

ALASKA LEGISLATURE SPECIAL COMMITTEE / SUBJECT FILES 86/2

919 SCCOMM32: AK GENERAL STOCK OWNERSHIP CORP. 1979-80

the AGSOC provide for the application and stop transfer requirements in the articles of incorporation or the by-laws.

The Securities Exchange Act of 1934
and The Investment Company Act of 1940

As was indicated in our firm's Securities Memorandum, AGSOC does not fall within any statutory exemptions to either the 1934 or the 1940 Acts, and without special provision by the SEC, it will be required to register its securities, to file periodic reports, to comply with proxy rules, to comply with disclosure and trading rules under the 1934 Act and to file under and comply with the fiduciary standards of the 1940 Act.

The primary goals of the 1934 Act are to ensure that shareholders have adequate information concerning the financing and operations of registered companies to permit informed investment decisions, to ensure that shareholders have similar information when they are called upon to vote on corporate matters, and finally to ensure that sales and exchanges of shares occur in a free and open fair market exchange. The 1940 Act has similar goals although it additionally imposes certain fiduciary standards upon the management of investment companies because of the risks that it might usurp control of shareholder assets.

S. 170 permits the AGSOC to be run as a fairly conventional private corporation. It is primarily subject to control by the legislature in its initial stages^{14/} and it is thereafter subject to governance by shareholders^{15/} and the board of directors.^{16/} It is unique in other respects: (1) its shareholders, constituting a cross-section of the state's citizens, will be in large measure unsophisticated in the exercise of shareholder rights and investment decisions;^{17/} (2) shareholders will have little or no initial equity investment in AGSOC; (3) they will be subject to severe limitations on sales or transfers of their shares, particularly during the first five years

^{14/} The legislature must amend the enabling legislation pursuant to § 10.50.640 to control it thereafter.

^{15/} A vote of shareholders is required to amend the articles of incorporation, § 10.50.375, and to approve certain asset sales.

^{16/} The directors may create and amend the bylaws, § 10.50.125, and have other standard management powers of corporate directors.

^{17/} Many shareholders will be minors or other legal incompetents.

after distribution;^{18/} (4) ownership of shares will remain unconcentrated by statutory mandate; (5) bars to proxy

^{18/} In conformance with Subchapter U, S. 170 provides many restrictions which will make it extremely difficult for a trading market in AGSOC shares to develop. For example, shares may not be transferred, voluntarily or involuntarily, within the first five years after issuance, and they may thereafter only be transferred to "resident individuals of the chartering State." It will not be possible for security brokers or dealers to make a market in AGSOC shares if this section is interpreted to mean such entities cannot hold AGSOC shares. Also, since no individual can own more than ten shares, it may not be feasible to create a trading market funded through transfer fees in a manner comparable to those which exist for other private corporate securities. The legislature should, as we previously recommended, give serious consideration to empowering AGSOC to be its own transfer agent or to the creation of a transfer mechanism for bringing together willing buyers and sellers.

Another potential problem is presented by the involuntary transferor. The AGSOC legislation provides at several points that redemption of shares shall be at book value. It is possible that there will be no or negative book value for the shares at stages during the operation of the corporation, when the carrying value of assets approximates the unamortized acquisition debt. This means that shareholders who leave the state or whose shares pass by operation of law to non-residents during the first five years after issuance may end up being forced to "sell" for far less than what would otherwise be market value. The legislature may wish to consider enabling AGSOC to pay a "fair market value" rather than book value to avoid unfairness.

usage^{19/} and cumulative voting^{20/} will limit shareholder power (while simultaneously barring usurpation of it by certain groups) and (6) AGSOC equity will be primarily supplied by loans from large financial institutions in reliance upon state guarantees. The existence of a diffuse, unsophisticated, and passive shareholder population together with a sophisticated and concerned set of creditors provides potential for abuses. S. 170 does not contain provisions which are adequate substitutes for most of the investor protections of the 1934 and 1940 Acts.^{21/}

^{19/} §§ 10.50.155 & 175.

^{20/} § 10.50.160.

^{21/} For example, because of the large shareholder population involved and the large sums of money which will be sought from financial institutions, this entity may have major impact upon financial markets. The SEC will probably be quite concerned about the contents of disclosures made to potential shareholders because of the lack of sophistication of this group of people compared with other investors in corporate securities. Particular care should be given to disclosure of the rights of minors and incompetents, who will probably compose a significant portion of shareholders. We propose to represent to the SEC that the notices to Alaska residents, the prospectus or other offering circulars, and other explanations of AGSOC made available to the public will contain full disclosure of the risks to shareholders.

In addition, S. 170 has no provision imposing fiduciary duties on officers or directors, other than requirements that loans not be made to officers or directors and

[Footnote continued on following page]

Our briefing memorandum prepared for the SEC will suggest that a modified form of 1934 Act regulation will be adequate to meet these problems during the five years after the initial distribution and that 1940 Act regulation would be unnecessarily burdensome. However, we anticipate that some modifications to S. 170 may be requested by the SEC during the course of these discussions because of the possibilities for abuse.

II. FEDERAL TAXATION OF AGSOC AND AGSOC SHAREHOLDERS

Subchapter U permits the creation of GSOCs by states and generally provides that a GSOC set up in conformance with its requirements will be exempt from federal taxation. 26 U.S.C. § 1392.^{22/} Taxation of the income of such corporations occurs at the shareholder level. § 1393. Shareholders also receive investment

[Footnote continued]

that distributions not be made unless there are adequate resources in the corporation. § 10.50.230. It provides for no periodic reports but only that shareholders may receive the most recent financial statements of the corporation upon written request. § 10.50.285.

^{22/} See generally Joint Committee on Taxation, General Explanation of the Revenue Act of 1978 (H.R. 13511, 95th Cong.; P.L. 95-600) (Joint Committee Print, March 12, 1979, pp. 321-24).

tax credits which would otherwise accrue to the corporation. § 1393(b). The corporation, rather than its shareholders, utilizes net operating losses which it may incur, and these may be carried forward for a ten-year period. § 172(b)(1)(H). The GSOC is required by Subchapter U to distribute 90 percent of its annual taxable income to shareholders,^{23/} (§ 1396), but to withhold 25 percent of such distributions for the IRS on behalf of shareholders. § 3402(r). AGSOC must file an informational tax return that identifies all shareholders and the distributions they have received. § 6039B.

Subchapter U permits a state to establish a GSOC between December 31, 1978 and January 1, 1984 by a charter enacted by the state legislature or a state-wide referendum. §§ 1391(a)(2) and (3). For the GSOC to qualify for the benefits of the Subchapter,

^{23/} These distributions must be made by January 31 of the year following the taxable year in question. A GSOC must maintain a segregated shareholder income account for purposes of accounting for such distributions. § 1394. At certain points, S. 170 refers to "dividends" rather than distributions. See, e.g., §§ 10.50.115(b), 10.50.140(a) and (b), 10.50.350, and 10.50.360; cf. § 10.50.215. These provisions should be conformed to the Subchapter U language.

its charter must provide for the issuance of only one class of stock, for the issuance of the stock only to "eligible individuals,"^{24/} for the issuance of at least one share of stock to each "eligible individual" unless such individual elects not to receive a share, and for certain restrictions on the transfer of shares. Id. § 1391(a)(4).^{25/} GSOCs may not own more than 20 percent of another company, (§ 1391(a), 1504), and may not obtain investment properties through the exercise of the state's power of eminent domain. § 1391(a)(5).

S. 170 contains the obligatory provisions required by Subchapter U^{26/} and generally appears to conform to the statutory standards. However, there are a few respects in which modifications to S. 170 may facilitate conformance of AGSOC with Subchapter U.

^{24/} Eligible individuals are defined as individuals who are residents of the chartering state during a period between "a date specified in the State's enabling legislation . . . and the date of issuance" of shares. § 1391(c).

^{25/} Shares may not be transferred for five years except by reason of death or if the shareholder ceases to reside in the state. Thereafter they may only be transferred to individual state residents who may not acquire more than 10 shares. Id. § 1391(a)(4)(D).

^{26/} See § 10.50.320(a), which requires AGSOC to set forth in its articles of incorporation Subchapter U's limitations on classes of shares, issuance, and restraints on alienation. S. 170 also requires that AGSOC must qualify under Subchapter U. § 10.50.320(9).

Taxation of Shareholders
at the Time of Distribution

Section 102 of the Internal Revenue Code provides that "gross income does not include the value of property acquired by gift" A gift has been defined as a voluntary transfer of property by one to another without any consideration or compensation therefor. Gray v. Barton, 55 N.Y. 68. The recipients of the shares are not required to do anything in order to be entitled to participate in AGSOC. They need only be residents of Alaska which they already are and will be. It cannot reasonably be argued that the possibility of becoming a shareholder will induce anyone to move to, or remain in Alaska. The recipients only have to be in Alaska to share in the disinterested generosity on the part of the donor. See Commissioner of Internal Revenue v. Duberstein, 363 U.S. 278 (1960).

It must be recognized that the IRS may resist treating the share distribution as a gift. For example, there is precedent for treating amounts as income where the recipient has done little or nothing to acquire the property. See Rev. Rul. 53-61, 1953-1 C.B. 17, holding treasure trove to be income to the finder. See also Cesarini v. United States, 428 F.2d 812 (6th Cir. 1970),

where a taxpayer was required to include in income currency discovered in a used piano bought at auction. The IRS has also held that payments under the Soil Bank Act, 7 U.S.C. § 1801, for refraining from planting crops constitute income. Rev. Rul. 60-32, 1960 C.B. 23. These precedents, which involve some minimal taxpayer activity, or induced inactivity, may be distinguishable in the mind of IRS. They do indicate, however, that there may be some reluctance on the part of IRS to exclude amounts from income, for example, where there is a transfer of property outside the normal family situation.

An alternative argument should also be considered. The receipt of shares by Alaska residents is comparable to a non-taxable transfer payment by a government. Support for the transfer payment analogy is found in the legislative history of Subchapter U.^{27/}

In general, the IRS has taken the position that transfer payments such as social welfare payments are not non-taxable, although no statutory authority for it to do so exists. United States v. Kaiser, 363 U.S. 299, 305-14 & App. (1960) (concurring opinion of Mr.

^{27/} Senator Gravel emphasized the hope that GSOC income could ultimately become a substitute for welfare.

Justice Frankfurter); see, e.g., I.T. 3230, 1938-2 C.B. 136 (unemployment benefits); I.T. 3447, 1941-1 C.B. 191 (social security payments); Rev. Rul. 57-102, 1957-1 C.B. 26 (aid to the blind); Rev. Rul. 72-340, 1972-2 C.B. 31 (job training); Rev. Rul. 36-395, 1976-2 C.B. 16 (home rehabilitation grants).

Rev. Rul. 76-131, 1976-1 C.B. 16, holding that benefit payments under the Alaska Longevity Bonus Act are taxable appears readily distinguishable. Those payments are available to all Alaskans "to provide an incentive to continue uninterrupted residence in the State and under no circumstances is to be considered a form . . . of public relief." The payments by Alaska under this Act must have been sufficient in amount to provide a realistic inducement for persons to remain in the State and are comparable to the Soil Bank Act payments in Rev. Rul. 60-92, supra.

It will, of course, be helpful to a favorable determination by IRS that the value of these shares of AGSOC will be readily perceived to be negligible, or possibly zero. The cost basis for gain on a future sale of the shares by the donee shareholder will be the same as the cost to the donor, i.e., negligible or possibly zero. 26 U.S.C. § 1015. Accordingly, the IRS may

recognize the administrative convenience of not taxing the initial distribution but instead deferring the tax until eventual sale when the entire proceeds will be subject to tax.

Finally, in the event that IRS is unwilling to rule favorably on the tax treatment of the initial stock distribution, consideration may be given to obtaining the opinion of two reputable appraisers, if it can reasonably be anticipated that a conclusion of zero value will be reached. In view of the apparent negligible revenue loss involved, if any, it would be highly unlikely that such appraisal would not be accepted as conclusive of the issue.

Tax Consequences After the
Initial Distribution of Shares

Under federal law, AGSOC will become eligible for Subchapter U treatment once it qualifies and so elects. 26 U.S.C. 1392(a). It may revoke its election for a year or more with the consent of the Secretary of the Treasury. Id. § 1392(f). S. 170 provides that AGSOC shall be formed in conformance with Subchapter U, (§ 10.50.010), and that its Articles of Incorporation shall set out that it "must qualify" as a GSOC under Subchapter U. § 10.50.320(9). The Articles may be

amended in conformance with Section 10.50.365 et seq. but only if as amended the Articles "contain provisions which would be lawfully contained in original articles of incorporation at the time the amendment is made."

While the matter is not free from doubt, we believe the state legislation is thus more restrictive than Subchapter U,^{28/} and requires AGSOC to maintain its election as a Subchapter U entity. We believe it would be preferable to permit a maximum flexibility by allowing the Articles to be amended to drop Subchapter U status under the usual procedure whereby the Board of Directors (or 1000 shareholders) proposes an amendment subject to shareholder approval. § 10.50.375. To accomplish this end, we believe § 10.50.320(9) should be modified^{29/} and that the possibility of such a change should be added to the list in § 10.50.370.

28/ AGSOC may also lose its Subchapter U status under federal law by "ceasing to be" a GSOC, 26 U.S.C. § 1392(f), but it would appear that this can only occur by such affirmative actions as passing amendments which do not conform to § 1391(a)(4), acquiring assets through exercise of the power of eminent domain, or becoming a member of an affiliated group (i.e., obtaining a greater than 20% investment in another group).

29/ The phrase "unless any election to so qualify is terminated under section 1392(f) of such Subchapter" would be added to the section.

Tax consequences to individuals holding AGSOC shares are set forth in Subchapter U, and nothing in S. 170 raises questions in this regard. The Internal Revenue Code provides that the IRS may by rule provide for a certification procedure by which AGSOC could be exempt, as to non-taxpayers, from the requirement of section 3402(r) that the GSOC reserve 25 percent of distributions as withheld taxes on behalf of shareholders as if it were their employer. 26 U.S.C. 3402(r). We propose to explore the feasibility of establishing such a procedure with the IRS. While such a procedure is desirable from a social welfare perspective (permitting these individuals to receive full distribution value as soon as possible and removing the burden of filing a federal tax return), a technique will have to be established to minimize administrative burdens upon AGSOC which would have to determine and keep a record of which of its anticipated 400,000 shareholders were taxpayers in any given year.

Summary of Points
To Be Discussed with the IRS

We propose to present a brief memorandum describing AGSOC and S. 170 to officials of the IRS.

The focal point of our discussions will be the tax consequences of the initial distribution of shares. We propose to request a revenue ruling on this point on behalf of the citizen shareholders of the State of Alaska. Consideration should also be given to discussing the following matters with IRS:

- (1) Confirmation of our understanding of how Subchapter U will work, including
 - (a) AGSOC obligations to the IRS;
 - (b) AGSOC shareholder obligations to the IRS;
 - (c) The general type of reports IRS will desire from GSOCs and the types of regulations contemplated to be issued for GSOCs.
- (2) Confirmation that AGSOC as proposed in S. 170 will be viewed in conformance with Subchapter U, including
 - (a) That S. 170 is a sufficiently detailed "charter" within the meaning of 26 U.S.C. § 1391(a);^{30/}
 - (b) That the definition of "eligible individuals" conforms to Subchapter U requirements;

^{30/} It could be argued that such a charter must contain details of AGSOC governance as currently planned for the Articles of Incorporation.

- (c) That charging consideration for shares will not defeat Subchapter U status;
- (d) That S. 170 provisions requiring eligible individuals to apply for shares are compatible with Subchapter U status;^{31/}
- (e) That secondary issuances of shares will not be considered different classes of stocks in conflict with 26 U.S.C. § 1391(a)(4)(A).

III. CONSTITUTIONAL ISSUES

For purposes of determining who is an "eligible individual, the drafters of S. 170 would begin the mandatory period of state residency on the effective date of the enabling legislation. § 10.50.320(6). Persons who are entitled to receive shares thus must remain residents of Alaska for the entire period from the effective date of S. 170 until the date of issuance of shares.^{32/} As now defined, the class of eligible individuals is permanently fixed and any later issuances of shares by AGSOC apparently

^{31/} The federal legislation states that the GSOC shall provide for the "issuance of at least one share to each eligible individual," 26 U.S.C. § 1391(a)(4)(C). S. 170 makes clear that receipt of a share is dependent upon application by residents in response to state-wide notification procedures. § 10.50.345-360. We will attempt to clarify that the IRS does not deem GSOCs as under a duty to seek out and issue shares to all eligible individuals. Such a view could be fatal to AGSOC's tax-free status.

^{32/} These individuals are referred to herein as "charter residents."

may only be made to charter residents. We again call to your attention our reasons for questioning this approach, although it appears acceptable under Subchapter U.

First, this restriction of eligible individuals to members of a closed class of persons resident within the state at a fixed point in time may pose significant constitutional problems. See Wilmer, Cutler & Pickering, Memorandum for the Commissioner of Revenue, State of Alaska: Federal Constitutional Issues Presented by Alaska's GSOC (December 15, 1978).^{33/} S. 170 exaggerates some of the problems we have previously raised because it also provides that within five years of issuance, shares must be sold back to the corporation if charter residents leave the state or die leaving their shares to nonresidents. This means that the pool of AGSOC shareholders will include only those charter residents who stay within the state for five years (and the small group who move into the state within this period and inherit shares from a charter resident). After five years, right to AGSOC shares seemingly vests in charter residents and their heirs may retain

^{33/} (Hereinafter "Constitutional Memorandum"). As we indicated there, such limited eligibility for a government benefit must at least be based upon significant state interests as recited in legislative findings.

AGSOC shares even if they do not reside in Alaska. Establishing a fixed class which excludes Alaska citizens who are born in or move to Alaska after S. 170's effective date from AGSOC share issuances may then appear particularly inequitable in view of the fact that these non-Alaskan heirs will hold shares and receive AGSOC income. Even if later arriving residents may acquire shares from charter residents after the five-year period, there can be no assurance that a market in such shares will exist.

The possible constitutional problems are exacerbated by the fact the residency period to qualify as a charter resident could be lengthy, as AGSOC must be organized and become sufficiently operational to issue shares.^{34/} The longer the eligibility period the more difficult it will be to verify compliance with residency requirements. A long residency period will also reduce

^{34/} Incorporators must be selected, and an initial slate of directors chosen. The latter are subject to disapproval within 15 days of their nominations which could cause delay. S. 170 § 4(b). The directors must prepare articles of incorporation and bylaws, and there is at least a 60-90 day period after they have been drafted and filed during which the legislature has the authority to disapprove any of their provisions. § 10.50.335. Activities before share issuance but after finalization of the articles and bylaws, including preparation of offering materials and procedures for share distribution, will also take considerable time,

[Footnote continued on following page]

the pool of eligible individuals and increase the number of Alaska citizens who will be resident within the state on the date of issuance or before distribution but ineligible to receive AGSOC shares. The latter will increase the potential for challenges to the constitutionality of AGSOC, and may undercut the political acceptability of AGSOC as well.

A possible solution to these problems would be to revise S. 170 to provide that the eligibility period will commence on a fixed date prior to the date of share issuance -- ^{35/} e.g., three to six months before issue. This approach has the advantage that if there is an issuance of shares subsequent to the initial distribution, later arriving residents could be included as long as they had

[Footnote continued]

for example, section 10.50.345 provides for notice to allow for application for shares of at least 90 days before the date of issuance. Litigation by opponents of some aspect of the program could cause indefinite delay. It appears extremely likely that the total period involved may exceed six months and could create constitutional problems under both the federal and State of Alaska constitutions. As we have mentioned previously, Alaska courts have taken a particularly strong stance against durational residency requirements. Constitutional Memorandum at 1, n.1, 34, n.38.

35/ The pivotal "date of issuance of shares" of S. 170 §§ 10.50.345 and 355 may not be effectual, since the bill appears to contemplate sporadic issue. Perhaps, the standard "the date of initial notification to the public of its intention to issue shares" would better carry out the purpose.

been and remained residents for the applicable period to the later issuance. This approach would, of course, exclude charter residents who leave the state prior to any secondary issuance.

Wilmer, Cutler & Pickering
WILMER, CUTLER & PICKERING

March 28, 1980

MEMORANDUM FOR SAM STERN

RE: AGSOC: Additional Information Needed for
Application for Exemption from Investment
Company Act

It appears from a conversation held between myself and Gerry Laporte and Messrs. Hallock and Roye of the Investment Management Division of the SEC, that it would be helpful to our application if you could collect the following information during your trip to Alaska next week.

1. The Staff wants a "little better idea of what the investment policy will be." They commented that their previous understanding from our filings was that the AGSOC was to enter into joint ventures primarily to give citizens the opportunity to participate in the growth of the economy through investment in Alaska's natural resources. Now they apparently have gotten the impression that the AGSOC will be free to invest in businesses outside of Alaska, including some businesses in and outside of Alaska that will have nothing to do with the natural resources of Alaska. Mr. Hallock also said that he had previously had the impression that the AGSOC

was "sort of like a venture capital deal." Any more information you can find to clarify these matters would be helpful.

2. Hallock comments on the fact that we say that there will be no traditional investment advisor used by AGSOC. He wants to know how the investment opportunities will be investigated and how investment decisions will be made. Would this be by in-house professionals or is it planned that the Board of Directors itself will have sufficient expertise to investigate investment opportunities?

3. Hallock would like to have more information about the oversight functions to be performed by the Administrator of the Alaska Securities Act and the Alaska Commissioner of Revenue. Will there be substantive oversight or merely pro forma review? On pages 6 and 23 of our application we state that the Administrator can issue regulations regarding the content of shareholder materials. Will they do this or are there only two or three people in the Alaska Securities Office who don't do much? What about the role of the Commissioner of Revenue in overseeing the soundness of transactions for which the state guarantees loans. (Application, p. 25.) Will this be a real oversight? Will it be continuing, or only at the time of the initial guarantee?

4. We need to state in more detail where the loans for the AGSOC will come from. Is it planned that they will come from insiders?

5. As we told you, the SEC strongly prefers the formal application not be made until the legislation is passed and the Board of Directors in place. They may be susceptible to an earlier application if we can give persuasive reasons why their requirements are unreasonable in our context. I would suggest that you discuss this matter with the relevant persons and generally discuss the timing of the application, assuming we follow Mr. Hallock's advice.

6. The Staff pointed out that one section was missing from the draft of the bill we sent them on March 18. This is the section making ineligible to serve as directors, officers, and employees, certain persons convicted of felonies and subject to court orders. The section was inadvertently omitted because it was not included in the memorandum we sent to the Legislative Budget and Audit Committee on February 13. It had, however, been included in our memorandum to the SEC on January 30 and in our memorandum to the client on January 22. It has been included as section 10.50.261 in a new draft of the bill that Gerry Laporte will give you on Monday. Please be

certain that the client knows that this section should
be in the bill and has given its concurrence.

Pat Douglas

Jerry Laporte

A M E N D M E N T

Offered in the HOUSE

TO: CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 240

Page 59, line 4 - page 60, line 7:

Delete *Sec. 4 and insert the following:

* Sec. 4. (a) The governor, the speaker of the house of representatives and the president of the senate shall each appoint one person to act as incorporators and as the initial board of directors of the Alaska General Stock Ownership Corporation which shall be formed in accordance with subchapter U, chapter 1, of the Internal Revenue Code of 1954, as amended (26 U.S.C. secs. 1391 - 1397). At least one of the persons appointed shall have experience and training in the field of banking and at least one of the persons appointed shall have experience and training in business.

(b) Notwithstanding provisions in AS 10.50 dealing with the powers and duties of the board of directors, the incorporators appointed under (a) of this section have only the following powers and duties:

(1) to file articles of incorporation of the Alaska General Stock Ownership Corporation under (c) of this section and obtain a certificate of incorporation;

(2) to explore possible investments for the Alaska General Stock Ownership Corporation;

(3) to explore possible sources of financing for the Alaska General Stock Ownership Corporation and enter into preliminary negotiations concerning potential loans;

(4) to examine administrative costs for the Alaska General Stock Ownership Corporation and identify potential administrative difficulties;

(5) to develop a detailed plan for distribution of shares of stock of the Alaska General Stock Ownership Corporation;

(6) to file applications and request needed rulings and exemptions from the Internal Revenue Service, the Securities and Exchange Commission, and other state and federal departments and agencies;

(7) to determine whether the Alaska General Stock Ownership Corporation requires state assistance and, if the incorporators decide that it does, to prepare a report for review by the legislature which shall be submitted by March 1, 1981, containing findings and recommendations of the incorporators;

(8) to determine whether the Alaska General Stock Ownership Corporation can feasibly operate and, if the incorporators decide that it cannot, to prepare a report for review by the legislature which shall be submitted by March 1, 1981, containing the findings of the incorporators and recommending that the corporation be dissolved;

(9) to determine by March 1, 1981, whether the Alaska General Stock Ownership Corporation can realistically proceed to operate without state assistance and, if the incorporators decide that it can,

(A) to select nine persons approved by a majority of the incorporators to act as the successor board of directors and submit their names by April 1, 1981, to the governor, to the speaker of the house of representatives, and to the president of the senate;

(B) if a majority of the governor, the speaker of the house of representatives, and the president of the senate disapprove a candi-

date for the successor board of directors within 15 days of receipt of the incorporators' nominations, to submit within 15 days the name of an alternative candidate approved by a majority of the incorporators;

(10) within the limits of appropriations made for the purpose, to enter into contracts and incur expenses needed to carry out the duties of the incorporators under this section.

(c) The provisions of AS 10.50.320(2), (4), (6), and (7) do not apply to the articles of incorporation of the Alaska General Stock Ownership Corporation filed by the incorporators. The articles of incorporation shall contain the following provisions in addition to those still required under AS 10.50.320:

(1) that shares of stock may be issued only to individuals who are residents of the state as defined in AS 10.50.640(11) on the effective date of the appointment of the successor board of directors under (b)(9) of this section and who continue to be residents until the date of issuance of the shares of the Alaska General Stock Ownership Corporation;

(2) that at least one share of stock of the Alaska General Stock Ownership Corporation shall be issued to each individual eligible under (1) of this subsection, unless that individual elects within one year after the date of issuance of the shares not to receive the share;

(3) that if a shareholder ceases to be a resident of the state or if his shares pass by operation of law to a nonresident,

(A) within five years of the date of issuance of his shares the Alaska General Stock Ownership Corporation shall purchase the shares of the shareholder at book value;

(B) more than five years after the date of issuance of his shares the shareholder or his executor, administrator or guardian shall have the right to sell the shares to the Alaska General Stock Ownership Corporation at book value.

(d) The Alaska General Stock Ownership Corporation must indemnify the incorporators under AS 10.50.020.

(e) An incorporator is entitled to transportation expenses and per diem as set out in AS 39.20.180.

(f) There is a special fund of the state known as the "Alaska General Stock Ownership Corporation feasibility study fund" which may not exceed \$1,000,000, which shall be completely segregated from all other funds of the state, and which shall be used by the incorporators to carry out their duties under this section. The unused portion of the fund lapses into the general fund on March 1, 1981. If the Alaska General Stock Ownership Corporation begins operations under (b)(9) of this section or after legislative review under (b)(7) or (8) of this section, the amount of money used from the fund shall be assumed as a loan by the Alaska General Stock Ownership Corporation to be repaid to the general fund of the state upon the terms set by the commissioner of revenue.

(g) Upon the appointment of a successor board of directors under (b) of this section, the Alaska General Stock Ownership Corporation shall begin to operate in accordance with AS 10.50. The successor board of directors shall hold an organization meeting under AS 10.50.340 and shall amend the articles of incorporation to conform to the requirements of AS 10.50.320(2) and (4) without submitting the proposed amendment to a vote of the shareholders as required by AS 01.50.375.

(h) There is a special fund of the state known as the "Alaska General Stock Ownership Corporation loan guarantee fund" which may not exceed \$5,000,000, which shall be completely segregated from all other funds of the state, and which shall be used by the commissioner of revenue to guarantee loans made to the Alaska General Stock Ownership Corporation by lenders other than the state solely for initial costs of the corporation and not for the acquisition by the corporation of major investments or for costs incurred by the incorporators in carrying out their duties under (b) of this section. In guaranteeing a loan, the commissioner of revenue shall review the loan for the purposes of ascertaining the general soundness of the proposed loan and guarding against fraud and misrepresentation. The guarantee of a loan may not be for an amount in excess of the unobligated balance of the fund at the time the guarantee is made.

A M E N D M E N T

Offered in the HOUSE

TO: CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 240

Page 59, line 4 - page 60, line 7:

Delete *Sec. 4 and insert the following:

* Sec. 4. (a) The governor, the speaker of the house of representatives and the president of the senate shall each appoint one person to act as incorporators and as the initial board of directors of the Alaska General Stock Ownership Corporation which shall be formed in accordance with subchapter U, chapter 1, of the Internal Revenue Code of 1954, as amended (26 U.S.C. secs. 1391 - 1397). At least one of the persons appointed shall have experience and training in the field of banking and at least one of the persons appointed shall have experience and training in business.

(b) Notwithstanding provisions in AS 10.50 dealing with the powers and duties of the board of directors, the incorporators appointed under (a) of this section have only the following powers and duties:

(1) to file articles of incorporation of the Alaska General Stock Ownership Corporation under (c) of this section and obtain a certificate of incorporation;

(2) to explore possible investments for the Alaska General Stock Ownership Corporation;

(3) to explore possible sources of financing for the Alaska General Stock Ownership Corporation and enter into preliminary negotiations concerning potential loans;

(4) to examine administrative costs for the Alaska General Stock Ownership Corporation and identify potential administrative difficulties;

(5) to develop a detailed plan for distribution of shares of stock of the Alaska General Stock Ownership Corporation;

(6) to file applications and request needed rulings and exemptions from the Internal Revenue Service, the Securities and Exchange Commission, and other state and federal departments and agencies;

(7) to determine whether the Alaska General Stock Ownership Corporation requires state assistance and, if the incorporators decide that it does, to prepare a report for review by the legislature which shall be submitted by March 1, 1981, containing findings and recommendations of the incorporators;

(8) to determine whether the Alaska General Stock Ownership Corporation can feasibly operate and, if the incorporators decide that it cannot, to prepare a report for review by the legislature which shall be submitted by March 1, 1981, containing the findings of the incorporators and recommending that the corporation be dissolved;

(9) to determine by March 1, 1981, whether the Alaska General Stock Ownership Corporation can realistically proceed to operate without state assistance and, if the incorporators decide that it can,

(A) to select nine persons approved by a majority of the incorporators to act as the successor board of directors and submit their names by April 1, 1981, to the governor, to the speaker of the house of representatives, and to the president of the senate;

(B) if a majority of the governor, the speaker of the house of representatives, and the president of the senate disapprove a candi-

date for the successor board of directors within 15 days of receipt of the incorporators' nominations, to submit within 15 days the name of an alternative candidate approved by a majority of the incorporators;

(10) within the limits of appropriations made for the purpose, to enter into contracts and incur expenses needed to carry out the duties of the incorporators under this section.

(c) The provisions of AS 10.50.320(2), (4), (6), and (7) do not apply to the articles of incorporation of the Alaska General Stock Ownership Corporation filed by the incorporators. The articles of incorporation shall contain the following provisions in addition to those still required under AS 10.50.320:

(1) that shares of stock may be issued only to individuals who are residents of the state as defined in AS 10.50.640(11) on the effective date of the appointment of the successor board of directors under (b)(9) of this section and who continue to be residents until the date of issuance of the shares of the Alaska General Stock Ownership Corporation;

(2) that at least one share of stock of the Alaska General Stock Ownership Corporation shall be issued to each individual eligible under (1) of this subsection, unless that individual elects within one year after the date of issuance of the shares not to receive the share;

(3) that if a shareholder ceases to be a resident of the state or if his shares pass by operation of law to a nonresident,

(A) within five years of the date of issuance of his shares the Alaska General Stock Ownership Corporation shall purchase the shares of the shareholder at book value;

(B) more than five years after the date of issuance of his shares the shareholder or his executor, administrator or guardian shall have the right to sell the shares to the Alaska General Stock Ownership Corporation at book value.

(d) The Alaska General Stock Ownership Corporation must indemnify the incorporators under AS 10.50.020.

(e) An incorporator is entitled to transportation expenses and per diem as set out in AS 39.20.180.

(f) There is a special fund of the state known as the "Alaska General Stock Ownership Corporation feasibility study fund" which may not exceed \$1,000,000, which shall be completely segregated from all other funds of the state, and which shall be used by the incorporators to carry out their duties under this section. The unused portion of the fund lapses into the general fund on March 1, 1981. If the Alaska General Stock Ownership Corporation begins operations under (b)(9) of this section or after legislative review under (b)(7) or (8) of this section, the amount of money used from the fund shall be assumed as a loan by the Alaska General Stock Ownership Corporation to be repaid to the general fund of the state upon the terms set by the commissioner of revenue.

(g) Upon the appointment of a successor board of directors under (b) of this section, the Alaska General Stock Ownership Corporation shall begin to operate in accordance with AS 10.50. The successor board of directors shall hold an organization meeting under AS 10.50.340 and shall amend the articles of incorporation to conform to the requirements of AS 10.50.320(2) and (4) without submitting the proposed amendment to a vote of the shareholders as required by AS 01.50.375.

(h) There is a special fund of the state known as the "Alaska General Stock Ownership Corporation loan guarantee fund" which may not exceed \$5,000,000, which shall be completely segregated from all other funds of the state, and which shall be used by the commissioner of revenue to guarantee loans made to the Alaska General Stock Ownership Corporation by lenders other than the state solely for initial costs of the corporation and not for the acquisition by the corporation of major investments or for costs incurred by the incorporators in carrying out their duties under (b) of this section. In guaranteeing a loan, the commissioner of revenue shall review the loan for the purposes of ascertaining the general soundness of the proposed loan and guarding against fraud and misrepresentation. The guarantee of a loan may not be for an amount in excess of the unobligated balance of the fund at the time the guarantee is made.

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COUNSEL

March 18, 1980

Mr. Dale E. Staley
Legislative Budget and Audit Committee
Alaska Legislature
Pouch V
Juneau, Alaska 99811

Re: AGSOC Investment Company
Act Exemption Application

Dear Dale:

We have submitted to the SEC Division of Investment Management on behalf of AGSOC the draft of an application for exemption from the Investment Company Act. Enclosed are two copies of the draft application.

We hope to file the application as soon as the SEC staff has reviewed and reacted to it. We will, of course, advise you of the staff's reactions.

I cannot stress too strongly the importance of making sure that each statement in the application is accurate and that we have not omitted any important matters. Please review the enclosures carefully with this in mind, and then advise us of any corrections or questions you have. Please do not hesitate to raise any issue. We want to be absolutely sure that every representation we make is entirely accurate.

We will have to wait for the reaction of the SEC staff to determine when the application will be

RECEIVED
MAR 24 1980
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COMMITTEE

- 2 -

filed. We hope, however, to be able to file it within two or three weeks.

Sincerely,

Sam

Samuel A. Stern

Encls.

ALAS003003
3/17/80

BEFORE THE
SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

-----)
In the Matter of) Application for an Order of Temporary
Exemption Pursuant to Section
ALASKA GENERAL STOCK) 6(d) or, in the Alternative,
OWNERSHIP CORPORATION) Pursuant to Section 6(c) of the
Investment Company Act of 1940
-----)

James W. Duncan ("Applicant"), Chairman of the
Legislative Budget and Audit Committee, Legislature of the
State of Alaska ("Legislature"), hereby applies for an order of
the Securities and Exchange Commission ("Commission") pursuant
to section 6(d) of the Investment Company Act of 1940, as
amended ("Act" or "ICA"), or, in the alternative, for an order
pursuant to section 6(c) of the Act, exempting conditionally
the Alaska General Stock Ownership Corporation ("AGSOC"), a
corporation to be chartered by an act of the Legislature, from
all the provisions of the Act, until five years after the
initial issuance of shares by of AGSOC. This period would
correspond with the time during which shares of AGSOC are not
alienable. Applicant agrees that the exemption may be
conditioned upon AGSOC's filing with the Commission and
distributing to shareholders an annual report containing
substantially all of the information required to be included in
annual reports of investment companies under section 30(a) of
the Act.

55 In executing and filing this application, Applicant
56 does not concede or represent that AGSOC will be an investment
57 company within the meaning of section 3 of the Act or that
58 AGSOC will be subject to the requirements of the Act. It is
59 not clear whether or to what extent the Act will apply to
60 AGSOC. Applicant respectfully suggests, nevertheless, that it
60 is not premature to request that the Commission issue an order
61 of exemption at this time. Apprising AGSOC of its legal
63 obligations now is necessary to facilitate proper planning for
64 the enterprise and to prevent the unnecessary expenditure of
65 public effort and funds.

66
66 Applicant intends to assure that AGSOC is structured
68 in a way that provides its security holders with all the
69 relevant protections embodied in the Act. Applicant is hopeful
70 that these protections will make it unnecessary to burden this
71 new entity with the full range of the Act's requirements during
72 the formative stages of its development. It is Applicant's
73 further hope that the temporary and conditional exemption will
74 permit AGSOC to identify any problems that may develop with
75 respect to the Act and to work out appropriate solutions to
75 such problems internally and in consultation with the
76 Commission and its staff.

77 77 78 I. BACKGROUND

79
80 The Legislature is considering legislation to charter
81 AGSOC in accordance with the provisions governing general stock
82 ownership corporations contained in title VI of the Revenue Act
83 of 1978.^{1/} The chartering legislation was introduced in the
88

89 -----
89
83 ^{1/} Pub. L. No. 95-600, tit. VI, 92 Stat. 2892 (codified
84 principally as INT. REV. CODE subch. II, 26 U.S.C. §§ 1391-97).
85 A copy of title VI is being filed concurrently herewith as
86 Exhibit A and is incorporated herein by reference.

89
89
90 Legislature in 1979^{2/} and will be reintroduced shortly in a
92 revised version.^{3/} The revisions reflect the comments and
106 suggestions of the staff of the Commission. Upon its
107 formation, AGSOC will issue one share of its stock to each
108 individual resident of Alaska; AGSOC will thus be a private
110 corporation owned by residents of Alaska.

111
115 A. The Federal Enabling Legislation

116
120 AGSOC will be a general stock ownership corporation
121 ("GSOC") formed in accordance with title VI of the Revenue Act
122 of 1978, a recent amendment to the Internal Revenue Code that
123 provides certain favorable tax treatment for such entities.
124 The focus of title VI was the enactment of subchapter U of the
125 Internal Revenue Code,^{4/} which provides the framework for
127 establishing a GSOC. The purpose of GSOC, as envisioned by
128 the sponsors of the federal legislation, is to provide state
129 residents with a greater ownership stake in the private
130 enterprise system and to broaden capital ownership.^{5/}

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90 2/ Sen. Bill 170, 11th Legis., 1st Sess. (1979).

93 3/ A copy of the bill, as it is expected to be revised,
94 is being filed concurrently herewith as Exhibit B and is
95 incorporated herein by reference. The revised bill contains
96 six sections. Section 1, which constitutes the bulk of the
97 bill, would add a new chapter to the Alaska Statutes, the
99 "Alaska General Stock Ownership Corporation Act" (the "Proposed
100 Act"). References to specific provisions of section 1 will be
101 cited by their section numbers as they will appear in the
103 Alaska Statutes (e.g., "Proposed Act § ____"). References to
104 sections 2 through 6 of the revised bill will be cited as
105 "Revised Bill § ____."

126 4/ 26 U.S.C. §§ 1391-1397.

130 5/ See S. Rep. No. 1263, 95th Cong., 2d Sess. 107
131 (1978); 124 Cong. Rec. S 19,168-169 (daily ed. Oct. 14, 1978)
132 (remarks of Senator Gravel).

51
52
53

Under subchapter U, each state may establish a GSOC provided the corporation's charter contains certain restrictions, including the following:

(1) only one class of stock may be issued;

(2) shares may be issued only to resident individuals of the chartering state;

(3) at least one share of stock must be issued to each resident individual who does not elect not to receive a share;

(4) shares may not be transferred for five years after they are issued, other than by testate or intestate succession or if the shareholder ceases to be a resident of the state;

(5) shares may not be transferred to nonresidents; and

(6) each individual's ownership is limited to 10 shares.^{6/}

In enacting title VI, Congress sought to assure adequate Federal oversight of GSOC's. The federal legislation provides that each GSOC must file an annual report with the Secretary of the Treasury summarizing its operations for the year. (26 U.S.C. § 6039B.) A GSOC must also file an informational tax return that, inter alia, identifies all shareholders and the distributions they have received and contains such other information as the Secretary of the Treasury may prescribe to enable him to carry out the provisions of subchapter U. (Id.) Federal Government oversight will also be provided by the Congressional Joint Committee on Taxation, whose staff is required under subchapter U to prepare a report on the operation of GSOC's. (Id. § 1391(e).) An interim report is to be filed within two years

^{6/} 26 U.S.C. § 1391(a)(4), (c).

178 after the first GSOC is formed, and a final report is to be
179 filed by September 30, 1982. (Id.)

181
182
183
184
185 B. State Enabling and Chartering Legislation

186
187 As far as Applicant is aware, Alaska is the only
188
189 state that has taken steps to take advantage of subchapter U.
190
191 Exhibit B is a copy of the legislative proposal that is now
192
193 being considered by Applicant as the enabling and chartering
194
195 legislation of AGSOC ("Revised Bill").

196
197 Section 1 of the Revised Bill would add a new chapter
198
199 to the Alaska Statutes, the "Alaska General Stock Ownership
200
201 Corporation Act" ("Proposed Act"). It would require that the
202
203 charter of a GSOC contain the provisions prescribed by
204
205 subchapter U (Proposed Act § 10.50.320(a)), and would provide
206
207 for the establishment of entities otherwise consistent with the
208
209 business corporation law of Alaska. For the most part, the
210
211 proposed Act tracks the language of the Alaska business
212
213 corporation statute and is similar to the corporation statutes
214
215 of other states. Certain provisions of the Proposed Act,
216
217 however, reflect the uniqueness of GSOC's. For instance, the
218
219 legislation permits the Legislature to disapprove the original
220
221 articles of incorporation and initial bylaws of a GSOC by
222
223 legislative veto within 60 days after submission. (Id.
224
225 § 10.50.335.)

226
227 The Proposed Act also sets out the procedures to be
228
229 followed for the initial issuance of shares by a GSOC. The
230
231 shares must be issued to all "eligible individuals" (generally
232
233 all residents), unless they elect not to accept their shares.
234
235 (See id. §§ 10.50.080-.085, 10.50.320(a)(7).) Beginning at
236
237 least 90 days before the initial issuance, the GSOC is required
238
239 weekly to notify residents of the issuance by publications in
240
241

220 newspapers and by radio and television announcements. (Id.
222 § 10.50.345.) Eligible individuals may apply for and receive
223 shares of GSOC stock up to two years after the date of initial
224 issue. (See id. § 10.50.345-.355.)7/
234

235 Section 3 of the Revised Bill requires that a GSOC
235 file with the Administrator of the Alaska Securities Act (1964,
236 the Commissioner of Commerce or his delegate), a copy of all
236 annual reports, ballots, consent authorizations, and other
237 materials relating to shareholder ballots published or made
238 available by any person to a GSOC's shareholders.8/ Section 3
241 also authorizes the Administrator to promulgate regulations
242 designed to insure fairness, completeness, and
243 nondiscrimination with respect to the content of such
244 shareholder materials.

245
246 Section 4 of the Revised Bill constitutes the
247 chartering legislation of AGSOC. It provides that Alaska's
248 Governor, Speaker of the House of Representatives, and
249 President of the Senate will each appoint one person to act as
250 an incorporator of AGSOC. The three incorporators are directed
251 to select nine persons to serve as AGSOC's initial board of
252 directors. The incorporators will submit the names of the
252 nominees to the Governor, the Speaker, and the President of the
253

256
256
225 7/ An individual who transfers or obtains shares through
226 fraud, misrepresentation, or any deceitful or illegal means is
226 guilty of a felony. Proposed Act § 10.50.310. Also, the
227 ownership interest of an ineligible individual (generally a
228 nonresident) who receives his initial share by presenting
229 fraudulent or misleading information will become void upon the
230 issuance of an appropriate court order, and he will be liable
231 for all dividends or other distributions received by him, plus
232 interest, as well as for legal fees and costs of recovery. Id.
233 § 10.50.360.

239 8/ Revised Bill § 3 (to be codified as an amendment to
241 ALASKA STAT. § 45.55.130).

Senate, who may by majority vote disapprove a nominee within 15 days of receipt of the nomination.

Once the nominations are approved, the incorporators will proceed to form AGSOC in conformance with the provisions of the Proposed Act. They will file the requisite articles of incorporation, including the provisions required by subchapter U, and will call an organization meeting of the directors. (Proposed Act §§ 10.50.315-.340.) At the organization meeting, the directors may adopt bylaws, elect officers, and otherwise provide for the transaction of business by AGSOC. (See id. § 10.50.340.) The notifications of the initial issuance of shares, applications for shares, and the initial issuance should follow shortly thereafter.9/

AGSOC will likely commence business operations by taking advantage of a "loan guarantee fund" established for it under section 4(d) of the Revised Bill. This fund, which shall not exceed \$5 million, is to be used by the Commissioner of Revenue to guarantee loans made to AGSOC by lenders (other than the State) for AGSOC's initial costs. It may not be used to acquire major investments.

C. Proposed Investment Policy of AGSOC

It is contemplated that AGSOC will acquire an interest in one or more business enterprises with borrowed funds; the acquired interests would be pledged to secure this debt. The cash flow from the acquired business interests will be used to service the debt and, to the extent of available earnings, pay dividends to the residents of the State who are its shareholders.

9/ See pp. 5-6, supra; Proposed Act §§ 10.50.345-.360.

297 No investment policy for AGSOC has been formulated as
298 of this date. Nor have specific investments been identified.
299 This is necessarily the case because investment policy will be
300 set by the AGSOC Board of Directors, which is not yet in
301 existence. The AGSOC Board of Directors, however, will not
302 operate in a vacuum. Certain legislative constraints will
303 limit its investment policy options.
304

305 There are three requirements imposed by subchapter U
306 of the Internal Revenue Code that will affect the investment
307 policy of AGSOC. First, AGSOC cannot be a member of an
308 affiliated group, defined for this purpose as a group of
309 corporations that are related through 20 or more percent stock
310 ownership. (26 U.S.C. §§ 1391(a)(1), 1504.) Thus, AGSOC
311 cannot own 20 percent or more of the stock of another
312 corporation. Second, AGSOC is not entitled to the 85-percent
313 dividends received deduction that is normally available to a
314 corporation with respect to dividends received from another
315 corporation. (26 U.S.C. § 1393(a)(2).) Thus, any investment
316 in another corporation would be subject to a double tax, once
317 at the corporate level of the company earning the income and
318 once in the hands of the AGSOC shareholders. In contrast, if
319 AGSOC invests directly in a project as a joint venturer rather
320 than through the vehicle of a corporate subsidiary, there is
321 only a single level of tax, i.e., the tax imposed on the AGSOC
322 shareholders. For this reason, it is unlikely that AGSOC will
323 invest in portfolio securities. Third, a shareholder in AGSOC
324 is liable for personal income taxes on his or her share of
325 AGSOC's earnings whether or not distributed by AGSOC. (26
326 U.S.C. § 1393.) Moreover, AGSOC is required to distribute at
327 least 90 percent of its taxable income for any taxable year and
328 is subject to a 20-percent penalty on any amount that is less

328 than the required distribution. (26 U.S.C. § 1396.) AGSOC's
329 board of directors is likely, therefore, to seek investments
329 that will produce sufficient cash flow to make the necessary
330 dividend payments, at least in an amount equal to the income
332 tax liability incurred by any shareholder with respect to the
332 earnings of AGSOC.

334
334 AGSOC's enabling legislation will not limit the
336 company to investments related to the Alaskan economy. Public
336 discussion, however, has tended to assume that AGSOC will focus
338 on investments that will allow its citizen-stockholders to
339 share in the development of the State's economy. For instance,
339 there has been much discussion and publicity concerning a
340 proposal for an AGSOC purchase of the British Petroleum
341 Company's interest in the TransAlaska Pipeline System. It is
342 likely, therefore, that AGSOC's Board of Directors will give
343 careful consideration to such a purchase as a potential
344 investment opportunity.

345
345
349 II. EXEMPTION OF AGSOC FROM THE REQUIREMENTS OF THE
350 INVESTMENT COMPANY ACT OF 1940

354
355 The Investment Company Act of 1940 provides for the
356 registration and regulation of companies engaged primarily in
357 the business of investing and reinvesting in "securities" of
358 other companies. If AGSOC enters or holds itself out as being
359 engaged primarily, or proposes to engage primarily, in the
360 business of investing, reinvesting, or trading in such
361 "securities," AGSOC may become subject to registration and
362 regulation under the ICA. While it is possible that AGSOC,
362 once its investment policy has been determined, will qualify
364 for one or more of the explicit statutory exclusions from ICA
365 coverage,^{10/} AGSOC hereby requests a discretionary exemption

396
396
396 10/ See ICA § 3(b)-(c). For example, it is possible that
396 AGSOC will qualify for exclusion under section 3(c)(5)(C) as a

[Footnote continued next page]

396 under either section 6(d) or section 6(c) of the ICA by
396 Commission order.

398
398
399 Section 6(d) provides that the Commission shall
400
400 exempt

401
401
404 a closed-end investment company from any or
405 all provisions of this subchapter, but
405 subject to such terms and conditions as may
406 be necessary or appropriate in the public
407 interest or for the protection of
407 investors, if --

408
409 (1) the aggregate sums received
409 by such company from the sale of all
410 its outstanding securities, plus the
411 aggregate offering price of all
411 securities of which such company is

413 -----
413

1 [Footnote continued from preceding page]

1
367 closed-end company primarily engaged in acquiring interests in
368 real estate or under section 3(c)(9) as a company substantially
369 all of whose business consists of owning or holding oil, gas,
369 or other mineral royalties or leases or interests therein.

372 In any event, the public policy behind the section
372 3(c)(5) and section 3(c)(9) exclusions supports the granting of
373 a discretionary exemption from the ICA for AGSOC. According to
374 a 1969 Senate committee report, the companies enumerated in
374 section 3(c)(5), although they have portfolios of securities in
375 the form of notes, commercial paper, or mortgages and other
376 interests in real estate, are excluded from ICA coverage
377 "because they do not come within the generally understood
378 concept of a conventional investment company investing in
378 stocks or bonds of corporate issuers." S. Rep. No. 91-184,
379 91st Cong., 1st Sess. 37 (1969); accord, H. R. Rep. No.
380 91-1382, 91st Cong., 2d Sess. 17 (1970). Similarly, companies
381 that primarily invest in oil, gas, and other mineral royalties
381 or leases are excluded from ICA coverage by section 3(c)(9)
382 because they are not conventional investment companies. Their
383 investments are based on long-term commitments to the
384 underlying economics of a particular royalty or leasehold
384 interest. There is no ready market for such interests, and
385 they are not widely traded. The investor's concern is with the
386 income stream of the investment rather than with its resale
387 potential or market value, as is the case with investors in
388 conventional investment companies.

390 Like the companies excluded from ICA coverage under
390 sections 3(c)(5)(c) and 3(c)(9), AGSOC will not come within the
391 generally understood concept of an investment company, and is
392 unlikely to invest in stocks or bonds of corporate issuers.
392 Moreover, also like the excluded companies, AGSOC will likely
393 make long-term commitments based on the income stream, rather
394 than on the resale potential or market value, of investments.

51
52
53

the issuer and which it proposes to offer for sale, do not exceed \$100,000;

(2) no security of which such company is the issuer has been or is proposed to be sold by such company or any underwriter therefor, in connection with a public offering, to any person who is not a resident of the State under the laws of which such company is organized or otherwise created; and

(3) such exemption is not contrary to the public interest or inconsistent with the protection of investors. 15 U.S.C. § 80a-6(d).

AGSOC will meet all the technical tests of section 6(d). It will be a closed-end company because its shareholders generally will have no right to redeem their shares.^{11/} AGSOC will not sell its initial shares, but will issue them without charge.^{12/} The aggregate sums received for the shares will thus not exceed \$100,000. No shares will be issued to residents of states other than Alaska, the State under whose laws AGSOC will be organized.

In addition, AGSOC is eligible for consideration under the general power of exemption contained in section 6(c) of the ICA. An exemption under either section 6(d) or 5(c) must be in the public interest and not inconsistent with the protection of investors. In addition, section 6(c) conditions an exemption on its being "necessary or appropriate [and consistent with] the purposes fairly intended by the policy and provisions" of the ICA.

^{11/} But see note 15, p. 14, *infra* and accompanying text.

^{12/} The Office of the General Counsel of the Commission has indicated that because of these facts, "it does not appear that registration of the securities would be required under the Securities Act of 1933." See Letter from Benjamin M. Vandegrift to James L. Thompson, Oct. 29, 1979 (copy attached as Exhibit C).

451 This application will show that AGSOC qualifies for a
451 temporary and conditional exemption under both section 6(d) and
452 section 6(c) because such an exemption is appropriate, in the
452 public interest, and consistent with the protection of
453 investors and the purposes fairly intended by the ICA. It will
453 do so by demonstrating that the potential for abuses of the
454 kind described in section 1(b) of the ICA, whose mitigation and
455 elimination Congress declared to be the "policy and purposes"
455 of the ICA, will be minimized by the enabling legislation of
456 AGSOC. It will discuss various provisions of the ICA and, in
458 so doing, will show that AGSOC shareholders will be provided
459 with protections equivalent to those of the ICA or that such
460 protections are otherwise inappropriate.

461
461
464 (1) Registration and Reporting
465 Requirements-----
466

469 Sections 7 and 8 of the ICA require registration by
470 investment companies that make use of the mails or
471 instrumentalities of interstate commerce. The purpose of these
472 requirements is to provide a "handle" for the regulatory scheme
473 and to assure that basic information regarding an investment
474 company's structure and investment policy is available
474 publicly.

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475
476 Other provisions of the ICA require that investment
477 companies keep current their registration statements and
477 otherwise report periodically to investors and to the
479 Commission. The ICA requires investment companies to transmit
480 financial reports containing prescribed information to their
481 security holders at least semiannually. (ICA § 30(d).)
482 Investment companies must also file annual reports, including
483 financial statements, similar to those filed pursuant to
484 section 13(a) of the Securities Exchange Act of 1934. (ICA

485 § 30(a).) The Commission is empowered to require the filing of
486 less comprehensive semiannual or quarterly reports (ICA
487 § 30(b)(1)), and has exercised this authority to require the
488 filing of quarterly reports (Rule 30b1-1 (17 C.F.R.
488 § 270.30b1-1)). Investment companies are, in addition,
489 required to file with the Commission copies of financial
490 reports sent to stockholders. (ICA § 30(b)(2).)^{13/}
499

500 In many ways, AGSOC will be unique in respects that
501 are highly relevant to the purposes underlying the registration
501 and reporting requirements of the ICA. AGSOC will be owned by
502 over 400,000 citizens of Alaska who have made no equity
503 investment and who will each hold one share of the one class of
504 stock issued by AGSOC.^{14/} There can be no transfer of AGSOC
509 shares for five years from the date of issuance except by
510 death.^{15/} There can be no significant aggregation of shares,
519 as each resident is limited to ownership of ten shares, and for
520 the first five years few residents will hold more than one or
521 two shares.^{16/} Even after the initial five-year period there
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491 ^{13/} In addition, the Commission is empowered to require
492 that financial statements sent to security holders and the
493 Commission be certified by independent public accountants (ICA
494 § 30(e)) and to promulgate uniform accounting rules (ICA
495 § 31(c)); see Regulation S-X, 17 C.F.R. §§ 210.1-01(A)(4),
495 210.6-01--210.6-10) and rules requiring the preservation of
496 books and records which form the basis of reports filed with
497 the Commission and sent to security holders (ICA §§ 31(a)-(b),
498 32(c)).

505 ^{14/} Although the legislation provides that "at least one
506 share" shall be issued to all eligible individuals, it is
507 Applicant's understanding that AGSOC initially will issue only
507 one share to each qualifying person.

510 ^{15/} 26 U.S.C. § 1391(a)(4)(D)(i); Proposed Act
511 § 10.50.320(a)(8)(A). The one exception is the case of the
512 "eligible individual" who has received his share and then
513 decides to leave Alaska. If he leaves Alaska within five years
514 after date of issuance, the corporation must purchase his share
515 (or shares) at book value. Revised Bill § 4(c)(1). The
516 corporation must also purchase at book value the share of an
517 eligible individual who dies within five years and whose share
518 passes by operation of law to a nonresident. Id.

522 ^{16/} 26 U.S.C. § 1391(a)(4)(D)(iii); Proposed Act
523 § 10.50.320(a)(8)(C). The only way a resident can hold more
528

[Footnote continued next page]

526 will remain severe restrictions on the transferability of AGSOC
528 shares that will make it difficult if not impossible for a
529 trading market in the shares to develop.17/

532
533 Since there will be no equity investment and, at
534 least during the first five years, Alaska's citizens will not
535 be buying, selling, or otherwise making investment decisions
536 regarding their AGSOC stock, there is little need for
537 shareholders to have the kind of detailed information supplied
538 in a registration statement and in the other reports required
539 under the ICA to be filed and distributed.18/

569
571 -----
571 1 [Footnote continued from preceding page]

524 than his one original share during the first five years is by
525 inheritance or devise of a share from another resident.

529 17/ Even after the five-year period shares may be
530 transferred only to "resident individuals" of Alaska. 26
531 U.S.C. § 1391(a)(4)(D)(ii).

540 18/ Compare H.R. Rep. No. 94-729, 94th Cong., 1st Sess.
541 18 (1975) (during period when stock of Alaska native
542 corporations cannot be transferred, not necessary to subject
543 corporations to burdens of compliance with 1933 and 1934
544 securities acts); Menominee Common Stock and Voting Trust,
545 Exch. Act Rel. No. 10725 (Apr. 10, 1974) (exemption from
546 registration and reporting requirements of 34 Act granted until
547 60 days before securities become alienable when state
548 authorities scrutinized affairs of enterprise).

550 Moreover, requiring Applicant or AGSOC to file a
551 registration statement in the formative stage of AGSOC's
552 development would be premature and would produce a largely
553 useless document. The situation is not unlike the situation
554 that prevailed when Congress exempted from the ICA the native
555 corporations to be formed pursuant to the Alaska Native Claims
556 Act, P.L. No. 94-204, 89 Stat. 1145 (1975). At that time, the
557 House Committee reported that "[i]t was too early for these
558 fledgling corporations to know even what their investment
559 policies and legal and accounting problems may be to make
560 registration practicable for them under the Investment Company
561 Act." H.R. Rep. No. 94-729, 94th Cong., 1st Sess. 17-18
562 (1975). Applicant has, in fact, filed a pro forma copy of Form
563 N-8A as an exhibit to this application, in compliance with rule
564 N-6D-1(b) (17 C.F.R. § 270.6d-1(b)). See Exhibit D. Even this
565 document, which normally serves as a kind of "cover page" for a
566 registration statement, is largely useless inasmuch as most of
567 the information called for is not yet available with respect to
568 AGSOC.

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570 It is important to Applicant, however, that AGSOC
571 shareholders have information sufficient to allow them to vote
572 and act intelligently on matters of corporate policy and
573 management. To this end, the enabling legislation contains
574 numerous disclosure provisions, many of which are essentially
575 duplicative of the requirements of the ICA. For instance, to
577 the extent that any shareholder may desire detailed financial
578 information relating to AGSOC, he can exercise his rights to
579 examine AGSOC's books and records^{19/} and to have a copy of
581 AGSOC's most recent financial statements showing in reasonable
582 detail its assets and liabilities and the results of its
583 operations.^{20/} Moreover, shareholders will have access to the
585 reports of the Congressional Joint Committee on Taxation
586 required by the Revenue Act of 1978.^{21/} They will also receive
588 written materials on matters to be voted upon at all
588 shareholder meetings, which will be held at least annually, and
590 these materials will be subject to regulation by the
591 Administrator of the Alaska Securities Act with respect to the
592 fairness, completeness, and nondiscrimination of their
593 content.^{22/} In addition, any false statements in any written
596 document with a tendency to mislead will subject the
597 responsible directors, officers, or agents of AGSOC to criminal
599 prosecution. (See Proposed Act § 10.50.630.) In view of these
601 provisions, Applicant believes that requiring AGSOC to comply
602 with the full panoply of ICA requirements regarding
603 registration and periodic reports is unduly burdensome and
604 unnecessary.

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606
579 ^{19/} See Proposed Act § 10.50.270 et seq.

583 ^{20/} See 11. § 10.50.285.

587 ^{21/} See 26 U.S.C. § 6039E.

593 ^{22/} Proposed Act §§ 10.50.130-.135; Revised Bill § 3 (to
594 be codified as ALASKA STAT. § 45.55.130).

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606 Applicant realizes that the Commission also has an
606 interest in reviewing information relating to ACSOC.
607 Accordingly, Applicant is prepared as a condition of the
608 exemption requested to undertake to cause ACSOC to file an
608 annual report with the Commission containing substantially all
609 of the information required to be included in annual reports of
611 investment companies by section 30(a) of the ICA and the rules
612 and regulations thereunder. This report would be distributed
613 to all shareholders, and, because of this fact, its contents
613 will be subject to regulation for fairness and completeness by
614 the Administrator of the Alaska Securities Act. (See Revised
615 Bill § 3.)
616

619 (2) Honest and Unbiased Management

620 Sections 9, 10, 17, 36, 37, and 49 of the ICA attempt
623 to assure honest and unbiased management for investment
624 companies. Section 9 makes certain persons ineligible to serve
625 as employees, officers, or directors of investment companies.
626 Included are persons convicted within the past 10 years of
627 crimes related to sales of securities and persons enjoined from
628 performing certain roles related to such sales. Such
629 prohibitions are superfluous with respect to ACSOC because
630 Alaska's enabling legislation already contains prohibitions
631 that basically track section 9. (See id. § 10.50.260.)
633

634 Section 10 of the ICA attempts to provide unbiased
635 management for investment companies. It requires that not more
636 than 60 percent of the board of directors may be "interested
637 persons" of the company. It restricts bankers, brokers,
638 commercial bankers, principal underwriters, and others who may
639 have a bias in the management of the company to a minority of
640 the board of directors. It prevents investment bankers and
641

641 other affiliated persons from using their investment companies
642 to assist them in their underwriting activities.23/
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652 Section 17 of the ICA supplements section 10 with
653 provisions designed to prevent self-dealing. It prohibits
654 self-dealing and exaction of excessive commissions by
655 affiliated persons. It prohibits certain loans to affiliated
656 persons and underwriters. It provides that portfolio
657 securities must be maintained in the custody of a bank unless
658 otherwise permitted by regulations of the Commission and
659 provides for bonding of the company's employees. Finally, it
660 prohibits indemnification of directors, officers, underwriters,
661 and investment advisers under certain circumstances.24/
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669 Many of the prohibitions contained in sections 10 and
670 17 are not applicable to AGSOC or are superfluous. AGSOC is
671 not likely to invest in portfolio securities, does not plan to
672 use traditional investment advisers or underwriters, and will
673 not engage in more than occasional purchases or sales of
674 securities.25/ It cannot loan money to directors, officers, or
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643 23/ In addition, section 12(d)(3) prohibits investment
644 companies from investing in the businesses of brokers, dealers,
645 underwriters, or investment advisors unless those businesses
646 are wholly owned by investment companies and such persons
647 primarily underwrite or sell the securities of other persons.
648 AGSOC is not expected to have any interest in such investments,
649 inasmuch as it is expected to focus upon investments that will
650 allow its citizen-shareholders to share in the economic
651 development of Alaska.

660 24/ In a further effort to prevent self-dealing, section
661 30(f) incorporates into the ICA the insider trading
662 restrictions contained in section 16 of the Securities Exchange
663 Act. The classes of persons required to report under the ICA,
664 however, are more numerous than those required to report under
665 the Exchange Act. Because of the strict limits on transfer of
666 AGSOC shares, of course, there is little chance of AGSOC's
667 experiencing problems with insider trading.

673 25/ See generally Elbert Corporation, 15 S.E.C. 667,
674 [1941-44 Dec.] Fed. Sec. L. Rep. (CCH) ¶ 25,441 (1944) (partial
675 section 6(c) exemption granted because of limited nature of
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[Footnote continued next page]

683 employees, nor can officers or employees serve as directors of
684 AGSOC. (See Proposed Act §§ 10.50.180, 10.50.225.) Moreover,
685 the Alaska enabling legislation contains provisions akin to
686 section 17; most activities that would fall within the reach of
687 section 17 are made unlawful, absent special clearance by the
689 board of directors.^{26/}

709
710 Section 36 authorizes shareholder derivative actions
710 or Commission actions against officers, directors, members of
711 advisory boards, investment advisers, depositors, or
712 underwriters of registered companies for breach of fiduciary
712 duties involving payments to investment advisers. It further
713 provides that an investment adviser is deemed to have a
714 fiduciary duty with respect to the receipt of compensation for
715 services or payments of a material nature paid by the
716 investment company.

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1 [Footnote continued from preceding page]

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675 portfolio and relative inactivity therein); Tobacco Prods.
677 Export Corp., 12 S.F.C. 743, [41-'44 Dec.] Fed. Sec. L. Rep.
678 (CCH) ¶ 75, 352 (1943) (partial section 6(c) exemption granted
679 because of, inter alia, limited nature of portfolio and
681 relative inactivity therein).

689 ^{26/} See Proposed Act § 10.50.262 (self-dealing),
690 10.50.020 (indemnification). In addition, to the extent that
692 section 17 prohibits certain transactions with "affiliated
693 persons" other than officers, directors, or employees, AGSOC is
694 less likely than a conventional investment company to be
696 "affiliated" with such persons within the meaning of ICA
697 § 2(a)(3) during its first five years. Because of the
698 restrictions on aggregate holdings and alienation of AGSOC
699 stock, no person will be able to control five percent or more
701 of AGSOC's stock. (See notes 14-17, pp. 13-14, supra and
702 accompanying text.) In addition, because AGSOC cannot be a
702 member of an "affiliated group" within the meaning of the
704 Internal Revenue Code (see 26 U.S.C. § 1391(a)(1), 1504), it
705 cannot own 20 percent or more of the stock of another
707 corporation. AGSOC will not, therefore, be able to meet the
707 initial test of "control" of another corporation in ICA
708 § 2(a)(9) (i.e., 25 percent).

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718 Alaska law will provide comparable protection for
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718 AGSOC security holders. The Proposed Act authorizes AGSOC
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719 shareholders to initiate derivative actions. (Proposed Act
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719 § 10.50.300) In addition, Alaska law creates strict fiduciary
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721 duties owed corporations by its officers and directors.27/
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725 Section 37 makes it a crime under the ICA to steal or
725
725 embezzle the property of an investment company, and section 49
727
727 makes it a crime to willfully violate any provision of the ICA
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728 or to make a material misstatement in an ICA filing. Penalties
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729 of up to \$10,000 and two years imprisonment are specified for
730
730 such crimes.
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732 Alaska law provides equivalent protections. Under
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732 the Proposed Act, it is a misdemeanor for a AGSOC director,
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734 officer, or agent to knowingly concur in making or publishing
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735 to anyone (1) a written statement containing any material
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736 statement that is false; (2) an untrue or willfully or
737
737 fraudulently exaggerated report, prospectus, account, or
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738 statement of operations, business, profits, or prospectus; or
738
738 (3) any other document intended to produce or give, or having a
740
740 tendency to produce or give, AGSOC's shares a greater value or
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741 a less apparent or market value than they really possess.
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742 (Proposed Act § 10.50.630.) It is also a misdemeanor for any
743
743 such person to refuse to make any book entry or post any notice
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744 in the manner required by law. (Id.) Finally, a director is
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745 guilty of a misdemeanor if he concurs in any vote or act of the
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746 directors to knowingly and with dishonest or fraudulent purpose
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747 make a dividend or distribution of assets either with the
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748 design of defrauding creditors or shareholders or of giving a
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722 27/ See, e.g., Alvest, Inc. v. Superior Oil Corp., 398
723 P.2d 213 (Alas. 1965).

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749 false appearance to the value of the stock and thereby
750 defrauding subscribers or purchasers. (Id. § 10.50.635.)
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753
754 While Alaska law may not contain a criminal statute
755 prohibiting theft or embezzlement from an investment company
756 specifically, it does contain strong criminal statutes
756 outlawing such conduct.^{28/} Applicant believes that these
759 statutes are adequate to deal with any such problems that may
760 arise with respect to AGSOC. Applicant believes further that
760 criminal sanctions with respect to activity relating directly
761 to AGSOC are most appropriately applied at the state, rather
761 than the federal, level because of AGSOC's intrastate
762 character. To the extent there may be a federal interest in
763 such activity, AGSOC will be subject to other relevant federal
764 criminal statutes, including those involving mail fraud.
766

767 AGSOC is in many ways a political entity; its few
768 investments and loan transactions will be highly visible and
769 the subject of widespread public comment and debate. This
770 scrutiny alone provides a strong disincentive for self-dealing
771 and dishonest or biased management. Certain provisions of the
771 enabling legislation provide additional "sunshine" protections
772 against conflict of interest situations.^{29/} Extensive
774 publicity will undoubtedly surround the appointment of officers
775 and directors. As for deterrence, these persons are subject to
776 court-ordered removal for fraudulent or dishonest acts and
777 criminal penalties for defrauding shareholders or creditors or
778 making misleading statements.^{30/} Thus, persons associated with
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757 ^{28/} See, e.g., ALASKA STAT. §§ 11.46.180 (larceny),
758 11.46.210 (embezzlement), 11.46.600 (scheme to defraud).

773 ^{29/} See, e.g., pp. 4-6 supra.

779 ^{30/} See Proposed Act §§ 10.50.290, 10.50.635, 10.50.630.

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781 AGSOC will have few opportunities to profit personally and even
782 less chance to do so successfully. In light of these
783 circumstances, Applicant considers that application of sections
784 9, 10, 17, 36, 37, and 49 of the ICA is unnecessary in the case
785 of AGSOC.

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787
789 (3) Participation in Management by Security
790 Holders
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794 Certain sections of the ICA provide for greater
794 participation in management by security holders than is often
795 the case in corporations. Under section 12(d)(1), pyramiding
795 of investment companies, a procedure that had been used to deny
796 any real participation in management to security holders,^{31/} is
798 severely restricted. Under section 13, an investment company's
799 investment policy,^{32/} as stated in its registration statement,
807 cannot be changed without the affirmative vote of a majority of
808 the security holders. Section 15 restricts the period of
808 effectiveness of investment adviser contracts to two years, and
809 requires approval of such contracts by the shareholders.
811 Section 16(a) requires at least two-thirds of the directors of
812 an investment company to have been elected by the shareholders.
813 Section 18 provides that all shares issued by management
813 companies must be voting shares, and requires preferred shares
814 to contain provisions transferring majority voting power to the
815 holders of such stock in the event of a default in payment of
816 dividends. Investment company proxy solicitation is subjected

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797 ^{31/} See S. Rep. No. 1775, 76th Cong., 3d Sess. 7 (1940).

799 ^{32/} Items of a company's "investment policy" include its
800 status as a diversified or nondiversified company and its
801 policies with respect to borrowing money, issuing senior
802 securities, underwriting securities issued by other persons,
803 purchasing or selling real estate or commodities, making loans
804 to other persons, and concentrating its investments in any
805 particular industry or group of industries. ICA § 13(a).

817 to Commission regulation by section 20(a). Sections 20(c) and
818 20(d) outlaw cross-ownership and circular ownership of
819 investment companies in excess of three percent of the
820 outstanding voting stock of the companies involved. Finally,
822 section 32 requires ratification of the selection of
822 accountants of the investment company by the shareholders.

825 Some of these shareholder participation requirements
825 are not applicable to AGSOC. AGSOC does not intend to use
826 conventional investment advisers. There is therefore no need
827 to limit the duration of investment adviser contracts or to
828 require approval of such contracts by AGSOC's shareholders.
829 Similarly, there is no need to require that all AGSOC's shares
830 be voting shares or that preferred shares have certain rights
830 upon a default in the payment of dividends. Under subchapter U
831 and the Proposed Act, AGSOC may have only one class of stock,
832 and the holders of that stock will wield majority voting
833 power.^{33/} Likewise, problems of cross-ownership and circular
834 ownership are unlikely to beset AGSOC, inasmuch as its stock
835 can be held only by individuals and the aggregate holding and
835 transfer restrictions on AGSOC stock^{34/} will make it virtually
838 impossible for anyone to obtain control of three percent of
839 AGSOC's outstanding shares.

841 At least one of the shareholder participation
841 provisions, Commission regulation of proxy solicitations, is
842 essentially superfluous with respect to AGSOC. Proxy voting
843 will not be permitted.^{35/} Corporation ballots^{36/} and written

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833 ^{33/} See 26 U.S.C. § 1391(a)(4)(A); Proposed Act
834 §§ 10.50.145, 10.50.320(a)(5).

836 ^{34/} See notes 14-17, pp. 13-14, SUPRA and accompanying
837 text.

843 ^{35/} Proposed Act § 10.50.155. Shares in the name of
844 another held by administrators, executors, guardians,

857 [Footnote continued next page]

856 materials on matters to be voted upon at shareholder meetings
857 will be distributed in conjunction with such meetings, but
857 these will be subject to regulation by the Administrator of the
858 Alaska Securities Act.^{37/}

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861 Finally, several of the shareholder participation
861 requirements are unnecessary in the case of AGSOC because of
862 its unique nature. These include requiring shareholder
863 approval for changes in investment policy, shareholder
864 ratification of the selection of accountants, and restrictions
864 on pyramiding. These are the kinds of issues that will be
865 subject to intense public scrutiny and debate by the
866 citizen-shareholders of AGSOC. They will also be subject to
867 review by AGSOC shareholders at their annual meeting. Indeed,
867 because of the sensitivity of these kinds of questions and the
868 public scrutiny to which their determination will be subjected,
869 it is highly unlikely that AGSOC's management would take any
870 significant action with respect to them without submitting the
871 action to shareholder review. Moreover, unlike the typical
872 mutual fund or investment company, AGSOC will not offer to
873 security holders an opportunity to invest in a specific

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875 1 [Footnote continued from preceding page]

845 conservators, or receivers may be voted by them under certain
845 circumstances. Id. §§ 10.50.165.

846 ^{36/} Corporation ballots will be prepared for each meeting
847 of AGSOC shareholders, and will be mailed to shareholders with
848 the notice of the meeting; the ballots, as marked by the
849 shareholders, shall be counted in determining the vote. See
850 Proposed Act § 10.50.175. See generally Lucky Stores, ['74-'75
850 Dec.] Fed. Sec. L. Rep. (CCH) ¶ 79,903 (June 5, 1974) (SEC
851 staff will not recommend action for failure to register
852 dividend investment plan if, inter alia, proxies are conveyed
854 to shareholders and voted only in accordance with their
855 instructions).

858 ^{37/} Revised Bill § 3 (to be codified as ALASKA STAT.
859 § 45.55.130).

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874 investment approach. There is not the same kind of need,
875 therefore, to require shareholder approval of changes in
876 investment policy as exists with respect to conventional
876 investment companies.

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877
878 Requiring two-thirds of AGSOC's directors to be
878 elected by the shareholders is likewise unnecessary. The only
879 time two-thirds of the directors might not have been elected by
880 the shareholders will be in the first two years of AGSOC's
881 existence. At that time, however, the board members who have
882 not been elected by the shareholders will have been selected by
883 a process initiated by public officials elected by Alaska's
884 voters. (See Revised Bill § 4(b).) Otherwise, all directors
884 will be elected by the shareholders and vacancies may only be
885 filled by the remaining directors if, immediately after filling
886 the vacancy, at least two-thirds of the directors will have
887 been elected by the shareholders. (See Proposed Act
888 §§ 10.50.185(d)-.195.)

889
892 (4) Adequate and Feasible Capital
893 Structure

894
897 Several provisions of the ICA attempt to assure that
897 investment companies have adequate and feasible capital
898 structures. Section 14(a) prohibits a public offering by an
899 investment company unless it can demonstrate that it will have
900 a net worth of at least \$100,000, and section 18 contains
902 several other limitations relating to capital structure.
903 Generally, no management company may issue any warrants or
904 subscription rights unless their life is limited to 120 days
904 and they are issued exclusively and ratably to its security
905 holders. (ICA § 18(d).) Moreover, in general, every share of
906 stock issued by a management company must have equal voting
907 rights with every other outstanding voting stock. (ICA

908 § 18(1).) With respect to closed-end management companies,
908 there may be only one class of debt security and one class of
909 preferred stock.^{38/} Furthermore, any senior security issued by
913 a closed-end company must have an asset coverage of 300 percent
913 if it represents indebtedness and 200 percent if it is a
914 stock.^{39/} Finally, section 23 generally prohibits closed-end
919 companies from issuing securities for services or for property
919 other than cash or securities. With certain exceptions,
920 section 23 also prohibits such companies from selling their
921 common stock at a price below its current net asset value,
922 exclusive of any distribution or discount, unless approved by a
923 majority of their common stockholders.^{40/}

928
928 Many of the abuses sought to be prevented by the ICA
930 provisions relating to capital structure will be obviated by
931 AGSOC's enabling legislation. For instance, while AGSOC may
932 not have a net worth in excess of \$100,000 initially, it will
932 be entitled to call upon the State of Alaska to guarantee "seed
934 money" loans from a \$5 million fund established for this
935 purpose. (Revised Bill § 4(d); see p. 7 supra.) In
935 guaranteeing such loans, the Commissioner of Revenue is
936 directed to ascertain the soundness of the proposed transaction
937

938 -----
938
909 ^{38/} ICA § 18(c). In addition, any senior stock issued
910 must have complete priority over any other class of stock both
911 as to distribution of assets and as to dividends, which must be
912 cumulative. ICA § 18(a)(2)(E).

914 ^{39/} ICA § 18(a). In the event these ratios are not
915 maintained, the holders of senior securities are given certain
916 protections, such as limitations on the declaration of
917 dividends or the purchase of common stock and affording them a
917 limited vote. See ICA § 18(a)-(b), (d).

923 ^{40/} In addition, section 12(d)(2) of the ICA would
923 prohibit AGSOC from acquiring a more than 10-percent interest
924 in any insurance company. AGSOC, of course, is unlikely to be
925 interested in such an investment because AGSOC will not be
926 entitled to the 85-percent dividends received deduction. See
927 p. 8 supra.

937 and to guard against fraud and misrepresentation. (Id.) Thus,
938 the Commissioner will be scrutinizing AGSOC's transactions and
939 thereby protecting the interests of shareholders against any
940 potential danger resulting from AGSOC's failure to meet the
941 initial net worth requirements of the ICA.

943
944 Some of the capital structure restrictions are simply
945 unnecessary with respect to AGSOC. There is no need to
946 prohibit multiple classes of preferred stock and to require
947 that all classes of stock have equal voting rights. (See ICA
948 § 18(c), (i).) AGSOC can have only one class of stock (26
949 U.S.C. § 1391(a)(4)(A)), and all shares of that class will have
950 equal rights of all kinds (Proposed Act §§ 10.50.130-.175).
951 Likewise, there is no purpose in prohibiting AGSOC from issuing
952 securities for services or for property other than cash or
953 securities. (See ICA § 23.) Under the Proposed Act,
954 consideration for the issuance of shares, if required, must be
955 paid in cash. (Proposed Act § 10.50.085.) Likewise, it is
956 unnecessary to prohibit AGSOC from selling its common stock at
957 a price below current net asset value without the consent of
958 shareholders. (See ICA § 23(b).) AGSOC may not issue shares
959 for less than the current net asset value of such shares unless
960 the transaction is approved by a vote of the majority of its
961 shareholders. (Proposed Act § 10.50.080(a).)

962
963 Moreover, it is unlikely that many of the capital
964 structure restrictions will be applicable to AGSOC, inasmuch as
965 AGSOC has no present plans for a public offering of its stock,
966 debt securities, warrants, or subscriptions. In any case, at
967 least some of the restrictions demonstrate clearly that
968 attempting to regulate AGSOC under the ICA is simply
969 procrustean. AGSOC is unique and the ICA was simply not

969 designed to regulate such an enterprise. While high asset
970 coverage restrictions may be necessary to protect investors of
971 an ordinary investment company, in the case of AGSOC they
972 should not be required. Debt financing without high asset
973 coverage is essential to the success of AGSOC.
975
975

979 III. CONCLUSION

983
984 Applicant believes the foregoing discussion
984 demonstrates clearly that a temporary and conditional exemption
985 from the ICA for AGSOC is not inconsistent with the protection
986 of investors and the purposes fairly intended by the policy and
987 provisions of the ICA. Moreover, Applicant believes such an
988 exemption is in the public interest.
989

990 Congress passed the AGSOC enabling legislation
990 because it believed "that many citizens should have a greater
991 ownership stake in the private enterprise system, and that this
992 would lead to better understanding of the system and would
993 encourage individuals to invest in other business
994 enterprises."^{41/} Congress also believed the AGSOC experiment
995 might enable consideration of GSOC's as alternatives to the
996 present system of governmental transfer payments.^{42/} If these
997 objectives are to be attained, AGSOC must be allowed to develop
998 in an atmosphere free from unnecessary and duplicative
999 regulation.^{43/}

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994 ^{41/} S. Rep. No. 95-1263, 95th Cong., 2d Sess. 107
995 (1978).

997 ^{42/} Id.

999 ^{43/} See Union Bank, I.C. Rel. No. 9074 (Dec. 5, 1975)
1000 (section 5(c) exemption granted in part because applicant would
1002 operate to carry out congressional policy and because applicant
1002 was already regulated by another governmental authority);
1003 Fitrust Corp., 9 S.E.C. 901 (1941) (section 5(c) exemption
1004 granted in part because applicant subject to regulation by
1005 another government agency).

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1008 Section 6(c) was designed to afford the Commission
1008
1008 discretionary authority to deal equitably with exceptional and
1010
1010 unusual situations and with situations that could not have been
1011
1011 foreseen at the time the ICA was enacted.⁴⁴/ It gives the
1013
1013 Commission authority to provide exemptions in unanticipated
1013
1013 circumstances of a particular case where compliance with the
1014
1014 provisions of the ICA is not necessary to accomplish the
1015
1015 objectives and policies of the Act.⁴⁵/ AGSOC is the
1018
1018 archetypical example of such an unforeseen and unanticipated
1019
1019 entity.

1020
1020
1021 It is not certain that AGSOC will fall within the
1021
1021 formal definition of an investment company. Even if it does,
1023
1023 however, it does "not come within the generally understood
1023
1023 concept of a conventional investment company investing in
1024
1024 stocks or bonds of corporate issuers."⁴⁶/ AGSOC's unique
1029
1029 character and function place it far outside that class of
1030
1030 companies which Congress intended to regulate under the ICA.
1030
1030 Most of the regulatory provisions in the ICA were designed to
1032
1032 protect investors from the schemes of incompetent or
1032
1032 unscrupulous promoters. AGSOC will not be the invention of
1033
1033 private promoters seeking to profit from either the sale to
1034
1034 investors of shares in an investment company or the sale to the
1035
1035 investment company of securities that it may also be marketing.
1035
1035 Rather, it will be the creation of the State of Alaska which,
1036

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1037 -----
1011 ⁴⁴/ Mutual Funds Advisory, Inc., 44 S.E.C. 761, 764
1011 (1972); Hugh B. Baker, 24 S.E.C. 202, 206 (1946); Sisto
1012 Financial Corp., 23 S.E.C. 311, 313 (1946).

1016 ⁴⁵/ Variable Annuity Life Ins. Co. of America, 43 S.E.C.
1017 61, 64 (1966).

1024 ⁴⁶/ S. Rep. No. 91-184, 91st Cong., 1st Sess. 37 (1960);
1025 H.R. Rep. No. 91-1382, 91st Cong., 1st Sess. 17 (1970)
1026 (providing rationale for excluding from ICA coverage companies
1027 engaged primarily in factoring, discounting, and real estate).

1036 under the auspices of unique federal tax legislation, is
1037 engaging in an experiment in public ownership of Alaskan
1038 business. Compliance with the Act's particular requirements
1039 should not be necessary to protect the State's citizens from
1040 abuses of an experiment of their own creation and for their own
1041 benefit.

1042
1042
1043 Applicant believes that the treatment accorded at
1044 least two previous requests for exemption from the ICA provide
1045 particularly useful models for the Commission's action on this
1046 application. The first request was an application filed by the
1047 Ampal-American Palestine Trading Corporation.^{47/} The second
1050 involved corporations organized pursuant to the Alaska Native
1051 Claims Settlement Act.

1053
1053
1054 The Ampal-American Palestine Trading Corporation had
1055 as its primary purpose the development of trade between the
1056 United States and Palestine and generally to assist in the
1057 economic development of the latter country. (25 S.E.C. at 25.)
1059 It did so by making loans to and investments in enterprises
1060 appropriate to its purposes. All the borrowers were charitable
1061 organizations aiding in the development of Palestine. The
1062 borrowers, in turn, made the funds available to their agencies
1063 in Palestine. The Corporation cooperated with the enterprises
1063 and the agencies to prevent overlapping of functions and to
1065 increase the effectiveness of its efforts. (Id. at 25-26.)

1066
1066
1067 If the Ampal-American Palestine Trading Corporation
1067 had been required to comply with the provisions of the ICA, its
1069 capital structure and possibly its method of operation would

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1071 -----
1071

1047 ^{47/} See Ampal-American Palestine Trading Corp., 25 S.E.C.
1048 24 (1947).

1070 have required material changes. The Commission, realizing that
1071 several of the ICA provisions with which the Corporation did
1071 not conform "were adopted with other problems in mind," (Id.
1072 at 26), granted the Corporation's request for an exemption
1073 because "[i]ts activities, although somewhat similar in form,
1074 are in substance different from the normal investment company
1075 business." (Id.) The Commission noted that the Corporation
1075 "was designed to appeal particularly to those interested in the
1077 Zionist Movement or in the economic development of Palestine
1078 rather than to those primarily interested in making investments
1079 in the securities of concerns from which a profitable return
1080 may be expedited." (Id.)

1081
1081 The activities of AGSOC will be different in both
1082 form and substance from the normal investment company business.
1084 Like the Ampal Corporation, AGSOC's primary purpose is not to
1085 appeal to those primarily interested in making portfolio
1086 investments; its aim will be to apply concepts of the private
1087 enterprise system to meet social needs.

1088
1088 The history of the requests for exemption by
1089 corporations organized pursuant to the Alaska Native Claims
1091 Settlement Act is also instructive. Under that Act, Congress
1092 authorized disbursement of federal funds to native peoples of
1093 Alaska in settlement of aboriginal land claims, and authorized
1094 the creation under Alaska law of a number of corporations to
1095 administer the funds and oversee investment on behalf of native
1096 residents. The original legislation, passed in 1971, did not
1097 address the question of the applicability of the federal
1098 securities laws and regulations to the corporations, but
1099 provided for an annual independent audit of each corporation,
1100 the results of which were to be transmitted to each

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1101 shareholder, to the Secretary of the Interior, and to
1102 appropriate committees of Congress. As a result, the various
1103 corporations were forced to seek individual administrative
1104 relief from the Commission. In 1975, the Native Claims Act was
1105 amended to provide for total exemption of the corporations
1106 from the applicable securities laws, including the ICA, during
1107 the period that shares cannot be traded. The exemption
1108 amendment accomplishes in large measure the disclosure function
1109 of the ICA and the other securities laws, nevertheless, by
1110 requiring that most corporations send an annual report to
1111 shareholders.^{48/} One reason Congress noted for its decision
1112 was that the lack of sophistication of most Alaska natives made
1113 the elaborate written materials required to be sent to security
1114 holders under the securities laws less likely to be useful;
1115 Congress was also moved by the assurance that no trading market
1116 in the shares would develop.^{49/}

1139 -----
1139
1111 ^{48/} The amendment reads:

1114 Any corporation organized pursuant to this
1115 chapter shall be exempt from the provisions
1116 of the Investment Company Act of 1940 (54
1116 Stat. 789), the Securities Act of 1933 (48
1117 Stat. 74), and the Securities Act of 1934
1118 (48 Stat. 881), as amended, through
1118 December 31, 1991. Nothing in this
1119 section, however, shall be construed to
1119 mean that any such corporation shall or
1120 shall not, after such date, be subject to
1121 the provisions of such Acts. Any such
1122 corporation which, but for this section,
1122 would be subject to the provisions of the
1123 Securities Exchange Act of 1934 shall
1124 transmit to its stockholders each year a
1124 report containing substantially all the
1125 information required to be included in an
1126 annual report to stockholders by a
1126 corporation which is subject to the
1127 provisions of such Act.

1130 ⁴³ U.S.C. § 1625.

1135 ^{49/} H.R. Rep. No. 94-729, 94th Cong., 1st Sess. 17-20
1136 (1975); see note 18, p. 14, *supra*.

1138 Prior to the Congressional amendment, the Commission
1139 had taken action to exempt the corporations from the full
1141 panoply of ICA requirements. It had promulgated a temporary
1142 rule exempting the corporations from all but five "essential"
1143 provisions of the ICA, and had proposed to adopt a permanent
1144 rule providing "substantial exemptive relief," which would have
1145 required compliance "with only those provisions which provide
1146 essential protection."^{50/} The protections apparently regarded
1151 as "essential" were contained in or variations of ICA sections
1152 10, 15, 17, 20(a), 20(a), 30(d), 31(a), 31(b), and 33.

1154
1154 * * * *

1158 The proposal for the exemption of AGSOC set forth in
1159 this application follows the line Congress and the Commission
1160 took in responding to the request for exemption from the ICA by
1161 the Alaska native corporations. It provides the essential
1162 protections of the Act and promotes its relevant purposes while
1163 dispensing with those requirements that would create
1164 unnecessary burdens for AGSOC without compensating benefits for
1165 shareholders. In these circumstances, exempting AGSOC from the
1166 ICA's requirements would be wholly consistent with the
1167 protection of investors -- and thus with the provisions of
1168 sections 6(d) and 6(c) of the Act. Moreover, such an exemption
1169 would clearly be in the public interest, as required by the
1170 Act, insofar as it relieves AGSOC of burdensome and unnecessary
1171 regulation and affords AGSOC the flexibility it will require in
1172 the formative stages of its development.

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1146 ^{50/} See I.C. Rel. No. 8251, ['73-'74 Dec.] Fed. Sec. L.
1147 Rep. (CCH) ¶ 79,682 (Feb. 26, 1974), amended, I.C. Rel. No.
1148 8902, ['75-'76 Dec.] Fed. Sec. L. Rep. (CCH) ¶ 80,271 (Aug. 22,
1149 1975), rescinded, I.C. Rel. No. 9149, ['75-'76 Dec.] Fed. Sec.
1150 L. Rep. (CCH) ¶ 80,371 (Feb. 6, 1976).

1174 WHEREFORE, Applicant respectfully requests that the
1175 Commission exempt AGSOC from all the provisions of the ICA and
1176 the rules and regulations thereunder until five years after the
1177 initial issuance of shares by AGSOC, during which time shares
1178 will not be alienable. As discussed above, Applicant expects
1179 that such an exemption will be conditioned upon compliance with
1180 modified annual disclosure requirements. Applicant proposes
1181 further that the Commission and its staff consult with AGSOC
1182 during this period of exemption relative to problems of ICA
1183 compliance and revisit the question of ICA exemption after five
1184 years.

1185
1186 Applicant requests that any questions regarding this
1187 application be directed to Samuel A. Stern, Esq., Wilmer &
1188 Pickering, 1666 K Street, N.W., Washington, D.C. 20006,
1189 telephone number (202) 872-6000.

1190
1191 Attached hereto as Exhibit E is a proposed notice of
1192 proceeding initiated by the filing of this application.

1193
1194
1195 Dated: March ___, 1980
1196
1200
1200
1200
1200

1201 By _____
1202 . James W. Duncan, Chairman
1203 Legislative Budget and Audit Committee
1204 Legislature of the State of Alaska
1205
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1205
1205

1207 VERIFICATION
1208

1212 James W. Duncan, being duly sworn, deposes and says
1213 that he has duly executed the attached "Application for an
1214 Order of Temporary Exemption Pursuant to Section 6(d) or, in
1215 the Alternative, Pursuant to Section 6(c) of the Investment
1216

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1216 Company Act of 1940" dated March ___, 1980 for and on behalf of
1217
1217 himself as Chairman of the Legislative Budget and Audit
1218
1218 Committee of the Legislature of the State of Alaska. Deponent
1219
1219 says further that he is familiar with this Application, and the
1220
1220 contents hereof, and that the facts herein set forth are true
1221
1221 to the best of his knowledge, information, and belief.

(Signature)

James W. Duncan

Subscribed and sworn before me, a notary public, this _____ day
of March 1980.

[Official Seal]

Signature of Notary Public

My commission expires

P.L. 95-600
Sec. 554

LAWS OF 95th CONG.—2nd SESS.

Nov. 6

~~SEC. 554. REPORT ON EFFECTIVENESS OF JOBS CREDIT.~~

~~(a) REPORT ON TARGETED JOBS CREDIT.—Not later than June 30, 1981, the Secretary of the Treasury and the Secretary of Labor shall jointly submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report on—~~

~~(1) the effectiveness of the targeted jobs credit provided by the amendments made by this section in improving the employment situation of the targeted groups, and~~

~~(2) the types of employers claiming such credit.~~

~~(b) GENERAL JOBS CREDIT.—The report required under paragraph (1) shall also include an evaluation of—~~

~~(1) the effectiveness of the general jobs credit provided by section 44B of the Internal Revenue Code of 1954 for 1977 and 1978 in stimulating employment and enhancing economic growth, and~~

~~(2) the types of employers claiming such credit.~~

~~SEC. 555. STUDY OF EFFECTS OF CHANGES IN THE TAX TREATMENT OF CAPITAL GAINS ON STIMULATING INVESTMENT AND ECONOMIC GROWTH.~~

~~Not later than September 30, 1981, the Secretary of the Treasury shall submit to the Committee on Ways and Means of the House of Representatives and to the Committee on Finance of the Senate a report on the effectiveness of the changes made by this title in the tax treatment of capital gains of individuals and corporations in stimulating investment and increasing the rate of economic growth. The report shall also include an analysis of the effects these changes had on employment growth and on income tax revenues.~~

TITLE VI—GENERAL STOCK OWNERSHIP CORPORATIONS

SEC. 601. ESTABLISHMENT AND TAXATION OF GENERAL STOCK OWNERSHIP CORPORATIONS AND THEIR SHAREHOLDERS.

(a) IN GENERAL.—Chapter 1 (relating to normal taxes and surtaxes) is amended by adding at the end thereof the following new subchapter:

“Subchapter U—General Stock Ownership Corporations

“Sec. 1391. Definitions

“Sec. 1392. Election by general stock ownership corporation.

“Sec. 1393. Corporation taxable income taxed to shareholders.

“Sec. 1394. Rules applicable to distributions of electing general stock ownership corporations.

“Sec. 1395. Adjustments to basis of stock of shareholders.

“Sec. 1396. Minimum distribution

“Sec. 1397. Special rules applicable to earnings and profits of an electing general stock ownership plan.

“SEC. 1391. DEFINITIONS.

“(a) GENERAL STOCK OWNERSHIP CORPORATION.—For purposes of this subchapter, the term ‘general stock ownership corporation’

(hereinafter referred to as a 'GSOC') means a domestic corporation which—

"(1) is not a member of an affiliated group (as defined in section 1504), and

"(2) is chartered and organized after December 31, 1978, and before January 1, 1984;

"(3) is chartered by an act of a State legislature or as a result of a State-wide referendum;

"(4) has a charter providing—

"(A) for the issuance of only 1 class of stocks,

"(B) for the issuance of shares only to eligible individuals (as defined in subsection (c));

"(C) for the issuance of at least one share to each eligible individual, unless such eligible individual elects within one year after the date of issuance not to receive such share;

"(D) that no share of stock shall be transferable—

"(i) by a shareholder other than by will or the laws of descent and distribution until after the expiration of 5 years from the date such stock is issued by the GSOC except where the shareholder ceases to be a resident of the State;

"(ii) to any person other than a resident individual of the chartering State;

"(iii) to any individual who, after the transfer, would own more than 10 shares of the GSOC;

"(E) that such corporation shall qualify as a GSOC under the Internal Revenue Code;

"(5) is empowered to invest in properties (but not in properties acquired by it or for its benefit through the right of eminent domain).

For purposes of this subsection, section 1504(a) shall be applied by substituting '20 percent' for '80 percent' wherever it appears.

"(b) **ELECTING GSOC.**—For purposes of this subchapter, the term 'electing GSOC' means a GSOC which files an election under section 1392 which, under section 1392, is in effect for such taxable year.

"(c) **ELIGIBLE INDIVIDUALS.**—For purposes of subsection (a), the term 'eligible individual' means an individual who is, as of a date specified in the State's enabling legislation for the GSOC, a resident of the chartering State and who remains a resident of such State between that date and the date of issuance.

"(d) **TREATED AS PRIVATE CORPORATION.**—For purposes of this title, a GSOC shall be treated as a private corporation and not as a governmental unit.

"(e) **STUDY OF GENERAL STOCK OWNERSHIP CORPORATIONS.**—The staff of the Joint Committee on Taxation shall prepare a report on the operation and effects of this subchapter relating to GSOC's. An interim report shall be filed within two years after the first GSOC is formed and a final report shall be filed by September 30, 1983.

SEC. 1392. ELECTION BY GSOC.

"(a) **ELIGIBILITY.**—Except as provided in section 1393, any GSOC may elect, in accordance with the provisions of this section, not to be subject to the taxes imposed by this chapter.

"(b) **EFFECT.**—If a GSOC makes an election under subsection (a) then—

"(1) with respect to the taxable years of the GSOC for which such election is in effect, such corporation shall not be subject to the taxes imposed by this chapter and, with respect to such

taxable years and all succeeding taxable years, the provisions of section 1396 shall apply to such GSOC, and

"(2) with respect to each such taxable year, the provisions of sections 1393, 1394, and 1395 shall apply to the shareholders of such GSOC.

"(c) WHERE AND HOW MADE.—An election under subsection (a) may be made by a GSOC at such time and in such manner as the Secretary shall prescribe by regulations.

"(d) YEARS FOR WHICH EFFECTIVE.—An election under subsection (a) shall be effective for the taxable year of the GSOC for which it is made and for all succeeding taxable years of the GSOC, unless it is terminated under subsection (f).

"(e) TAXABLE YEAR.—The taxable year of a GSOC shall end on October 31 unless the Secretary consents to a different taxable year."

"(f) TERMINATION.—The election of a GSOC under subsection (a) shall terminate for any taxable year during which it ceases to be a GSOC and for all succeeding taxable years. The election of a GSOC under subsection (a) may be terminated at any other time with the consent of the Secretary, effective for the first taxable year with respect to which the Secretary consents and for all succeeding taxable years.

"SEC. 1393. GSOC TAXABLE INCOME TAXED TO SHAREHOLDERS.

"(a) GENERAL RULE.—The taxable income of an electing GSOC for any taxable year shall be included in the gross income of the shareholders of such GSOC in the manner and to the extent set forth in this subsection.

"(1) AMOUNT INCLUDED IN GROSS INCOME.—Each shareholder of an electing GSOC on any day of a taxable year of such GSOC shall include in his gross income for the taxable year with or within which the taxable year of the GSOC ends the amount he would have received if, on each day of such taxable year, there had been distributed pro rata to its shareholders by such GSOC an amount equal to the taxable income of the GSOC for its taxable year divided by the number of days in the GSOC's taxable year.

"(2) TAXABLE INCOME DEFINED.—For purposes of this section, the term 'taxable income' of a GSOC shall be determined without regard to the deductions allowed by part VIII of subchapter B (other than deductions allowed by section 248, relating to organizational expenditures).

"(b) SPECIAL RULE FOR INVESTMENT CREDIT.—The investment credit of an electing GSOC for any taxable year shall be allowed as a credit to the shareholders of such corporation in the manner and to the extent set forth in this subsection.

"(1) CREDIT.—There shall be apportioned among the shareholders a credit equal to the amount each shareholder would have received if, on each day of such taxable year, there had been distributed pro rata to the shareholders the electing GSOC's net investment credit divided by the number of days in the GSOC's taxable year.

"(2) NET INVESTMENT CREDIT.—For purposes of this paragraph the term 'net investment credit' means the investment credit of the electing GSOC for its taxable year less any tax from recomputing a prior year's investment credit in accordance with section 47.

"(3) RECAPTURE.—There shall be apportioned among the shareholders of a GSOC, in the manner described in paragraph (1), an

additional tax equal to the excess of any tax resulting from recomputing a prior year's investment credit in accordance with section 47 over the investment credit of the GSOC for its taxable year.

"SEC. 1394. RULES APPLICABLE TO DISTRIBUTIONS OF AN ELECTING GSOC'S.

"(a) SHAREHOLDER INCOME ACCOUNT.—An electing GSOC shall establish and maintain a shareholder income account which account shall be—

"(1) increased at the close of the GSOC's taxable year by an amount equal to the GSOC's taxable income for such year, and

"(2) decreased, but not below zero, on the first day of the GSOC's taxable year by the amount of any GSOC distribution to the shareholders of such GSOC made or treated as made during the prior taxable year.

"(b) TAXATION OF DISTRIBUTIONS.—Distributions by an electing GSOC shall be treated as—

"(1) a distribution of previously taxed income to the extent such distribution does not exceed the balance of the shareholder income account as of the close of the taxable year of the GSOC, and

"(2) a distribution to which section 301(a) applies but only to the extent such distribution exceeds the balance of the shareholder income account as of the close of the taxable year of the GSOC.

"(c) DISTRIBUTIONS NOT TREATED AS A DIVIDEND.—Any amounts includible in the gross income of any individual by reason of ownership of stock in a GSOC shall not be considered as a dividend for purposes of section 116.

"(d) REGULATIONS.—The Secretary shall have authority to prescribe by regulation, rules for treatment of distributions in respect of shares of stock of the GSOC that have been transferred during the taxable year."

"SEC. 1395. ADJUSTMENT TO BASIS OF STOCK OF SHAREHOLDERS.

"The basis of a shareholder's stock in an electing GSOC shall be increased by the amount includible in the gross income of such shareholder under section 1393, but only to the extent to which such amount is actually included in the gross income of such shareholder.

"SEC. 1396. MINIMUM DISTRIBUTIONS.

"(a) GENERAL RULE.—A GSOC shall distribute at least 90 percent of its taxable income for any taxable year by January 31 following the close of such taxable year. Any distribution made on or before January 31 shall be treated as made as of the close of the preceding taxable year.

"(b) IMPOSITION OF TAX IN CASE OF FAILURE TO MAKE MINIMUM DISTRIBUTIONS.—If a GSOC fails to make the minimum distribution requirements described in subsection (a), there is hereby imposed a tax equal to 20 percent of the excess of the amount required to be distributed over the amount actually distributed.

"SEC. 1397. SPECIAL RULES APPLICABLE TO AN ELECTING GSOC.

"(a) GENERAL RULE.—The current earnings and profits of an electing GSOC as of the close of its taxable year shall not include the amount of taxable income for such year which is required to be

included in the gross income of the shareholders of such GSOC under section 1393(a).

"(b) SPECIAL RULE FOR AUDIT ADJUSTMENTS.—

"(1) TAXABLE INCOME.—Taxable income of an electing GSOC shall, in the year of final determination, be increased or decreased, as the case might be, by any adjustment to taxable income for a prior taxable year.

"(2) INVESTMENT CREDIT.—The net investment credit of an electing GSOC shall, in the year of final determination, be increased or decreased, as the case might be, by any adjustment to the net investment credit for a prior taxable year.

"(3) METHOD OF MAKING ADJUSTMENTS.—An electing GSOC shall include in gross income for the year of an adjustment the amount described in paragraph (1) and shall take into account the adjustment described in paragraph (2), and shall be liable for payment of interest in the amount that would have been payable by the GSOC under section 6601 (relating to interest on underpayment, nonpayment or extensions of time for payment, of tax) or receivable by the GSOC under section 6611 (relating to interest on overpayments) if such GSOC had been a corporation other than an electing GSOC."

(b) TECHNICAL AMENDMENTS.—

(1) NET OPERATING LOSS DEDUCTION.—Paragraph (1) of section 172(b) (relating to net operating loss carrybacks and carryovers) is amended by adding at the end thereof the following new subparagraph:

"(H) In the case of an electing GSOC which has a net operating loss for any taxable year such loss shall not be a net operating loss carryback to any taxable year preceding the year of such loss, but shall be a net operating loss carryover to each of the 10 taxable years following the year of such loss."

(2) INCOME TAX COLLECTED AT SOURCE.—Section 3402 (relating to income collected at source) is amended by adding at the end thereof the following new subsection:

"(r) EXTENSION OF WITHHOLDING TO GSOC DISTRIBUTIONS.—

"(1) GENERAL RULE.—An electing GSOC making any distribution to its shareholders shall deduct and withhold from such payment a tax in an amount equal to 25 percent of such payment.

"(2) COORDINATION WITH OTHER SECTIONS.—For purposes of sections 3403 and 3404 and for purposes of so much of subtitle F (except section 7205) as relates to this chapter, distributions of an electing GSOC to any shareholder which are subject to withholding shall be treated as if they were wages paid by an employer to an employee."

(3) ADJUSTMENTS TO BASIS.—Section 1016(a) (relating to adjustments of basis) is amended by redesignating paragraph (23) as (22) and by inserting after paragraph (20) the following new paragraph:

"(21) to the extent provided in section 1395 in the case of stock of shareholders of a general stock ownership corporation (as defined in section 1391) which makes the election provided by section 1392; and"

(4) RETURN OF GENERAL STOCK OWNERSHIP CORPORATION.—Subpart A of part III of subchapter A of chapter 61 (relating to information returns) is amended by adding at the end thereof the following new section:

"SEC. 6039B. RETURN OF GENERAL STOCK OWNERSHIP CORPORATION.

"Every general stock ownership corporation (as defined in section 1391) which makes the election provided by section 1392 shall make a return for each taxable year, stating specifically the items of its gross income and the deductions allowable by subtitle A, the amount of investment credit or additional tax, as the case may be, the names and addresses of all persons owning stock in the corporation at any time during the taxable year, the number of shares of stock owned by each shareholder at all times during the taxable year, the amount of money and other property distributed by the corporation during the taxable year to each shareholder, the date of each such distribution, and such other information, for the purpose of carrying out the provisions of subchapter U of chapter 1, as the Secretary may by regulation prescribe. Any return filed pursuant to this section shall, for purposes of chapter 66 (relating to limitations), be treated as a return filed by the corporation under section 6012. Every GSOC shall file an annual report with the Secretary summarizing its operations for such year."

(c) CLERICAL AMENDMENTS.—

(1) The table of subchapters for chapter 1 is amended by adding at the end thereof the following:

"SUBCHAPTER U —General stock ownership plans."

(2) The table of sections for subpart A of part III of subchapter A of chapter 61 is amended by adding at the end thereof the following:

"Sec. 6039B Return of general stock ownership corporation."

(d) **EFFECTIVE DATE.**—The amendments made by this section shall apply with respect to corporations chartered after December 31, 1978, and before January 1, 1984.

~~TITLE VII—TECHNICAL CORRECTIONS OF THE TAX REFORM ACT OF 1976~~

SEC. 701. TECHNICAL AMENDMENTS TO INCOME TAX PROVISIONS AND ADMINISTRATIVE PROVISIONS.

(a) AMENDMENTS RELATING TO RETENTION OF PRIOR LAW FOR RETIREMENT INCOME CREDIT UNDER SECTION 37(e).—

(1) **CLARIFICATION THAT SPOUSE UNDER AGE 65 MUST HAVE PUBLIC RETIREMENT SYSTEM INCOME.**—Paragraph (2) of section 37(e) (relating to election of prior law with respect to public retirement system income) is amended by striking out "who has not attained age 65 before the close of the taxable year" and inserting in lieu thereof "who has not attained age 65 before the close of the taxable year (and whose gross income includes income described in paragraph (4)(B))".

(2) **CLARIFICATION THAT QUALIFYING SERVICES MUST HAVE BEEN PERFORMED BY TAXPAYER OR SPOUSE.**—Subparagraph (B) of section 37(e)(4) (defining retirement income) is amended by inserting "and who performed the services giving rise to the pension or annuity (or is the spouse of the individual who performed the services)" after "before the close of the taxable year".

(3) **DISREGARD OF COMMUNITY PROPERTY LAWS.**—Subsection (c) of section 37 (relating to election of prior law with respect to public retirement system income) is amended



OFFICE OF THE
GENERAL COUNSEL

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

October 29, 1979

James L. Thompson
Securities Examiner
Division of Banking, Securities, Small Loans, and Corporations
Department of Commerce and Economic Development
State of Alaska
Pouch D
Juneau, Alaska 99811

Re: Alaska General Stock Ownership Corporation ("AGSOC")

Dear Mr. Thompson:

As I explained during our recent telephone conversation, we have considered the questions raised by your letter of July 17, 1979. In doing so we consulted with senior members of this Commission's staff in the Divisions of Corporation Finance, Investment Management, and Corporate Regulation. As I mentioned in our conversation, we have not discussed these matters with the Commission and the following sets forth only tentative staff views.

Your letter asked a number of questions relating to compliance with the Federal securities laws, specifically which forms should be used, what types of disclosure are necessary, and our estimates of the costs of compliance. Unfortunately, it is not possible to answer to your questions because answers to most of them would depend, to a large degree, on the manner in which the AGSOC program is carried out. Therefore the following is designed simply to alert you to the scope of the various securities laws and the ways in which they may apply to AGSOC. 1/

Securities Act of 1933

Assuming AGSOC would not sell its securities, but rather would issue them free of charge to each resident of Alaska, it does not appear that registration of the securities would be required under

1/ The Memorandum of Wilmer, Cutler & Pickering to the Commissioner of Revenue of the State of Alaska dated November 2, 1978, which you included in the materials sent under cover of your July 17 letter, accurately described many of the problems which AGSOC would encounter in relation to the federal securities laws.

the Securities Act of 1933. As you know, that Act applies only to sales of securities for value. Since these securities would not be distributed in a transaction where any value changes hands, it would appear that no sale would be involved. This conclusion would not, of course, apply to resales by AGSOC of securities of other issuers purchased by AGSOC. In such a case, unless some statutory exemption were available to AGSOC, any sale of securities might be a public offering which might render AGSOC a statutory underwriter. In that event, AGSOC would be precluded from making the sales unless the issuer registered the securities. 2/

Securities Exchange Act of 1934

Unlike the Securities Act of 1933 which deals, for the most part, with distributions of securities by issuers or underwriters, the Securities Exchange Act of 1934 contains various provisions dealing with the trading of securities in the secondary market. In addition, the Securities Exchange Act applies rather complex continuous reporting obligations to corporations which have 500 or more shareholders and one million dollars or more in assets. Once AGSOC met these criteria it would be required to report under this disclosure system.

The Securities Exchange Act also requires that if the issuer solicits proxies for a meeting of shareholders the solicitation must comply with rules which the Commission has adopted. These rules provide the form and content of proxy solicitation materials as well as prohibiting the inclusion of false or misleading statements in those materials. If AGSOC were to solicit proxies, these disclosure rules would apply to that solicitation. 3/

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- 2/ In addition, Section 17(a) of the Securities Act and Rule 10b-5 adopted under the Securities Exchange Act of 1934 prohibit various forms of fraud in connection with the offer or sale of any security.
- 3/ During our October 16 telephone conversation, you explained that AGSOC's board of directors would initially be appointed by the Governor of Alaska. Subsequently, however, the board would be elected by the shareholders using the State's electoral mechanisms. Apparently, the shareholders would vote directly so no solicitation of a proxy would be involved. Even so, the Securities Exchange Act requires a reporting company which does not solicit proxies to provide an annual report, containing the same information as a proxy statement, to its shareholders.

Finally, as noted previously, the Securities Exchange Act and rules thereunder prohibit fraud in connection with the purchase or sale of a security.

Investment Company Act

To the extent that AGSOC would, or would hold itself out to be, engaged primarily in or proposing to engage primarily in, the business of investing, reinvesting, or trading in securities, AGSOC might be an investment company under Section 3(a) of the Investment Company Act of 1940. On the other hand, if AGSOC were to limit itself to purchases of majority interests in companies engaged primarily in a business other than investing, reinvesting, owning, holding, or trading in securities it might be excluded from the definition of the term "investment company." There are, in addition, several other exclusions which might apply but all of which depend on the particular facts involved.

The Investment Company Act establishes one of the most pervasive regulatory schemes under the Commission's jurisdiction. Unlike the Securities and Securities Exchange Acts, the provisions of which focus primarily on disclosure, the Investment Company Act imposes various substantive conditions on investment companies. It is true that the Investment Company Act authorizes the Commission to grant rather broad exemptions from those conditions but these exemptions are generally granted on a case-by-case basis. We simply do not have enough information at present to discuss an Investment Company Act exemption for AGSOC.

Public Utility Holding Company Act

Should AGSOC own or control 10 percent of the outstanding voting securities of a public utility or another public utility holding company, it might become subject to the Public Utility Holding Act of 1935. If so, among other restrictions, it could not engage in any further financing without the approval of the Commission.

Conclusion

We hope the foregoing, although necessarily somewhat general, has been helpful. Because there are so many imponderables, we believe that your suggestion that a continuing dialogue be maintained between

- 4 -

your office and the Commission's staff is a good one. Only when the details of AGSOC's management and operations are completely clear can the applicability of the federal securities laws be accurately assessed. In this regard, continued participation of counsel experienced in the application of the federal securities laws would be helpful. Of course, we will endeavor to give you any assistance you need. For example, if, as you have suggested, testimony before an Alaskan legislative committee by a Commission staff member would assist your efforts, you should let me know so that we can bring the proposal to the attention of the Commission.

Very truly yours,

A large, stylized handwritten signature in dark ink, appearing to read "B. M. Vandegrift". The signature is written over the typed name and extends to the right with a long, sweeping flourish.

Benjamin M. Vandegrift
(202) 272-2436

SECURITIES AND EXCHANGE
COMMISSION
Washington, D.C. 20549

FORM N-8A

NOTIFICATION OF REGISTRATION
FILED PURSUANT TO SECTION 8(a)
OF THE INVESTMENT COMPANY
ACT OF 1940¹/

The undersigned investment company hereby notifies
the Securities and Exchange Commission that it registers under
and pursuant to the provisions of section 8(a) of the
Investment Company Act of 1940 and in connection with such
notification of registration submits the following information:

Name: Alaska General Stock Ownership Corporation

Address of Principal Business Office: Not yet determined

Telephone Number: Not yet determined

Name and address of agent for service
of process: Not yet determined

Registrant is not filing a Registration Statement
pursuant to section 8(b) of the Investment Company Act of 1940
concurrently with the filing of this Form N-8A. The following
items of information are therefore provided:

1/ In compliance with rule N-6D-1(b) (17 C.F.R.
§ 270.6d-1(b)), this form is filed as an exhibit to the
attached Application for Exemption from the Investment Company
Act of 1940. It has not been executed. In accordance with
rule N-6D-1(b), the filing of this form in this manner shall
not be construed as the filing of a notification of
registration under section 8(a) of the Act. The information
contained herein is correct as of March __, 1980.

60 Item 1. Exact name of registrant.
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62 Alaska General Stock Ownership Corporation.
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63
64 Item 2. Name of state under the laws of which registrant was
65 organized or created and the date of such
65 organization or creation.
66
67 Registrant has not yet been organized or created.
67 Registrant will, however, be organized under the laws
67 of the State of Alaska.
69
69
70 Item 3. Form of organization of registrant.
71
72 General stock ownership corporation.
73
73
74 Item 4. Classification of registrant.
75
76 Management company.
77
77
78 Item 5. Subclassification of management company.
79
80 (a) It is anticipated that registrant will be a
80 closed-end company. But see note 15, page 14, of
81 attached application.
82
83 (b) It is not known whether registrant will be a
84 diversified or nondiversified company.
85
85
86 Item 6. Name and address of each investment adviser of
87 registrant.
88
89 Registrant does not expect to use investment
90 advisers.
91
91
92 Item 7. Name and address of each officer and director of
93 registrant.
94
95 Officers and directors have not yet been selected.
97
97
98 Item 8. Unincorporated investment companies.
99
100 Not applicable. Registrant will be an incorporated
101 company.
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102
103 Item 9. Issuances and offerings of securities.
104
105 Registrant is not currently issuing or offering its
105 securities, nor does registrant have any securities
106 currently issued and outstanding. Registrant does
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not propose presently to make a public offering of its securities. Any stock issued will be issued without charge and only to residents of the State of Alaska.2/ Any other securities issued will be offered privately.

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117
118 Item 10. Current value of registrant's total assets.

Registrant, not being legally existent, has no assets.

124 Item 11. License to operate as a small business investment
125 company.

Registrant does not intend to apply for a license to operate as a small business investment company under the Small Business Investment Act of 1958.

130 Item 12. Registrant's last regular periodic report to security
131 holders.

Not applicable. Registrant does not yet have any security holders and has not distributed any regular periodic reports.

111 2/ The Office of the General Counsel of the Securities
113 and Exchange Commission has indicated that such an issuance
113 will constitute neither a "sale" nor an "offering" within the
114 meaning of the Securities Act of 1933. See Exhibit C to
115 attached application.

Proposed Notice of Proceedings Initiated
by the Filing of Application

UNITED STATES OF AMERICA

BEFORE THE

SECURITIES AND EXCHANGE COMMISSION

INVESTMENT COMPANY ACT OF 1940

Release No. _____/ _____, 1980

In the Matter of

ALASKA GENERAL STOCK
OWNERSHIP CORPORATION

c/o Hon. James W. Duncan, Chairman
Legislative Budget and Audit Committee
Legislature of the State of Alaska
Pouch V
Juneau, Alaska 99811

NOTICE OF FILING OF APPLICATION FOR
ORDER PURSUANT TO SECTION 6(d)
OR, IN THE ALTERNATIVE, PURSUANT TO
SECTION 6(c) OF THE ACT TEMPORARILY EXEMPTING
COMPANY FROM ALL PROVISIONS OF
THE ACT

NOTICE IS HEREBY GIVEN that James W. Duncan
("Applicant"), Chairman of the Legislative Budget and Audit
Committee, legislature of the State of Alaska ("Legislature"),
has filed an application requesting an order of the Commission
pursuant to section 6(d) of the Investment Company Act of 1940
("Act") or, in the alternative, for an order pursuant to
section 6(c) of the Act, exempting conditionally the Alaska
General Stock Ownership Corporation ("AGSOC"), a corporation to
be chartered by an act of the legislature, from all the
provisions of the Act until five years after the initial
issuance of shares by AGSOC. All interested persons are

63 referred to the application on file with the Commission for a
63 statement of the representations contained therein, which are
64 summarized below.

65
66 Applicant represents as follows:

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69 It is not certain at this time whether
70 AGSOC will fall within the formal
71 definition of an investment company or
71 whether AGSOC might qualify for exclusion
72 from coverage under the Act. AGSOC will
73 not come within the generally understood
74 concept of a conventional investment
75 company, however, and will be far outside
75 the class of companies intended to be
76 regulated by the Act. AGSOC will differ in
77 both form and substance from the normal
78 investment company business. In any event,
80 Applicant intends to structure AGSOC in a
80 way that provides the company's security
81 holders with all the relevant protections
82 embodied in the Act.

83
84 The Legislature is considering legislation
85 to charter AGSOC in accordance with the
85 provisions governing general stock
86 ownership corporations in Title VI of the
86 Revenue Act of 1978, Pub. L. No. 95-600,
87 Tit. VI, 92 Stat. 2892 (codified
87 principally as INT. REV. CODE subch. U, 26
88 U.S.C. §§ 1391-97). Upon its formation,
89 AGSOC will issue one share of its only
89 class of stock to all "eligible
90 individuals" (in general, all residents of
90 Alaska) without charge. Shares will not be
91 transferable (1) to nonresidents and (2)
92 for five years after they are issued,
92 except by testate or intestate succession.
93 AGSOC will be required to purchase at book
94 value the shares of any individual who
95 ceases to be a resident of Alaska or of any
95 nonresident who acquires shares by
96 operation of law. Each individual's
97 aggregate holdings will be limited to 10
98 shares.

99
100 AGSOC has not yet formulated an investment
101 policy. It is contemplated, however, that
102 AGSOC will acquire an interest in one or
102 more business enterprises with borrowed
103 funds and that the acquired interests will
104 be pledged to secure the debt. The cash
104 flow from the acquired business will be
105 used to service the debt and, to the extent
106 possible, pay dividends to shareholders.
107 AGSOC is expected to focus on investments
107 that will allow its citizen-stockholders to
108 share in the development of Alaska's
109 economy.