated amount to be used for each purpose; the order or priority in which the proceeds will be used for the purposes stated; the amounts of any funds to be raised from other sources to achieve the purposes stated; the sources of the funds; and, if a part of the proceeds is to be used to acquire property, including goodwill, other than in the ordinary course of business, the names and addresses of the vendors, the purchase price, the names of any persons that have received commissions in connection with the acquisition, and the amounts of the commissions and other expenses in connection with the acquisition, including the cost of borrowing money to finance the acquisition;</p> <p>(10) a description of any stock options or other security options outstanding or to be created in connection with the offering, and the amount of those options held or to be held</p>			
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<p>by each person required to be named in (2), (4), (5), (6), or (8) of this subsection and by any person that holds or will hold 10 percent or more in the aggregate of those options;</p> <p>(11) the dates of, parties to, and general effect, concisely stated, of each managerial or other material contract made or to be made other than in the ordinary course of business to be performed in whole or in part at or after the filing of the registration statement or that was made within the previous two years, and a copy of each contract;</p> <p>(12) a description of any pending litigation, action, or proceeding to which the issuer is a party and that materially affects the issuer's business or assets and any litigation, action, or proceeding known to be contemplated;</p> <p>(13) a copy of any prospectus, pamphlet, circular, form letter, advertisement, or other sales literature intended as of the effective date of the registration statement to be used in connection with the offering and any solicitation of interest used in compliance with AS 45.56.210(17)(B);</p> <p>(14) a specimen or copy of the security being registered, unless the security is uncertificated; a copy of the issuer's articles of incorporation and bylaws or their substantial equivalents, in effect; and a copy of any indenture or other instrument covering the security to be registered;</p> <p>(15) a signed or conformed copy of an opinion of counsel concerning the legality of the security being registered, with an English translation if it is in a language other than English, that states whether the security when sold will be validly issued, fully paid, nonassessable and, if a debt security, a binding obligation of the issuer;</p> <p>(16) a signed or conformed copy of a consent of any accountant, engineer, appraiser, or other person whose profession gives authority for a statement made by the person if the person is named as having prepared or certified a report or valuation, other than an official record, that is</p>				
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<p>public, that is used in connection with the registration statement;</p> <p>(17) a balance sheet of the issuer as of a date within four months before the filing of the registration statement; a statement of income and a statement of cash flows for each of the three fiscal years preceding the date of the balance sheet and for any period between the close of the immediately previous fiscal year and the date of the balance sheet, or for the period of the issuer's and any predecessor's existence if less than three years; and, if any part of the proceeds of the offering is to be applied to the purchase of a business, the financial statements that would be required if that business were the registrant; and</p> <p>(18) any additional information or records required by a regulation adopted or order issued under this chapter.</p> <p>(c) A registration statement under this section becomes effective when the administrator so orders.</p> <p>(d) A regulation adopted or order issued under this chapter may require as a condition of registration under this section that a prospectus containing a specified part of the information or record specified in (b) of this section be sent or given to each person to which an offer is made, before or concurrently, with the earliest of</p> <p>(1) the first offer made in a record to the person other than by means of a public advertisement, by or for the account of the issuer or another person on whose behalf the offering is being made or by an underwriter or broker-dealer that is offering part of an unsold allotment or subscription taken by the person as a participant in the distribution;</p> <p>(2) the confirmation of a sale made by or for the account of the person;</p> <p>(3) payment under the sale; or</p> <p>(4) delivery of the security under the sale.</p>			
<p><b>Sec. 45.56.320. Securities registration filings.</b> (a) A</p>	<p>See generally 45.55.110</p>	<p>Tracks fairly closely to 45.55.</p>	<p>35</p>

<p>registration statement may be filed by the issuer, a person on whose behalf the offering is to be made, or a broker-dealer registered under this chapter.</p> <p>(b) A person filing a registration statement shall pay a filing fee established by a regulation adopted under this chapter and consent to service of process as described under AS 45.56.630.</p> <p>(c) A registration statement filed under AS 45.56.305 or 45.56.310 must specify</p> <p>(1) the amount of securities to be offered in the state;</p> <p>(2) the states in which a registration statement or similar record in connection with the offering has been or is to be filed; and</p> <p>(3) any adverse order, judgment, or decree issued in connection with the offering by a state securities regulator, the Securities and Exchange Commission, or a court.</p> <p>(d) A record filed under this chapter or former AS 45.55 within five years preceding the filing of a registration statement may be incorporated by reference in the registration statement to the extent that the record is currently accurate.</p> <p>(e) In the case of a nonissuer distribution, information or a record may not be required under (i) of this section or AS 45.56.310 unless it is known to the person filing the registration statement or to the person on whose behalf the distribution is to be made or unless it can be furnished by those persons without unreasonable effort or expense.</p> <p>(f) A regulation adopted or order issued under this chapter may require as a condition of registration that a security issued within the previous five years or to be issued to a promoter for a consideration substantially less than the public offering price or to a person for a consideration other than cash be deposited in escrow and that the proceeds from the sale of the registered security in the state be impounded</p>		<p>Moves provision allowing administrator to permit omission of a required document for a registration or notice filing to 45.56.350.</p> <p>Securities issued to the promoter for consideration substantially less than public offering price issued within previous five years can be held in escrow per regulation or order ( Change in USA; is three years in 45.55).</p> <p>Signed or conformed copy of contracts may be required to be filed or preserved for up to five years per regulation or order (Change in USA; is three years in 45.55).</p>	
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<p>until the issuer receives a specified amount from the sale of the security, either in the state or elsewhere. The conditions of any escrow or impoundment required under this subsection may be established by a regulation adopted or order issued under this chapter, but the administrator may not reject a depository institution solely because of its location in another state.</p> <p>(g) A regulation adopted or order issued under this chapter may require as a condition of registration that a security registered under this chapter be sold only on a specified form of subscription or sale contract and that a signed or conformed copy of each contract be filed under this chapter or preserved for a period specified by the regulation or order, not to exceed five years.</p> <p>(h) Except while a stop order is in effect under AS 45.56.360, a registration statement is effective for one year after the effective date of the registration statement or for any longer period designated in an order under this chapter during which the security is being offered or distributed in a nonexempted transaction by or for the account of the issuer or other person on whose behalf the offering is being made or by an underwriter or broker-dealer that is still offering part of an unsold allotment or subscription taken as a participant in the distribution. For the purposes of a nonissuer transaction, all outstanding securities of the same class identified in the registration statement as a security registered under this chapter are considered to be registered while the registration statement is effective. If any securities of the same class are outstanding, a registration statement may not be withdrawn until one year after the effective date of the registration statement. A registration statement may be withdrawn only with the approval of the administrator.</p> <p>(i) While a registration statement is effective, a regulation adopted or order issued under this chapter may require the</p>			
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<p>person that filed the registration statement to file reports, not more often than quarterly, to keep the information or other record in the registration statement reasonably current and to disclose the progress of the offering.</p> <p>(j) A registration statement may be amended after the effective date of the registration statement. The posteffective amendment becomes effective when the administrator so orders. If a posteffective amendment is made to increase the number of securities specified to be offered or sold, the person filing the amendment shall pay a registration fee established by a regulation adopted under this chapter. A posteffective amendment relates back to the date of the offering of the additional securities being registered if, within one year after the date of the sale, the amendment is filed and the additional registration fee is paid.</p>			
<p><b>Sec. 45.56.330. Notice filing of federal covered securities.</b> (a) With respect to a federal covered security, as defined in 15 U.S.C. 77r(b), that is not otherwise exempt under AS 45.56.205 - 45.56.240, a regulation adopted or order issued under this chapter may require the filing of any or all of the following records:</p> <p>(1) before the initial offer of a federal covered security in the state, all records that are part of a federal registration statement filed with the Securities and Exchange Commission under 15 U.S.C. 77a - 77aa (Securities Act of 1933) and a consent to service of process complying with AS 45.56.630 signed by the issuer and the payment of a fee established in a regulation adopted under this chapter;</p> <p>(2) after the initial offer of the federal covered security in the state, all records that are part of an amendment to a federal registration statement filed with the Securities and Exchange Commission under 15 U.S.C. 77a - 77aa (Securities Act of 1933); and</p> <p>(3) to the extent necessary or appropriate to compute fees, a</p>	45.55.075	Allows for late fees for reg D notice filings.	37

report of the value of the federal covered securities sold or offered to persons present in the state if the sales data are not included in records filed with the Securities and Exchange Commission and payment of a fee established in a regulation adopted under this chapter.

(b) A notice filing under (a) of this section is effective for one year commencing on the later of the notice filing or the effectiveness of the offering filed with the Securities and Exchange Commission. On or before expiration, the issuer may renew a notice filing by filing a copy of those records filed by the issuer with the Securities and Exchange Commission that are required by a regulation adopted or order issued under this chapter to be filed and by paying a renewal fee established in a regulation adopted under this chapter. A previously filed consent to service of process complying with AS 45.56.630 may be incorporated by reference in a renewal. A renewed notice filing becomes effective upon the expiration of the filing being renewed.

(c) With respect to a security that is a federal covered security under 15 U.S.C. 77r(b)(4)(D) (Securities Act of 1933), a regulation adopted under this chapter may require a notice filing by or on behalf of an issuer to include a copy of Form D, including the Appendix, as adopted by the Securities and Exchange Commission, and a consent to service of process complying with AS 45.56.630 signed by the issuer not later than 15 days after the first sale of the federal covered security in the state and the payment of a fee established in a regulation adopted under this chapter; and the payment of a fee established in a regulation adopted under this chapter for any late filing.

(d) Except with respect to a federal security under 15 U.S.C. 77r(b)(1), if the administrator finds that there is a failure to comply with a notice or fee requirement of this section, the administrator may issue a stop order suspending the offer

<p>and sale of a federal covered security in the state. If the deficiency is corrected, the stop order is void as of the time of its issuance and a penalty may not be imposed by the administrator.</p>			
<p><b>Sec. 45.56.340. Viatical settlement interests.</b> (a) Before the sale of a viatical settlement interest, an issuer shall provide a prospective buyer with information that is sufficient to make an informed investment decision. The issuer shall also provide the information to the administrator upon request if the issuer is not otherwise required to file the information with the administrator. In this subsection, "information that is sufficient to make an informed investment decision" includes state-mandated disclosure forms and a disclosure of any significant factors that may affect the outcome of the investment.</p> <p>(b) Except as may be required in the course of conduct of the responsibilities of the administrator, an issuer of a viatical settlement interest may not disclose to another person the identity of the viator or insured of the insurance policy that is the subject of the viatical settlement interest. The viator may waive this prohibition against disclosure if the waiver is in writing and signed by the viator.</p> <p>(c) The administrator shall regulate transactions between a viatical settlement provider or person acting as an agent of a viatical settlement provider and a subsequent investor, while the authority of the director of the division of insurance extends to the regulation of viatical settlement contracts under AS 21.96.110.</p> <p>(d) In this section,</p> <p>(1) "viatical settlement contract" has the meaning given in AS 21.96.110(h);</p> <p>(2) "viatical settlement interest"</p> <p>(A) means the entire interest or any fractional interest in a life insurance policy or in the death benefit under a life insurance</p>	<p>45.55.155, 45.55.905(c)</p>	<p>Puts all of viatical provisions into one statute (separated into two under 45.55). (c) clarifies that the administrator regulates transactions between viatical settlement providers and subsequent investors while the Division of Insurance regulates viatical settlement contracts under AS 21.89.110.</p>	<p>39</p>

<p>policy that is the subject of a viatical settlement contract;  (B) does not include the initial purchase from the viator by a viatical settlement provider;  (3) “viatical settlement provider” has the meaning given in AS 21.96.110(h);  (4) “viator” has the meaning given in AS 21.96.110(h)</p>			
<p><b>Sec. 45.56.350. Waiver and modification.</b> The administrator may waive or modify, in whole or in part, any or all of the requirements of AS 45.56.305 and 45.56.320 or the requirement of any information or record in a registration statement or in a periodic report filed under AS 45.56.310(i).</p>	<p>See 45.55.110(e)</p>	<p>New provision gives the administrator authority to waive or modify the requirements for registrations. 45.55 allowed the Administrator to permit omission of certain documents otherwise required.</p>	<p>40</p>
<p><b>Sec. 45.56.360. Denial, suspension, and revocation of securities registration.</b> (a) The administrator may issue a stop order denying effectiveness to, or suspending or revoking the effectiveness of, a registration statement if the administrator finds that the order is in the public interest and that</p> <p>(1) the registration statement as of the effective date of the registration statement or before the effective date in the case of an order denying effectiveness, an amendment under AS 45.56.320(j) as of the effective date of the amendment, or a report under AS 45.56.320(i) is incomplete in a material respect or contains a statement that, in the light of the circumstances under which it was made, was false or misleading with respect to a material fact;</p> <p>(2) this chapter or a regulation adopted or order issued under this chapter or a condition imposed under this chapter has been willfully violated in connection with the offering by</p> <p>(A) the person filing the registration statement;  (B) the issuer, a partner, officer, or director of the issuer or a person having a similar status or performing a similar function;  (C) a promoter of the issuer;  (D) a person directly or indirectly controlling or controlled by</p>	<p>45.55.120</p>	<p>Stop orders may be issued against promoters of the issuer in addition to the classes of people described in 45.55.</p> <p>The administrator is required to adopt regulations explaining what type of conduct meets the requirements of (a)(7):</p> <p>(7) the offering</p> <p>(A) will work or tend to work a fraud upon purchasers or would operate;</p> <p>(B) has been or would be made with unreasonable amounts of underwriters' and sellers' discounts, commissions, or other compensation, or promoters' profits or participations, or unreasonable amounts or kinds of options; or</p> <p>(C) is being made on terms that are unfair, unjust, or inequitable.</p>	<p>40</p>

<p>the issuer, but only if the person filing the registration statement is directly or indirectly controlled by or acting for the issuer; or</p> <p>(E) an underwriter;</p> <p>(3) the security registered or sought to be registered is the subject of a permanent or temporary injunction of a court of competent jurisdiction or an administrative stop order or similar order issued under any federal, foreign, or state law other than this chapter applicable to the offering; the administrator may not institute a proceeding against an effective registration statement under this paragraph more than one year after the date of the order or injunction on which it is based, and the administrator may not issue an order under this paragraph on the basis of an order or injunction issued under the securities act of another state unless the order or injunction was based on conduct that would constitute, as of the date of the order, a ground for a stop order under this section;</p> <p>(4) the issuer's enterprise or method of business includes or would include activities that are unlawful where performed;</p> <p>(5) with respect to a security sought to be registered under AS 45.56.305, there has been a failure to comply with the undertaking required by AS 45.56.305(b)(4);</p> <p>(6) the applicant or registrant has not paid the filing fee; the administrator shall void the order if the deficiency is corrected and the order was based solely on the nonpayment of the filing fee; or</p> <p>(7) the offering</p> <p>(A) will work or tend to work a fraud upon purchasers or would operate;</p> <p>(B) has been or would be made with unreasonable amounts of underwriters' and sellers' discounts, commissions, or other compensation, or promoters' profits or participations, or unreasonable amounts or kinds of options; or</p>			
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<p>(C) is being made on terms that are unfair, unjust, or inequitable.</p> <p>(b) To the extent practicable, the administrator shall, by a regulation adopted or order issued under this chapter, publish standards that provide notice of conduct that violates (a)(7) of this section.</p> <p>(c) The administrator may not institute a stop order proceeding against an effective registration statement on the basis of conduct or a transaction known to the administrator when the registration statement became effective unless the proceeding is instituted within 30 days after the registration statement became effective.</p> <p>(d) The administrator may summarily revoke, deny, postpone, or suspend the effectiveness of a registration statement pending final determination of an administrative proceeding. Upon the issuance of the order, the administrator shall promptly notify each person specified in (e) of this section that the order has been issued, the reasons for the revocation, denial, postponement, or suspension, and that, within 15 days after the receipt of a request in a record from the person, the matter will be scheduled for a hearing. If a hearing is not requested and none is ordered by the administrator, within 30 days after the date of service of the order, the order becomes final. If a hearing is requested or ordered, the administrator, after notice of and opportunity for hearing for each person subject to the order, may modify or vacate the order or extend the order until final determination.</p> <p>(e) A stop order may not be issued under this section without</p> <ol style="list-style-type: none"> <li>(1) appropriate notice to the applicant or registrant, the issuer, and the person on whose behalf the securities are to be or have been offered;</li> <li>(2) an opportunity for hearing conducted in the manner provided in AS 45.56.650(c); and</li> </ol>			
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<p>(3) findings of fact and conclusions of law in a record.  (f) The administrator may modify or vacate a stop order issued under this section if the administrator finds that the conditions that caused its issuance have changed or that it is necessary or appropriate in the public interest or for the protection of investors.</p>			
<p><b>Article 4. Broker-dealers, Agents, Investment Advisers, Investment Adviser Representatives, and Federal Covered Investment Advisers.</b></p>	<p><b>Article 2:  Registration of Broker-Dealers, Agents, and Investment Advisers</b></p>	<p>45.55 is not very user friendly when it comes to licensing provisions. While 45.55.030 generally discusses registration of broker-dealers, agents, and investment advisers, many, but not all, of the exemptions are located within the definitions in 45.55.990.  The proposed bill reorganizes all securities licensing provisions into one article which is laid out in a straightforward manner, making it much more user-friendly. The sections are organized by broker-dealers (including Canadian broker-dealers and mergers and acquisitions brokers), broker-dealer agents, investment advisers, investment adviser representatives, and federal covered investment advisers.</p>	<p>42</p>
<p><b>Sec. 45.56.405. Broker-dealer registration requirement and exemptions.</b> (a) A person may not transact business in the state as a broker-dealer unless the person is registered under this chapter as a broker-dealer or is exempt from registration as a broker-dealer under (b) of this section.</p>	<p>45.55.030(a)</p>	<p>Language is the same as 030(a) but limited to broker-dealers only (not including agents)</p>	<p>42</p>
<p>(b) The following persons are exempt from the registration requirement of (a) of this section:  (1) a broker-dealer without a place of business in the state if the broker-dealer's only transactions effected in the state are with  (A) the issuer of the securities involved in the transactions;  (B) a broker-dealer registered as a broker-dealer under this</p>	<p>See generally 45.55.990(7)</p>	<p>Current Alaska law explains what types of business activities are exempt in the definition of broker-dealer rather than including them in the registration statute. This provision moves the explanation of what conduct is exempt from registration up to the general registration statute, which is much more user friendly.</p>	<p>42</p>

<p>chapter or not required to be registered as a broker-dealer under this chapter;</p> <p>(C) an institutional investor;</p> <p>(D) a nonaffiliated federal covered investment adviser with investments under management in excess of \$100,000,000 acting for the account of others under discretionary authority in a signed record;</p> <p>(E) a bona fide preexisting customer whose principal place of residence is not in the state and the person is registered as a broker-dealer under 15 U.S.C. 78a - 78pp (Securities Exchange Act of 1934) or not required to be registered under 15 U.S.C. 78a - 78ll (Securities Exchange Act of 1934) and is registered under the securities act of the state in which the customer maintains a principal place of residence;</p> <p>(F) a bona fide preexisting customer whose principal place of residence is in the state but who was not present in the state when the customer relationship was established if</p> <p>(i) the broker-dealer is registered under 15 U.S.C. 78a - 78pp (Securities Exchange Act of 1934) or not required to be registered under 15 U.S.C. 78a – 78pp (Securities Exchange Act of 1934) and is registered under the securities laws of the state in which the customer relationship was established and where the customer had maintained a principal place of residence; and</p> <p>(ii) within 45 days after the customer's first transaction in the state, the person files an application for registration as a broker-dealer in the state and a further transaction is not effected more than 75 days after the date on which the application is filed, or, if earlier, the date on which the administrator notifies the person that the administrator has denied the application for registration or has stayed the pendency of the application for good cause;</p> <p>(G) not more than three customers in the state during the previous 12 months, in addition to those customers specified</p>		<p>The USA adds a new “snowbird exemption” at 45.56.405(b)(1)(E) and (F) in order to facilitate ongoing broker-customer relationships with customers who have established a second or other residence for such purposes as a winter home.</p> <p>45.56.405(b)(G) changes the de minimis exemption to allow for an exemption from registration if the broker-dealer (firm, not agent) has less than three Alaskan customers in a 12 month period, aside from those listed in (A)-(F) and is properly registered in its home state or exempt from registration under the Securities Exchange Act of 1934. 45.55 exempts a broker-dealer who effects no more than 15 transactions within a 12 month period at the initiation and direction of the customer (provided other conditions are met). 45.56 is much more straightforward and should result in less confusion for industry, as this is a topic of many of our inquiries.</p>	
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<p>in (A) - (F) of this paragraph and under (H) of this paragraph if the broker-dealer is registered under 15 U.S.C. 78a – 78pp (Securities Exchange Act of 1934) or not required to be registered under 15 U.S.C. 78a – 78pp (Securities Exchange Act of 1934) and is registered under the securities act of the state in which the broker-dealer has its principal place of business; and</p> <p>(H) any other person exempted by a regulation adopted or order issued under this chapter; and</p> <p>(2) a person that deals solely in United States government securities and is supervised as a dealer in government securities by the Board of Governors of the Federal Reserve System, the United States Comptroller of the Currency, the Federal Deposit Insurance Corporation, or the Office of Thrift Supervision, United States Department of the Treasury.</p>			
<p>(c) A broker-dealer or an issuer engaged in offering, offering to purchase, purchasing, or selling securities in the state may not, directly or indirectly, employ or associate with an individual to engage in an activity related to securities transactions in the state if the registration of the individual is suspended or revoked or the individual is barred from employment or association with a broker-dealer, an issuer, an investment adviser, or a federal covered investment adviser by an order of the administrator under this chapter, the Securities and Exchange Commission, or a self-regulatory organization. A broker-dealer or issuer does not violate this subsection if the broker-dealer or issuer did not know and, in the exercise of reasonable care, could not have known of the suspension, revocation, or bar. Upon request from a broker-dealer or issuer and for good cause, an order under this chapter may modify or waive, in whole or in part, the application of the prohibitions of this subsection to the broker-dealer.</p>	None	(c) prohibits a broker-dealer or issuer from employing or associating with an individual in a capacity for which that individual has been suspended by the administrator. Violation of this provision does not result in strict liability. In order for a broker-dealer or issuer to be liable, the broker-dealer or issuer must have known or should have known of the administrator's order to the individual suspended or barred.	44

<p><b>Sec. 45.56.410. Limited registration of Canadian broker-dealers and agents.</b> (a) If a broker-dealer is registered under this section and its principal office is located in a province or territory of Canada that provides at least equivalent registration for a broker-dealer that is resident in the United States, a broker-dealer that is resident in Canada and does not have an office or other physical presence in this state may effect transactions in securities with or for or induce or attempt to induce the purchase or sale of a security by a person from Canada who is</p> <p>(1) temporarily resident in this state and with whom the Canadian broker-dealer had a bona fide broker-dealer-client relationship before the person entered the United States; or</p> <p>(2) resident in this state and whose transactions are in a self-directed tax-advantaged retirement plan in Canada of which the person is the holder or contributor.</p> <p>(b) An agent who represents a Canadian broker-dealer registered under this section may, if the agent is registered under this section, effect transactions in securities in this state as permitted for the broker-dealer under (a) of this section.</p> <p>(c) Subject to the requirements of (a) of this section, a Canadian broker-dealer may register under this section if the broker-dealer</p> <p>(1) files an application in the form required by the jurisdiction in which the broker-dealer has its principal office;</p> <p>(2) files a written consent to service of process under AS 45.56.630;</p> <p>(3) is registered as a broker or dealer in good standing in the jurisdiction from which the broker-dealer is effecting transactions into this state and files evidence of the registration; and</p> <p>(4) is a member of a self-regulating organization or stock exchange in Canada.</p> <p>(d) An agent may register under this section in order to effect</p>	<p>45.55.035</p>	<p>Identical to existing provision except renewal date was moved from December 1 to December 31, to encourage better compliance by our licensees. (typical licensing renewal date is the end of the year, as with the U.S. broker-dealers)</p>	<p>44</p>
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<p>transactions in securities in this state if the agent represents a Canadian broker-dealer that is registered under this section, and the agent</p> <p>(1) files an application in the form required by the jurisdiction in which the broker-dealer has its principal office;</p> <p>(2) files a written consent to service of process under AS 45.56.630; and</p> <p>(3) is registered and files evidence of good standing in the jurisdiction from which the agent is effecting transactions into this state.</p> <p>(e) Registration under this section becomes effective on the 30th day after an application is filed unless it is made effective earlier by the administrator or a denial order is in effect and a proceeding is pending under AS 45.56.480.</p> <p>(f) A Canadian broker-dealer registered under this section shall</p> <p>(1) maintain provincial or territorial registration and membership in good standing in a self-regulating organization or stock exchange;</p> <p>(2) provide the administrator on request with books and records relating to its business in the state as a broker-dealer;</p> <p>(3) inform the administrator promptly of any criminal action taken against the broker-dealer or of any finding or sanction imposed on the broker-dealer as a result of regulatory action, including that of a self-regulating organization, involving fraud, theft, deceit, misrepresentation, or similar conduct; and</p> <p>(4) disclose to its clients in this state that the broker-dealer and its agents are not subject to the full regulatory requirements of this chapter.</p> <p>(g) An agent of a Canadian broker-dealer registered under this section shall</p> <p>(1) maintain provincial or territorial registration in good standing; and</p> <p>(2) inform the administrator promptly of any criminal action</p>			
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taken against the agent or of any finding or sanction imposed on the broker-dealer or agent as a result of regulatory action, including that of a self-regulating organization, involving fraud, theft, deceit, misrepresentation, or similar conduct.

(h) Renewal applications for Canadian broker-dealers and agents under this section must be filed by midnight on December 31 of each year and may be made by filing the most recent renewal application, if any, filed in the jurisdiction in which the broker-dealer has its principal office or, if a renewal application is not required, the most recent application filed under (c)(1) or (d)(1) of this section.

(i) An applicant for registration or renewal registration under this section shall pay the fee for broker-dealers and agents required by this chapter.

(j) A Canadian broker-dealer or agent registered under this section may not effect transactions in this state except

(1) as permitted under (a) or (b) of this section;

(2) with or through

(A) the issuers of the securities involved in the transactions;

(B) other broker-dealers; or

(C) banks, savings institutions, trust companies, insurance companies, investment companies as defined in 15 U.S.C. 80a-3 (Investment Company Act of 1940), pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees; or

(3) as otherwise permitted by this chapter.

(k) A Canadian broker-dealer or agent registered under this section and acting in accordance with the limitations in (j) of this section is exempt from all of the requirements of this chapter except the anti-fraud provisions under AS 45.56.505 and the requirements of this section. The registration of a Canadian broker-dealer or agent under this section may not be denied, suspended, or revoked except in accordance with the provisions of AS 45.56.480 for a breach of the anti-fraud

<p>provisions under AS 45.56.505 or the requirements of this section.</p> <p>(l) In this section, “Canadian broker-dealer” means a broker-dealer that has its principal office in a province or territory of Canada.</p>			
<p><b>Sec. 45.56.420. Registration exemption for merger and acquisition broker.</b> (a) In general, except as provided in (b) and (d) of this section, a merger and acquisition broker shall be exempt from registration pursuant to AS 45.55.405.</p> <p>(b) A merger and acquisition broker is not exempt from registration pursuant to AS 45.55.405 if such broker does any of the following:</p> <p>(1) directly or indirectly, in connection with the transfer of ownership of an eligible privately held company, receives, holds, transmits, or has custody of the funds or securities to be exchanged by the parties to the transaction;</p> <p>(2) engages on behalf of an issuer in a public offering of any class of securities that is registered, or is required to be registered, with the United States Securities and Exchange Commission under Section 12 of the Securities Exchange Act of 1934, 15 U.S.C. 78o(b) or with respect to which the issuer files, or is required to file, periodic information, documents, and reports under the Securities Exchange Act of 1934 Section 15(b) subsection (d), 15 U.S.C. 78o(d); or</p> <p>(3) engages on behalf of any party in a transaction involving a public shell company.</p> <p>(c) A merger and acquisition broker is not exempt from registration under AS 45.55.405 if the broker is subject to</p> <p>(1) Suspension or revocation of registration under Section 15(b) of the Securities Exchange Act of 1934, 15 U.S.C. 78o(b)(4);</p> <p>(2) a statutory disqualification described in Section 3(a)(39) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(39);</p> <p>(3) a disqualification under the rules adopted by the United</p>	<p>None.</p>	<p>Taken from NASAA proposed model rule on mergers and acquisition (M&amp;A) brokers based on an SEC no action letter dated January 31, 2014 stating that M&amp;A brokers meeting specific requirements should not have to register with the SEC. Advocates have also made multiple attempts to have Congress pass legislation exempting M&amp;A brokers from registration under the 1934 Act, but nothing has passed as of this date. It is appropriate to exempt these brokers in the specific circumstances outlined in the bill because these transactions are conducted under significant scrutiny and all parties typically have adequate representation in these deals.</p> <p>Generally, M&amp;A brokers are exempt from the requirement that they register as broker-dealers under the Act. An M&amp;A broker is defined as a broker or agent who effects securities transactions solely in connection with the transfer of ownership of an eligible privately held company as long as they believe that the purchaser will control the company and before the purchaser engages in the transaction, they will have access to the financials of the purchased company.</p> <p>The exemption is NOT available if the broker - receives, holds, transmits or has custody of the securities exchanged in the transaction,</p>	<p>47</p>

<p>States Securities and Exchange Commission under Section 926 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (15 U.S.C. 77d note); or</p> <p>(4) a final order described in paragraph (4)(H) of Section 15(b) of the Securities Exchange Act of 1934, 15 U.S.C. 78o(b)(4)(H).</p> <p>(d) Nothing in this section shall be construed to limit any other authority of the department to exempt any person, or any class of persons, from any provision of this title, or from any provision of any rule or regulation thereunder.</p> <p>(e) In this section,</p> <p>(1) “control” means the power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise. There is a presumption of control for any person who</p> <p>(A) is a director, general partner, member or manager of a limited liability company, or officer exercising executive responsibility, or has similar status or functions;</p> <p>(B) has the right to vote 20 percent or more of a class of voting securities or the power to sell or direct the sale of 20 percent or more of a class of voting securities; or</p> <p>(C) in the case of a partnership or limited liability company, has the right to receive upon dissolution, or has contributed, 20 percent or more of the capital;</p> <p>(2) “eligible privately held company” means a company meeting both of the following conditions:</p> <p>(A) the company does not have any class of securities registered, or required to be registered, with the United States Securities and Exchange Commission under Section 12 of the Securities Exchange Act of 1934, 15 U.S.C. 78o(b), or with respect to which the company files, or is required to file, periodic information, documents, and reports under subsection (d), 15 U.S.C. 78o(d); and</p> <p>(B) in the fiscal year ending immediately before the fiscal year</p>		<ul style="list-style-type: none"> <li>- engages on behalf of an issuer in a public offering of any class of securities that is registered with the SEC under the Securities Exchange Act of 1934,</li> <li>- engages on behalf of a public shell company (a company with a class of securities registered with the SEC but has no assets and only nominal operations),</li> <li>- is subject to suspension or revocation of registration under the Exchange Act or other disqualifier.</li> </ul>	
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<p>in which the services of the merger and acquisition broker are initially engaged with respect to the securities transaction, the company meets either or both of the following conditions, determined in accordance with the historical financial accounting records of the company:</p> <p>(i) The earnings of the company before interest, taxes, depreciation, and amortization are less than \$25,000,000;</p> <p>(ii) The gross revenues of the company are less than \$250,000,000;</p> <p>(3) “merger and acquisition broker” means any broker and any person associated with a broker engaged in the business of effecting securities transactions solely in connection with the transfer of ownership of an eligible privately held company, regardless of whether that broker acts on behalf of a seller or buyer, through the purchase, sale, exchange, issuance, repurchase, or redemption of, or a business combination involving, securities or assets of the eligible privately held company, if the broker reasonably believes that</p> <p>(A) upon consummation of the transaction, any person acquiring securities or assets of the eligible privately held company, acting alone or in concert, will control and, directly or indirectly, will be active in the management of the eligible privately held company or the business conducted with the assets of the eligible privately held company; and</p> <p>(B) if any person is offered securities in exchange for securities or assets of the eligible privately held company, the person will, before becoming legally bound to consummate the transaction, receive or have reasonable access to the most recent fiscal year-end financial statements of the issuer of the securities as customarily prepared by its management in the normal course of operations and, if the financial statements of the issuer are audited, reviewed, or compiled, any related statement by the independent accountant; a balance sheet dated not more than 120 days before the date of the</p>			
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<p>exchange offer; and information pertaining to the management, business, results of operations for the period covered by the foregoing financial statements, and any material loss contingencies of the issuer.</p> <p>(4) “public shell company” means a company that at the time of a transaction with an eligible privately held company (A) has any class of securities registered, or required to be registered, with the United States Securities and Exchange Commission under Section 12, 15 U.S.C. 78o(b), or with respect to which the company files, or is required to file, periodic information, documents, and reports under subsection (d), 15 U.S.C. 78o(d); and (B) has no or nominal operations; and (C) has (i) no or nominal assets; (ii) assets consisting solely of cash and cash equivalents; or (iii) assets consisting of any amount of cash and cash equivalents and nominal other assets.</p>			
<p><b>Sec. 45.56.430. Agent registration requirement and exemptions.</b> (a) An individual may not transact business in the state as an agent unless the individual is registered under this chapter as an agent or is exempt from registration as an agent under (b) of this section.</p>	45.55.030(a)	Language is the same as 45.55.030(a) but limited to agents only (not including firms)	50
<p>(b) The following individuals are exempt from the registration requirement of (a) of this section:</p> <p>(1) an individual who represents a broker-dealer in effecting transactions in the state limited to those described in 15 U.S.C. 78o(i);</p> <p>(2) an individual who represents a broker-dealer that is exempt under AS 45.56.405(b) or AS 45.56.410;</p> <p>(3) an individual who represents an issuer with respect to an offer or sale of the issuer's own securities or those of the issuer's parent or any of the issuer's subsidiaries, and who is not compensated in connection with the individual's</p>	See generally 45.55.990(5) (definition of “agent”) and also some provisions of 45.55.030	Current Alaska law explains what types of business activities are exempt in the definition of agent rather than including them in the registration statute. This provision moves the explanation of what conduct is exempt from registration up to the general registration statute, which is much more user friendly. <p>(1) 15 U.S.C. 78o(i) refers to a limited federal exemption from registration for broker-dealer agents who are effecting certain types of</p>	50

<p>participation by the payment of commissions or other remuneration based, directly or indirectly, on transactions in those securities;</p> <p>(4) an individual who represents an issuer and who effects transactions in the issuer's securities exempted by AS 45.56.210, other than AS 45.56.210(11) and (14);</p> <p>(5) an individual who represents an issuer that effects transactions solely in federal covered securities of the issuer, but an individual who effects transactions in a federal covered security under 15 U.S.C. 77r(b)(3) or (b)(4)(D) is not exempt if the individual is compensated in connection with the agent's participation by the payment of commissions or other remuneration based, directly or indirectly, on transactions in those securities;</p> <p>(6) an individual who represents a broker-dealer registered in the state under AS 45.56.405(a) or exempt from registration under AS 45.56.405(b) in the offer and sale of securities for an account of a nonaffiliated federal covered investment adviser with investments under management in excess of \$100,000,000 acting for the account of others under discretionary authority in a signed record;</p> <p>(7) an individual who represents an issuer in connection with the purchase of the issuer's own securities;</p> <p>(8) an individual who represents an issuer and who restricts participation to performing clerical or ministerial acts; or</p> <p>(9) any other individual exempted by a regulation adopted or order issued under this chapter.</p>		<p>transactions for preexisting customers on a limited basis while registered in another state, but not in Alaska.</p> <p>(2) If the broker-dealer is exempt, the agent is also exempt.</p> <p>(3)-(5) same as 45.55.990(5)(A)</p> <p>(6) similar to 45.55.030(c)(2)(A)</p> <p>(7) security buy-back by the issuer.</p> <p>(8) ministerial or clerical acts might include preparing written communications or responding to inquiries, per the USA comments.</p>	
<p>(c) The registration of an agent is effective only while the agent is employed by or associated with a broker-dealer registered under this chapter or an issuer that is offering, selling, or purchasing the issuer's securities in this state.</p>	<p>45.55.030(b)</p>	<p>Language directly from first part of 45.55.030(b).</p>	<p>51</p>
<p>(d) A broker-dealer or an issuer engaged in offering, selling, or purchasing securities in the state may not employ or associate with an agent who transacts business in the state on</p>	<p>45.55.030(b)</p>	<p>Language directly from second part of 45.55.030(b).</p>	<p>51</p>

behalf of broker-dealers or issuers unless the agent is registered under (a) of this section or exempt from registration under (b) of this section.			
(e) An individual may not act as an agent for more than one broker-dealer or one issuer at a time, unless the broker-dealer or the issuer for which the agent acts is affiliated by direct or indirect common control or is authorized by a regulation or order issued under this chapter.	45.55.030(f)	Under 45.55, agents wishing to be dual registered must receive a waiver from the administrator. This process will remain the same.	51
<b>Sec. 45.56.435. Investment adviser registration requirement and exemptions.</b> (a) A person may not transact business in the state as an investment adviser unless the person is registered under this chapter as an investment adviser or is exempt from registration as an investment adviser under (b) of this section.	45.55.030(c)	Same as 45.55.	51
(b) The following persons are exempt from the registration requirement in (a) of this section: (1) a person without a place of business in this state that is registered under the securities act of the state in which the person has the person's principal place of business if the person's only clients in this state are (A) federal covered investment advisers, investment advisers registered under this chapter, or broker-dealers registered under this chapter; (B) institutional investors; (C) bona fide preexisting clients whose principal places of residence are not in the state if the investment adviser is registered under the securities act of the state in which the clients maintain principal places of residence; or (D) exempt by regulation adopted or order issued under this chapter; (2) a person without a place of business in the state if the person has had, during the preceding 12 months, not more than five clients that are resident in the state in addition to those specified under (1) of this subsection; or	See generally 45.55.030(c)(2)	The exemptions follow those found in 45.55.030(c)(2).  (C) provides a new "snowbird" exemption, matching the one for broker-dealers in 45.56.405, to facilitate ongoing relationships with customers who have established a second or other residence for such purposes as a winter home.	52

(3) any other person exempted by a regulation adopted or order issued under this chapter.			
(c) An investment adviser may not, directly or indirectly, employ or associate with an individual to engage in an activity related to investment advice in the state if the registration of the individual is suspended or revoked or the individual is barred from employment or association with an investment adviser, federal covered investment adviser, or broker-dealer by an order under this chapter, the Securities and Exchange Commission, or a self-regulatory organization, unless the investment adviser did not know, and, in the exercise of reasonable care could not have known, of the suspension, revocation, or bar. Upon request from the investment adviser and for good cause, the administrator may by order, waive, in whole or in part, the application of the prohibitions of this subsection to the investment adviser.	None	Bad actor disqualifier for persons performing investment advisory activities; this provision prevents IA firms from employing or associating with individuals who have been barred from the industry by Alaska, the SEC, or FINRA (or other SRO). The Administrator may waive this prohibition upon a showing of good cause.	52
(d) An investment adviser may not employ or associate with an individual required to be registered under this chapter as an investment adviser representative who transacts business in the state on behalf of the investment adviser unless the individual is registered under AS 45.56.440(a) or is exempt from registration under AS 45.56.440(b).	45.55.030(g)	Same as 45.55.	53
<b>Sec. 45.56.440. Investment adviser representative registration requirement and exemptions.</b> (a) An individual may not transact business in the state as an investment adviser representative unless the individual is registered under this chapter as an investment adviser representative or is exempt from registration as an investment adviser representative under (b) of this section. (b) The following individuals are exempt from the registration requirement of (a) of this section: (1) an individual who is employed by or associated with an investment adviser that is exempt from registration under AS 45.56.435(b) or a federal covered investment adviser that is	None.	45.55 did not specifically address investment adviser representatives, only state investment advisers and federal covered investment advisers.  The new provisions generally mirror the requirements for broker-dealer agents.  (f) explains that an investment adviser that is already registered with the state receiving referral fees from another state-registered entity (broker-dealer or investment adviser) does not need to separately register as an investment adviser	53

<p>excluded from the notice filing requirements of AS 45.56.445; and</p> <p>(2) any other individual exempted by a regulation adopted or order issued under this chapter.</p> <p>(c) The registration of an investment adviser representative is not effective while the investment adviser representative is not employed by or associated with an investment adviser registered under this chapter or a federal covered investment adviser that has made or is required to make a notice filing under AS 45.56.445.</p> <p>(d) An individual may transact business as an investment adviser representative for more than one investment adviser or federal covered investment adviser unless a regulation adopted or order issued under this chapter prohibits or limits an individual from acting as an investment adviser representative for more than one investment adviser or federal covered investment adviser.</p> <p>(e) An individual acting as an investment adviser representative may not, directly or indirectly, conduct business in the state on behalf of an investment adviser or a federal covered investment adviser if the registration of the individual as an investment adviser representative is suspended or revoked or the individual is barred from employment or association with an investment adviser or a federal covered investment adviser by an order under this chapter, the Securities and Exchange Commission, or a self-regulatory organization. Upon request from a federal covered investment adviser and for good cause, the administrator may by order, waive, in whole or in part, the application of the requirements of this subsection to the federal covered investment adviser.</p> <p>(f) An investment adviser registered under this chapter, a federal covered investment adviser that has filed a notice under AS 45.56.445, or a broker-dealer registered under this</p>		<p>representative of the entity paying referral fees.</p>	
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<p>chapter is not required to employ or associate with an individual as an investment adviser representative if the only compensation paid to the individual for a referral of investment advisory clients is paid to an investment adviser registered under this chapter, a federal covered investment adviser who has filed a notice under AS 45.56.445, or a broker-dealer registered under this chapter with which the individual is employed or associated as an investment adviser representative.</p>			
<p><b>Sec. 45.56.445. Federal covered investment adviser notice filing requirement.</b> (a) Except with respect to a federal covered investment adviser described in (b) of this section, a federal covered investment adviser may not transact business in the state as a federal covered investment adviser unless the federal covered investment adviser complies with (c) of this section.</p> <p>(b) The following federal covered investment advisers are not required to comply with (c) of this section:</p> <p>(1) a federal covered investment adviser without a place of business in the state if the only clients of the federal covered investment adviser in the state are</p> <p>(A) federal covered investment advisers, investment advisers registered under this chapter, and broker-dealers registered under this chapter;</p> <p>(B) institutional investors;</p> <p>(C) bona fide preexisting clients whose principal places of residence are not in the state; or</p> <p>(D) other clients specified by a regulation adopted or order issued under this chapter;</p> <p>(2) a federal covered investment adviser without a place of business in the state if the person has had, during the preceding 12 months, not more than five clients that are resident in the state in addition to those specified under (1) of this subsection; and</p>	<p>See generally 45.55.030</p>	<p>45.55 did not generally separate out notice-filed advisers.</p> <p>In general, federal covered IAs do not need to be registered in the state unless they have more than five Alaska clients or a place of business in this state (de minimis exemption). This matches existing law.</p>	<p>54</p>

<p>(3) any other person excluded by a regulation adopted or order issued under this chapter.</p> <p>(c) A person acting as a federal covered investment adviser not excluded under (b) of this section shall file a notice, a consent to service of process complying with AS 45.56.630, and the records that have been filed with the Securities and Exchange Commission under 15 U.S.C. 80b-1 - 80b-21 (Investment Advisers Act of 1940) required by a regulation adopted or order issued under this chapter and shall pay the fees specified by regulation adopted under AS 45.56.470.</p> <p>(d) The notice under (c) of this section becomes effective upon filing.</p>			
<p><b>Sec. 45.56.450. Registration by broker-dealer, agent, investment adviser, and investment adviser representative.</b> (a) A person shall register as a broker-dealer, agent, investment adviser, or investment adviser representative by filing an application and a consent to service of process complying with AS 45.56.630 and paying the fee specified in AS 45.56.430 and any reasonable fees charged by the designee of the administrator for processing the filing. The application must contain</p> <p>(1) the information or record required for the filing of a uniform application; and</p> <p>(2) upon request by the administrator, any other financial or other information or record that the administrator determines is appropriate.</p> <p>(b) If the information or record contained in an application filed under (a) of this section is or becomes inaccurate or incomplete in a material respect, the registrant shall promptly file a correcting amendment.</p> <p>(c) If an order is not in effect, and a proceeding is not pending under AS 45.56.480, and the administrator has not initiated an investigation, registration becomes effective at noon on the 45th day after a completed application is filed,</p>	<p>45.55.040, 45.55.050, 3 AAC 08.011, 3 AAC 08.050</p>	<p>The registration statute combines provisions found in 45.55 and in current regulations.</p> <p>Under current regulations, an application becomes automatically effective 30 days after it is filed unless the division initiates an investigation. (c) extends it to 45 days. In practice, decisions are made, or investigations initiated, well before 30 days after an application is filed.</p> <p>(e) clarifies that the Administrator may impose other conditions upon licensing so long as they are consistent with NSMIA (i.e. not preempted by federal law).</p>	<p>55</p>

<p>unless the registration is denied. A regulation adopted or order issued under this chapter may set an earlier effective date or may defer the effective date until noon on the 45th day after the filing of any amendment completing the application.</p> <p>(d) A registration is effective until midnight on December 31 of the year for which the application for registration is filed. Unless an order is in effect under AS 45.56.480, a registration may be automatically renewed each year by filing the records required by a regulation adopted or order issued under this chapter, by paying the fee specified in AS 45.56.470, and by paying costs charged by the designee of the administrator for processing the filings.</p> <p>(e) A regulation adopted or order issued under this chapter may impose other conditions, not inconsistent with 15 U.S.C. 77b – 77c, 77e – 77f, 77r, 77z-3, 77ddd, 78a – 78d, 78g – 78h, 78n – 78o, 78q, 78bb, 78ee, 78kk, 78mm, 80a-2- 80a-3, 80a-6, 80a-12, 80a-24, 80a-26 – 80a-27, 80a-29-80a-30, 80a-34, 80a-51, 80a-54, 80a-60, 80a-63, 80b-2 – 80b-3a, 80b-5, 80b-10, 80b-18a, 80b-20, and 29 U.S.C. 1002 (P.L. 104-290) (National Securities Markets Improvement Act of 1996). An order issued under this chapter may waive, in whole or in part, specific requirements in connection with registration that are in the public interest and for the protection of investors.</p>			
<p><b>Sec. 45.56.455. Succession and change in registration of broker-dealer or investment adviser.</b> (a) A broker-dealer or investment adviser may succeed to the current registration of another broker-dealer or investment adviser or a notice filing of a federal covered investment adviser, and a federal covered investment adviser may succeed to the current registration of an investment adviser or notice filing of another federal covered investment adviser, by filing as a successor an application for registration under AS 45.56.405</p>	<p>45.55.040(d), 3 AAC 08.018, and 3 AAC 08.050</p>	<p>Successor provisions are currently generally referred to in 45.55.040 and then elaborated upon in the regulations.</p> <p>(b) clarifies that a change in organization, so long as there is not a material change in financial condition or management, can be completed through an amendment, rather than filing a new registration. An example would be an IA going</p>	<p>56</p>

<p>or 45.56.435 or a notice under AS 45.56.445 for the unexpired portion of the current registration or notice filing.</p> <p>(b) A broker-dealer or investment adviser that changes its form of organization or state of incorporation or organization may continue its registration by filing an amendment to its registration if the change does not involve a material change in its financial condition or management. The amendment becomes effective when filed or on a date designated by the registrant in its filing. The new organization is a successor to the original registrant for the purposes of this chapter. If there is a material change in financial condition or management, the broker-dealer or investment adviser shall file a new application for registration. A predecessor registered under this chapter shall stop conducting its securities business other than winding down transactions and shall file for withdrawal of broker-dealer or investment adviser registration within 45 days after filing its amendment to effect succession.</p> <p>(c) A broker-dealer or investment adviser that changes its name may continue its registration by filing an amendment to its registration. The amendment becomes effective when filed or on a date designated by the registrant.</p> <p>(d) A change of control of a broker-dealer or investment adviser may be made in accordance with a regulation adopted or order issued under this chapter.</p>		<p>from a sole proprietorship to an LLC or corporation.</p>	
<p><b>Sec. 45.56.460. Termination of employment or association of agent and investment adviser representative and transfer of employment or association.</b> (a) If an agent registered under this chapter terminates employment by or association with a broker-dealer or issuer, or if an investment adviser representative registered under this chapter terminates employment by or association with an investment adviser or federal covered investment adviser, or if either registrant terminates activities</p>	<p>45.55.030(b), (i)</p>	<p>45.55 separates the requirements for broker-dealers and investment advisers; they are combined here, and a procedure for the notification of termination is established.</p>	<p>57</p>

<p>that require registration as an agent or investment adviser representative, the broker-dealer, issuer, investment adviser, or federal covered investment adviser shall promptly file a notice of termination. The registrant may file the notice of termination if the registrant learns that the broker-dealer, issuer, investment adviser, or federal covered investment adviser has not filed the notice.</p>			
<p>(b) If an agent registered under this chapter terminates employment by or association with a broker-dealer registered under this chapter and begins employment by or association with another broker-dealer registered under this chapter, or if an investment adviser representative registered under this chapter terminates employment by or association with an investment adviser registered under this chapter or a federal covered investment adviser that has filed a notice under AS 45.56.445 and begins employment by or association with another investment adviser registered under this chapter or a federal covered investment adviser that has filed a notice under AS 45.56.445, then, within 30 days after the termination, upon the filing by or on behalf of the registrant of an application for registration that complies with the requirement of AS 45.56.450(a) and payment of the filing fee required under AS 45.56.470, the registration of the agent or investment adviser representative is</p> <p>(1) immediately effective as of the date of the completed filing, if the agent's record or successor record in the Central Registration Depository operated by the Financial Industry Regulatory Authority or the investment adviser representative's record or successor record in the Investment Adviser Registration Depository operated by the Financial Industry Regulatory Authority does not contain a new or amended disciplinary disclosure within the previous 12 months; or</p> <p>(2) temporarily effective as of the date of the completed</p>	<p>None</p>	<p>This outlines the procedure by which agents or investment adviser representative registration will be effective immediately as of the date of new employment when there is no new or added disciplinary disclosure in the relevant CRD or IARD records.</p> <p>Also provides for temporary registration when an agent/rep succeeds to a new firm and there is a new disclosure within the past 12 months.</p>	<p>57</p>

<p>filing, if the agent's record or successor record in the Central Registration Depository operated by the Financial Industry Regulatory Authority or the investment adviser representative's record or successor record in the Investment Adviser Registration Depository operated by the Financial Industry Regulatory Authority contains a new or amended disciplinary disclosure within the preceding 12 months.</p>			
<p>(c) The administrator may withdraw a temporary registration if there are or were grounds for discipline as specified in AS 45.56.480 and the administrator does so within 30 days after the filing of the application. If the administrator does not withdraw the temporary registration within the 30-day period, registration becomes automatically effective on the 31st day after filing.</p>	None	A temporary registration becomes permanent if no action taken by the administrator within 30 days. Note: in practice, action is typically taken within a few days.	58
<p>(d) The administrator may prevent the effectiveness of a transfer of an agent or investment adviser representative under (b)(1) or (2) of this section based on the public interest and the protection of investors.</p>	None	The administrator may prevent immediate effectiveness of agent/rep transfers in appropriate cases.	58
<p>(e) If the administrator determines that a registrant or applicant for registration is no longer in existence, has ceased to act as a broker-dealer, agent, investment adviser, or investment adviser representative, is the subject of an adjudication of incapacity, is subject to the control of a committee, conservator, or guardian, or cannot reasonably be located, a regulation adopted or order issued under this chapter may require the registration be canceled or terminated or the application denied. The administrator may reinstate a canceled or terminated registration, with or without hearing, and may make the registration retroactive.</p>	45.55.060(f)	Same as 45.55.	58
<p><b>Sec. 45.56.465. Withdrawal of registration of broker-dealer, agent, investment adviser, and investment adviser representative.</b> Withdrawal of registration by a broker-dealer, agent, investment adviser, or investment adviser representative becomes effective 60 days after the</p>	45.55.060(g)	Current 45.55 makes a withdrawal effective 30 days after it is filed; new provision changes it to 60 days. In general, this provision retains the Administrator's jurisdiction over a registrant for enforcement purposes for a year after they	58

<p>filing of the application to withdraw or within any shorter period as provided by a regulation adopted or order issued under this chapter unless a revocation or suspension proceeding is pending when the application is filed. If a proceeding is pending, withdrawal becomes effective when and upon the conditions required by a regulation adopted or order issued under this chapter. The administrator may institute a revocation or suspension proceeding under AS 45.56.480 within one year after the withdrawal became effective automatically and issue a revocation or suspension order as of the last date on which registration was effective if a proceeding is not pending.</p>		<p>withdraw registration.</p>	
<p><b>Sec. 45.56.470. Filing fees.</b> (a) The administrator shall establish fees by regulation for</p> <ol style="list-style-type: none"> <li>(1) an initial filing of an application as a broker-dealer and renewal of an application by a broker-dealer for registration;</li> <li>(2) an application for registration as an agent and renewal of registration as an agent;</li> <li>(3) an application for registration as an investment adviser and renewal of registration as an investment adviser;</li> <li>(4) an application for registration as an investment adviser representative, a renewal of registration as an investment adviser representative, and a change of registration as an investment adviser representative; and</li> <li>(5) an initial fee and annual notice fee for a federal covered investment adviser required to file a notice under AS 45.56.445.</li> </ol> <p>(b) A person required to pay a filing or notice fee under this section may transmit the fee through or to a designee as provided by a regulation adopted or order issued under this chapter.</p>	<p>45.55.040(c)</p>	<p>Aside from the general fee requirement, this clarifies that the fee should be paid through or to a designee (FINRA) as provided in regulation.</p>	<p>59</p>
<p><b>Sec. 45.56.475. Postregistration requirements.</b> (a) Subject to 15 U.S.C. 78o(i) or 15 U.S.C. 80b-18a, a regulation adopted or order issued under this chapter may establish</p>	<p>45.55.040, 45.55.050</p>	<p>NSMIA prohibits states from imposing specific capital, custody, margin, financial responsibility, making and keeping records, bonding, or financial</p>	<p>59</p>

<p>minimum financial requirements for broker-dealers registered or required to be registered under this chapter and investment advisers registered or required to be registered under this chapter.</p> <p>(b) Subject to 15 U.S.C. 78o(i) or 80b-18a, a broker-dealer registered or required to be registered under this chapter and an investment adviser registered or required to be registered under this chapter shall file the financial reports required by a regulation adopted or order issued under this chapter. If the information contained in a record filed under this subsection is or becomes inaccurate or incomplete in a material respect, the registrant shall promptly file a correcting amendment.</p> <p>(c) Subject to 15 U.S.C. 78o(i) or 80b-18a,</p> <p>(1) a broker-dealer registered or required to be registered under this chapter and an investment adviser registered or required to be registered under this chapter shall make and maintain the accounts, correspondence, memoranda, papers, books, and other records required by a regulation adopted or order issued under this chapter;</p> <p>(2) broker-dealer records required to be maintained under (1) of this subsection may be maintained in any form of data storage acceptable under 15 U.S.C. 78q(a) if they are readily accessible to the administrator; and</p> <p>(3) investment adviser records required to be maintained under (1) of this subsection may be maintained in any form of data storage required by a regulation adopted or order issued under this chapter.</p> <p>(d) The records of a broker-dealer registered or required to be registered under this chapter and of an investment adviser registered or required to be registered under this chapter are subject to the reasonable periodic, special, or other audits or inspections by a representative of the administrator, in or outside the state, that the administrator considers necessary or appropriate in the public interest and for the protection of</p>		<p>or operational reporting requirements except for those specifically allowed by the Securities Act of 1933. This provision only includes those specific requirements, and generally mirrors 45.55.050.</p> <p>(d) fees for examinations or inspection were in 45.55.915 previously.</p> <p>(h) is new and allows the Administrator to require a registrant to complete continuing education requirements.</p>	
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<p>investors. An audit or inspection may be made at any time and without prior notice. The administrator may copy and remove for audit or inspection copies of all records the administrator reasonably considers necessary or appropriate to conduct the audit or inspection. The administrator may assess a reasonable charge for conducting an audit or inspection under this subsection.</p> <p>(e) Subject to 15 U.S.C. 78o(i) or 80b-18a, a regulation adopted or order issued under this chapter may require a broker-dealer or investment adviser that has custody of or discretionary authority over funds or securities of a customer or client to obtain insurance or post a bond or other satisfactory form of security in an amount established by a regulation adopted under this chapter. The administrator may determine the requirements of the insurance, bond, or other satisfactory form of security. Insurance or a bond or other satisfactory form of security may not be required of a broker-dealer registered under this chapter whose net capital exceeds, or of an investment adviser registered under this chapter whose minimum financial requirements exceed, the amounts required by a regulation adopted or order issued under this chapter. The insurance, bond, or other satisfactory form of security must permit an action by a person to enforce any liability on the insurance, bond, or other satisfactory form of security if instituted within the time limitations in AS 45.56.660(j)(2).</p> <p>(f) Subject to 15 U.S.C. 78o(i) or 15 U.S.C. 80b-18a, an agent may not have custody of funds or securities of a customer except under the supervision of a broker-dealer and an investment adviser representative may not have custody of funds or securities of a client except under the supervision of an investment adviser or a federal covered investment adviser. A regulation adopted or order issued under this chapter may prohibit, limit, or impose conditions on a</p>			
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<p>broker-dealer regarding custody of funds or securities of a customer and on an investment adviser regarding custody of securities or funds of a client.</p> <p>(g) With respect to an investment adviser registered or required to be registered under this chapter, a regulation adopted or order issued under this chapter may require that information or other records be furnished or disseminated to clients or prospective clients in the state as necessary or appropriate in the public interest and for the protection of investors and advisory clients.</p> <p>(h) A regulation adopted or order issued under this chapter may require an individual registered under AS 45.56.430 or 45.56.440 to participate in a continuing education program approved by the Securities and Exchange Commission and administered by a self-regulatory organization, or, in the absence of a continuing education program, a regulation adopted or order issued under this chapter may require continuing education for an individual registered under AS 45.56.440.</p>			
<p><b>Sec. 45.56.480. Denial, revocation, suspension, withdrawal, restriction, condition, or limitation of registration.</b> (a) If the administrator finds that the order is in the public interest and (d) of this section authorizes the action, an order issued under this chapter may deny an application, or may condition or limit registration of an applicant to be a broker-dealer, agent, investment adviser, or investment adviser representative, and, if the applicant is a broker-dealer or investment adviser, of a partner, officer, director, or person having a similar status or performing similar functions, or a person directly or indirectly in control, of the broker-dealer or investment adviser.</p>	45.55.060	<p>This is the enforcement provision for registrants. The sections are generally already covered in 45.55.060 but are expanded upon here for clarity, and some specific provisions are changed as noted below.</p> <p>(a) relates to denial, condition or limitation of a registration not already approved.</p>	61
<p>(b) If the administrator finds that the order is in the public interest and (d) of this section authorizes the action, an order issued under this chapter may revoke, suspend, condition, or</p>		<p>(b) allows the Administrator to revoke, suspend, condition or limit the registration of approved registrants based on actions taken in another state</p>	61

<p>limit the registration of a registrant, and, if the registrant is a broker-dealer or investment adviser, of a partner, officer, director, or person having a similar status or performing similar functions, or a person directly or indirectly in control, of the broker-dealer or investment adviser. However, the administrator may not</p> <p>(1) institute a revocation or suspension proceeding under this subsection based on an order issued under a law of another state that is reported to the administrator or a designee of the administrator more than three years after the date of the order on which it is based; or</p> <p>(2) under (d)(5)(A) and (B) of this section, issue an order on the basis of an order issued under the securities act of another state unless the other order was based on conduct for which (d) of this section would authorize the action had the conduct occurred in this state.</p>		<p>(similar to 45.55.060(a)(6)(A) and (B)), but only within three years of the action being taken in another state. Current law limits it to one year, and because many of these matters are self-reported, the Administrator may not learn of them for some time. Three years provides added flexibility while still having a limit in place.</p>	
<p>(c) If the administrator finds that the order is in the public interest and (d)(1) - (6), (8) - (10), (12), or (13) of this section authorize the action, an order under this chapter may censure, impose a bar, or impose a civil penalty of not more than \$100,000 for a single violation, on a registrant, and, if the registrant is a broker-dealer or investment adviser, a partner, officer, director, or person having a similar status or performing similar functions, or a person directly or indirectly in control, of the broker-dealer or investment adviser.</p>	45.55.920	<p>This provision allows the Administrator to impose a bar, which is not permitted under current law, and also increases potential civil penalties from \$2,500 to \$10,000 for a single violation to up to \$100,000 for a single violation.</p>	61
<p>(d) A person may be disciplined under (a) - (c) of this section if the person</p> <p>(1) has filed an application for registration in the state under this chapter or former AS 45.55, as of the effective date of registration or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained a statement that, in light of the circumstances under which it was made, was false or</p>	45.55.060	<p>(d) explains when action may be taken against a registrant, and generally tracks provisions already in place in 45.55.060, except for as noted below:</p> <p>(d)(4) expands on current (a)(4) which referred to conduct involving an aspect of “the securities business”</p>	61

<p>misleading with respect to a material fact;</p> <p>(2) willfully violated or willfully failed to comply with this chapter or former AS 45.55 or a regulation adopted or order issued under this chapter or former AS 45.55;</p> <p>(3) has been convicted of a felony or within the previous 10 years has been convicted of a misdemeanor involving a security, a commodity future or option contract, or an aspect of a business involving securities, commodities, investments, franchises, insurance, banking, or finance;</p> <p>(4) is enjoined or restrained by a court of competent jurisdiction in an action instituted by the administrator under this chapter or former AS 45.55, a state, the Securities and Exchange Commission, or the United States from engaging in or continuing an act, practice, or course of business involving an aspect of a business involving securities, commodities, investments, franchises, insurance, banking, or finance;</p> <p>(5) is the subject of an order, issued after notice and opportunity for hearing by</p> <p>(A) the securities or other financial services regulator of a state or the Securities and Exchange Commission or other federal agency denying, revoking, barring, or suspending registration as a broker-dealer, agent, investment adviser, federal covered investment adviser, or investment adviser representative;</p> <p>(B) the securities regulator of a state or the Securities and Exchange Commission against a broker-dealer, agent, investment adviser, investment adviser representative, or federal covered investment adviser;</p> <p>(C) the Securities and Exchange Commission or a self-regulatory organization suspending or expelling the registrant from membership in the self-regulatory organization;</p> <p>(D) a court adjudicating a United States Postal Service fraud order;</p>		<p>(d)(5)(E) is new, and allows for the Administrator to conduct enforcement based on action taken by a state insurance administrator</p> <p>(d)(5)(F) is new, and allows for the Administrator to conduct enforcement based on action taken by a state banking/financial services administrator.</p> <p>(d)(6) is similar to 45.55.060(a)(6), but is broadened significantly to include actions taken by the SEC, CFTC, FTC, federal depository institution regulator, or state depository or financial services regulator when a finding is made that the respondent violated the Securities Act of 1933, Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Commodity Exchange Act, the securities or commodities laws of a state, or a federal or state law involving investments, franchises, insurance, banking or finance.</p> <p>Under (d)(5) and (6), the administrator is not required to prove the validity of the ground which led to the earlier disciplinary order because the subject of the order was already given notice and an opportunity for hearing.</p> <p>(d)(8) relates to refusal to cooperate with a reasonable audit or inspection and can include withholding or concealing records, refusing to furnish required records, or refusing the administrator reasonable access to any office or location within an office to conduct an audit or inspection under the Act.</p>	
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<p>(E) the insurance regulator of a state denying, suspending, or revoking registration as an insurance agent; or</p> <p>(F) a depository institution or financial services regulator suspending or barring the person from the depository institution or other financial services business;</p> <p>(6) is the subject of an adjudication or determination, after notice and opportunity for hearing, by the Securities and Exchange Commission, the Commodity Futures Trading Commission, the Federal Trade Commission, a federal depository institution regulator, or a depository institution, insurance, or other financial services regulator of a state that the person willfully violated 15 U.S.C. 77a - 77aa (Securities Act of 1933), 15 U.S.C. 78a – 78pp (Securities Exchange Act of 1934), 15 U.S.C. 80b-1 - 80b-21 (Investment Advisers Act of 1940), 15 U.S.C. 80a-1 - 80a-64 (Investment Company Act of 1940), or 7 U.S.C. 1 - 27 (Commodity Exchange Act), the securities or commodities law of a state, or a federal or state law under which a business involving investments, franchises, insurance, banking, or finance is regulated;</p> <p>(7) is insolvent, either because the person's liabilities exceed the person's assets or because the person cannot meet the person's obligations as they mature, but the administrator may not enter an order against an applicant or registrant under this paragraph without a finding of insolvency as to the applicant or registrant;</p> <p>(8) refuses to allow or otherwise impedes the administrator from conducting an audit or inspection under AS 45.56.475(d) or refuses access to a registrant's office to conduct an audit or inspection under AS 45.56.475(d);</p> <p>(9) has failed to reasonably supervise an agent, investment adviser representative, or other individual, if the agent, investment adviser representative, or other individual was subject to the person's supervision and committed a violation of this chapter or former AS 45.55 or a regulation adopted or</p>		<p>(d)(11) is similar to earlier provisions, but relates to actions taken outside of the U.S.</p> <p>(d)(12) is new and specifically relates to cease and desist orders.</p> <p>(d)(14) is new and would allow for discipline for failure to fulfill continuing education requirements or other evidence of lack of knowledge or experience.</p> <p>(d)(15) is new and relates to denial of license renewal under the Education Loan Program (AS 14.43.091 et seq.) and nonissuance/nonrenewal of occupational license for failure to pay child support (AS 25.24 et seq.). Under these other state laws, a licensing authority may not renew a license if a person is in default on a loan made pursuant to the Educational Loan Program or if they are not in substantial compliance with a support order or child support payment schedule.</p>	
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<p>order issued under this chapter or former AS 45.55;</p> <p>(10) has not paid the proper filing fee within 30 days after having been notified by the administrator of a deficiency, but the administrator shall vacate an order under this paragraph when the deficiency is corrected;</p> <p>(11) after notice and opportunity for a hearing, has been found</p> <p>(A) by a court of competent jurisdiction to have willfully violated the laws of a foreign jurisdiction under which the business of securities, commodities, investment, franchises, insurance, banking, or finance is regulated;</p> <p>(B) to have been the subject of an order of a securities regulator of a foreign jurisdiction denying, revoking, or suspending the right to engage in the business of securities as a broker-dealer, agent, investment adviser, investment adviser representative, or similar person; or</p> <p>(C) to have been suspended or expelled from membership by or participation in a securities exchange or securities association operating under the securities laws of a foreign jurisdiction;</p> <p>(12) is the subject of a cease and desist order issued by the Securities and Exchange Commission or issued under the securities, commodities, investment, franchise, banking, finance, or insurance laws of a state;</p> <p>(13) has engaged in dishonest or unethical practices in the securities, commodities, investment, franchise, banking, finance, or insurance business;</p> <p>(14) is not qualified on the basis of factors that may include training, experience, and knowledge of the securities business; however, in the case of an application by an agent for a broker-dealer that is a member of a self-regulatory organization or by an individual for registration as an investment adviser representative, a denial order may not be based on this paragraph if the individual has successfully</p>			
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<p>completed all examinations required by (e) of this section; the administrator may require an applicant for registration under AS 45.56.430 or 45.56.440 who has not been registered in a state within the two years preceding the filing of an application in this state to successfully complete an examination; or</p> <p>(15) is a person whose license renewal is denied under AS 14.43.148 or whose license issuance or renewal is denied under AS 25.27.244.</p>			
<p>(e) A regulation adopted or order issued under this chapter may require that an examination, including an examination developed or approved by an organization of securities regulators, be successfully completed by a class of individuals or all individuals. An order issued under this chapter may waive, in whole or in part, an examination as to an individual and a regulation adopted under this chapter may waive, in whole or in part, an examination as to a class of individuals if the administrator determines that the examination is not necessary or appropriate in the public interest and for the protection of investors.</p>	45.55.060(d)(6)	Same as 45.55.	65
<p>(f) The administrator may suspend or deny an application summarily; restrict, condition, limit, or suspend a registration; or censure, bar, or impose a civil penalty on a registrant before final determination of an administrative proceeding. Upon the issuance of an order, the administrator shall promptly notify each person subject to the order that the order has been issued, the reasons for the action, and that, within 15 days after the receipt of a request in a record from the person, the matter will be scheduled for a hearing. If a hearing is not requested and none is ordered by the administrator within 30 days after the date of service of the order, the order becomes final by operation of law. If a hearing is requested or ordered, the administrator, after notice of and opportunity for hearing to each person subject</p>	45.55.060(e)	Same as 45.55, but with the additional option of a bar.	66

to the order, may modify or vacate the order or extend the order until final determination.			
(g) An order may not be issued under this section, except under (f) of this section, without appropriate notice to the applicant or registrant, and an opportunity for hearing under AS 45.56.650(c).	45.55.060(h)	Same as 45.55.	66
(h) A person that controls, directly or indirectly, a person not in compliance with this section may be disciplined by order of the administrator under (a) - (c) of this section to the same extent as the noncomplying person, unless the controlling person did not know, and in the exercise of reasonable care could not have known, of the existence of conduct that is a ground for discipline under this section.	45.55.060(a)	Taken from 45.55.060(a); clarifies applicability to control persons, who are excused from liability if they did not know and could not have known of the conduct that is the basis for discipline under the Act.	66
(i) The administrator may not institute a proceeding under (a) - (c) of this section based solely on material facts actually known by the administrator unless an investigation or the proceeding is instituted within one year after the administrator actually acquires knowledge of the material facts.	45.55.060(c)	This provision is the same as 45.55.060(c) except that the time limit is expanded from 30 days to one year. "Actually known" according to the USA comments, is used to signify that the mere filing of facts in the CRD or IARD system does not constitute actual knowledge on the part of the Administrator.	66
<b>Article 5. Fraud and Liabilities.</b>			
<b>Sec. 45.56.505. General fraud.</b> A person may not, in connection with the offer, sale, or purchase of a security, directly or indirectly, (1) employ a device, scheme, or artifice to defraud; (2) make an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or (3) engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person.	45.55.010	Same as 45.55.	66
<b>Sec. 45.56.510. Prohibited conduct in providing</b>	45.55.020(a)	The proposed statute allows the Administrator to	67

<p><b>investment advice.</b> (a) A person that advises others for compensation, either directly or indirectly or through publications or writings, as to the value of securities or the advisability of investing in, purchasing, or selling securities or that, for compensation and as part of a regular business, issues or adopts analyses or reports relating to securities may not</p> <p>(1) employ a device, scheme, or artifice to defraud another person; or</p> <p>(2) engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person.</p> <p>(b) A regulation adopted under this chapter may define an act, practice, or course of business of an investment adviser or an investment adviser representative, other than a supervised person of a federal covered investment adviser, as fraudulent, deceptive, or manipulative and may prescribe means reasonably designed to prevent investment advisers and investment adviser representatives, other than supervised persons of a federal covered investment adviser, from engaging in acts, practices, and courses of business defined as fraudulent, deceptive, or manipulative.</p> <p>(c) A regulation adopted under this chapter may specify the contents of an investment advisory contract entered into, extended, or renewed by an investment adviser.</p>		<p>define by regulation the type of conduct that can be considered fraudulent, deceptive or manipulative. Many of these examples are currently listed in 45.55.023/.025 which are not carried over into the proposed language, but would likely be incorporated into regulations.</p> <p>(generally the same as SEC 10b-5 provisions)</p>	
<p><b>Sec. 45.56.520. Misleading filings.</b> A person may not, in a document filed with the administrator or in a proceeding under this chapter, make or cause to be made an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading.</p>	45.55.160	Same as 45.55.	67
<p><b>Sec. 45.56.530. Misrepresentations concerning registration or exemption.</b> The filing of an application for</p>	See generally 45.55.170	Same content as 45.55.170, just rewritten for clarity. In essence, the mere fact that something is	67

<p>registration, a registration statement, a notice filing under this chapter, the registration of a person, the notice filing by a person, or the registration of a security under this chapter does not constitute a finding by the administrator that a record filed under this chapter is true, complete, and not misleading. The filing or registration or the availability of an exemption, exception, preemption, or exclusion for a security or a transaction does not mean that the administrator has passed upon the merits or qualifications of, or recommended or given approval to, a person, security, or transaction. A person may not make, or cause to be made, to a purchaser, customer, client, or prospective customer or client a representation inconsistent with this section.</p>		<p>filed does not mean that the administrator has judged the filing to be true, complete, or not misleading, and the existence of an exemption, etc. does not mean the administrator has given approval to the security or transaction.</p>	
<p><b>Sec. 45.56.540. Evidentiary burden.</b> (a) In a civil action or administrative proceeding under this chapter, a person claiming an exemption, exception, preemption, or exclusion has the burden to prove the applicability of the claim. (b) In a criminal proceeding under this chapter, a person claiming an exemption, exception, preemption, or exclusion has the burden of going forward with evidence of the claim.</p>	<p>Generally 45.55.900(c)</p>	<p>This is in 45.55 for exemptions specifically, but this provision extends across the entire Act.</p>	<p>68</p>
<p><b>Sec. 45.56.550. Filing of sales and advertising literature.</b> (a) Except as otherwise provided in (b) of this section, a regulation adopted or order issued under this chapter may require the filing of a prospectus, pamphlet, circular, form letter, advertisement, sales literature, or other advertising record relating to a security or investment advice, addressed or intended for distribution to prospective investors, including clients or prospective clients of a person registered or required to be registered as an investment adviser under this chapter. (b) This section does not apply to sales and advertising literature specified in (a) of this section that relates to a federal covered security, a federal covered investment adviser, or a security or transaction exempted by AS</p>	<p>45.55.150</p>	<p>Same as 45.55.</p>	<p>68</p>

<p>45.56.205, 45.56.210, 45.56.220, or 45.56.240 except as required under AS 45.56.205(7). (c) The administrator may by regulation or order prohibit the publication, circulation, or use of any advertising deemed false or misleading.</p>			
<p><b>Sec. 45.56.560. Qualified immunity.</b> A broker-dealer, agent, investment adviser, federal covered investment adviser, or investment adviser representative is not liable to another broker-dealer, agent, investment adviser, federal covered investment adviser, or investment adviser representative for defamation relating to a statement that is contained in a record required by the administrator, or designee of the administrator, the Securities and Exchange Commission, or a self-regulatory organization, unless the person knew, or should have known at the time the statement was made, that it was false in a material respect or the person acted in reckless disregard of the statement's truth or falsity.</p>	<p>None.</p>	<p>Per the USA Comments: In 1994 The Securities and Exchange Commission Division of Market Regulation published The Large Firm Project: A Review of Hiring, Retention, and Supervisory Practices (1994), which found that a small number of "rogue brokers" were responsible for a significant proportion of customer disciplinary complaints. These brokers in some instances moved from one broker-dealer firm to another, it was explained, without full and complete disclosure of disciplinary problems by the broker-dealer, because of broker-dealer firms' fear of state law defamation claims. In 1998, the NASD proposed qualified immunity for statements made in Forms U-4 and U-5 to address this problem. The rule went out for comment but was ultimately not adopted.</p> <p>New York and California have adopted absolute immunity by court decision.</p> <p>The following states have adopted qualified immunity under the USA: GA, HI, ID, IN, IA, KS, ME, MN, MS, MO, ND, OK, SC, SD, WI, and VT.</p>	<p>68</p>
<p><b>Article 6. Administration and Judicial Review.</b></p>			
<p><b>Sec. 45.56.605. Administration.</b> (a) The Department of Commerce, Community, and Economic Development shall administer this chapter.</p>	<p>45.55.905</p>	<p>(a)-(c) are in existing 45.55.905(a)-(b)  (d) is a new provision allowing the administrator</p>	<p>69</p>

<p>(b) The administrator or an officer, employee, or designee of the administrator may not use for personal benefit or the benefit of others records or other information obtained by or filed with the administrator that is not public under AS 45.56.615(b). This chapter does not authorize the administrator or an officer, employee, or designee of the administrator to disclose the record or information, except in accordance with AS 45.56.615(c), 45.56.620, 45.56.645.</p> <p>(c) This chapter does not create or diminish a privilege or exemption that exists at common law, by statute or regulation, or otherwise.</p> <p>(d) The administrator may develop and implement investor education initiatives to inform the public about investing in securities, with particular emphasis on the prevention and detection of securities fraud. In developing and implementing these initiatives, the administrator may collaborate with public and nonprofit organizations with an interest in investor education. The administrator may accept a grant or donation from a person that is not affiliated with the securities industry or from a nonprofit organization, regardless of whether the organization is affiliated with the securities industry, to develop and implement investor education initiatives. This subsection does not authorize the administrator to require participation or monetary contributions of a registrant in an investor education program.</p>		<p>to develop investor education programs and permits the use of grant or donation funds from outside organizations to fund those programs.</p>	
<p><b>Sec. 45.56.610. Administrative files and opinions.</b> (a) The administrator shall maintain, or designate a person to maintain, a register of applications for registration of securities; registration statements; notice filings; applications for registration of broker-dealers, agents, investment advisors, and investment adviser representatives; notice filings by federal covered investment advisors that are or have been effective under this chapter or former AS 45.55;</p>	<p>See generally 45.55.970</p>	<p>(a) the administrator is required to keep records according to its retention schedule (45.55.970 says the administrator must keep a record of all applications, notice filings, etc. that “have ever been” effective, essentially requiring permanent retention of all securities filings.)</p> <p>(b) regulations, forms, opinions and orders are</p>	<p>69</p>

<p>notices of claims of exemption from registration or notice filing requirements contained in a record; orders issued under this chapter or former AS 45.55; and interpretative opinions or no action determinations issued under this chapter. The register will be kept according to the existing retention schedule mandated by the department.</p> <p>(b) The administrator shall make all regulations, forms, interpretative opinions, and orders available to the public.</p> <p>(c) The administrator shall furnish a copy of a record that is a public record or a certification that the public record does not exist to a person upon request. A copy of the record certified or a certificate by the administrator of a record's nonexistence is prima facie evidence of a record or its nonexistence.</p>		publicly disclosable documents.	
<p><b>Sec. 45.56.615. Public records; confidentiality.</b> (a) Except as otherwise provided in (b) of this section, records obtained by the administrator or filed under this chapter, including a record contained in or filed with a registration statement, application, notice filing, or report, are public records and are available for public examination under AS 40.25.100 - 40.25.120.</p> <p>(b) The following records are not public records under AS 40.25.100 – 40.25.120 and are not available for public examination under (a) of this section:</p> <p>(1) a record obtained by the administrator in connection with an audit, examination or inspection under AS 45.56.475(d) or an investigation under AS 45.56.645;</p> <p>(2) a part of a record filed in connection with a registration statement under AS 45.56.105 and 45.56.305 - 45.56.320 or a record under AS 45.56.475(d) that contains trade secrets or confidential information if the person filing the registration statement or report has asserted a claim of confidentiality or privilege that is authorized by law;</p> <p>(3) a record that is not required to be provided to the</p>	See generally 45.55.910	<p>This provision expands upon the confidentiality provision in 45.55.910 relating to investigations. Currently, other information is confidential if designated by the administrator. This is much more clear. Examples of confidential information include exam materials, registration documents containing trade secrets, records containing information such as social security numbers, etc.</p> <p>Records may be disclosed as necessary in a civil, administrative, or criminal investigation, or action or proceeding.</p> <p>AS 40.25 is the Public Records Act.</p>	70

<p>administrator or filed under this chapter and is provided to the administrator only on the condition that the record may not be subject to public examination or disclosure;</p> <p>(4) a nonpublic record received from a person specified in AS 45.56.620(a); and</p> <p>(5) any social security number, residential address unless used as a business address, and residential telephone number unless used as a business telephone number, contained in a record that is filed.</p> <p>(c) If disclosure is for the purpose of a civil, administrative, or criminal investigation, action, or proceeding or to a person specified in AS 45.56.620(a), the administrator may disclose a record obtained in connection with an audit or inspection under AS 45.56.475(d) or a record obtained in connection with an investigation under AS 45.56.645.</p>			
<p><b>Sec. 45.56.620. Uniformity and cooperation with other agencies.</b> (a) The administrator may cooperate, coordinate, consult, and, subject to AS 45.56.615, share records and information with the securities regulator of another state, Canada, a Canadian province or territory, a foreign jurisdiction, the Securities and Exchange Commission, the United States Department of Justice, the Commodity Futures Trading Commission, the Federal Trade Commission, the Securities Investor Protection Corporation, a self-regulatory organization, a national or international organization of securities regulators, a federal or state banking and insurance regulator, and a governmental law enforcement agency to bring about greater uniformity in securities matters among the federal government, self-regulatory organizations, states, and foreign governments.</p> <p>(b) In cooperating, coordinating, consulting, and sharing records and information under this section and in acting by regulation, order, or waiver under this chapter, the administrator may take into consideration in carrying out the</p>	<p>See generally 45.55.050(d), 45.55.950(b)</p>	<p>45.56 expands upon some provisions already in place referring to cooperation with other agencies for examination purposes and a statement of policy that regulations, forms, orders, etc. should generally be uniform with those of other states where practicable.</p> <p>Considerations when cooperating include maximizing effective regulation for protection of consumers, maximizing uniformity among states/federal regulators, minimizing burdens on capital formation, and cost savings while protecting investors.</p>	<p>71</p>

<p>public interest the following general policies:</p> <ul style="list-style-type: none"> <li>(1) maximizing effectiveness of regulation for the protection of investors;</li> <li>(2) maximizing uniformity in federal and state regulatory standards; and</li> <li>(3) minimizing burdens on the business of capital formation, without adversely affecting essentials of investor protection.</li> </ul> <p>(c) The cooperation, coordination, consultation, and sharing of records and information authorized by this section includes</p> <ul style="list-style-type: none"> <li>(1) establishing or employing one or more designees as a central depository for registration and notice filings under this chapter and for records required or allowed to be maintained under this chapter;</li> <li>(2) developing and maintaining uniform forms;</li> <li>(3) conducting a joint examination or investigation;</li> <li>(4) holding a joint administrative hearing;</li> <li>(5) instituting and prosecuting a joint civil or administrative proceeding;</li> <li>(6) sharing and exchanging personnel;</li> <li>(7) coordinating registrations under AS 45.56.105 and 45.56.405 - 45.56.440 and exemptions under AS 45.56.240;</li> <li>(8) sharing and exchanging records, subject to AS 45.56.615;</li> <li>(9) formulating regulations, statements of policy, guidelines, forms, and interpretative opinions and releases;</li> <li>(10) formulating common systems and procedures;</li> <li>(11) notifying the public of proposed regulations, forms, statements of policy, and guidelines;</li> <li>(12) attending conferences and other meetings among securities regulators, that may include representatives of governmental and private sector organizations involved in capital formation, considered necessary or appropriate to promote or achieve uniformity; and</li> <li>(13) developing and maintaining a uniform exemption from</li> </ul>			
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registration for small issuers and taking other steps to reduce the burden of raising investment capital by small businesses.			
<b>Sec. 45.56.625. Securities investor education and training fund.</b> The securities investor education and training fund is created as a special fund in the general fund to provide funds for the purposes specified in 45.56.605(d). The legislature may appropriate 33 percent of the money received by this state from civil penalties under this chapter into the fund for securities investor education and training. Nothing in this section exempts money deposited into the fund from the requirements of AS 37.07 (Executive Budget Act) or dedicates money for a specific purpose.	None	Creates a securities and investor education and training fund within the general fund to provide funds for investor education. 33% of the money received in civil penalties may go into such a fund if appropriated by the legislature.	72
<b>Sec. 45.56.630. Service of process.</b> (a) A consent to service of process complying with this section required by this chapter shall be signed and filed in the form required by a regulation adopted or order issued under this chapter. A consent appointing the administrator the person's agent for service of process in a noncriminal action or proceeding against the person or the person's successor or personal representative under this chapter or a regulation adopted or order issued under this chapter after the consent is filed has the same force and validity as if the service were made personally on the person filing the consent. A person that has filed a consent under this subsection in connection with a previous application for registration or notice filing need not file an additional consent. (b) If a person, including a nonresident of the state, engages in an act, practice, or course of business prohibited or made actionable by this chapter or a regulation adopted or order issued under this chapter and the person has not filed a consent to service of process under (a) of this section, the act, practice, or course of business constitutes the appointment of the administrator as the person's agent for service of process in a noncriminal action or proceeding	45.55.980(g)-(i)	Same as 45.55.	73

<p>against the person or the person's successor or personal representative.</p> <p>(c) Service under (a) or (b) of this section may be made by providing a copy of the process to the office of the administrator, but the service is not effective unless</p> <p>(1) the plaintiff, which may be the administrator, promptly sends notice of the service and a copy of the process, return receipt requested, to the defendant or respondent at the address set out in the consent to service of process or, if a consent to service of process has not been filed, at the last known address, or takes other reasonable steps to give notice; and</p> <p>(2) the plaintiff files an affidavit of compliance with this subsection in the action or proceeding on or before the return day of the process, if any, or within the time that the court, or the administrator in a proceeding before the administrator, allows.</p> <p>(d) Service under (c) of this section may be used in a proceeding before the administrator or by the administrator in a civil action in which the administrator is the moving party.</p> <p>(e) If process is served under (c) of this section, the court, or the administrator in a proceeding before the administrator, shall order continuances as are necessary or appropriate to afford the defendant or respondent reasonable opportunity to defend.</p> <p>(f) Unless the persons are exempt elsewhere in this chapter, AS 45.56 applies to person who sell or offer to sell when an offer to</p> <p>(1) sell is made in this state; or</p> <p>(2) buy is made and accepted in this state.</p>			
<p><b>Sec. 45.56.635. Applicability of the chapter.</b> (a) Unless the persons are exempt elsewhere in this chapter, AS 45.56 applies to persons who buy or offer to buy when an offer to</p>	<p>45.55.980(a)-(f)</p>	<p>Same as 45.55.</p>	<p>74</p>

<p>(1) buy is made in this state; or  (2) sell is made and accepted in this state.  (b) Unless the person is exempt elsewhere in this chapter, this chapter applies to a person who sells or offers to sell when an offer to  (1) sell is made in this state; or  (2) buy is made and accepted in this state.  (c) For the purposes of this section, an offer to sell or to buy is made in this state, whether or not either party is then present in this state, when the offer  (1) originates from this state;  (2) is directed by the offeror to this state and received at the place to which it is directed, or at a post office in this state in the case of a mailed offer;  (3) is for an interest or participation in an oil, gas, or mining right, title, or lease on land in the state, including submerged land, regardless of where the offer is made;  (4) is for an interest or participation in payments out of production under an oil, gas, or mining right, title, or lease on land in the state, including submerged land, regardless of where the offer is made;  (5) is for an interest or participation in real property located in the state, or in a corporation, a partnership, a limited liability company, a limited partnership, a limited liability partnership, an association, a joint-stock company; jurisdiction under this paragraph may be exercised only when the exercise is not inconsistent with the constitution of this state or of the United States.  (d) For the purpose of this section, an offer to buy or to sell is accepted in this state when acceptance is communicated to the offeror in this state and has not previously been communicated to the offeror, orally or in writing, outside this state. Acceptance is communicated to the offeror in this state, whether or not either party is then present in this state,</p>			
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<p>when the offeree directs it to the offeror in this state reasonably believing the offeror to be in this state and it is received at the place to which it is directed or, in the case of a mailed acceptance, a post office in this state.</p> <p>(e) AS 45.56 applies to investment advisers, federal covered advisers, and investment adviser representatives when any act instrumental in effecting prohibited conduct is done in this state, regardless of whether either party is then present in this state.</p>			
<p><b>Sec. 45.56.640. Regulations, forms, orders, interpretative opinions, and hearings.</b> (a) The administrator may</p> <p>(1) issue forms and orders; after notice and comment, adopt and amend regulations necessary or appropriate to carry out this chapter; and repeal regulations, including regulations and forms governing registration statements, applications, notice filings, reports, and other records;</p> <p>(2) by regulation, define terms, whether or not used in this chapter, but those definitions may not be inconsistent with this chapter; and</p> <p>(3) by regulation, classify securities, persons, and transactions and adopt different requirements for different classes.</p> <p>(b) Under this chapter, a regulation or form may not be adopted or amended, or an order issued or amended, unless the administrator finds that the regulation, form, order, or amendment is necessary or appropriate in the public interest or for the protection of investors and is consistent with the purposes intended by this chapter. In adopting, amending, and repealing regulations and forms, AS 45.56.620 applies in order to achieve uniformity among the states and coordination with federal laws in the form and content of registration statements, applications, reports, and other records, including the adoption of uniform rules, forms, and procedures.</p> <p>(c) Subject to 15 U.S.C. 78o(i) and 80b-18a, the administrator</p>	<p>45.55.950 and 45.55.970</p>	<p>This provision combines regulations, forms, orders, interpretative opinions, and hearings into one statute, whereas in 45.55 it is divided into two.</p> <p>Language is updated to clarify that the administrator may require financial statements filed to be GAAP compliant only where permitted by federal law due to NSMIA (National Securities Market Improvement Act).</p>	<p>75</p>

<p>may require that a financial statement filed under this chapter be prepared in accordance with generally accepted accounting principles in the United States and comply with other requirements specified by regulation adopted or order issued under this chapter. A regulation adopted or order issued under this chapter may establish</p> <p>(1) subject to 15 U.S.C. 78o(i) and 80b-18a, the form and content of financial statements required under this chapter;</p> <p>(2) whether unconsolidated financial statements must be filed; and</p> <p>(3) whether required financial statements must be audited by an independent certified public accountant.</p> <p>(d) The administrator may provide interpretative opinions or issue determinations that the administrator will not institute a proceeding or an action under this chapter against a specified person for engaging in a specified act, practice, or course of business if the determination is consistent with this chapter. A regulation adopted or order issued under this chapter may establish a reasonable charge for interpretative opinions or determinations that the administrator will not institute an action or a proceeding under this chapter.</p> <p>(e) A hearing in an administrative proceeding under this chapter must be conducted in public unless the administrative law judge or the administrator for good cause consistent with this chapter determines that the hearing may not be conducted in public.</p> <p>(f) AS 44.62 (Administrative Procedures Act) applies to all regulations adopted or authorized under this chapter.</p>			
<p><b>Sec. 45.56.645. Investigations and subpoenas.</b> (a) The administrator may</p> <p>(1) conduct public or private investigations within or outside of the state that the administrator considers necessary or appropriate to determine whether a person has violated, is violating, or is about to violate this chapter or a regulation</p>	45.55.910	<p>Mostly the same language as is currently in 45.55.910, but (e) has been moved to 45.56.603 (confidentiality).</p> <p>(f) is a new provision that more explicitly permits and encourages cooperation with other states'</p>	76

<p>adopted or order issued under this chapter, or to aid in the enforcement of this chapter or in the adoption of regulations and forms under this chapter;</p> <p>(2) require or permit a person to testify, file a statement, or produce a record, under oath or otherwise as the administrator determines, as to all the facts and circumstances concerning a matter to be investigated or about which an action or proceeding is to be instituted; and</p> <p>(3) publish a record concerning an action, proceeding, or an investigation under, or a violation of, this chapter or a regulation adopted or order issued under this chapter if the administrator determines it is necessary or appropriate in the public interest and for the protection of investors.</p> <p>(b) For the purpose of an investigation under this chapter, the administrator or the designated officer of the administrator may administer oaths and affirmations, subpoena witnesses, seek compulsion of attendance, take evidence, require the filing of statements, and require the production of any records that the administrator considers relevant or material to the investigation.</p> <p>(c) If a person does not appear or refuses to testify, file a statement, produce records, or otherwise obey a subpoena as required by the administrator under this chapter, the administrator may refer the matter to the attorney general, who may bring an action in the superior court or a court of another state to enforce compliance. The court may</p> <ol style="list-style-type: none"> <li>(1) hold the person in contempt;</li> <li>(2) order the person to appear before the administrator;</li> <li>(3) order the person to testify about the matter under investigation or in question;</li> <li>(4) order the production of records;</li> <li>(5) grant injunctive relief, including restricting or prohibiting the offer or sale of securities or the providing of investment advice;</li> </ol>		<p>securities administrators in their investigations as to violations or potential violations of those states' securities laws, even if the conduct would not necessarily be a violation of Alaska's securities laws. Cooperation with other jurisdictions already takes place in practice, and we are always happy to share resources if we can be of some assistance. Under this provision, the statute also makes clear that the administrator may choose to not cooperate with another jurisdiction for public policy considerations or if resources are not available.</p>	
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<p>(6) impose a civil penalty of not more than \$100,000 for a single violation; and</p> <p>(7) grant any other necessary or appropriate relief.</p> <p>(d) This section does not preclude a person from applying to the superior court or a court of another state for relief from a request to appear, testify, file a statement, produce records, or obey a subpoena.</p> <p>(e) A person is not excused from attending, testifying, filing a statement, producing a record or other evidence, or obeying a subpoena of the administrator under this chapter or in an action or proceeding instituted by the administrator under this chapter on the ground that the required testimony, statement, record, or other evidence, directly or indirectly, may tend to incriminate the individual or subject the individual to a criminal fine, penalty, or forfeiture. If the person refuses to testify, file a statement, or produce a record or other evidence on the basis of the individual's privilege against self-incrimination, the administrator may apply to the superior court to compel the testimony, the filing of the statement, the production of the record, or the giving of other evidence. The testimony, record, or other evidence compelled under an order of the superior court may not be used, directly or indirectly, against the individual in a criminal case, except in a prosecution for perjury or contempt or otherwise failing to comply with the order.</p> <p>(f) At the request of the securities regulator of another state or a foreign jurisdiction, the administrator may provide assistance if the requesting regulator states that it is conducting an investigation to determine whether a person has violated, is violating, or is about to violate a law or regulation of the other state or foreign jurisdiction relating to securities matters that the requesting regulator administers or enforces. The administrator may provide the assistance by using the authority to investigate and the powers conferred</p>			
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<p>by this section as the administrator determines is necessary or appropriate. The assistance may be provided without regard to whether the conduct described in the request would also constitute a violation of this chapter or other law of this state if occurring in this state. In deciding whether to provide the assistance, the administrator may consider whether the requesting regulator is permitted and has agreed to provide assistance reciprocally within its state or foreign jurisdiction to the administrator on securities matters when requested, whether compliance with the request would violate or prejudice the public policy of this state, and the availability of resources and employees of the administrator to carry out the request for assistance.</p>			
<p><b>Sec. 45.56.650. Administrative enforcement.</b> (a) If the administrator determines that a person has engaged, is engaging, or is about to engage in an act, practice, or course of business constituting a violation of this chapter or a regulation adopted or order issued under this chapter or that a person has materially aided, is materially aiding, or is about to materially aid an act, practice, or course of business constituting a violation of this chapter or a regulation adopted or order issued under this chapter, the administrator may issue an order</p> <p>(1) directing the person to cease and desist from engaging in the act, practice, or course of business or to take other action necessary or appropriate to comply with this chapter;</p> <p>(2) denying, suspending, revoking, or conditioning the exemptions for a broker-dealer under AS 45.56.405(b)(1)(D) or (F) or an investment adviser under AS 45.56.435(b)(1)(C); or</p> <p>(3) denying, suspending, conditioning, or limiting an exemption as provided under AS 45.56.250.</p> <p>(b) An order under (a) of this section is effective on the date of issuance. Upon issuance of the order, the administrator</p>	<p>See generally 45.55.920, and 45.55.935</p>	<p>The enforcement provisions have been significantly reorganized under the proposed bill, and are now divided into administrative, civil, and criminal sections, though the basic provisions are carried over, with some additions.</p> <p>Administratively, the administrator can issue an order to cease and desist (or take other action), impact a license under Article 4 of the Act, or limit or deny use of exemptions under Article 2 of the Act. (All permitted under current law in 45.55.920, 45.55.060, and 45.55.990, respectively).</p> <p>Orders are effective upon service and respondents have 30 days to request a hearing. This is a change from 15 days under current law. Note: the Securities Act is exempted from the Alaska Administrative Procedures Act under 44.62.330.</p> <p>Civil penalties are increased from \$2,500 for a single violation and \$25,000 maximum for</p>	<p>78</p>

<p>shall promptly serve each person subject to the order with a copy of the order and a notice that the order has been entered. The order must include a statement of any civil penalty, restitution, or costs of investigation the administrator will seek, a statement of the reasons for the order, and notice that, within 15 days after receipt of a request in a record from the person, the matter will be scheduled for a hearing. If a person subject to the order does not request a hearing and none is ordered by the administrator within 30 days after the date of service of the order, the order, including the imposition of a civil penalty, the imposition of restitution, or requirement for payment of the costs of investigation sought in a statement in the order, becomes final as to that person by operation of law. If a hearing is requested or ordered, the administrator, after notice of and opportunity for hearing to each person subject to the order, may modify or vacate the order or extend it until final determination.</p> <p>(c) If a hearing is requested or ordered under (b) of this section, a hearing must be conducted by the office of administrative hearings (AS 44.64.010) and AS 44.64.040 - 44.64.200 shall apply and govern.</p> <p>(d) In a final order under (b) of this section, the administrator may impose a civil penalty of not more than \$100,000 for a single violation, unless the violation of this chapter is against an older person or a vulnerable adult.</p> <p>(1) In addition to a civil penalty imposed pursuant to AS 45.56.650, a person or entity who engages in any conduct prohibited by the provisions of this chapter against an older person or a vulnerable adult, may be liable for an additional civil penalty of treble statutory damages.</p> <p>(A) In determining whether to impose a supplemental civil penalty under (d)(1) of this section, the administrator shall consider, in addition to other appropriate factors, the extent to which the following factors are present:</p>		<p>multiple violations to \$100,000 maximum for a single violation with no limit for multiple violations. There is no longer a differentiation between knowing/intentional violations and other types. However, whether something is committed knowingly or intentionally would be a factor in determining where to set the penalty.</p> <p>New: If the victim is an “older person” (defined as a natural person over 60 years old), the respondent is subject to treble damages.</p> <p>New: Under (e)(1), restitution may now be ordered.</p> <p>Under (e)(2), actual costs of investigation may be ordered. Currently in 3 AAC 08.015(b).</p> <p>Under (e)(3), the administrator may deny the use of exemptions. The administrator may do this currently under 45.55.900(d), but only relating to specific securities transactions. This blanket provision prevents those who violate the securities act from benefitting from the use of exemptions. Currently, the administrator negotiates the denial of exemptions as may be appropriate.</p> <p>The administrator may petition a court to enter a final judgment to collect a civil penalty. Such a petition does not reopen the merits of the case to be decided in Superior Court. (Same as 45.55.920(e)).</p> <p>(g) is similar to current 45.55.920(e). The</p>	
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<p>(1) whether the respondent knew that the respondent's conduct was directed to an older person or vulnerable adult;</p> <p>(2) whether the respondent's conduct caused an older person or a vulnerable adult to suffer severe loss or encumbrance of a primary residence, principal employment or source of income, substantial loss of property set aside for retirement or for personal and family care and maintenance, or</p> <p>(3) whether the respondent's conduct caused substantial loss of payments received under a pension or retirement plan or a government benefits program;</p> <p>(e) In a final order under (b) of this section, the administrator may</p> <p>(1) impose restitution to any person in interest for any monies or property, real or personal, that may have been acquired or transferred in violation of this chapter;</p> <p>(2) charge the actual cost of an investigation or proceeding for a violation of this chapter or a regulation adopted or order issued under this chapter; or</p> <p>(3) deny the violator of the use of any exemptions listed under this chapter.</p> <p>(f) The administrator may petition the superior court to enter a judgment against a person who is a respondent in the order for the amount of the civil penalty levied against the person. Subject to AS 44.62.570, the filing of the petition for a judgment does not reopen the final order to further substantive review. A judgment entered under this subsection may be executed on and levied under in the manner provided in AS 09.35.</p> <p>(g) If a person does not comply with an order under this section, the administrator may petition a court of competent jurisdiction to enforce the order. The court may not require the administrator to post a bond in an action or proceeding under this section. If the court finds, after service and opportunity for hearing, that the person was not in</p>		<p>administrator may petition a court to enforce a final order. The bill adds new language explaining that the court can hold a person who violates a final order in civil contempt and impose a further civil penalty of \$100,000 for each violation in addition to what was ordered administratively.</p>	
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<p>compliance with the order, the court may adjudge the person in civil contempt of the order. The court may impose a further civil penalty against the person for contempt in an amount not greater than \$100,000 for each violation and may grant any other relief the court determines is just and proper in the circumstances.</p>			
<p><b>Sec. 45.56.655. Civil enforcement.</b> (a) If the administrator believes that a person has engaged, is engaging, or is about to engage in an act, practice, or course of business constituting a violation of this chapter or a regulation adopted or order issued under this chapter or that a person has, is, or is about to engage in an act, practice, or course of business that materially aids a violation of this chapter or a regulation adopted or order issued under this chapter, the administrator may maintain an action in the superior court to enjoin the act, practice, or course of business and to enforce compliance with this chapter or a regulation adopted or order issued under this chapter.</p> <p>(b) In an action under this section and on a proper showing, the court may</p> <p>(1) issue a permanent or temporary injunction, restraining order, or declaratory judgment;</p> <p>(2) order other appropriate or ancillary relief, which may include</p> <p>(A) an asset freeze, accounting, writ of attachment, writ of general or specific execution, and appointment of a receiver or conservator that may be the administrator for the defendant or the defendant's assets;</p> <p>(B) ordering the administrator to take charge and control of a defendant's property, including investment accounts and accounts in a depository institution, rents, and profits; to collect debts; and to acquire and dispose of property;</p> <p>(C) imposing a civil penalty of not more than \$100,000 for a single violation unless the violation of this chapter is against</p>	<p>45.55.920(a)(2)</p>	<p>45.55 does not have very clear language explaining civil enforcement of the Securities Act, containing only one brief statement within AS 45.55.920 that gives the administrator the option of enforcing the Act in court rather than administratively. The proposed bill provides more guidance on the types of remedies available in civil court and the procedure to follow.</p> <p>(a) same as 45.55.920(a)(2). Gives the administrator the option of going to Superior Court to enforce the Securities Act rather than taking administrative action</p> <p>(b) New. Provides more specific guidelines to the possible actions that may take place in civil court including:</p> <p>(1) injunctions,</p> <p>(2)(A) asset freezes, including appointing the administrator as receiver,</p> <p>(2)(B) ordering the administrator to take charge and control of a defendant's property, including the ability to acquire and dispose of property,</p> <p>(2)(C) imposing a civil penalty of up to \$100,000 per violation, which may be higher if against an "older person." In determining whether to increase penalties, the court may consider factors such as whether the person knew that the victim</p>	<p>81</p>

<p>an older person or a vulnerable adult; in determining whether to impose a supplemental civil penalty for a violation of this chapter against an older person or a vulnerable adult, the court shall consider, in addition to other appropriate factors, the extent to which the following factors are present:</p> <p>(i) whether the respondent knew that the respondent's conduct was directed to an older person or a vulnerable adult;</p> <p>(ii) whether the respondent's conduct caused an older person or a vulnerable adult to suffer severe loss or encumbrance of a primary residence, principal employment or source of income, substantial loss of property set aside for retirement or for personal and family care and maintenance, or</p> <p>(iii) whether the respondent's conduct caused substantial loss of payments received under a pension or retirement plan or a government benefits program;</p> <p>(D) imposing an order of rescission, or disgorgement directed to a person that has engaged in an act, practice, or course of business constituting a violation of this chapter or former AS 45.55 or a regulation adopted or order issued under this chapter or former AS 45.55;</p> <p>(E) imposing an order restitution to any person in interest for any monies or property, real or personal, that may have been acquired or transferred in violation of this chapter; and</p> <p>(F) ordering the payment of prejudgment and postjudgment interest; or</p> <p>(3) order other relief that the court considers appropriate.</p> <p>(c) The administrator may not be required to post a bond in an action or proceeding under this chapter.</p> <p>(d) After an order issued by the court under (b) of this section becomes final and all rights of appeal are exhausted, the administrator may petition the superior court to enter a judgment against a person who is a respondent in the order for the amount of the civil penalty levied against the person.</p>		<p>was an older person, whether the conduct caused severe loss or encumbrance of primary residence, employment or source of income, or substantial loss of property or loss of pension, retirement or government benefits. An older person is defined as a person over 60 years old.</p> <p>(2)(D) imposing an order of rescission or disgorgement</p> <p>(2)(E) imposing restitution</p> <p>(2)(F) ordering repayment of prejudgment or post judgment interest</p> <p>(c) New. Provides that the administrator is not required to post a bond in a civil proceeding.</p> <p>(d) New. Allows the administrator to petition for post-decision judgment if the judge ordered civil penalties.</p>	
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<p>Subject to AS 44.62.570, the filing of the petition for a judgment does not reopen the final order to further substantive review. A judgment entered under this subsection may be executed on and levied under in the manner provided in AS 09.35.</p>			
<p><b>Sec. 45.56.660. Civil liability.</b> (a) Enforcement of civil liability under this section is subject to P.L. 105-353 (Securities Litigation Uniform Standards Act of 1998). (b) A person is liable to the purchaser if the person sells a security in violation of AS 45.56.105, or by means of an untrue statement of a material fact or an omission to state a material fact necessary in order to make the statement made, in light of the circumstances under which it is made, not misleading, the purchaser not knowing the untruth or omission and the seller not sustaining the burden of proof that the seller did not know and, in the exercise of reasonable care, could not have known of the untruth or omission. An action under this subsection is governed by the following: (1) the purchaser may maintain an action to recover the consideration paid for the security, less the amount of any income received on the security, and interest at the legal rate of interest under AS 09.30.070 or eight percent, whichever is greater, from the date of the purchase, costs, and reasonable attorney fees determined by the court, upon the tender of the security, or for actual damages as provided in (3) of this subsection; (2) the tender referred to in (1) of this subsection may be made any time before entry of judgment; tender requires only notice in a record of ownership of the security and willingness to exchange the security for the amount specified; a purchaser that no longer owns the security may recover actual damages as provided in (3) of this subsection; (3) actual damages in an action arising under this subsection are the amount that would be recoverable upon a tender less</p>	<p>See generally 45.55.930</p>	<p>Rescission offers and general civil liability to buyers, formerly within the same provision at 45.55.930, are now separate.</p> <p>(a) New. Enforcement of a civil liability is subject to the Securities Litigation Uniform Standards Act (SLUSA) of 1998. As the SLUSA is federal law, it already applied, but this makes its application clear in the statutes.</p> <p>(b) is the same in content as 45.55.930(a); rewritten for clarity.</p> <p>(b)(1)-(3) New. (b) covers instances where a SELLER is liable to a PURCHASER. The purchaser may sue to recover consideration for the security, minus the income received; interest from the date of purchase; and costs and attorney fees upon the tender of security. Or, the purchaser may choose actual damages under (3). The rate of interest is updated from a flat eight percent to the rate calculated in 09.30.070, which sets the interest rate at three points above the 12th Federal Reserve District discount rate in effect on January 2 of that year, OR eight percent, whichever is greater.</p> <p>(2) same as 45.55.930(d).</p>	<p>82</p>

<p>the value of the security when the purchaser disposed of it and interest at the legal rate of interest under AS 09.30.070, or eight percent, whichever is greater, from the date of the purchase, costs, and reasonable attorney fees determined by the court.</p> <p>(c) A person is liable to the seller if the person buys a security by means of an untrue statement of a material fact or omission to state a material fact necessary in order to make the statement made, in light of the circumstances under which it is made, not misleading, the seller not knowing of the untruth or omission, and the purchaser not sustaining the burden of proof that the purchaser did not know and, in the exercise of reasonable care, could not have known of the untruth or omission. An action under this subsection is governed by the following:</p> <p>(1) the seller may maintain an action to recover the security and any income received on the security, costs, and reasonable attorney fees determined by the court, upon the tender of the purchase price, or for actual damages as provided in (3) of this subsection;</p> <p>(2) the tender referred to in (1) of this subsection may be made any time before entry of judgment; tender requires only notice in a record of the present ability to pay the amount tendered and willingness to take delivery of the security for the amount specified; if the purchaser no longer owns the security, the seller may recover actual damages as provided in (3) of this subsection;</p> <p>(3) actual damages in an action arising under this subsection are the difference between the price at which the security was sold and the value the security would have had at the time of the sale in the absence of the purchaser's conduct causing liability, and interest at the legal rate of interest under AS 09.30.070, or eight percent, whichever is greater from the date of the sale of the security, costs, and reasonable attorney</p>		<p>(3) New. Calculation of actual damages is: the consideration paid plus interest at the rate calculated in AS 09.30.070, or eight percent, whichever is greater, less any income received from the security.</p> <p>(c) New. This section applies to situations where a PURCHASER is liable to a SELLER. This would occur when a purchaser buys a security through misrepresentation.</p> <p>(c)(1)-(3) New. Mirrors the remedies available in (b)(1)-(3), but is regarding damages recoverable by the seller. The seller may recover the security and any income received, plus costs, attorney fees or actual damages.</p> <p>(d) New. A person acting as a broker-dealer or agent that sells a security in violation of the Act is liable to the customer, and they may recover actual damages under (b) or (c).</p> <p>(e) New. A person acting as an investment adviser or investment adviser representative providing advice in violation of the Act is liable to the client, who may recover consideration paid for the cost of the advice plus interest, costs and attorney fees.</p> <p>(f) New. A person that engages in fraudulent conduct is liable to the other person. The victim may recover consideration paid for advice plus actual damages, interest and attorney fees, minus any income received as a result of the fraudulent conduct.</p>	
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<p>fees determined by the court.</p> <p>(d) A person acting as a broker-dealer or agent that sells or buys a security in violation of AS 45.56.405(a), 45.56.435(a), or 45.56.530 is liable to the customer. The customer, if a purchaser, may maintain an action for recovery of actual damages as specified in (b)(1) - (3) of this section or, if a seller, for a remedy as specified in (c)(1) - (3) of this section.</p> <p>(e) A person acting as an investment adviser or investment adviser representative that provides investment advice for compensation in violation of AS 45.56.405(a), 45.56.406(a), or 45.56.504 is liable to the client. The client may maintain an action to recover the consideration paid for the advice, interest at the legal rate of interest under AS 09.30.070, or eight percent, whichever is greater, from the date of payment, costs, and reasonable attorney fees determined by the court.</p> <p>(f) A person that receives, directly or indirectly, any consideration for providing investment advice to another person and that employs a device, scheme, or artifice to defraud the other person or engages in an act, practice, or course of business that operates or would operate as a fraud or deceit on the other person is liable to the other person. An action under this subsection is governed by the following:</p> <p>(1) the person defrauded may maintain an action to recover the consideration paid for the advice and the amount of any actual damages caused by the fraudulent conduct, interest at the legal rate of interest under AS 09.30.070, or eight percent, whichever is greater, from the date of the fraudulent conduct, costs, and reasonable attorney fees determined by the court, less the amount of any income received as a result of the fraudulent conduct;</p> <p>(2) this subsection does not apply to a broker-dealer or its agents if the investment advice provided is solely incidental to transacting business as a broker-dealer and special compensation is not received for the investment advice.</p>		<p>(g) is same as 45.55.930(c).</p> <p>Subsection (h) NEW A person liable under this section has a right of contribution against any other person liable under this section.</p> <p>(i) same as 45.55.930(e).</p> <p>(j) similar to 45.55.930(f) regarding the statutory limit for bringing an action under this section. For violations under subsection (d) or (e), the action must be instituted within three years after the violation occurred. For violations under subsection (c) or (f), the action must be instituted within the earlier of two years after discovery of the facts constituting the violation or five years after the violation. The statute of limitations in 45.55 is three years from the sale or, if based on fraud, two years from the date of discovery, whichever is later.</p> <p>(k) same as 45.55.930(g).</p> <p>(l) same as 45.55.930(h).</p> <p>(m) same as 45.55.930(i).</p> <p>Note: attorney fees would only be recoverable by the plaintiff in all cases where it is allowed. This statute does not provide for “prevailing party” attorney fees.</p>	
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<p>(g) The following persons are liable jointly and severally with and to the same extent as persons liable under (b) - (f) of this section:</p> <p>(1) a person that directly or indirectly controls a person liable under (b) - (f) of this section, unless the controlling person sustains the burden of proof that the person did not know and, in the exercise of reasonable care, could not have known of the existence of conduct by reason of which the liability is alleged to exist;</p> <p>(2) an individual who is a managing partner, executive officer, or director of a person liable under (b) - (f) of this section, including an individual having a similar status or performing similar functions, unless the individual sustains the burden of proof that the individual did not know and, in the exercise of reasonable care, could not have known of the existence of conduct by reason of which the liability is alleged to exist;</p> <p>(3) an individual who is an employee of or associated with a person liable under (b) - (f) of this section and who materially aids the conduct giving rise to the liability, unless the individual sustains the burden of proof that the individual did not know and, in the exercise of reasonable care, could not have known of the existence of conduct by reason of which the liability is alleged to exist; and</p> <p>(4) a person that is a broker-dealer, agent, investment adviser, or investment adviser representative that materially aids the conduct giving rise to the liability under (b) - (f) of this section, unless the person sustains the burden of proof that the person did not know and, in the exercise of reasonable care, could not have known of the existence of conduct by reason of which liability is alleged to exist.</p> <p>(h) A person liable under this section has a right of contribution as in cases of contract against any other person liable under this section for the same conduct.</p> <p>(i) A cause of action under this section survives the death of</p>			
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<p>an individual who might have been a plaintiff or defendant.</p> <p>(j) A person may not obtain relief under (b) of this section for a violation of AS 45.56.105, or under (d) or (e) of this section, unless the action is instituted within three years after the violation occurred; or other than for violation of AS 45.56.105, or under (c) or (f) of this section, unless the action is instituted within the earlier of two years after discovery of the facts constituting the violation or five years after the violation.</p> <p>(k) A person that has made, or has engaged in the performance of, a contract in violation of this chapter or a regulation adopted or order issued under this chapter or that has acquired a purported right under the contract with knowledge of conduct by reason of which its making or performance was in violation of this chapter may not base an action on the contract.</p> <p>(l) A condition, stipulation, or provision binding a person purchasing or selling a security or receiving investment advice to waive compliance with this chapter or a regulation adopted or order issued under this chapter is void.</p> <p>(m) The rights and remedies provided by this chapter are in addition to any other rights or remedies that may exist, but this chapter does not create a cause of action not specified in this section or AS 45.56.475(e).</p>			
<p><b>Sec. 45.56.665. Rescission offers.</b> (a) A purchaser, seller, or recipient of investment advice may not maintain an action under AS 45.56.660 if</p> <p>(1) the purchaser, seller, or recipient of investment advice receives, in a record, before the action is instituted</p> <p>(A) an offer stating the respect in which liability under AS 45.56.660 may have arisen and fairly advising the purchaser, seller, or recipient of investment advice of that person's rights in connection with the offer and any financial or other information necessary to correct all material</p>	<p>See generally 45.55.930, 45.55.900(b)(19)</p>	<p>Rescission offers and general civil liability to buyers, formerly within the same provision at AS 45.55.930, are now separate.</p> <p>Rescission is not concurrently available with the civil liability provisions in AS 45.56.660 (i.e. you must choose one or the other if you are a plaintiff in a civil case).</p> <p>Subsection (a)(1) is the same as 45.55.930(f)</p>	<p>86</p>

<p>misrepresentations or omissions in the information that was required by this chapter to be furnished to that person at the time of the purchase, sale, or investment advice;</p> <p>(B) if the basis for relief under this section may have been a violation of AS 45.56.660(b), an offer to repurchase the security for cash, payable on delivery of the security, equal to the consideration paid, and interest at the legal rate of interest under AS 09.30.070, or eight percent, whichever is greater, from the date of the purchase, less the amount of any income received on the security, or, if the purchaser no longer owns the security, an offer to pay the purchaser, upon acceptance of the offer, damages in an amount that would be recoverable upon a tender, less the value of the security when the purchaser disposed of it, and interest at the legal rate of interest under AS 09.30.070, or eight percent, whichever is greater, from the date of the purchase in cash equal to the damages computed in the manner provided in this subparagraph;</p> <p>(C) if the basis for relief under this section may have been a violation of AS 45.56.660(c), an offer to tender the security, on payment by the seller of an amount equal to the purchase price paid, less income received on the security by the purchaser and interest at the legal rate of interest under AS 09.30.070, or eight percent, whichever is greater, from the date of the sale, or, if the purchaser no longer owns the security, an offer to pay the seller, upon acceptance of the offer, in cash, damages in the amount of the difference between the price at which the security was purchased and the value the security would have had at the time of the purchase in the absence of the purchaser's conduct that may have caused liability and interest at the legal rate of interest in AS 09.30.070, or eight percent, whichever is greater, from the date of the sale;</p> <p>(D) if the basis for relief under this section may have been a</p>		<p>(A)-(F) is new and explains what type of offer would constitute a valid rescission based upon the type of violation. This tracks the violation types in 45.56.660(b)-(f).</p> <p>Subsection (a)(2) New. The aggrieved party has 30 days to accept the recession offer made under (a)(1). 45.55.930 refers to a 30 day time frame in a few places but did not clearly state that offers must be accepted or rejected within 30 days.</p> <p>Subsection (a)(3) New. The offeror must demonstrate his or her ability to pay.</p> <p>Subsection (a)(4) New. The rescission offer must be delivered in a way that ensures receipt by the other party.</p> <p>Subsection (a)(5) New. The offeror must actually pay as promised.</p> <p>Subsection (b) Same as 45.55.930(k).</p> <p>The rescission amount is calculated the same as actual damages in a civil case: the consideration paid plus interest at the rate calculated in 09.30.070, or eight percent, whichever is greater, less any income received from the security.</p> <p>09.30.070 sets the interest rate at three points above the 12<sup>th</sup> Federal Reserve District discount rate in effect on January 2 of the year the judgment is entered.</p>	
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<p>violation of AS 45.56.660(d); and if the customer is a purchaser, an offer to pay as specified in (B) of this paragraph; or, if the customer is a seller, an offer to tender or to pay as specified in (C) of this paragraph;</p> <p>(E) if the basis for relief under this section may have been a violation of AS 45.56.660(e), an offer to reimburse in cash the consideration paid for the advice and interest at the legal rate of interest under AS 09.30.070, or eight percent, whichever is greater, from the date of payment; or</p> <p>(F) if the basis for relief under this section may have been a violation of AS 45.56.660(f), an offer to reimburse in cash the consideration paid for the advice, the amount of any actual damages that may have been caused by the conduct, and interest at the legal rate of interest under AS 09.30.070 from the date of the violation causing the loss;</p> <p>(2) the offer under (1) of this section states that it must be accepted by the purchaser, seller, or recipient of investment advice within 30 days after the date of its receipt by the purchaser, seller, or recipient of investment advice or any shorter period of not less than three days that the administrator, by order, specifies;</p> <p>(3) the offeror has the present ability to pay the amount offered or to tender the security under (1) of this section;</p> <p>(4) the offer under (1) of this section is delivered to the purchaser, seller, or recipient of investment advice or sent in a manner that ensures receipt by the purchaser, seller, or recipient of investment advice; and</p> <p>(5) the purchaser, seller, or recipient of investment advice that accepts the offer under (1) of this section, in a record, within the period specified under (2) of this section, is paid in accordance with the terms of the offer.</p> <p>(b) The offer under this section must be filed with the administrator 10 business days before the offering and conform in form and content with a regulation adopted</p>		<p>The offeror must have the capacity to pay; this is currently found in our regulations at 3 AAC 08.915.</p> <p>The offer must be filed with the administrator 10 business days before the offering is made. The offer is an exempt securities transaction under 45.56.210(19).</p>	
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under this chapter.			
<p><b>Sec. 45.56.670. Criminal enforcement.</b> (a) A person who knowingly violates this chapter, a regulation adopted under this chapter, or an order issued under this chapter, except AS 45.56.550 or the notice filing requirements of AS 45.56.330 or 45.56.445, or that willfully violates AS 45.56.520 knowing the statement made to be false or misleading in a material respect is guilty of a class C felony punishable by imprisonment under AS 12.55.125(e) or punishable by a fine of not more than \$100,000, or both. A person convicted of violating a regulation or order issued under this chapter may be fined, but may not be imprisoned, if the person did not know of the regulation or order.</p> <p>(b) A person who violates a regulation under this chapter or an order issued under this chapter without knowledge of the regulation or order commits a class A misdemeanor.</p> <p>(c) A person who knowingly alters, destroys, shreds, mutilates, or conceals a record, document, or other object, or attempts to do so, with the intent to alter or impair the record, document, or object for use in an official proceeding under this chapter, is guilty of a class C felony. A person convicted of violating (a) of this section is punishable by imprisonment as provided in AS 12.55.125(e).</p> <p>(d) The attorney general, with or without a reference from the administrator, may institute criminal proceedings under this chapter.</p> <p>(e) This chapter does not limit the power of the state to punish a person for conduct that constitutes a crime under other laws of the state.</p>	45.55.925	<p>(a): Similar to 45.55.925(a) with important changes:</p> <p>Willfully was changed to knowingly; individuals who violate the chapter, or a regulation under the chapter, are guilty of a class C felony under 12.55.125. (Previously, it was unclear if it was a misdemeanor or felony or even what class it was)</p> <p>The criminal penalty is increased from \$5,000 to \$100,000. Imprisonment of 1-5 years in the current statute is changed in the new statute to the requirements under 12.55.125(e) that states:</p> <p>“(e) Except as provided in (i) of this section, a defendant convicted of a class C felony may be sentenced to a definite term of imprisonment of not more than five years, and shall be sentenced to a definite term within the following presumptive ranges, subject to adjustment as provided in 12.55.155 - 12.55.175:</p> <p>(1) if the offense is a first felony conviction and does not involve circumstances described in (4) of this subsection, zero to two years; a defendant sentenced under this paragraph may, if the court finds it appropriate, be granted a suspended imposition of sentence under AS 12.55.085, and the court may, as a condition of probation under AS 12.55.086, require the defendant to serve an active term of imprisonment within the range specified in this paragraph;</p> <p>(2) if the offense is a second felony conviction, two to four years;</p>	88

		<p>(3) if the offense is a third felony conviction, three to five years;</p> <p>(4) if the offense is a first felony conviction, and the defendant violated AS 08.54.720(a)(15), one to two years.”</p> <p>Individuals can't be imprisoned if they had no knowledge of the violation or order. (This is the same as in 45.55).</p> <p>(b): New. Individuals who violate regulations or orders under the chapter without knowledge that they have violated them commits a class A misdemeanor. The fine is not more than \$100,000.</p> <p>(c): New. Individuals who alter or destroy evidence are guilty of a class C felony under 12.55.125. Violators under this provision are subject to imprisonment under 12.55 and a fine of not more than \$500,000, or both.</p> <p>(d): Same as 45.55.925(b).</p>	
<p><b>Sec. 45.56.675. Judicial review.</b> (a) Judicial review by the superior court of a final order issued by the administrator under this chapter may be had by filing a notice of appeal in accordance with the applicable rules of court governing appeals in civil matters. The notice of appeal shall be filed within 30 days after the order becomes final under AS 44.64.060.</p> <p>(b) A regulation adopted under this chapter is subject to judicial review under AS 44.62.300.</p>	45.55.940	<p>Same as existing law, with language updated. Appellants have 30 days to obtain judicial review of a final order.</p>	89
<b>Article 7. Miscellaneous and Additional General Provisions.</b>			
<p><b>Sec. 45.56.710. Reimbursement of expenses incident to examination or investigation.</b> (a) The administrator may</p>	45.55.915	Same as 45.55.	89

<p>require an issuer, broker-dealer, agent, investment adviser representative, federal covered adviser, or investment adviser to reimburse the administrator for actual travel expenses and per diem incurred in connection with an examination or investigation under this chapter.</p> <p>(b) The administrator may by regulation or order adopt a schedule of charges for annual examination and investigation of issuers, broker-dealers, agents, investment adviser representatives, federal covered advisers, and investment advisers.</p> <p>(c) If an issuer, broker-dealer, agent, investment adviser representative, federal covered adviser, or investment adviser fails to pay the fees and expenses provided for in this section, the fees and expenses shall be paid out of funds of the administrator in the same manner as other disbursements made by the administrator. The amounts paid from the funds of the administrator are a lien on all of the assets and property in this state of the an issuer, broker-dealer, agent, investment adviser representative, federal covered adviser, or investment adviser, and the amount may be recovered by the attorney general on behalf of the state.</p> <p>(d) Failure of the an issuer, broker-dealer, agent, investment adviser representative, federal covered adviser, or investment adviser to pay fees and expenses under this section is a willful violation of this chapter, and the violation falls within the provisions of AS 45.56.350, AS 45.56.440, and AS 45.56.615.</p>			
<p><b>Sec. 45.56.720. Electronic records and signatures.</b> This chapter modifies, limits, and supersedes 15 U.S.C. 7001 - 7031 (Electronic Signatures in Global and National Commerce Act), but does not modify, limit, or supersede 15 U.S.C. 7001(c) or authorize electronic delivery of any of the notices described in 15 U.S.C. 7003(b). This chapter authorizes the filing of records and signatures, when specified by provisions of this chapter or by a regulation adopted or</p>	None	Facilitates the filing of electronic records and signatures as permitted by regulation or order and consistent with federal law. The law cited, the Electronic Signatures in Global and National Commerce Act, encourages the use of electronic records, but for the purposes of consumer disclosures the consumer must consent to the use of electronic records and have the option to	90

<p>order issued under this chapter, in a manner consistent with 15 U.S.C. 7004(a).</p>		<p>withdraw such consent. Further, certain notices listed in the act (none of which are related to securities, but include things like notice of utility cancellation) cannot be delivered to consumers electronically. 45.56.720 does not modify those basic requirements.</p>	
<p><b>Sec. 45.56.730. References to federal statutes.</b> In this chapter, a reference to the following federal statutes, including a statute within a spanned reference, means those statutes and the rules and regulations adopted under those statutes, as in effect on the date of enactment of this chapter, or as later amended:</p> <p>(1) 7 U.S.C. 1 - 27 (Commodity Exchange Act);</p> <p>(2) 15 U.S.C. 77a - 77aa (Securities Act of 1933);</p> <p>(3) 15 U.S.C. 77b, 77k, 77m, 77p, 77r, 77v, 77z-1 - 77z-3, 77aa, 77ccc - 77ddd, 77mmm, 77sss, 78a, 78c - 78d, 78g, 78n, 78o, 78o-4 - 78o-5, 78s, 78t - 78u, 78u-4, 78z, 78bb, 78ee, 78kk, 78ll, 80a-2 - 80a-3, 80a-12, 80a-18, 80a-29 - 80a-30, 80b-3, 80b-18a, (Securities Litigation Uniform Standards Act of 1998);</p> <p>(4) 15 U.S.C. 78a - 78pp (Securities Exchange Act of 1934);</p> <p>(5) 15 U.S.C. 80a-1 - 80a-64 (Investment Company Act of 1940);</p> <p>(6) 15 U.S.C. 80b-1 - 80b-21 (Investment Advisers Act of 1940);</p> <p>(7) 15 U.S.C. 661 - 697g (Small Business Investment Act of 1958);</p> <p>(8) 15 U.S.C. 7001 - 7031 (Electronic Signatures in Global and National Commerce Act);</p> <p>(9) 26 U.S.C. (Internal Revenue Code);</p> <p>(10) 29 U.S.C. 1001 - 1461 (Employee Retirement Income Security Act of 1974);</p> <p>(11) 42 U.S.C. 16451 et seq. (Energy Policy Act of 2005).</p>	<p>None</p>	<p>This is a list of all federal statutes referred to in the Act.</p>	<p>90</p>
<p><b>Sec. 45.56.740. References to federal agencies.</b> A</p>	<p>None</p>		<p>91</p>

reference in this chapter to an agency or department of the United States is also a reference to a successor agency or department.			
<b>Sec. 45.56.900. Definitions.</b> In this chapter, unless the context otherwise requires,	See generally 45.55.990	Note: a number of definitions are not carried over simply because they are not used in the Act.	
(1) "administrator" means the commissioner of commerce, community, and economic development or a designee of the commissioner;	45.55.990(1)	Same as 45.55.	91
(2) "agent" means an individual, other than a broker-dealer, who represents a broker-dealer in effecting or attempting to effect purchases or sales of securities or represents an issuer in effecting or attempting to effect purchases or sales of the issuer's securities; however, a partner, officer, or director of a broker-dealer or issuer, or an individual having a similar status or performing similar functions is an agent only if the individual otherwise comes within the term; "agent" does not include an individual excluded by regulation adopted or order issued under this chapter;	45.55.990(5)	Same lead-in language as current definition of agent. 45.55 contains a list of what is excluded from the definition of agent. This is now covered in 45.56.404.	91
(3) "bank" means (A) a banking institution organized under the laws of the United States; (B) a member bank of the Federal Reserve System; (C) any other banking institution, whether incorporated or not, doing business under the laws of a state or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to be exercised by national banks under the authority of the United States Comptroller of the Currency under 12 U.S.C. 92a, that is supervised and examined by a state or federal agency having supervision over banks, and that is not operated for the purpose of evading this chapter; and (D) a receiver, conservator, or other liquidating agent of any institution or firm included in (A), (B), or (C) of this	None	Taken from Subsection 3(a)(6) of the Securities Exchange Act of 1934.	91

paragraph;			
(4) "broker-dealer" means a person engaged in the business of effecting transactions in securities for the accounts of others or for the person's own account; the term does not include (A) an agent; (B) an issuer; (C) a bank, trust company organized or chartered under the laws of the state, or savings institution if its activities as a broker-dealer are limited to those specified in 15 U.S.C. 78c(a)(4)(B)(i) - (vi), (viii) - (x), and (xi) if limited to unsolicited transactions, or 15 U.S.C. 78c(a)(5)(B) and (C), or a bank that satisfies the conditions described in 15 U.S.C. 78c(a)(4); (D) an international banking institution; or (E) a person excluded by a regulation adopted or order issued under this chapter;	45.55.990(7)	Generally similar to the definition in 45.55, except that 45.55 included the de minimis exemption for broker-dealers, which has been moved to 45.56.401.	92
(5) "defraud" includes engaging in common law deceit;	45.55.990(12)	Definition separated out at the suggestion of legislative legal – in 45.55, definition covers "fraud," "deceit" and "defraud"	92
(6) "department " means the Department of Commerce, Community, and Economic Development;	None		92
(7) "depository institution" means (A) a bank; or (B) a savings institution, trust company, credit union, or similar institution that is organized or chartered under the laws of a state or of the United States, authorized to receive deposits and supervised and examined by an official or agency of a state or the United States if its deposits or share accounts are insured to the maximum amount authorized by statute by the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund, or a successor authorized by federal law; the term does not include (i) an insurance company or other organization primarily	None	This definition is more inclusive than the definition of bank, and includes credit unions, trust companies, and insurance companies.  A Morris Plan Bank is a type of bank first established in 1910 to lend money to individuals who couldn't obtain loans from mainstream banks. Morris Plan banks had a unique lending strategy. They did not require collateral for loans, but instead considered the character and community standing of applicants by requiring two endorsers. All three were required to fill out	92

engaged in the business of insurance; (ii) a Morris Plan bank; or (iii) an industrial loan company that is not an "insured depository institution" as defined in 12 U.S.C. 1813(c)(2), or any successor federal statute;		an application covering character, financial history, employment and wages. If the loan was granted, the borrower ended up paying a relatively high rate of interest.	
(8) "federal covered investment adviser" means a person registered under 15 U.S.C. 80b-1 - 80b-21 (Investment Advisers Act of 1940);	45.55.990(9)	Previously: "federal covered adviser"	93
(9) "federal covered security" means a security that is, or upon completion of a transaction will be, a covered security under 15 U.S.C. 77r(b) or rules or regulations adopted under that provision;	45.55.990(10)	Same as 45.55.	93
(10) "filing" means the receipt under this chapter of a record by the administrator or a designee of the administrator;	None	The definition recognizes that records may be filed in paper form or electronically with the administrator, or CRD, IARD, or EDGAR.	93
(11) "former AS 45.55" means AS 45.55 as it existed immediately before July 1, 2016;	None		93
(12) "fraud" and "deceit" include common law deceit;	45.55.990(12)	Definition separated out at the suggestion of legislative legal – in 45.55, definition covers "fraud," "deceit" and "defraud"	93
(13) "guaranteed" means guaranteed as to payment of all principal and all interest;	45.55.990(13)	Same as 45.55	93
(14) "institutional investor" means any of the following, whether acting for itself or for others in a fiduciary capacity: (A) a depository institution, a trust company organized or chartered under the laws of this state, or international banking institution; (B) an insurance company; (C) a separate account of an insurance company; (D) an investment company as defined in 15 U.S.C. 80a-1 - 80a-64 (Investment Company Act of 1940); (E) a broker-dealer registered under 15 U.S.C. 78a – 78pp (Securities Exchange Act of 1934); (F) an employee pension, profit-sharing, or benefit plan if the	None		93

<p>plan has total assets in excess of \$10,000,000 or its investment decisions are made by a named fiduciary, as defined in 29 U.S.C. 1102(a)(2) (Employee Retirement Income Security Act of 1974), that is a broker-dealer registered under 15 U.S.C. 78a – 78pp (Securities Exchange Act of 1934), an investment adviser registered or exempt from registration under 15 U.S.C. 80b-1 - 80b-21 (Investment Advisers Act of 1940), an investment adviser registered under this chapter, a depository institution, or an insurance company;</p> <p>(G) a plan established and maintained by a state, a political subdivision of a state, or an agency or instrumentality of a state or a political subdivision of a state for the benefit of its employees if the plan has total assets in excess of \$10,000,000 or its investment decisions are made by a legally designated public official or by a named fiduciary, as defined in 29 U.S.C. 1102(a)(2), that is a broker-dealer registered under 15 U.S.C. 78a – 78pp (Securities Exchange Act of 1934), an investment adviser registered or exempt from registration under 15 U.S.C. 80b-1 - 80b-21 (Investment Advisers Act of 1940), an investment adviser registered under this chapter, a depository institution, or an insurance company;</p> <p>(H) a trust if that trust has total assets in excess of \$10,000,000, the trustee of the trust is a depository institution, and the participants in the trust are exclusively plans of the types identified in (F) or (G) of this paragraph, regardless of the size of their assets, except a trust that includes as participants self-directed individual retirement accounts or similar self-directed plans;</p> <p>(I) an organization described in 26 U.S.C. 501(c)(3), corporation, Massachusetts trust or similar business trust, limited liability company, or partnership, not formed for the specific purpose of acquiring the securities offered, with total assets in excess of \$10,000,000;</p>			
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<p>(J) a small business investment company licensed by the United States Small Business Administration under 15 U.S.C. 681(c) with total assets in excess of \$10,000,000;</p> <p>(K) a private business development company as defined in 15 U.S.C. 80b-2(a)(22) with total assets in excess of \$10,000,000;</p> <p>(L) a federal covered investment adviser acting for its own account;</p> <p>(M) a qualified institutional buyer, as defined in 17 C.F.R. 230.144A, other than 17 C.F.R. 230.144A(a)(1)(i)(H), adopted under 15 U.S.C. 77a - 77aa (Securities Act of 1933);</p> <p>(N) a major United States institutional investor, as defined in 17 C.F.R. 240.15a-6(b)(4)(i), adopted under 15 U.S.C. 78a - 78pp (Securities Exchange Act of 1934);</p> <p>(O) any other person, other than an individual, of institutional character with total assets in excess of \$10,000,000 not organized for the specific purpose of evading this chapter; or</p> <p>(P) any other person specified by regulation adopted or order issued under this chapter;</p>			
<p>(15) "insurance company" means a company organized as an insurance company whose primary business is writing insurance or reinsuring risks underwritten by insurance companies and that is subject to supervision by the insurance commissioner or a similar official or agency of a state;</p>	None	Based on Section 2(a)(13) of the Securities Act of 1933.	95
<p>(16) "insured" means insured as to payment of all principal and all interest;</p>	None		95
<p>(17) "international banking institution" means an international financial institution of which the United States is a member and whose securities are exempt from registration under 15 U.S.C. 77a - 77aa (Securities Act of 1933);</p>	None	Per USA: Securities issued or guaranteed by the International Bank for Reconstruction and Development, 22 U.S.C. 286k-1(a); the Inter-American Development Bank, 22 U.S.C. 283h(a); the Asian Development Bank, 22 U.S.C. 285h(a); the African Development Bank, 22 U.S.C. 290i-9; and the International Finance Corporation, see 22 U.S.C. 282k; are treated as exempt securities under	95

		Section 3(a)(2) of the 33 Act, and are within this term.	
(18) "investment adviser" means a person that, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or the advisability of investing in, purchasing, or selling securities or that, for compensation and as a part of a regular business, issues or produces analyses or reports concerning securities; the term includes a financial planner or other person that, as an integral component of other financially related services, provides investment advice to others for compensation as part of a business or that holds itself out as providing investment advice to others for compensation; the term does not include (A) an investment adviser representative; (B) a lawyer, accountant, engineer, or teacher whose performance of investment advice is solely incidental to the practice of the person's profession; (C) a broker-dealer or its agents whose performance of investment advice is solely incidental to the conduct of business as a broker-dealer and that does not receive special compensation for the investment advice; (D) a publisher of a bona fide newspaper, news magazine, or business or financial publication of general and regular circulation; (E) a federal covered investment adviser; (F) a bank, a trust company organized or chartered under the laws of this state, or savings institution; (G) any other person that is excluded by 15 U.S.C. 80b-1 - 80b-21 (Investment Advisers Act of 1940) from the definition of investment adviser; or (H) any other person excluded by a regulation adopted or order issued under this chapter;	45.55.990(34)	Similar to definition of state investment adviser in 45.55 (note: "state investment adviser" is not used in 45.56), this definition generally follows the definition of investment adviser in section 202(a)(11) of the Investment Advisers Act of 1940, but has been updated to account for new media such as the internet.	95
(19) "investment adviser representative" means an individual	45.55.990(15)	Reworded for clarity, covers the same people and	95

<p>employed by or associated with an investment adviser or federal covered investment adviser and who makes any recommendations or otherwise gives investment advice regarding securities, manages accounts or portfolios of clients, determines which recommendation or advice regarding securities should be given, provides investment advice or offers to provide investment advice, receives compensation to solicit, offer, or negotiate for the sale of or for selling investment advice, or supervises employees who perform any of the foregoing; the term does not include an individual who</p> <p>(A) performs only clerical or ministerial acts;</p> <p>(B) is an agent whose performance of investment advice is solely incidental to the individual's acting as an agent and who does not receive special compensation for investment advisory services;</p> <p>(C) is employed by or associated with a federal covered investment adviser, unless the individual has a place of business in this state, as that term is defined by rule adopted under 15 U.S.C. 80b-3a and is</p> <p>(i) an investment adviser representative, as that term is defined by rule adopted under 15 U.S.C. 80b-3a; or</p> <p>(ii) not a supervised person, as that term is defined in 15 U.S.C. 80b-2(a) (25); or</p> <p>(D) is excluded by a regulation adopted or order issued under this chapter;</p>		<p>conduct as 45.55.</p>	
<p>(94) "issuer" means a person that issues or proposes to issue a security, subject to the following:</p> <p>(A) the issuer of a voting trust certificate, collateral trust certificate, certificate of deposit for a security, or share in an investment company without a board of directors or individuals performing similar functions is the person performing the acts and assuming the duties of depositor or manager under the trust or other agreement or instrument</p>	<p>45.55.990(20)</p>	<p>Generally the same, but updated language and expanded to clarify that the owner of a lease that creates fractional interest in oil, gas or other mineral leases, is the issuer of those interests.</p>	<p>97</p>

<p>under which the security is issued;</p> <p>(B) the issuer of an equipment trust certificate or similar security serving the same purpose is the person by which the property is or will be used or to which the property or equipment is or will be leased or conditionally sold or that is otherwise contractually responsible for ensuring payment of the certificate;</p> <p>(C) the issuer of a fractional undivided interest in an oil, gas, or other mineral lease or in payments out of production under a lease, right, or royalty is the owner of an interest in the lease or in payments out of production under a lease, right, or royalty, whether whole or fractional, that creates fractional interests for the purpose of sale;</p>			
<p>(21) "nonissuer transaction" or "nonissuer distribution" means a transaction or distribution not directly or indirectly for the benefit of the issuer;</p>	45.55.990(23)	Same as 45.55.	97
<p>(22) "offer to purchase" includes an attempt or offer to obtain, or solicitation of an offer to sell, a security or interest in a security for value; the term does not include a tender offer that is subject to 15 U.S.C. 78n(d);</p>	None	A rescission offer under 45.56.665 would be an offer to purchase with respect to a security that earlier had been sold.	97
<p>(23) "older person" means a natural person who is 60 years of age or older;</p>	None		97
<p>(24) "person" means an individual, a corporation, a partnership, a limited liability company, a limited partnership, a limited liability partnership, an association, a joint-stock company, a trust in which the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government;</p>	45.55.990(25)	Same as 45.55.	98
<p>(25) "place of business" of a broker-dealer, an investment adviser, or a federal covered investment adviser means</p> <p>(A) an office at which the broker-dealer, investment adviser, or federal covered investment adviser regularly provides brokerage or investment advice or solicits, meets with, or otherwise communicates with customers or clients; or</p>	45.55.990(26)	Same as 45.55.	98

(B) any other location that is held out to the general public as a location at which the broker-dealer, investment adviser, or federal covered investment adviser provides brokerage or investment advice or solicits, meets with, or otherwise communicates with customers or clients;			
(26) "price amendment" means the amendment to a registration statement filed under 15 U.S.C. 77a - 77aa (Securities Act of 1933) or, if an amendment is not filed, the prospectus or prospectus supplement filed under 15 U.S.C. 77a - 77aa (Securities Act of 1933) that includes a statement of the offering price, underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call prices, and other matters dependent upon the offering price;	None	A price amendment may be used in a registration coordinated with the SEC procedure in Section 303(d). In the case of noncash offerings, required information concerning such matters as the offering price and underwriting arrangements is normally filed in a "price" amendment after the rest of the registration statement has been reviewed by the SEC staff.	98
(27) "principal place of business" of a broker-dealer or an investment adviser means the executive office of the broker-dealer or investment adviser from which the officers, partners, or managers of the broker-dealer or investment adviser direct, control, and coordinate the activities of the broker-dealer or investment adviser;	45.55.990(27)	Same as 45.55.	98
(28) "record," except in the phrases "of record," "official record," and "public record," means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form;	None	Taken from Uniform Electronic Transaction Act Section 2(13). From the USA comments: This is a standard definition designed to embrace all means of communicating or storing information except human memory. It includes any method for storing or communicating information, including "writings." A record need not be indestructible or permanent, but the term does not include oral or other communications which are not stored or preserved by some means.	98
(29) "sale" includes every contract of sale, contract to sell, or disposition of a security or interest in a security for value, and "offer to sell" includes every attempt or offer to dispose of, or solicitation of an offer to purchase, a security or interest in a security for value; both terms include	45.55.990(28)	Very similar to 45.55; modeled after Section 2(a)(3) of the Securities Act of 1933.	98

(A) a security given or delivered with, or as a bonus on account of, a purchase of securities or any other thing constituting part of the subject of the purchase and having been offered and sold for value; (B) a gift of assessable stock involving an offer and sale; and (C) a sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer and a sale or offer of a security that gives the holder a present or future right or privilege to convert the security into another security of the same or another issuer, including an offer of the other security;			
(30) "Securities and Exchange Commission" means the United States Securities and Exchange Commission;	None		99
(31) "securities business" means a business that provides the services provided by (A) investment advisers, federal covered investment advisers, or investment adviser representatives; or (B) broker-dealers, issuers, or agents of broker-dealers or issuers;	45.55.990(30)	Same as 45.55.	99
(32) "security" means a note; stock; treasury stock; security future; bond; debenture; evidence of indebtedness; certificate of interest or participation in a profit-sharing agreement; collateral trust certificate; preorganization certificate or subscription; transferable share; investment contract; voting trust certificate; certificate of deposit for a security; viatical settlement; fractional undivided interest in oil, gas, or other mineral rights; put, call, straddle, option, or privilege on a security, certificate of deposit, or group or index of securities, including an interest or based on the value of a put, call, straddle, option, or privilege on a security, certificate of deposit, or group or index of securities; put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency; or, in general, an interest or instrument commonly known as a "security"; or a	45.55.990(32)	The definition is substantially similar to 45.55.	99

<p>certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase any of the foregoing; the term</p> <p>(A) includes both a certificated and an uncertificated security;</p> <p>(B) does not include a participation agreement entered under AS 14.40.802 or an insurance policy subject to AS 21;</p> <p>(C) does not include an interest in a contributory or noncontributory pension or welfare plan subject to 29 U.S.C. 1001 - 1461 (Employee Retirement Income Security Act of 1974);</p> <p>(D) includes an investment in a common enterprise with the expectation of profits to be derived primarily from the efforts of a person other than the investor; in this subparagraph, "common enterprise" means an enterprise in which the fortunes of the investor are interwoven with those of either the person offering the investment, a third party, or other investors;</p> <p>(E) includes as an investment contract, among other contracts, an interest in a limited partnership and a limited liability company, and an investment in a viatical settlement or similar agreement; and</p> <p>(F) includes a viatical settlement interest;</p>			
<p>(33) "self-regulatory organization" means a national securities exchange registered under 15 U.S.C. 78a - 78pp (Securities Exchange Act of 1934), a national securities association of broker-dealers registered under 15 U.S.C. 78a - 78pp (Securities Exchange Act of 1934), a clearing agency registered under 15 U.S.C. 78a - 78pp (Securities Exchange Act of 1934), or the Municipal Securities Rulemaking Board established under 15 U.S.C. 78o-4;</p>	None		100
<p>(34) "sign" means, with present intent to authenticate or adopt a record,</p> <p>(A) to execute or adopt a tangible symbol; or</p> <p>(B) to attach or logically associate with the record an</p>	None	Intended to facilitate the use of electronic signatures.	100

electronic symbol, sound, or process;			
(35) "state" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States;	45.55.990(33)	Same as 45.55.	100
(36) "vulnerable adult" means a person 19 years of age or older who, because of incapacity, mental illness, mental deficiency, physical illness, physical disability, advanced age, chronic use of drugs, chronic intoxication, fraud, confinement, or disappearance, is unable to meet the persons own needs or to seek help without assistance	47.24.900(21)	Added as an amendment in House Judiciary, offered by Rep. Kriess-Tomkins. Language for definition taken from current Alaska statute.	100
<b>Sec. 45.56.995 Short title.</b> This chapter may be cited as the Alaska Securities Act.	45.55.995	Same as 45.55.	100
<b>Sections 26-28: Substantive Additions to Other Chapters in the Alaska Statutes</b>		Most of the changes are numbering updates with the Securities Act moving to 45.56.	101
<b>Sec. 29: Repeal of statutes that are not needed in AS 45.55.</b>		These statutes referred to securities and not to the ANCSA related statutes remaining in AS 45.55.	105
<b>Sec. 30.</b> The uncodified law of the State of Alaska is amended by adding a new section to read: <b>INDIRECT COURT RULE AMENDMENTS.</b> (a) The provisions of AS 45.56.630(c)-(e), enacted by sec. 25 of this Act, have the effect of changing Rules 4 and 5, Alaska Rules of Civil Procedure, by allowing service on the administrator in certain cases. (b) The provisions of AS 45.56.650(f), enacted by sec. 25 of this Act, have the effect of changing Rule 54, Alaska Rules of Civil Procedure, by expanding the definition of judgments to include final judgments of the administrator issued under AS 45.56.650, enacted by sec. 25 of this Act. (c) The provisions of AS 45.56.650(g), enacted by sec. 25 of this Act, have the effect of changing Rule 90, Alaska Rules of Civil Procedure, by changing the contempt procedure in certain cases. (d) The provisions of AS 45.56.655(c), enacted by sec. 25 of		Select Alaska court rules are amended as a result of the bill. (a)-(d) relate to the Rules of Civil Procedure which are amended to allow service on the administrator in some cases, expand the definition of judgments to include final judgments of the administrator, change the contempt procedure in limited circumstances, and prohibiting requiring the administrator to post a bond in certain injunction cases.  (e) changes Rule 602 of the Rules of Appellate Procedure by changing the time for filing a notice of appeal in cases covered by the Securities Act.	105

<p>this Act, have the effect of changing Rule 65, Alaska Rules of Civil Procedure, by changing the procedure for injunctions in certain cases by prohibiting requiring the administrator to post a bond.</p> <p>(e) The provisions of AS 45.56.675(a), enacted by sec. 25 of this Act, have the effect of changing Rule 602, Alaska Rules of Appellate Procedure, by changing the time for filing a notice of appeal.</p>			
<p><b>Sections 31-34 Transitional provisions</b></p>		<p>The bill provides for a transitional period during which AS 45.55 continues to apply, primarily for enforcement of actions pending as of the effective date of the act and relating to conduct occurring before the effective date. All previously-issued registrations, regulations, statements of policy, opinions, etc. that were issued under 45.55. remain in effect until officially replaced or rescinded by the administrator.</p>	<p>106</p>
<p><b>Sec. 35.</b> This Act takes effect July 1, 2016</p>		<p>Effective date</p>	<p>107</p>

February 1, 2016

Robert S. Banks, Jr.  
bbanks@SamuelsLaw.com

**VIA EMAIL**

The Honorable Mia Costello  
Chair, Senate Labor and Commerce Committee  
Alaska State Senate  
State Capitol Room 510  
Juneau AK, 99801  
[Senator.Mia.Costello@akleg.gov](mailto:Senator.Mia.Costello@akleg.gov)

The Honorable Kurt Olson  
Chair, House Labor and Commerce Committee  
Alaska State House of Representatives  
State Capitol Room 24  
Juneau AK, 99801  
[Representative.Kurt.Olson@akleg.gov](mailto:Representative.Kurt.Olson@akleg.gov)

**Re: Alaska Senate Bill 108 and House Bill 194  
Alaska Securities Act**

Dear Senator Costello and Representative Olson:

I am writing to offer my written testimony on Alaska Senate Bill 108 and House Bill 194, the proposed Alaska Securities Act. I am an attorney and member of the bars of Oregon, Washington, Wisconsin and Massachusetts. I have practiced law for 34 years, mostly in the area of securities. I speak frequently to state and federal regulators and securities lawyers around the country on issues of securities law. I am a member of the FINRA (Financial Industry Regulatory Authority) National Arbitration and Mediation Committee, which advises FINRA on rules governing disputes between savers and investors and securities brokerage firms. I do not practice in Alaska and have nothing personally to gain from commenting on SB 108/HB 194. I offer my testimony in hopes that it may be of some assistance to the Alaska Senate and House and the people of the great State of Alaska.

In my view, the bills before you are significant improvements, and Alaska legislature should amend Alaska's Securities Act. Today there are terms of art and concepts that did not exist when your existing law was enacted, and the proposed legislation recognizes them. By enacting a modernized securities act, Alaska will be a national leader in the blue sky laws community. That attention alone is likely to generate national recognition and interest. It should result in increased opportunities for entrepreneurs and others seeking to raise capital in Alaska. Equally important, the proposed bill will afford needed protections for investors and retirement savers.

There are a few sections of the proposed Act where my direct experience might be of some assistance.

**Crowdfunding.** The proposed new exemption to allow for crowdfunding is good for Alaska. By enacting Section 45.56.220, Alaska will join those states that permit crowdfunding. I was on the special committee that reviewed and commented on Oregon's crowdfunding rules. While on that committee, I reviewed the crowdfunding statutes and regulations of all states that had enacted new crowdfunding rules. The challenge with crowdfunding is to strike the appropriate balance between allowing investment in grassroots businesses while providing safeguards for investors. The key provisions in SB 108 in my view are subsections (3) and (4) which limit the amount of money to be raised to \$1,000,000, and limit the amount that a single unaccredited investor can invest to \$5,000. In Oregon, our maximum investment is \$2,500, and other states allow more than \$5,000. Your proposed legislation falls in the middle and strikes a fair balance. Additionally, I like that there is a bad actor provision (25.56.230), and that no commissions may be paid on crowdfunding investments.

**Variable Annuities.** Section 45.56.605(f) is another key improvement in SB 108. It provides that variable annuities are securities and subject to the new Act. This is one of the most important features of the bill. Variable annuities have been a *major* source of investor abuse over the last decade. FINRA has issued warnings about these investments on its website. See, for example, *Variable Annuities: Beyond the Hard Sell*, at <https://www.finra.org/sites/default/files/InvestorDocument/p125846.pdf>. I would encourage your committee to read that alert, keeping in mind that it is the financial industry itself that is issuing this warning.

Perhaps the biggest problem with variable annuities is the fees associated with these products. In my experience, these fees are rarely less than 3% per year, meaning that the investment must grow 3% annually just to break even. And, the fees are more often considerably higher. If the investor needs to sell the investment anytime within 6 – 7 years of purchasing it (to pay unforeseen medical expenses, for example), there are sales charge penalties for selling the investment, which can drive the annual fees well above 3%.

One reason the fees are so high is that the commissions paid to the salesperson are among the very highest of any investment product available. The insurance companies have to pay those commissions to convince the salesperson to sell them, and then the companies need to recoup those commission charges from the purchasing investors. They do that from charging deferred sales charges, administrative fees, sub account management fees, and others.

Another problem with variable annuities is that they are complex and extremely difficult for anyone to understand. If you have any doubt about that, I would encourage you to have your staff obtain a copy of a variable annuity contract. Then, read it, and see how much of it you can understand. I have been in FINRA hearings where a full day of testimony was devoted to

explaining how the products work. Not only do the purchasers not understand what it was that they bought, but in my experience the person selling the product did not understand it either.

In Oregon, variable annuities are securities under our securities act. I was one of the people who testified in favor of that change to our legislature. I can tell you that from the perspective of an attorney who represents senior citizens, the change has been 100% positive. It allows our securities division to protect investors from unscrupulous salespeople, and it has allowed investors to use the securities laws when they have been victimized by unsuitable sales.

Adding variable annuities to the definition of securities in Oregon was not easy, because the insurance lobby fought the change. They argued that it would result in "too much regulation" and that insurance companies would pull out of Oregon if the change was made. That was several years ago, and the sky has not fallen. I would encourage you to check with Oregon's Division of Consumer and Business Services to ask them what the effect has been.

The insurance lobby argues that these products are insurance products, not securities. In my years of speaking with investors (many of whom are seniors), I can report that they always report that they were sold variable annuities as *investments*. In fact, investors often are surprised to learn that there is an insurance component wrapped into the variable annuity. I have *never* seen an investor who was sold a variable annuity believing it was primarily an insurance product. Variable annuities are a hybrid product that has features of both insurance and securities. They feature a death benefit like a life insurance policy, but the value of the investment is variable, because the performance and value are based on one or more sub-accounts that are part of the investment. The sub-accounts act like mutual funds; they are comprised of securities investments. The differences between a sub account in a variable annuity and a regular mutual fund are that you can sell a mutual fund, and you can choose to buy no-load and low load funds. Sub-accounts in variable annuities have higher fees associated with them, the choices of funds available are limited, and getting rid of the product is expensive.

#### **Civil Liability Provisions.**

I generally favor the civil liability provisions found at section 45. 56.660. They are very similar to the civil liability provisions of other states with blue sky statutes. Under your proposed law, there are appropriate liability sections for sellers, broker-dealers, officers, employees, control persons and investment advisors involved in unlawful transactions. However, there is one section where an amendment would benefit Alaskan citizens. Section 56.660(g)(4) limits the liability of a person who "materially aids" in the sale of a security to those who are broker-dealers, agents, investment advisors and their representatives. Often times, those who materially aid an illegal securities transaction do not fit into one of those narrow categories. For example, I have seen many cases over the years where outside professionals materially aided a securities sale. Frequently, lawyers are material aiders. They should not be treated any more favorably than others who materially aid an illegal sale. Thus I would

recommend that the Alaska statute provide for liability for *any* person who materially aids an unlawful sale. That is the law in Oregon, *see* ORS 59.115, and it works well.

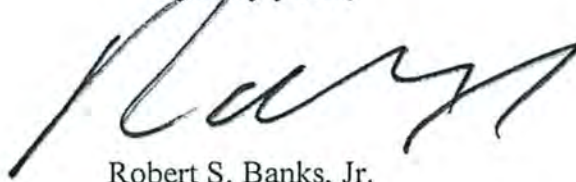
**Administrative Remedies.** These provisions are also well drafted and are an improvement over existing law. They permit the Administrator to seek a court order that would seize assets, impose substantial penalties, and order restitution to victims of unlawful transactions, among other remedies. It is often the state regulators that first learn of a large scale securities fraud. It is critical that the Department of Banking and Securities be given the authority to file a court case and, upon a proper showing, obtain adequate relief for victims. Not only does this make it possible to stop a fraud before additional Alaskans become victims, but it can obviate the need for victims to hire private lawyers to represent them. Lawyers are expensive, and if the state can recover losses for victims, victims are relieved of the need to find, hire, and pay for a competent attorney. Not all attorneys who are hired are competent, and most of them are expensive. It makes more sense to allow the state in appropriate circumstances to prosecute the victims' claims.

\* \* \*

I should close by recognizing your Director of Securities and Banking, Kevin Anselm. She was the Director of Oregon's Securities Enforcement Division before she came to Alaska. Oregon's loss was Alaska's gain. Kevin was highly regarded here, and she has a national reputation among regulators as smart, effective and hard-working. I think she has done an excellent job for Alaska in drafting the updated Alaska Securities Act. I hope that the Alaska legislature has the foresight to take advantage of the work that she, Enforcement Director Kristy Naylor and others have done to make Alaska's blue sky law a shining example for other states to follow.

Please feel free to contact me if you have any questions or if I can provide any additional information.

Very truly yours,

A handwritten signature in black ink, appearing to read "R. Banks, Jr.", written in a cursive style.

Robert S. Banks, Jr.

RSB:ac

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## Governor Bill Walker STATE OF ALASKA

April 11, 2015

The Honorable Mike Chenault  
Speaker of the House  
Alaska State Legislature  
State Capitol, Room 208  
Juneau, AK 99801-1182

Dear Speaker Chenault:

Under the authority of Article III, Section 18, of the Alaska Constitution, I am transmitting a bill relating to the Alaska Securities Act and certain provisions of the Alaska Native Claims Settlement Act (ANCSA) proxy solicitations.

The bill would modify AS 45 by adding a new chapter, AS 45.56, relating to the Alaska Securities Act. The proposed updates would modernize and streamline the State's outdated securities laws to recognize industry changes and to support new means of raising capital, while enhancing investor protections and remedies. By adopting relevant provisions of the Uniform Securities Act (2002), this new Alaska Securities Act would incorporate proven successful practices in the industry but maintain Alaska-specific provisions relevant to the unique features of the state. Moreover, the updates would eliminate redundant or outdated references and practices.

Currently, AS 45.55 governs securities transactions in the state. Since its adoption in 1961, there have only been two relevant changes to our securities law. In 1999, a portion of the existing law was revised after the passage of the National Securities Markets Improvement Act of 1996. In 2014, Chapter 46, SLA 2014 eliminated several filing requirements for certain securities exemptions, but otherwise left the majority of the Alaska Securities Act unchanged. It remains outdated. By example, the current version of the Alaska Securities Act limits official notification of certain dates to telegram or telephone, but not electronic means, and continues to list stock exchanges that have merged with other entities or no longer exist. The financial industry has changed dramatically in the last 15 years and an entire overhaul of the Alaska Securities Act is necessary to put the State's laws governing securities transactions in line with other regulatory regimes.

Using the Uniform Securities Act as a springboard for changes to the Alaska Securities Act, our State benefits from a time-tested regulatory regime that has been adopted and used in at least 20 other states. By incorporating provisions proven to improve the regulation of the securities industry in other states into our laws, the state and persons doing business here will benefit. Using the Uniform Securities Act for the basic framework also provides familiarity to many industry professionals that are familiar with the Alaska Securities Act.

The Honorable Mike Chenault  
Alaska Securities Act Transmittal  
April 11, 2015  
Page 2

Using the Uniform Securities Act as the starting point, the bill would incorporate several Alaska-specific provisions aimed at protecting and supporting the public and industry. By example, proposed AS 45.56.220 would provide an exemption for small intrastate investment opportunities, commonly referred to as "crowdfunding." This would encourage local capital raising without burdensome administrative oversight and still provide necessary protections to Alaskan investors. Additionally, most notice filings relating to small projects or investments are eliminated, but investor protections are maintained.

The bill would update enforcement provisions by increasing penalties for those who violate the Alaska Securities Act, allow restitution to be ordered to compensate victims for their losses, and provide for enhanced civil penalties against violators who harm or injure an older Alaskan. Further, the bill would direct that a small portion of civil penalties may be used to provide investor education to Alaskans.

The bill also would modify existing provisions related to the treatment of ANCSA proxy solicitations in the existing chapter, AS 45.55. These limited modifications do not change any substantive law, but instead reorganize the existing laws regulating ANCSA proxy solicitations into their own chapter, as they are best regulated.

I urge your prompt and favorable action on this measure.

Sincerely,

A handwritten signature in black ink, appearing to read "Bill Walker". The signature is fluid and cursive, written over a light blue horizontal line.

Bill Walker  
Governor

Enclosure



House Bill 194CS\I  
AK Securities Act; Penalties; Crt. Rules  
Brief Sectional Analysis

**SECTIONS 1 – 14 (pp. 1-11)** include the corresponding changes to statutes that refer to former AS 45.55 provisions that have been moved to AS 45.56.

**SECTIONS 15 – 24 (pp. 11-24)** modify AS 45.55 as necessary to delete references to statutes that have no bearing on the Alaska Native Claims Settlement Act corporations because of the enactment of AS 45.56.

**SECTION 25 (p. 14)** Proposed new Chapter AS 45.56

**Article 1. General Provisions (pp. 14-15)**

**Sec. 45.56.105. Securities registration requirement** – same as current law (AS 45.55.070). Securities must be registered before offer or sale unless federally covered or specifically exempt from registration.

**Article 2. Exemptions from Registration of Securities (pp. 15-29)**

**Sec. 45.56.205. Exempt securities** – generally the same as current law (AS 45.55.900(a)) with a few additions including securities issued by an insurance company; certain options, warrants and rights that are not federal covered securities; certain cooperatives and equipment trust certificates.

**Sec. 45.56.210. Exempt transactions** – similar to current law AS 45.55.900(b), reorganized with additions reflecting transactions allowed under the Uniform Securities Act of 2002 (USA).

**Sec. 45.56.220. Small intrastate securities offerings (referred to as “Crowdfunding”)** Allows Alaskans to invest up to \$10,000 per person, per offering, in an Alaskan business. Businesses can raise up to \$1 million per offering and requires a notice filing with the state and certain investor disclosures and protections.

**Sec. 45.56.230. Disqualifier** – prohibits persons who have been subject to regulatory action or participated in certain crimes from using exemptions from the registration requirement.

**Sec. 45.56.240. Waiver and modification** – broadens the administrator’s authority to waive or change requirements or conditions for exemptions.

**Sec. 45.56.250. Denial, suspension, revocation, condition, or limitation of exemptions** – same as current law, although the appeal rights and hearing information is moved to Article 6.

**Article 3. Registration of Securities and Notice Filing of Federal Covered Securities. (pp. 29-42)**

No significant changes to registration provisions from AS 45.55. Material changes are noted by section.

**Sec. 45.56.305. Securities registration by coordination** – registration statement must be on file with the Administrator for 20 days unless reduced by regulation. 10 days is the current requirement. References to prompt notice by telegram are deleted.

**Sec. 45.56.310. Securities registration by qualification** – adds a new requirement that registrants disclose pending litigation that may materially affect the issuer or litigation that is known to be contemplated but not yet filed.

**Sec. 45.56.320. Securities registration filings** – allows the administrator to set escrow time by regulation or order for certain securities issued to a promoter or to other persons at a price substantially less than the public offering price.

**Sec. 45.56.330. Notice filing of federal covered securities** – adds the imposition of fees for late filings.

**Sec. 45.56.340. Viatical settlement interests** – combines current AS 45.55.120 and AS 45.55.905(c) to explain the joint regulation of these interests by the Securities and Insurance statutes.

**Sec. 45.56.350. Waiver and modification** – administrator allowed waiver authorities are consolidated in this section instead of throughout the chapter.

**Sec. 45.56.360. Denial, suspension, and revocation of securities registration** – adds requirement to establish regulations explaining what conduct may be fraud upon purchasers; unreasonable discounts, compensation, profits (including options, etc.) and terms that are unfair, unjust or inequitable.

**Article 4. Broker-dealers, Agents, Investment Advisers, Investment Adviser Representatives, and Federal Covered Investment Advisers. (pp. 42-66)**

Firm, salesperson, and adviser registration (licensing) provisions are reorganized into one article, making it more user-friendly than current law. Notable changes are listed below.

**Sec. 45.56.405. Broker-dealer registration requirement and exemptions** – includes a new “snowbird exemption” to facilitate ongoing broker-customer relationships with customers who have established a second or other residence and clarifies the number of transactions a broker-dealer may effect annually (3) if not registered in Alaska.

**Sec. 45.56.410. Limited registration of Canadian broker-dealers and agents** – changed annual renewal to December 31 from December 1 for easier state and firm processing.

**Sec. 45.56.420. Registration exemption for merger and acquisition broker** – this new provision exempts mergers and acquisitions brokers from registration (licensing) requirements because these transactions are typically between knowing parties with adequate legal counsel and scrutiny. The exemption is not available if the broker actually handles the securities exchanged in the transaction or otherwise represents an issuer or public shell company, or is subject to a Securities and Exchange Commission action.

**Sec. 45.56.430. Agent registration requirement and exemptions** – the rewrite of this section includes a statement of the types of business covered here instead of in a definitional section.

**Sec. 45.56.435. Investment adviser registration requirement and exemptions** – includes a new “snowbird” exemption that mirrors the broker-dealer exemption in Sec. 45.56.405.

**Sec. 45.56.440. Investment adviser representative registration requirement and exemptions** – these provisions mirror the broker-dealer agent requirements in Sec. 45.56.430.

**Sec. 45.56.445. Federal covered investment adviser notice filing requirement** – these provisions are not separately stated in the current law.

**Sec. 45.56.450. Registration by broker-dealer, agent, investment adviser, and investment adviser representative** – combines provisions in current statute and regulations and extends the automatic registration from 30 to 45 days unless the registration is denied.

**Sec. 45.56.455. Succession and change in registration of broker-dealer or investment adviser** – clarifies that an organizational change can generally be completed by amendment instead of a new registration (for instance a sole proprietorship moving to a limited liability company).

**Sec. 45.56.460. Termination of employment or association of agent and investment adviser representative and transfer of employment or association** – requires the registrant file a notification with the division. Allows for an immediate temporary effective registration with a new firm when there is no new disciplinary information added.

**Sec. 45.56.465. Withdrawal of registration of broker-dealer, agent, investment adviser, and investment adviser representative** – extends the effective date of registration withdrawal up to 60 days and allows a revocation proceeding to commence within one year.

**Sec. 45.56.470. Filing fees** – are established and may be paid through a designee by regulation.

**Sec. 45.56.475. Post registration requirements** – in addition to current requirements, adds the provision for continuing education by regulation.

**Sec. 45.56.480. Denial, revocation, suspension, withdrawal, restriction, condition, or limitation of registration** – in addition to current provisions, allows the administrator to bar

registration and includes actions taken by other regulators. Civil penalty for registrants is increased from \$2,500-\$10,000 per violation to up to \$100,000 per violation.

**Article 5. Fraud and Liabilities. (pp. 66-69)**

**Sec. 45.56.505. General fraud** – same as current AS 45.55.010.

**Sec. 45.56.510. Prohibited conduct in providing investment advice** – allows administrator to define prohibited conduct by regulation.

**Sec. 45.56.520. Misleading filings** – same as current AS 45.55.160.

**Sec. 45.56.530. Misrepresentations concerning registration or exemption** – same content as AS 45.55.170.

**Sec. 45.56.540. Evidentiary burden** – same content as AS 45.55.900(c).

**Sec. 45.56.550. Filing of sales and advertising literature** – same content as AS 45.55.150.

**Sec. 45.56.560. Qualified immunity** – registered persons are not liable to other registered persons, under state defamation laws, for statements contained in disclosure records required to be filed with the administrator for purposes of licensing and potential discipline. This provision encourages full disclosure to the administrator.

**Article 6. Administration and Judicial Review. (pp. 69-89)**

**Sec. 45.56.605. Administration** – adds a new provision allowing the administrator to develop and implement investor education initiatives and accept grants or donations for investor education.

**Sec. 45.56.610. Administrative files and opinions** – requires the administrator keep records according to a retention schedule and outlines publicly disclosable documents.

**Sec. 45.56.615. Public records; confidentiality** – clarifies and specifies record confidentiality.

**Sec. 45.56.620. Uniformity and cooperation with other agencies** – expands opportunity for cooperation and sharing with governmental units, regulatory organizations for collaborative efforts including regulation, enforcement and coordination to reduce the burden of raising capital by small business.

**Sec. 45.56.625. Securities investor education and training fund** – creates a securities and investor education and training fund within the general fund to provide funds for investor education. 33% of the money received from civil penalties may be used for investor education and training if so appropriated by the legislature.

**Sec. 45.56.630. Service of process** – same as current AS 45.55.980.

**Sec. 45.56.635. Applicability of the chapter** – same as current AS 45.55.980.

**Sec. 45.56.640. Regulations, forms, orders, interpretative opinions, and hearings** – combines existing AS 45.55.950 and 45.55.970 and clarifies that GAAP compliant financial statements may only be required as allowed by federal law.

**Sec. 45.56.645. Investigations and subpoenas** – similar to existing AS 45.55.910 and allows broader cooperation with other regulators.

**Sec. 45.56.650. Administrative enforcement** – time period for a respondent to request a hearing after an action is taken is extended from 15 days to 30 days. Civil penalties are increased from \$2,500 for a single violation and \$25,000 for multiple violations to a maximum of \$100,000 for a single violation with no cap for multiple violations. If a victim is an “older person” (a person over 60 years old) or a “vulnerable adult,” the respondent is subject to treble damages. Restitution and actual costs of investigation may be ordered. The administrator may deny the use of securities exemptions under Article 2 and registration (licensing) exemptions under Article 4 if a person violates the Act. The administrator may petition the Superior Court to enforce a final order and the Court may hold a person in contempt for violating an order of the administrator, punishable by up to \$100,000 per violation, in addition to any administrative penalties that were originally assessed.

**Sec. 45.56.655. Civil enforcement** – the administrator may seek remedies such as asset freezes, an order of rescission, restitution, and civil penalties of up to \$100,000 per violation, and all damages may be trebled if the victim is an “older person” (person over 60 years of age) or “vulnerable adult”.

**Sec. 45.56.660. Civil liability** – outlines instances where the seller is liable to the purchaser and potential remedies (actual damages including interest as determined by the court); also describes instances where the buyer may be liable to the seller.

**Sec. 45.56.665. Rescission offers** – outlines the rescission offer process, including a new requirement that the offeror must demonstrate the ability to pay and then actually pay as promised.

**Sec. 45.56.670. Criminal enforcement** – knowing violations of the Act and fraud are punishable as class C felonies punishable under AS 12.55.125. Unknowing violations are punishable as class A misdemeanors and fine of not more than \$100,000. Individuals who alter or destroy evidence are guilty of a class C felony and a fine of not more the \$500,000 or both.

**Sec. 45.56.675. Judicial review** – appellants have 30 days to request review of a final order.

#### **Article 7. Miscellaneous and Additional General Provisions. (pp. 89-100)**

**Sec. 45.56.710. Reimbursement of expenses incident to examination or investigation** – same as AS 45.55.915.

**Sec. 45.56.720. Electronic records and signatures** – facilitates filing of electronic records and signatures. Consumers must consent and have the option to withdraw such consent.

**Sec. 45.56.730. References to federal statutes** – a list of all federal statutes referenced in the Act.

**Sec. 45.56.740. References to federal agencies** – notes that a reference to an agency of the United States is also a reference to a successor agency.

**Sec. 45.56.900. Definitions.**

- Updates federal citations
- New definitions include:
  - o Disqualifier
  - o Filing
  - o Institutional investor (reflects federal law)
  - o Insurance company
  - o Insured
  - o International Banking Institution
  - o Offer to purchase
  - o Older person – a person that is age 60 or older (from AS 47.65.290(6))
  - o Price amendment
  - o Record
  - o Self-regulatory organization
  - o Sign
  - o Vulnerable adult (taken from AS 47.24.900(21))

**Sec. 45.56.995. Short title.** This chapter may be cited as the Alaska Securities Act.

**SECTIONS 26 – 28 (pp. 101-105)**. Citations are modified to reflect Chapter 45.56 in place of Chapter 45.55 references; federal law citations are updated.

**SECTION 29 (p. 105)** – Repeals statutes that are no longer needed in AS 45.55 because they do not apply to Alaska Native Claims Settlement Act corporation proxy solicitations.

**SECTION 30 (p. 105)** – Amends indirect Court Rules relating to changes in AS 45.56.

**SECTION 31 (pp. 105-106)** – Allows the department to adopt transition regulations.

**SECTION 32 (pp. 106-107)** – Amends the law to effect transition and application of AS 45.55 for existing proceedings, existing rights and duties.

**SECTION 33 (p. 107)** – Reviser’s instruction to rename AS 45.55 to Alaska Native Claims Settlement Act Corporations Proxy Solicitations and Initial Issuance of Stock.

**SECTION 34 (p. 107)** – Conditional effect of certain provisions upon constitutionally required vote of each house.

**SECTION 35** – July 1, 2016 effective date.



Senate Bill 194CS-I  
AK Securities Act; Penalties; Crt. Rules  
Summary of Changes  
April 8, 2016

**Structural Changes.** The order of the sections has been reorganized. HB 194A was drafted with the new AS 45.56 Alaska Securities Act at the beginning of the bill with other statutes amended in numerical order at the end. HB 194 CS I now follows the order of the statutes amended beginning with AS 06.

**Drafting.** Legislative Counsel made conforming drafting and legal improvements throughout the bill including consolidating definitions into Article 7, Sec 45.56.740 or citing to existing definitions in other statutes.

**Summary of Changes**

**Sec. 1 – 24.** Renumbered from HB 194A and moved to the front of the bill. HB 194 A, Sec. 6 AS 21.42.315(k) was deleted because ‘variable annuity’ was removed from the definition of security (see Article 7 Definitions)

**Sec. 25. Chapter 56. Alaska Securities Act** (pg. 14)

**Article 1. General Provisions.** No changes.

**Article 2. Exemptions from Registration of Securities.** The per-investor limit for small intrastate securities offerings in 45.56.220(4) was raised from \$5,000 to \$10,000. *This change was made by committee amendment. No other changes.*

**Article 3. Registration of Securities and Notice Filing of Federal Covered Securities.** The words “by governmental authorities” was deleted at the end of Sec. 45.56.310(12). *This change was made by committee amendment. No other changes.*

**Article 4. Broker-dealers, Agents, Investment Advisers, Investment Adviser Representatives, and Federal Covered Investment Advisers.** No substantive changes.

**Article 5. Fraud and Liabilities.** No substantive changes.

**Article 6. Administration and Judicial Review. (pp. 66-86)**

**Sec. 45.56.605(e)** relating to the securities education and training fund was moved to a new Sec. 45.56.625 Securities investor education and training fund. Section 45.56.635(f) was deleted from the bill because variable annuity was removed from the definition of security.

**Sec. 45.56.625 Jurisdiction** contents were combined with **Sec. 45.56.635 Applicability of the chapter.**

Treble damages in administrative enforcement (45.56.650) and civil enforcement (45.56.655) may be awarded if the victim is a “vulnerable adult.” *This change was made by committee amendment.*

**Sec. 45.56.660. Civil liability and Sec 45.56.665 Rescission Offers.** The legal rate of interest for rescission and civil enforcement is the legal rate of interest under AS 09.30.970 **or eight percent a year, whichever is greater.** (Bold is new)

**Article 7. Miscellaneous and Additional General Provisions.**

**Sec. 45.56.900. Definitions.**

(23) Older Person (formerly Older Alaskan) – a natural person that is age 60 or older  
(adapted from AS 47.26.290(6))

(32) Security – “variable annuity” is deleted from the definition

(36) "vulnerable adult" means a person 19 years of age or older who, because of incapacity, mental illness, mental deficiency, physical illness, physical disability, advanced age, chronic use of drugs, chronic intoxication, fraud, confinement, or disappearance, is unable to meet the persons own needs or to seek help without assistance. *Added by committee amendment.*

**Sections 26-28.** No substantive changes.

**Section 29.** “45.55.960” was deleted because it was included as part of statutes repealed, and should not be repealed.

**Sections 30-35.** No substantive changes.



THE STATE  
of **ALASKA**  
GOVERNOR BILL WALKER

**Department of Commerce, Community,  
and Economic Development**

DIVISION OF BANKING AND SECURITIES

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House Bill 194  
AK Securities Act; Penalties; Crt. Rules  
"Snowbird" Exemption Scenarios – Broker-Dealer Firms

**Fact Scenario One:**

John, a resident of Arizona, has a broker-dealer firm, AZ Trade, which he works with in Arizona. AZ Trade is currently licensed in Arizona, according to all requirements of Arizona law, but not licensed in Alaska. John travels to Alaska for the summer where he has a second residence and wants to continue doing business with AZ Trade while he is in Alaska.

**CURRENT LAW:**

When John comes to Alaska, AZ Trade must become licensed in Alaska to maintain the full broker-client business relationship throughout the time that John resides in Alaska.

Currently there is something called a "de minimis" exemption that allows some limited relationship to continue, but under that exemption, all contact must be initiated by John and the work cannot exceed 15 transactions across all of Alaska in a 12 month period. This exemption is a source of many questions by broker-dealers and many licensees find it confusing.

**PROPOSED LAW:**

As long as AZ Trade maintains its licensure in Arizona (where John has his principal residence), AZ Trade does not have to get any additional license to keep John as a customer while he is temporarily living in Alaska.

**Fact Scenario Two:**

John moves his principal residence to Washington from Arizona, but wants to keep working with AZ Trade.

**CURRENT LAW:**

AZ Trade is required to become licensed in Washington according to Washington law.

**PROPOSED LAW:**

AZ Trade is required to become licensed in Washington. The proposed law does not change this requirement, as Washington's law controls here. As long as AZ Trade maintains its license in Washington, it can benefit from the snowbird exemption anytime John visits Alaska.

**Fact Scenario Three:**

John decides to move permanently to Alaska and wants to keep working with AZ Trade.

**CURRENT LAW:**

AZ Trade must become licensed in Alaska if it exceeds 15 transactions within a 12 month period with Alaskan residents.

**PROPOSED LAW:**

Under the new “de minimis” exemption (45.56.405(b)(1)(G)), AZ Trade only has to become licensed in Alaska if it has more than three customers in Alaska in a 12 month period. If John remains AZ Trade’s only Alaska customer, it does not have to become registered to do business here.

Notes about the exemption:

- The exemption applies to the broker-dealer FIRM, not the individual agents. As a general rule, agent registration always flows from the firm’s (i.e. if the firm has to be registered, so do its agents who conduct business in Alaska or with Alaskan residents. If the firm does not have to be registered, neither do its agents).
- The firm is always required to maintain its registration where the customer has his or her principal place of residence.
- 23 other states currently have this exemption, which is taken directly from the model language of the 2002 Uniform Securities Act.
- As long as the firm is registered in the state where the client has his or her principal place of residence, and the client has a second residence in Alaska, the firm can use the exemption in Alaska.
- The responsibility to be properly licensed lies with the firm and its agents (salespeople).

There is a similar exemption for Investment Advisers at Sec.45.56.435(b)(1)(C).



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Senate Bill 194  
AK Securities Act; Penalties; Crt. Rules  
Summary of Changes  
*Version A to N*

Structural Changes. The order of the sections has been reorganized. HB 194A was drafted with the new AS 45.56 Alaska Securities Act at the beginning of the bill with other statutes amended in numerical order at the end. HB 194 CS N now follows the order of the statutes amended beginning with Title 06.

Drafting. Legislative Counsel made conforming drafting and legal improvements throughout the bill including consolidating definitions into Article 7, Sec 45.56.740 or citing to existing definitions in other statutes.

Summary of Changes

**Sec. 1 – 24.** Renumbered from HB 194A and moved to the front of the bill. HB 194 A, Sec. 6 AS 21.42.315(k) was deleted because 'variable annuity' was removed from the definition of security (see Article 7 Definitions)

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**Article 1. General Provisions.** No changes.

**Article 2. Exemptions from Registration of Securities.** No changes.

**Article 3. Registration of Securities and Notice Filing of Federal Covered Securities.** The words "by governmental authorities" was deleted at the end of Sec. 45.56.310(12) by committee amendment. No other substantive changes.

**Article 4. Broker-dealers, Agents, Investment Advisers, Investment Adviser Representatives, and Federal Covered Investment Advisers.** No substantive changes.

**Article 5. Fraud and Liabilities.** No substantive changes.

**Article 6. Administration and Judicial Review. (pp. 66-86)**

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**Sec. 45.56.660. Civil liability and Sec 45.56.665 Rescission Offers.** The legal rate of interest for rescission and civil enforcement is the legal rate of interest under AS 09.30.970 **or eight percent a year, whichever is greater.** (Bold is new)

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(adapted from AS 47.26.290(6))

(32) Security – “variable annuity” is deleted from the definition

**Sections 26-28.** No substantive changes.

**Section 29.** “45.55.960” was deleted because it was included as part of statutes repealed, and should not be repealed.

**Sections 30-35.** No substantive changes.

**Alaska Securities Act CSHB 194\N**  
**House Judiciary Committee**  
**April 6, 2016**

**OVERVIEW:** HB 194 repeals and reenacts the Alaska Securities Act. This Act provides the legal framework for offering or selling securities in Alaska or to Alaskans including provisions for crowdfunding, registration of the securities and salesforce, taking action against those who violate the Act, and providing education about securities and investments to Alaskans, including citizens, entrepreneurs and industry.

Highlights:

- Separates securities statutes from Alaska Native Claims Settlement Act (ANCSA) related statutes to reduce confusion and improve understanding of each Act
- Synthesize with other states' laws to make it easier for businesses, entrepreneurs and investors to understand their rights, responsibilities and opportunities in Alaska. Clarifies disclosure requirements.
- Eliminates filings for all exemptions except crowdfunding
- Allows Alaskans to invest up to \$10,000 in Alaskan businesses that file disclosure materials with the division including information about the business, control persons, salespersons and depository (crowdfunding).
- Deters investment scams using Alaska entities or harming Alaskans through
  - Increased penalties against those who break the law and scam Alaskans
  - Trebled penalties against those who harm an older person or a vulnerable person
- Facilitates requirements for broker/agent continuing education
- Allows the division to develop and implement investor education initiatives and to accept grants or donation for those specific purposes
  - 1/3 of civil penalties received may be deposited into an Investor Education Fund (IED);
  - Legislature may appropriate IED funds for investor education and training
- Recognize and incorporate current industry terms and standards, as well as update legal citations (removes telegram notice about effective registrations)
- Facilitates use of electronic records and signatures
- Improves statutory organization

Significant Changes to Administrative Enforcement (Division ordered)

- Civil penalties increased from \$25,000 to \$100,000 per violation with no maximum limit
- Penalties may be trebled when the victim is 60 years of age or older
- Division may order the bad actor to pay losses to the investor (restitution)
- Division can bar a bad actor from having an Alaska securities license
- Superior Court can hold a person in violation of a final administrative order in civil contempt, subject to potential \$100,000 fine per violation

Significant Changes to Civil Enforcement

- Provides guidance regarding remedies available including injunctions, asset freezes and receivership
- Treble penalties where victim is age 60 or older
- Order of rescission or disgorgement
- Restitution
- Ordering repayment of prejudgment or post judgment interest
- Civil liability is separated from rescission
- Describes circumstances and remedies where sellers/issuers and purchasers are liable
- Salespeople who violate the act are liable to their clients, who may recover damages

- Statute of limitations is generally three years from the date of sale, unless there is fraud

Significant changes to rescission offers:

- Aggrieved party has 30 days to accept rescission offer
- Offeror must demonstrate ability to pay and deliver the offer in a way that ensures receipt
- Offeror must actually pay as promised

Criminal Enforcement.

- Five year statute of limitations
- For certain provisions, “willful violation” is changed to “knowing violation”
- Knowing violations - Class C felony under AS 12.55.125 and fine increased from \$5,000 to \$100,000
- An unknowing violation is a Class A misdemeanor
- Altering or destroying evidence is a Class C felony

**WHY DOES ALASKA NEED TO UPDATE THE SECURITIES LAW NOW?**

13-1095-S, Fortune Oil & Gas, Russell Vera and R. Gerald Bailey: On February 3, 2014, the Division issued a Final Cease and Desist Order that included the MAXIMUM civil penalty of \$25,000 against Respondents for selling over \$3.1 million in unregistered limited partnership interests in Texas Oil and Gas ventures, mainly to Alaskan investors.

14-1442-S, Global Arena Capital Corp.: On October 23, 2015, the Division issued a Final Cease and Desist Order that included a civil penalty of \$150,000 against Global Arena and six of its employees for violations of the Alaska Securities Act. Specifically, an employee of Global Arena contacted an elderly Alaska halibut fisherman in poor health and sold him junk bonds, although the investor believed he was buying something like a CD. The investigation revealed that the agents were instructed to offer and sell the junk bonds as “safe investments.” The fisherman invested \$27,000 in the bonds, which rapidly lost value. The firm even attempted to sell the investor to purchase other bonds, including one that would not reach maturity until the investor was 119 years old. The investment lost nearly \$16,000. Global Arena was cited for deceptive and misleading representations and offering unsuitable securities. Under the current statute, money received by the state from a court judgment goes into the General Fund. Currently, the Division can only get money back for a defrauded investor with an agreement with a bad actor to pay restitution directly to the investor. In this case, the Division successfully negotiated with one of the Respondents to pay restitution to the investor.

15-1520-S/15-1520-2-S, Garden State Securities/Garland James: Garland James, previously an agent at Global Arena Capital Corp., went to work for Garden State. He cold-called the same elderly Alaskan fleeced by Global and tried to sell him purchase \$82,000 of a risky biotechnology stock. When he made the call, James was not registered as a broker-dealer agent in Alaska. The Division entered into a consent agreement with Garden State to withdraw its registration in Alaska and pay a \$25,000 civil penalty (maximum) for failing to supervise James. The Division issued Temporary Cease and Desist Order against James on March 21, 2016 for unregistered activity and for offering an unsuitable security to the investor, seeking a \$25,000 civil penalty.

12-85-S, Troy Stafford and Patrick Williams: Stafford and Williams formed an Alaska LLC, GS Capital and WS Seafood. Stafford offered an Alaska resident an opportunity to invest \$40,000 in WS Seafood and employment. Stafford also stated, falsely, that another corporation had promised a \$10 million loan to assist the endeavors. The investor invested his money. The deal fell through and the investor never received the promised management role. The Division negotiated a settlement with the Respondents, requiring them to offer rescission to the investor, which Respondents agreed to do and promised to pay, even filing a notice of rescission with the Division. Respondents never paid the investor as promised. The Division issued a Cease and Desist and received a court order to enforce it.



Financial Security...for Life.

*Carl B. Wilkerson*

*Vice President & Chief Counsel, Securities & Litigation*

April 1, 2016

Statement of the American Council of Life Insurers on Senate Bill 108 and House Bill 194  
in the Alaska Legislature

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The American Council of Life Insurers<sup>1</sup> strongly supports the enactment of Senate Bill 108 and House Bill 194, as amended.<sup>2</sup> This legislation will enhance the Alaska securities laws and will implement commendable uniformity with other states throughout the nation. The amended bills reflect important modifications that ensure investor protection and an efficient securities marketplace. The legislation is consistent with the Uniform Securities Act of 2002<sup>3</sup> and compliments a comprehensive network of state and federal securities and insurance regulation.

Importantly, the amendments to Senate Bill 108 and House Bill 194 exclude variable annuities from the definition of the term "security." This dovetails prudently with the Alaska insurance laws that grant the insurance director the exclusive authority to regulate the issuance and sale of variable annuities.<sup>4</sup> This aspect of the bills promotes sensible and functional regulation, reflects the practices in the majority of states, and prevents duplicate layers of regulation. The significant laws and regulations enforced by the Alaska Insurance Director, together with those of the U.S. Securities and Exchange Commission and the Financial Institutions Regulatory Authority (FINRA), provide effective and efficient consumer protection.

Life insurers greatly appreciate the accessibility and responsiveness of Division of Banking and Securities Director Kevin Anselm and Insurance Director Lori Wing-Heier who worked diligently and constructively together with the life insurance industry as the bills evolved through the legislative process. Their substantive expertise helped inform the legislative process in an exemplary fashion.

Thank you for the opportunity to share the views of the life insurance industry on this important legislation. Please let us know if you have any questions.

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<sup>1</sup> The American Council of Life Insurers (ACLI) is a national trade association with approximately 300 member companies operating in the United States and abroad. 215 member companies serve Alaska consumers. ACLI advocates in federal, state, and international forums for public policy that supports the industry marketplace and the 75 million American families that rely on life insurers' products for financial and retirement security. ACLI members offer life insurance, annuities, retirement plans, long-term care and disability income insurance, and reinsurance, representing more than 90 percent of industry assets and premiums in Alaska. Learn more at [www.acli.com](http://www.acli.com).

<sup>2</sup> The amendments appear in the [CS for Senate Bill 108 \(L & C\)](#) (March 3, 2016) and in the [CS for House Bill 194 \(L & C\)](#) (March 24, 2016).

<sup>3</sup> The Uniform Securities Act of 2002 was promulgated by the National Conference of Commissioners on Uniform State Laws. This model law implements the National Securities Markets Improvements Act of 1996 which was enacted to harmonize and modernize state and federal securities regulation.

<sup>4</sup> Banking and Securities Director Kevin Anselm helpfully clarified during her testimony on the amended legislation that variable annuities were excluded from the definition of security so that "variable annuities will remain under the sole regulation of the Division of Insurance under Title 21." See [House Labor & Commerce Hearing](#) (March 14, 2016).