SCOMM

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PLEASE NOTE: THE FOLLOWING PAGES WERE TREATED AS A UNIT IN THE ORIGINAL DOCUMENT.

H. St Affairs 1-29
AGSOC 1:15
2-8-80 1:30A

Stern Cap. 102

Changes should be cleared first but should not make the changes before we get response from SEC.

Gauche
202-224-6665
Graves - Jones 2-11-80

in principle leg. or Spon. is willing to accept these changes

Call Sam Wed 1-30-80 before 8:30A/202-872-~~6054~~ 6414

WILMER & PICKERING
1666 K STREET, N. W.
WASHINGTON, D. C. 20006

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LONDON, EC4R 2RA, ENGLAND
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January 22, 1980

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

Re: Exemption of the Alaska General Stock Ownership Corporation from the Investment Company Act of 1940.

Dear Dale:

I enclose a memorandum to the Budget and Audit Committee recommending several specific changes in the Alaska GSOC enabling legislation which have suggested themselves in the course of our consultations with the Staff of the SEC. We believe that representations to the Staff that these changes will be made would be most helpful in securing Staff support before the Commission for our request for a total exemption from the Investment Company Act for the first five years.

Also enclosed is a draft letter concerning these changes as well as a discussion of Alaska's law on conflict of interest which has been requested by the Staff. We ask you to clear these statutory changes and the draft letter in principle with the Committee. We will then forward the letter to the SEC Staff and ask that they recommend to the Commission that the requested exemption be granted if the Alaska legislation is amended along these lines. When and if we receive informal assurances, we will suggest that you proceed with the revisions.

The Staff has also requested more information as to the nature of the investments which are planned for the AGSOC. We have told them that we do not believe portfolio securities will be among the investments to be made, but rather that the AGSOC will seek to become a joint venturer with other large enterprises in the development of various natural resources. We have been specifically asked whether it is contemplated that the AGSOC will own in excess of 25 percent of each entity in which it invests. Please clear with the Committee a representation whether ownership of this magnitude is or is not contemplated. Any additional information you could provide as to contemplated investments would be most helpful.

Your prompt response on these matters is appreciated. On the whole we have been encouraged by the Staff's receptivity to the GSOC concept.

On the IRS front, we understand that IRS, at the urging of a representative of the Treasury, will reconsider its initial unwillingness to rule. We will of course keep you posted.

Sincerely,

Sam

Samuel A. Stern

WILMER & PICKERING
1666 K STREET, N. W.
WASHINGTON, D. C. 20006

January 22, 1980

MEMORANDUM FOR THE ALASKA
LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Re: Exemption of the Alaska General Stock Ownership Corporation from the Investment Company Act of 1940.

We have submitted to the staff of the Securities and Exchange Commission ("SEC") our memorandum of December 5, 1979, and discussed the submission with the staff on several occasions. As a result of our discussions, we believe certain steps are necessary and appropriate to secure total exemption for five years for the Alaska General Stock Ownership Corporation ("AGSOC") from operation of the Investment Company Act of 1940 ("ICA"). We have been given informal assurances that if the Division of Investment Management (the section of the SEC which regulates registered investment companies) will recommend granting the AGSOC total exemption for five years from operation of the ICA, SEC personnel will also recommend approval of our application for partial and temporary exemptions from operation of the Securities Act of 1933 and the Securities and Exchange Act of 1934.

We suggest that certain specific changes set forth below be made to the enabling legislation before its passage in its current form to maximize our chances of

persuading the Division of Investment Management that the AGSOC should be exempt from operation of the ICA. All of these suggested changes have been prompted by specific comments of the staff. The alternative will be at best a partial exemption and some measure of SEC regulation of the AGSOC.

a) Conflict of Interest

The SEC's primary concern is whether granting an exemption from operation of those provisions of the ICA which outlaw certain transactions which could involve conflicts of interest or self-dealing will result in a failure to protect AGSOC shareholders.

Section 17 of the ICA makes unlawful (absent an exemption by Commission order) certain transactions between an investment company and "affiliated persons," broadly defined.*/ Under section 17(a) it is unlawful for an

---

*/ The term is defined in section 2(a)(3) of the ICA:

> "'Affiliated person' of another person means
>
> "(A) any person directly or indirectly owning, controlling, or holding with power to vote, 5 per centum or more of the outstanding voting securities of such other person;
>
> "(B) any person 5 per centum or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by such other person;

[Footnote continued on following page]

"affiliated" person to sell or buy property or most securities to or from the investment company or to enter into joint ventures with or borrow money from the company. */

[Footnote continued]

"(C) any person directly or indirectly controlling, controlled by, or under common control with, such other person;

"(D) any officer, director, partner, copartner, or employee of such other person;

"(E) if such other person is an investment company, any investment advisor thereof or any member of an advisory board thereof; and

"(F) if such other person is an unincorporated investment company not having a board of directors, the depositor thereof."

*/ Section 17(a) makes it unlawful for an "affiliated" person:

"(1) knowingly to sell any security or other property to such registered company or to any company controlled by such registered company, unless such sale involves solely

"(A) securities of which the buyer is the issuer,

"(B) securities of which the seller is the issuer and which are part of a general offering to the holders of a class of its securities, or

"(C) securities deposited with the trustee of a unit investment trust or periodic payment plan by the depositor thereof;

"(2) knowingly to purchase from such registered company, or from any company controlled by such registered company, any security or any other property (except securities of which the seller is the issuer); or

[Footnote continued on following page]

The SEC staff has pointed out that various sections of the proposed AGSOC enabling legislation*/ could give rise to the kind of transactions which would be prohibited under section 17. For example, the Act (§§ 10.50.015(4), (5) and (7)) permits the AGSOC to buy and sell property and securities; the ICA, if applicable, would prohibit it from engaging in such a transaction with, for example, a person who is a director of the GSOC (or with a company on whose board their director also sits). The ICA might also prohibit the AGSOC from becoming a joint venturer with such a company, as contemplated in Act § 10.50.015(17), in certain circumstances.**/ Similarly, the Act § 10.50.015(6) permits

[Footnote continued]

> "(3) to borrow money or other property from such registered company or from any company controlled by such registered company (unless the borrower is controlled by the lender) . . . ."

*/ References to "Act §" refer to section 1 of CSSS Senate Bill No. 170, introduced as amended April 27, 1979.

**/ Section 17(d) makes it "unlawful for any affiliated person of . . . a registered investment company . . . or any affiliated person of such a person . . . acting as principal to effect any transaction in which such registered company, or a company controlled by such registered company, is a joint or a joint and several participant with such person . . . for the purpose of limiting or preventing participation by such registered or controlled company on a basis different from or less advantageous than that of such other participant."

the AGSOC to lend money to its employees; since the ICA defines employees as "affiliated persons," such a loan would constitute a violation.

One option -- an option invited by the staff -- is to argue to the Commission why existing Alaska law on conflicts of interest adequately protects the public and why therefore there is no need for section 17 of the ICA to apply to AGSOC. Attached hereto as Attachment A is a draft of a letter we propose to send to the staff for its informal reaction. If we are not successful with this approach, it may be necessary to formulate certain modifications of the enabling legislation to include explicit prohibitions of transactions with persons who may have a conflict of interest.

b) Indemnification

The staff also commented on the scope of the AGSOC's power to indemnify provided by section 10.50.020 of the enabling legislation. The staff has indicated that these standards are acceptable to them as consistent with section 17(h) of the ICA, with the exception of the open-ended power granted in Act § 10.50.020(f), which widens the scope of possible indemnity to allow any corporate

choice. Although we realize that the provision was based on the American Bar Foundation's Model Business Corporation Act, it goes further than the ICA. We suggest strongly that Act § 10.50.020(f) be deleted from the legislation.

c) Miscellaneous

Below we discuss a series of miscellaneous changes to the legislation which have been suggested by our conversations with the staff. We request that you clear each of these changes in principle so that we may represent to the staff that they will be implemented if our exemption request is granted.

(i) Stock Options

The AGSOC is given the power to establish pension plans and other incentive plans for its directors, officers and employees. Act § 10.50.015(15). The staff has pointed out that section 18(d) of the ICA prohibits an investment company from granting stock options to its employees. We recommend that stock options be specifically excepted from Act § 10.50.015(15). The new section would read:

> "(15) pay pensions and establish pension plans, pension trusts, profit-sharing plans, and other incentive plans for its directors, officers and employees, except that such pensions or plans shall not include the issuance of stock options;"

(ii) Later Issues

Under Act § 10.50.080, the AGSOC shareholders are permitted to set the price of shares to be sold in later issuances. The staff has pointed out that section 23(b) of the ICA requires that shares not be sold at an amount below the current net asset value of each share without the consent of a majority of the investment company's shareholders. Under Act § 10.50.150, one third of the AGSOC shareholders constitutes a quorum and, thus, one vote more than one sixth could set the price at less than net asset value. We recommend that you tighten the restriction in the AGSOC legislation to match the ICA. The second sentence of section 10.50.080 would be amended to read:

> "The decision to issue shares without consideration or for consideration if that consideration is less than the current net asset value of such shares shall be made by the vote of a majority of the shareholders."

(iii) Payment Other Than Cash

The staff has also noted that Act § 10.50.085 allows payments for shares to be by transfer of property other than cash or in exchange for services. The ICA does not allow payment other than in cash (section 23(a)). We suggest conformance to the ICA in this minor matter. The

first sentence of Act § 10.50.085 would be amended to read:

> "Consideration for the issuance of shares if required shall be paid in cash."

(iv) Interested Directors

Section 10(a) of the ICA provides that no investment company may have more than 60 percent of its Board of Directors be "interested persons". The ICA's definition of 'interested" persons includes all affiliated persons and many others.*/ There is currently no similar restriction on who may serve on the Board of Directors of the AGSOC. In lieu of incorporating some sort of restriction along the lines of the ICA into the AGSOC legislation, we suggest that a provision along the lines of section 41 of the Model Business Corporation Act be added to the legislation. That section provides:

> DIRECTOR CONFLICTS OF INTEREST
>
> No contract or other transaction between a corporation and one or more of its directors or any other corporation, firm, association or entity in which one or more of its directors are

---

*/ "Interested person", as defined in section 2(a)(19) of the ICA, includes (unless exempted by Commission order) members of the immediate family of affiliated persons, affiliates or other interested persons of the company's investment adviser, legal counsel for the company or any partner or employee of such counsel, and any registered broker or dealer or an affiliate of such a broker or dealer.

directors or officers or are financially interested, shall be either void or voidable because of such relationship or interest or because such director or directors are present at the meeting of the board of directors or a committee thereof which authorizes, approves or ratifies such contract or transaction or because his or their votes are counted for such purpose, if:

(a) the fact of such relationship or interest is disclosed or known to the board of directors or committee which authorizes, approves or ratifies the contract or transaction by a vote or consent sufficient for the purpose without counting the votes or consents of such interested directors; or

(b) the fact of such relationship or interest is disclosed or known to the shareholders entitled to vote and they authorize, approve or ratify such contract or transaction by vote or written consent; or

(c) the contract or transaction is fair and reasonable to the corporation.

Common or interested directors may be counted in determining the presence of a quorum at a meeting of the board of directors or a committee thereof which authorizes, approves or ratifies such contract or transaction.

We suggest the new provision follow Act § 10.50.200. This new provision will also strengthen our position with the SEC concerning the need for application of section 17 of the ICA to the AGSOC. See Attachment A.

(v) Replacing Directors

The ICA requires (section 16) that when a vacancy occurs in the Board of Directors of an investment company it may be filled only if after it is filled, two thirds of the Board has been elected by the shareholders. No such restriction exists in Act § 10.50.195, and we recommend adding such a provision. The first sentence of § 10.50.195 would then read:

> "A vacancy occurring in the board of directors may be fulfilled by the affirmative vote of a majority of the remaining directors if immediately after filling any such vacancy at least two thirds of the directors then holding office shall have been elected by the shareholders at a shareholders' meeting."

(vi) Disqualification

The ICA places certain restrictions on who may serve as an officer, director, or employee of an investment company, forbidding (unless an exception is granted) persons convicted within 10 years of a securities related crime or subject to an injunction arising from past securities laws violations (section 9). The staff has indicated, and our research has confirmed, that this provision of the ICA is one for which exceptions are only very infrequently given. The enabling legislation contains no equivalent, and we suggest that a provision such as the following

be added, to follow § 10.50.260:

> " INELIGIBILITY OF CERTAIN AFFILIATED PERSONS AND UNDERWRITERS
>
> "It shall be unlawful for any of the following persons to serve or act in the capacity of employee, officer, or director of a corporation:
>
> "(1) any person who within ten years has been convicted of any felony or misdemeanor involving the purchase or sale of any security or arising out of such person's conduct as an underwriter, broker, dealer, or investment adviser, or as an affiliated person, salesman, or employee of any investment company, bank, or insurance company; or
>
> "(2) any person who, by reason of any misconduct, is permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction from acting as an underwriter, broker, dealer, or investment adviser, or as an affiliated person, salesman, or employee of any investment company, bank, or insurance company, or from engaging in or continuing any conduct or practice in connection with any such activity or in connection with the purchase or sale of any security."

(vii) Public Utility Holding Company Act

Finally, as we have advised previously, the Public Utility Holding Company Act places very severe restrictions on a company owning in excess of 10 percent of (or otherwise controlling) a "public utility" as that term is defined in the Act. The staff has indicated that it

would be useful if a mechanism were worked into the legislation so that the directors would be advised of the possibility that an investment would fall within the terms of the Public Utility Holding Company Act, and either seek specific exemption from the SEC as permitted under section 3 of that Act, or comply with the Act's extremely rigid requirements. For this reason, we suggest a new section be added to follow Act § 10.50.015:

> PROHIBITION. A corporation may not own, control or hold with power to vote ten percent or more of the outstanding voting securities of a public utility company or a public utility holding company (as those terms are defined in the Public Utility Holding Company Act of 1935, 15 U.S.C. §§ 79 et seq.), without first taking steps to come within the requirements of that Act, or seeking exemption from the Act's coverage from the Securities and Exchange Commission.

Wilmer & Pickering

WILMER & PICKERING

ATTACHMENT A

DRAFT
January 22, 1980

Houghton R. Hallock, Jr., Esq.
Division of Investment Management

Paul Roye, Esq.
Division of Investment Management

Securities and Exchange Commission
500 North Capitol Street
Washington, D.C. 20549

Re: Request for Exemption for Alaska General Stock Ownership Corporation

Dear Sirs:

You have asked us to amplify our opinion as to why exemption of the AGSOC from the conflict of interest provisions of the Investment Company Act ("ICA") would not work to the detriment of the investing public. In addition, this letter responds to several other concerns you have expressed to us.

As we have stated previously (Memorandum to the Staff of the Securities and Exchange Commission, dated December 5, 1979), the AGSOC, while it may technically fit within the definition of an investment company, is not at all the sort of entity typically regulated under the ICA. It will not invest in portfolio securities, will not use traditional investment advisors or underwriters, and will not engage in more than occasional purchases or sales of securities. Thus, the traditional

abuses which section 17 of the ICA was created to outlaw -- such as conflicts of interest on the part of investment advisors, mutual backscratching and other self-dealing -- will not take place. Moreover, one obvious potential for abuse -- loans to AGSOC officers and directors -- is strictly forbidden by the Alaska legislation. (Act § 10.50.225).

The AGSOC is in many ways a political entity; its few investments and loan transactions will be highly visible and a subject of widespread public comment and debate. This scrutiny alone provides a strong disincentive for self-dealing. Certain provisions of the Alaska enabling legislation provide additional "sunshine" protections against conflict of interest situations. For example, shareholders have the right to examine AGSOC books and records (Act § 10.50.270), and the AGSOC must file an annual report to the Secretary of the Treasury. 24 U.S.C. § 6039B. Extensive publicity will undoubtedly surround the appointment of officers and directors. As for deterrence, these persons are subject to court-ordered removal for fraudulent or dishonest acts and criminal penalties for defrauding shareholders or creditors or making misleading statements. (Act §§ 10.50.290, 10.50.635, 10.50.630).

In addition, Alaska law creates strict fiduciary duties owed every corporation by its officers and directors.

Although we have discovered no Alaska statutes specifically dealing with conflicts of interest, the most complete statement of Alaska law on this subject is contained in the Supreme Court of Alaska's opinion in Alvest, Inc. v. Superior Oil Corp., 398 P.2d 213 (1965), a copy of which is attached hereto. Under the rule of law set forth in this case, corporate officers or directors are fiduciaries and cannot personally profit from a corporate opportunity even with the concurrence of the company's Board of Directors. (Op. at 216). Any such conflict could only be waived by the shareholders (id.), and it is not necessary to allege bad faith by an officer or director in an action against him for dereliction of his fiduciary duties and recovery of the opportunity diverted.

We have also secured agreement from our client that a new provision modeled on section 41 of the Model Business Corporation Act will be added to the proposed Alaska legislation. The new section will provide:

DIRECTOR CONFLICTS OF INTEREST

> No contract or other transaction between a corporation and one or more of its directors or any other corporation, firm, association or entity in which one or more of its directors are

> directors or officers or are financially interested, shall be either void or voidable because of such relationship or interest or because such director or directors are present at the meeting of the board of directors or a committee thereof which authorizes, approves or ratifies such contract or transaction or because his or their votes are counted for such purpose, if:
>
> (a) the fact of such relationship or interest is disclosed or known to the board of directors or committee which authorizes, approves or ratifies the contract or transaction by a vote or consent sufficient for the purpose without counting the votes or consents of such interested directors; or
>
> (b) the fact of such relationship or interest is disclosed or known to the shareholders entitled to vote and they authorize, approve or ratify such contract or transaction by vote or written consent; or
>
> (c) the contract or transaction is fair and reasonable to the corporation.
>
> Common or interested directors may be counted in determining the presence of a quorum at a meeting of the board of directors or a committee thereof which authorizes, approves or ratifies such contract or transaction.

We believe that such a provision is more suited to the AGSOC than are the complex "interested person" restrictions of section 10(a) of the ICA, and that this provision will

further assure that any transaction carrying the potential for abuse will be the subject of focus by a disinterested board.

Thus, persons associated with the AGSOC will have few opportunities to profit personally and even less chance to do so successfully. In light of these circumstances, we feel application of section 17 of the ICA is unnecessary in the case of the AGSOC.

* * * * *

After consultation with us, our client has agreed to make certain other changes in the state legislation to satisfy your concern that the protections offered by the ICA are adequately dealt with in the state AGSOC legislation. Below is a list of changes we propose to CSSS Senate Bill No. 170:

1. Add a new provision after § 10.50.015 as follows:

> PROHIBITION. A corporation may not own, control or hold with power to vote ten percent or more of the outstanding voting securities of a public utility company or a public utility holding company (as those terms are defined in the Public Utility Holding Company Act of 1935, 15 U.S.C. §§ 79 et seg.), without first taking steps to come within the requirements of that Act, or seeking exemption from the Act's coverage from the Securities and Exchange Commission.

2. Act § 10.50.015(15) - Amend the section to read as follows:

"(15) pay pensions and establish pension plans, pension trusts, profit-sharing plans, and other incentive plans for its directors, officers and employees, except that such pensions or plans shall not include the issuance of stock options;"

3. Act § 10.50.020(f) - Delete.

4. Act § 10.50.080 - Amend the second sentence to read as follows:

"The decision to issue shares without consideration or for consideration if that consideration is less than the current net asset value of such shares shall be made by the vote of a majority of the shareholders."

5. Act § 10.50.085 - Amend the first sentence to read as follows:

"Consideration for the issuance of shares if required shall be paid in cash."

6. Act § 10.50.195 - Amend so that the first sentence reads:

"A vacancy occurring in the board of directors may be fulfilled by the affirmative vote of a majority of the remaining directors if immediately after filling any such vacancy at least two thirds of the directors then holding office shall have been elected by the shareholders at a shareholders' meeting."

7. Add new provision after § 10.50.260, as follows:

" INELIGIBILITY OF CERTAIN AFFILIATED PERSONS AND UNDERWRITERS

"It shall be unlawful for any of the following persons to serve or act in the capacity of employee, officer, or director of a corporation:

"(1) any person who within ten years has been convicted of any felony or misdemeanor involving the purchase or sale of any security or arising out of such person's conduct as an underwriter, broker, dealer, or investment adviser, or as an affiliated person, salesman, or employee of any investment company, bank, or insurance company; or

"(2) any person who, by reason of any misconduct, is permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction from acting as an underwriter, broker, dealer, or investment adviser, or as an affiliated person, salesman, or employee of any investment company, bank, or insurance company, or from engaging in or continuing any conduct or practice in connection with any such activity or in connection with the purchase or sale of any security."

We hope this submission is helpful in your review of our exemption application. Please feel free to call on us should other questions arise.

Sincerely,

Samuel A. Stern

...ellant alleges that error was com-...ed when evidence of the value of the ...perty in dispute, supplied by the records ...testimony of a tax assessor, was ad-...d.

...s pointed out by appellant, there is a ...rence of opinion among the various ...isdictions [16] as to whether such evidence ...ne should be admitted. The testimony ...tax assessor was that the taxing dis-...regularly assessed at 100 per cent of ...e based upon a record of comparable ...s in the area within the preceding two ...rs.

[9] Appellant has not shown how or ...this testimony was unreliable with re-...t to the value of the property or how ...mission prejudiced his case in any ...ticular. The basis employed in arriving ...valuation was sound. The evidence had ...ative value and should have been ad-...d. No error was committed.

...The trial court, over objection, per-...d counsel for appellee to question ap-...in detail concerning his military rec-...the nature of his discharge, wounds ...d while in the service, the degree ...isability thereby created, the amount ...government pension received by ap-...and appellee's inability to obtain em-...ment because of his wounds and disa-.... Admission of this testimony is as-...ed as error.

...ppellant's first objection was overruled, ...ently on the ground that appellee's ...ical ability to earn money was ma-...l to the determination of the issues. ...econd objection was overruled on the ...nd that the evidence was necessary to ...the intent of the parties.

[10, 11] We hold that no error was com-...d. The financial condition of the ...or in a suit of this nature is a rele-...factor to be considered.[17] So also may his physical ability to earn be relevant and material.

[12] Appellant's allegation of error committed in admitting certain exhibits is not briefed sufficiently to be readily understandable and will not be considered.

The findings of fact, conclusions of law and judgment are set aside and the case remanded for retrial.

ALVEST, INC., Appellant,
v.
SUPERIOR OIL CORPORATION, Appellee.
No. 503.

Supreme Court of Alaska.
Jan. 21, 1965.

Proceeding on appeal from a judgment of the Superior Court, Third Judicial District, Ralph E. Moody, J., affirming decision of state division of lands cancelling award to corporation which had been awarded first priority at noncompetitive oil and gas lease drawing. The Supreme Court, Dimond, J., held that fact that two officers of corporation filed applications for themselves in noncompetitive oil and gas lease drawing conducted by state division of lands when corporation itself had filed application violated administrative regulation providing that each applicant shall have only one chance in any one drawing, and division of lands properly cancelled award to corporation which had been awarded first priority at drawing.

Judgment affirmed.

16. See 5 Wigmore, Evidence § 1640 (3d ed. 1940) for a discussion of the subject and tabulations of the holding of the various jurisdictions.

17. Emmons v. Emmons, 217 Miss. 594, 64 So.2d 753, 755 (1953).

1. Corporations ⇐307

Corporate officer or director stands in fiduciary relationship to his corporation.

2. Corporations ⇐310(1)

Out of fiduciary relationship between corporate officer or director and corporation arises duty of reasonably protecting interests of corporation.

3. Corporations ⇐315

It is inconsistent with and breach of duty of corporate officer to reasonably protect interests of corporation for officer or director to take advantage of business opportunity for his own personal profit when, applying ethical standards of what is fair and equitable in particular situation, opportunity should belong to corporation.

4. Corporations ⇐315

Where business opportunity is one in which corporation has legitimate interest, officer or director may not take opportunity for himself, and if he does, he will hold all resulting benefit and profit in his fiduciary capacity for use and benefit of corporation.

5. Corporations ⇐315

Whether business opportunity is corporate one or one within legitimate scope of individual interests of officer or director depends on facts and circumstances of each case.

6. Mines and Minerals ⇐5

Fact that two officers of corporation filed applications for themselves in noncompetitive oil and gas lease drawing conducted by state division of lands when corporation itself had filed application violated administrative regulation providing that each applicant shall have only one chance in any one drawing, and division of lands properly cancelled award to corporation which had been awarded first priority at drawing.

7. Mines and Minerals ⇐5

Administrative regulation providing that each applicant in noncompetitive oil and gas lease drawing should have only one chance in any one drawing would not have precluded corporation from making successful claim for lease or its benefits against corporate officers who filed applications for themselves had either been successful at drawing.

8. Corporations ⇐315

In absence of shareholder approval, business opportunity involving application by corporate officers, as individuals and for themselves, in noncompetitive oil and gas lease drawing conducted by state division of lands was not within legitimate scope of individual interests of officers where corporation itself had filed application.

9. Corporations ⇐315

Showing of bad faith is not essential to establish duty on part of officers or directors of corporation in connection with business opportunities which they wish to acquire for themselves, and fact that business opportunity is of such nature that under particular circumstances it should fairly belong to corporation is sufficient to establish duty on part of officer or director to acquire opportunity for corporation.

Clifford J. Groh and Ronald G. Benkert, Groh & Benkert, Anchorage, for appellant.

Paul F. Robison, Robison, McCaskey & Lewis, Anchorage, for appellee.

Before NESBETT, C. J., and DIMOND and AREND, JJ.

DIMOND, Justice.

Appellant was awarded first priority for an oil and gas lease at a non-competitive lease drawing conducted by the state Division of Lands. Appellee was given second priority. Later the Division of Lands cancelled the award to appellant and gave it to appellee for the reason that two of appellant's officers and directors, White and Mueller, had filed applications for themselves in the same drawing. The Division of Lands held that this action on the part of White and Mueller gave appellant more than one chance at the drawing in violation

of an administrative regulation which provided:

"Each drawing shall be conducted in such a manner as the Director shall determine and each applicant shall have only one chance in any one drawing."[1]

The superior court affirmed the decision of the Division of Lands and this appeal followed.

[1-4] A corporate officer or director stands in a fiduciary relationship to his corporation. Out of this relationship arises the duty of reasonably protecting the interests of the corporation. It is inconsistent with and a breach of such duty for an officer or director to take advantage of a business opportunity for his own personal profit when, applying ethical standards of what is fair and equitable in a particular situation, the opportunity should belong to the corporation. Where a business opportunity is one in which the corporation has a legitimate interest, the officer or director may not take the opportunity for himself. If he does, he will hold all resulting benefit and profit in his fiduciary capacity for the use and benefit of the corporation.[2]

[5, 6] Whether a business opportunity is a corporate one or one within the legitimate scope of the individual interests of the officer or director depends upon the facts and circumstances of each case.[3] Here appellant's chance to be the successful applicant at the lease drawing was a business opportunity in which appellant had expressed a definite interest. That interest was a legitimate one because appellant had made similar applications in previous drawings, and the leasing of oil and gas lands was within the scope of appellant's corporate activities. This was a corporate opportunity which appellant's officers and directors, White and Mueller, had no right to seek for themselves. If either had been the successful applicant at the drawing he would have held the lease in a fiduciary capacity for the use and benefit of appellant. This means that appellant did not have only one chance at the drawing, but three—its own, represented by the corporate application filed on its behalf, plus two additional chances, represented by White's and Mueller's individual applications. Since appellant had more than one chance in the drawing, it was not a qualified applicant under section 507.31 of the administrative regulations. The Division of Lands was correct in holding that appellant was not entitled to the lease.

[7] Appellant argues that it had only one chance at the drawing, because the regulation would have precluded appellant from making a successful claim for the lease or its benefits against White or Mueller had either been successful at the drawing. This argument is untenable. The regulation deals with the element of chance. When a lease drawing has been concluded and the successful applicant known, the element of chance is gone. What had been chance has now become something certain. The regulation pertains only to the situation which exists while the element of chance is present, and not afterwards. The regulation would have no pertinency in an action by a corporation claiming that one of its officers or directors held a lease as constructive trustee for the corporation. What the rights would be as between those parties

1. 11 Alaska Adm.Code § 507.31 (1964).

2. Diedrick v. Helm, 217 Minn. 483, 14 N.W.2d 913, 919, 153 A.L.R. 649 (1944); Durfee v. Durfee & Canning, Inc., 323 Mass. 187, 80 N.E.2d 522, 527, 529 (1948); Lutheriand, Inc. v. Dahlen, 357 Pa. 143, 53 A.2d 143, 147 (1947); Guth v. Loft, Inc., 23 Del.Ch. 255, 5 A.2d 503, 510 (1939); McKay v. Wahlenmaier, 96 U.S.App.D.C. 313, 226 F.2d 35, 45–46 (1955).

3. American Inv. Co. v. Lichtenstein, 134 F.Supp. 857, 861 (E.D.Mo.1955); Industrial Indem. Co. v. Golden State Co., 117 Cal.App.2d 519, 256 P.2d 677, 686–687 (Dist.Ct.App.1953); Johnston v. Greene, 35 Del.Ch. 479, 121 A.2d 919, 923 (1956); Guth v. Loft, Inc., 23 Del.Ch. 255, 5 A.2d 503, 511–515 (1939); Durfee v. Durfee & Canning, Inc., 323 Mass. 187, 80 N.E.2d 522, 528–529 (1948); Henn, Corporations § 228, at 372 (1961).

would not be governed by the regulation. The regulation would be relevant after a drawing had been concluded only insofar as it was established that before the drawing took place an applicant had had more than one chance to be successful. If that is established, then the regulation can be invoked to disqualify such an applicant from securing the lease. That is what was done here.

[8] Appellant contends that it could not have claimed the benefits of the lease had it been awarded to White or Mueller, because a full disclosure of their actions in filing their individual applications had been made to the corporation, and because the filing of applications by appellant's officers and directors was consistent with corporate policy. There was evidence that the members of appellant's board of directors had generally approved the appropriateness of officers and directors filing on the same land that the corporation had filed on, although it was not established that this in fact had ever been done prior to the filings in this case. But there was no evidence that the shareholders of the corporation had consented to such a policy generally, or that in this particular instance they had approved White's and Mueller's actions in filing in competition with appellant. In the absence of such approval by the shareholders, the business opportunity in this case was not within the legitimate scope of the individual interests of appellant's officers and directors.[4]

[9] Appellant states that White and Mueller had at all times been open and above board and had acted in good faith in all their dealings here. That is apparently true. But it has no bearing on the decision of the issues in this case. A showing of bad faith is not essential to establish a duty on the part of officers or directors in connection with business opportunities which they wish to acquire for themselves. The fact that a business opportunity is of such a nature that under the particular circumstances of the case it should fairly belong to the corporation is sufficient to establish a duty on the part of an officer or director to acquire the opportunity for the corporation.[5]

The judgment is affirmed.

4. In re Lerch's Estate, 399 Pa. 59, 159 A.2d 506, 513 (1960); Remillard Brick Co. v. Remillard-Dandini Co., 109 Cal. App.2d 405, 241 P.2d 66, 74–75 (1952).

5. Rosenblum v. Judson Engineering Corp., 99 N.H. 267, 109 A.2d 558, 563 (1954).

WRIGHT TRUCK AND TRACTOR SERVICE, INC., Appellant,

v.

STATE of Alaska, Appellee.

No. 525.

Supreme Court of Alaska.

Jan. 21, 1965.

Action on construction contract against the state. The Superior Court, First Judicial District, James A. von der Heydt, J., entered judgment for contractor for $285,933.17 plus costs but disallowed claim for interest between date when sums became due and date of formal entry of judgment, and contractor appealed. The Supreme Court, Nesbett, C. J., held that state was not liable for interest between date sums became due and date of entry of judgment, under statute providing in effect that judgment entered for plaintiff against state shall be for legal amount found due with interest only from date of judgment.

Affirmed.

1. States ⇐171

Legislature intended to preclude interest on all claims, not just tort claims, against state prior to judgment. Laws 1957,

PLEASE NOTE: THE PRECEDING PAGES WERE TREATED AS A UNIT IN THE ORIGINAL DOCUMENT.

Phone Conversation w/

10-15 Sam Stern W+P 202-872-6000 2:45

? O capitalization for begining Corp.
would be equally willing to review our proposed
corp. law with SEC for problems
Contract - they are subject entirely to our direction

What kind of session will our trip to B.C.
Resource be Sam wants to get with people
who are really running the thing - he may
want to do a follow-up trip 2 wks later

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A. STEPHEN HUT, JR.
DAVID R. JOHNSON
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DAVID WESTIN
THOMAS W. WHITE
ANN O. WILLIAMS
ROBERT G. WILSON
JUDITH BARRY WISH
GEORGE B. WOLFE

January 22, 1980

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

Re: Exemption of the Alaska General Stock Ownership Corporation from the Investment Company Act of 1940.

Dear Dale:

I enclose a memorandum to the Budget and Audit Committee recommending several specific changes in the Alaska GSOC enabling legislation which have suggested themselves in the course of our consultations with the Staff of the SEC. We believe that representations to the Staff that these changes will be made would be most helpful in securing Staff support before the Commission for our request for a total exemption from the Investment Company Act for the first five years.

Also enclosed is a draft letter concerning these changes as well as a discussion of Alaska's law on conflict of interest which has been requested by the Staff. We ask you to clear these statutory changes and the draft letter in principle with the Committee. We will then forward the letter to the SEC Staff and ask that they recommend to the Commission that the requested exemption be granted if the Alaska legislation is amended along these lines. When and if we receive informal assurances, we will suggest that you proceed with the revisions.

The Staff has also requested more information as to the nature of the investments which are planned for the AGSOC. We have told them that we do not believe portfolio securities will be among the investments to be made, but rather that the AGSOC will seek to become a joint venturer with other large enterprises in the development of various natural resources. We have been specifically asked whether it is contemplated that the AGSOC will own in excess of 25 percent of each entity in which it invests. Please clear with the Committee a representation whether ownership of this magnitude is or is not contemplated. Any additional information you could provide as to contemplated investments would be most helpful.

Your prompt response on these matters is appreciated. On the whole we have been encouraged by the Staff's receptivity to the GSOC concept.

On the IRS front, we understand that IRS, at the urging of a representative of the Treasury, will reconsider its initial unwillingness to rule. We will of course keep you posted.

Sincerely,

Sam

Samuel A. Stern

cc: Mr. Jerry Gauche
Mr. Jay Hogan

WILMER & PICKERING
1666 K STREET, N. W.
WASHINGTON, D. C. 20006

January 22, 1980

MEMORANDUM FOR THE ALASKA
LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Re: Exemption of the Alaska General Stock Ownership Corporation from the Investment Company Act of 1940.

We have submitted to the staff of the Securities and Exchange Commission ("SEC") our memorandum of December 5, 1979, and discussed the submission with the staff on several occasions. As a result of our discussions, we believe certain steps are necessary and appropriate to secure total exemption for five years for the Alaska General Stock Ownership Corporation ("AGSOC") from operation of the Investment Company Act of 1940 ("ICA"). We have been given informal assurances that if the Division of Investment Management (the section of the SEC which regulates registered investment companies) will recommend granting the AGSOC total exemption for five years from operation of the ICA, SEC personnel will also recommend approval of our application for partial and temporary exemptions from operation of the Securities Act of 1933 and the Securities and Exchange Act of 1934.

We suggest that certain specific changes set forth below be made to the enabling legislation before its passage in its current form to maximize our chances of

persuading the Division of Investment Management that the AGSOC should be exempt from operation of the ICA. All of these suggested changes have been prompted by specific comments of the staff. The alternative will be at best a partial exemption and some measure of SEC regulation of the AGSOC.

a) Conflict of Interest

The SEC's primary concern is whether granting an exemption from operation of those provisions of the ICA which outlaw certain transactions which could involve conflicts of interest or self-dealing will result in a failure to protect AGSOC shareholders.

Section 17 of the ICA makes unlawful (absent an exemption by Commission order) certain transactions between an investment company and "affiliated persons," broadly defined.*/ Under section 17(a) it is unlawful for an

---

*/ The term is defined in section 2(a)(3) of the ICA:

> "'Affiliated person' of another person means
>
> "(A) any person directly or indirectly owning, controlling, or holding with power to vote, 5 per centum or more of the outstanding voting securities of such other person;
>
> "(B) any person 5 per centum or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by such other person;

[Footnote continued on following page]

"affiliated" person to sell or buy property or most securities to or from the investment company or to enter into joint ventures with or borrow money from the company. */

[Footnote continued]

"(C) any person directly or indirectly controlling, controlled by, or under common control with, such other person;

"(D) any officer, director, partner, copartner, or employee of such other person;

"(E) if such other person is an investment company, any investment advisor thereof or any member of an advisory board thereof; and

"(F) if such other person is an unincorporated investment company not having a board of directors, the depositor thereof."

*/ Section 17(a) makes it unlawful for an "affiliated" person:

"(1) knowingly to sell any security or other property to such registered company or to any company controlled by such registered company, unless such sale involves solely

"(A) securities of which the buyer is the issuer,

"(B) securities of which the seller is the issuer and which are part of a general offering to the holders of a class of its securities, or

"(C) securities deposited with the trustee of a unit investment trust or periodic payment plan by the depositor thereof;

"(2) knowingly to purchase from such registered company, or from any company controlled by such registered company, any security or any other property (except securities of which the seller is the issuer); or

[Footnote continued on following page]

The SEC staff has pointed out that various sections of the proposed AGSOC enabling legislation*/ could give rise to the kind of transactions which would be prohibited under section 17. For example, the Act (§§ 10.50.015(4), (5) and (7)) permits the AGSOC to buy and sell property and securities; the ICA, if applicable, would prohibit it from engaging in such a transaction with, for example, a person who is a director of the GSOC (or with a company on whose board their director also sits). The ICA might also prohibit the AGSOC from becoming a joint venturer with such a company, as contemplated in Act § 10.50.015(17), in certain circumstances.**/ Similarly, the Act § 10.50.015(6) permits

[Footnote continued]

> "(3) to borrow money or other property from such registered company or from any company controlled by such registered company (unless the borrower is controlled by the lender) . . . ."

*/ References to "Act §" refer to section 1 of CSSS Senate Bill No. 170, introduced as amended April 27, 1979.

**/ Section 17(d) makes it "unlawful for any affiliated person of . . . a registered investment company . . . or any affiliated person of such a person . . . acting as principal to effect any transaction in which such registered company, or a company controlled by such registered company, is a joint or a joint and several participant with such person . . . for the purpose of limiting or preventing participation by such registered or controlled company on a basis different from or less advantageous than that of such other participant."

the AGSOC to lend money to its employees; since the ICA defines employees as "affiliated persons," such a loan would constitute a violation.

One option -- an option invited by the staff -- is to argue to the Commission why existing Alaska law on conflicts of interest adequately protects the public and why therefore there is no need for section 17 of the ICA to apply to AGSOC. Attached hereto as Attachment A is a draft of a letter we propose to send to the staff for its informal reaction. If we are not successful with this approach, it may be necessary to formulate certain modifications of the enabling legislation to include explicit prohibitions of transactions with persons who may have a conflict of interest.

b) Indemnification

The staff also commented on the scope of the AGSOC's power to indemnify provided by section 10.50.020 of the enabling legislation. The staff has indicated that these standards are acceptable to them as consistent with section 17(h) of the ICA, with the exception of the open-ended power granted in Act § 10.50.020(f), which widens the scope of possible indemnity to allow any corporate

choice. Although we realize that the provision was based on the American Bar Foundation's Model Business Corporation Act, it goes further than the ICA. We suggest strongly that Act § 10.50.020(f) be deleted from the legislation.

c) Miscellaneous

Below we discuss a series of miscellaneous changes to the legislation which have been suggested by our conversations with the staff. We request that you clear each of these changes in principle so that we may represent to the staff that they will be implemented if our exemption request is granted.

(i) Stock Options

The AGSOC is given the power to establish pension plans and other incentive plans for its directors, officers and employees. Act § 10.50.015(15). The staff has pointed out that section 18(d) of the ICA prohibits an investment company from granting stock options to its employees. We recommend that stock options be specifically excepted from Act § 10.50.015(15). The new section would read:

> "(15) pay pensions and establish pension plans, pension trusts, profit-sharing plans, and other incentive plans for its directors, officers and employees, except that such pensions or plans shall not include the issuance of stock options;"

(ii) Later Issues

Under Act § 10.50.080, the AGSOC shareholders are permitted to set the price of shares to be sold in later issuances. The staff has pointed out that section 23(b) of the ICA requires that shares not be sold at an amount below the current net asset value of each share without the consent of a majority of the investment company's shareholders. Under Act § 10.50.150, one third of the AGSOC shareholders constitutes a quorum and, thus, one vote more than one sixth could set the price at less than net asset value. We recommend that you tighten the restriction in the AGSOC legislation to match the ICA. The second sentence of section 10.50.080 would be amended to read:

> "The decision to issue shares without consideration or for consideration if that consideration is less than the current net asset value of such shares shall be made by the vote of a majority of the shareholders."

(iii) Payment Other Than Cash

The staff has also noted that Act § 10.50.085 allows payments for shares to be by transfer of property other than cash or in exchange for services. The ICA does not allow payment other than in cash (section 23(a)). We suggest conformance to the ICA in this minor matter. The

first sentence of Act § 10.50.085 would be amended to read:

> "Consideration for the issuance of shares if required shall be paid in cash."

(iv) Interested Directors

Section 10(a) of the ICA provides that no investment company may have more than 60 percent of its Board of Directors be "interested persons". The ICA's definition of "interested" persons includes all affiliated persons and many others.*/ There is currently no similar restriction on who may serve on the Board of Directors of the AGSOC. In lieu of incorporating some sort of restriction along the lines of the ICA into the AGSOC legislation, we suggest that a provision along the lines of section 41 of the Model Business Corporation Act be added to the legislation. That section provides:

> DIRECTOR CONFLICTS OF INTEREST
>
> No contract or other transaction between a corporation and one or more of its directors or any other corporation, firm, association or entity in which one or more of its directors are

---

*/ "Interested person", as defined in section 2(a)(19) of the ICA, includes (unless exempted by Commission order) members of the immediate family of affiliated persons, affiliates or other interested persons of the company's investment adviser, legal counsel for the company or any partner or employee of such counsel, and any registered broker or dealer or an affiliate of such a broker or dealer.

directors or officers or are financially interested, shall be either void or voidable because of such relationship or interest or because such director or directors are present at the meeting of the board of directors or a committee thereof which authorizes, approves or ratifies such contract or transaction or because his or their votes are counted for such purpose, if:

(a) the fact of such relationship or interest is disclosed or known to the board of directors or committee which authorizes, approves or ratifies the contract or transaction by a vote or consent sufficient for the purpose without counting the votes or consents of such interested directors; or

(b) the fact of such relationship or interest is disclosed or known to the shareholders entitled to vote and they authorize, approve or ratify such contract or transaction by vote or written consent; or

(c) the contract or transaction is fair and reasonable to the corporation.

Common or interested directors may be counted in determining the presence of a quorum at a meeting of the board of directors or a committee thereof which authorizes, approves or ratifies such contract or transaction.

We suggest the new provision follow Act § 10.50.200. This new provision will also strengthen our position with the SEC concerning the need for application of section 17 of the ICA to the AGSOC. See Attachment A.

(v) Replacing Directors

The ICA requires (section 16) that when a vacancy occurs in the Board of Directors of an investment company it may be filled only if after it is filled, two thirds of the Board has been elected by the shareholders. No such restriction exists in Act § 10.50.195, and we recommend adding such a provision. The first sentence of § 10.50.195 would then read:

> "A vacancy occurring in the board of directors may be fulfilled by the affirmative vote of a majority of the remaining directors if immediately after filling any such vacancy at least two thirds of the directors then holding office shall have been elected by the shareholders at a shareholders' meeting."

(vi) Disqualification

The ICA places certain restrictions on who may serve as an officer, director, or employee of an investment company, forbidding (unless an exception is granted) persons convicted within 10 years of a securities related crime or subject to an injunction arising from past securities laws violations (section 9). The staff has indicated, and our research has confirmed, that this provision of the ICA is one for which exceptions are only very infrequently given. The enabling legislation contains no equivalent, and we suggest that a provision such as the following

be added, to follow § 10.50.260:

" INELIGIBILITY OF CERTAIN AFFILIATED PERSONS AND UNDERWRITERS

"It shall be unlawful for any of the following persons to serve or act in the capacity of employee, officer, or director of a corporation:

"(1) any person who within ten years has been convicted of any felony or misdemeanor involving the purchase or sale of any security or arising out of such person's conduct as an underwriter, broker, dealer, or investment adviser, or as an affiliated person, salesman, or employee of any investment company, bank, or insurance company; or

"(2) any person who, by reason of any misconduct, is permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction from acting as an underwriter, broker, dealer, or investment adviser, or as an affiliated person, salesman, or employee of any investment company, bank, or insurance company, or from engaging in or continuing any conduct or practice in connection with any such activity or in connection with the purchase or sale of any security."

(vii) Public Utility Holding Company Act

Finally, as we have advised previously, the Public Utility Holding Company Act places very severe restrictions on a company owning in excess of 10 percent of (or otherwise controlling) a "public utility" as that term is defined in the Act. The staff has indicated that it

would be useful if a mechanism were worked into the legislation so that the directors would be advised of the possibility that an investment would fall within the terms of the Public Utility Holding Company Act, and either seek specific exemption from the SEC as permitted under section 3 of that Act, or comply with the Act's extremely rigid requirements. For this reason, we suggest a new section be added to follow Act § 10.50.015:

> PROHIBITION. A corporation may not own, control or hold with power to vote ten percent or more of the outstanding voting securities of a public utility company or a public utility holding company (as those terms are defined in the Public Utility Holding Company Act of 1935, 15 U.S.C. §§ 79 et seq.), without first taking steps to come within the requirements of that Act, or seeking exemption from the Act's coverage from the Securities and Exchange Commission.

WILMER & PICKERING

ATTACHMENT A

DRAFT
January 22, 1980

Houghton R. Hallock, Jr., Esq.
Division of Investment Management

Paul Roye, Esq.
Division of Investment Management

Securities and Exchange Commission
500 North Capitol Street
Washington, D.C. 20549

Re: Request for Exemption for Alaska General Stock Ownership Corporation

Dear Sirs:

You have asked us to amplify our opinion as to why exemption of the AGSOC from the conflict of interest provisions of the Investment Company Act ("ICA") would not work to the detriment of the investing public. In addition, this letter responds to several other concerns you have expressed to us.

As we have stated previously (Memorandum to the Staff of the Securities and Exchange Commission, dated December 5, 1979), the AGSOC, while it may technically fit within the definition of an investment company, is not at all the sort of entity typically regulated under the ICA. It will not invest in portfolio securities, will not use traditional investment advisors or underwriters, and will not engage in more than occasional purchases or sales of securities. Thus, the traditional

abuses which section 17 of the ICA was created to outlaw -- such as conflicts of interest on the part of investment advisors, mutual backscratching and other self-dealing -- will not take place. Moreover, one obvious potential for abuse -- loans to AGSOC officers and directors -- is strictly forbidden by the Alaska legislation. (Act § 10.50.225).

The AGSOC is in many ways a political entity; its few investments and loan transactions will be highly visible and a subject of widespread public comment and debate. This scrutiny alone provides a strong disincentive for self-dealing. Certain provisions of the Alaska enabling legislation provide additional "sunshine" protections against conflict of interest situations. For example, shareholders have the right to examine AGSOC books and records (Act § 10.50.270), and the AGSOC must file an annual report to the Secretary of the Treasury. 24 U.S.C. § 6039B. Extensive publicity will undoubtedly surround the appointment of officers and directors. As for deterrence, these persons are subject to court-ordered removal for fraudulent or dishonest acts and criminal penalties for defrauding shareholders or creditors or making misleading statements. (Act §§ 10.50.290, 10.50.635, 10.50.630).

In addition, Alaska law creates strict fiduciary duties owed every corporation by its officers and directors.

Although we have discovered no Alaska statutes specifically dealing with conflicts of interest, the most complete statement of Alaska law on this subject is contained in the Supreme Court of Alaska's opinion in Alvest, Inc. v. Superior Oil Corp., 398 P.2d 213 (1965), a copy of which is attached hereto. Under the rule of law set forth in this case, corporate officers or directors are fiduciaries and cannot personally profit from a corporate opportunity even with the concurrence of the company's Board of Directors. (Op. at 216). Any such conflict could only be waived by the shareholders (id.), and it is not necessary to allege bad faith by an officer or director in an action against him for dereliction of his fiduciary duties and recovery of the opportunity diverted.

We have also secured agreement from our client that a new provision modeled on section 41 of the Model Business Corporation Act will be added to the proposed Alaska legislation. The new section will provide:

DIRECTOR CONFLICTS OF INTEREST

> No contract or other transaction between a corporation and one or more of its directors or any other corporation, firm, association or entity in which one or more of its directors are

> directors or officers or are financially interested, shall be either void or voidable because of such relationship or interest or because such director or directors are present at the meeting of the board of directors or a committee thereof which authorizes, approves or ratifies such contract or transaction or because his or their votes are counted for such purpose, if:
>
> (a) the fact of such relationship or interest is disclosed or known to the board of directors or committee which authorizes, approves or ratifies the contract or transaction by a vote or consent sufficient for the purpose without counting the votes or consents of such interested directors; or
>
> (b) the fact of such relationship or interest is disclosed or known to the shareholders entitled to vote and they authorize, approve or ratify such contract or transaction by vote or written consent; or
>
> (c) the contract or transaction is fair and reasonable to the corporation.
>
> Common or interested directors may be counted in determining the presence of a quorum at a meeting of the board of directors or a committee thereof which authorizes, approves or ratifies such contract or transaction.

We believe that such a provision is more suited to the AGSOC than are the complex "interested person" restrictions of section 10(a) of the ICA, and that this provision will

further assure that any transaction carrying the potential for abuse will be the subject of focus by a disinterested board.

Thus, persons associated with the AGSOC will have few opportunities to profit personally and even less chance to do so successfully. In light of these circumstances, we feel application of section 17 of the ICA is unnecessary in the case of the AGSOC.

* * * * *

After consultation with us, our client has agreed to make certain other changes in the state legislation to satisfy your concern that the protections offered by the ICA are adequately dealt with in the state AGSOC legislation. Below is a list of changes we propose to CSSS Senate Bill No. 170:

1. Add a new provision after § 10.50.015 as follows:

> PROHIBITION. A corporation may not own, control or hold with power to vote ten percent or more of the outstanding voting securities of a public utility company or a public utility holding company (as those terms are defined in the Public Utility Holding Company Act of 1935, 15 U.S.C. §§ 79 et seg.), without first taking steps to come within the requirements of that Act, or seeking exemption from the Act's coverage from the Securities and Exchange Commission.

2. Act § 10.50.015(15) - Amend the section to read as follows:

"(15) pay pensions and establish pension plans, pension trusts, profit-sharing plans, and other incentive plans for its directors, officers and employees, except that such pensions or plans shall not include the issuance of stock options;"

3. Act § 10.50.020(f) - Delete.

4. Act § 10.50.080 - Amend the second sentence to read as follows:

"The decision to issue shares without consideration or for consideration if that consideration is less than the current net asset value of such shares shall be made by the vote of a majority of the shareholders."

5. Act § 10.50.085 - Amend the first sentence to read as follows:

"Consideration for the issuance of shares if required shall be paid in cash."

6. Act § 10.50.195 - Amend so that the first sentence reads:

"A vacancy occurring in the board of directors may be fulfilled by the affirmative vote of a majority of the remaining directors if immediately after filling any such vacancy at least two thirds of the directors then holding office shall have been elected by the shareholders at a shareholders' meeting."

7. Add new provision after § 10.50.260, as follows:

" INELIGIBILITY OF CERTAIN AFFILIATED PERSONS AND UNDERWRITERS

"It shall be unlawful for any of the following persons to serve or act in the capacity of employee, officer, or director of a corporation:

"(1) any person who within ten years has been convicted of any felony or misdemeanor involving the purchase or sale of any security or arising out of such person's conduct as an underwriter, broker, dealer, or investment adviser, or as an affiliated person, salesman, or employee of any investment company, bank, or insurance company; or

"(2) any person who, by reason of any misconduct, is permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction from acting as an underwriter, broker, dealer, or investment adviser, or as an affiliated person, salesman, or employee of any investment company, bank, or insurance company, or from engaging in or continuing any conduct or practice in connection with any such activity or in connection with the purchase or sale of any security."

We hope this submission is helpful in your review of our exemption application. Please feel free to call on us should other questions arise.

Sincerely,

Samuel A. Stern

...ellant alleges that error was com-...d when evidence of the value of the ...erty in dispute, supplied by the records ...estimony of a tax assessor, was ad-...d.

...s pointed out by appellant, there is a ...rence of opinion among the various ...dictions [16] as to whether such evidence ...ld should be admitted. The testimony ...e tax assessor was that the taxing dis-...t regularly assessed at 100 per cent of ...e based upon a record of comparable ...s in the area within the preceding two ...rs.

[9] Appellant has not shown how or ...this testimony was unreliable with re-...t to the value of the property or how ...admission prejudiced his case in any ...ticular. The basis employed in arriving ...valuation was sound. The evidence had ...ative value and should have been ad-...d. No error was committed.

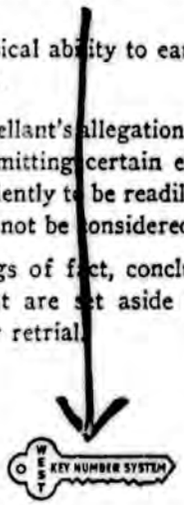
...e trial court, over objection, per-...d counsel for appellee to question ap-...in detail concerning his military rec-...the nature of his discharge, wounds ...d while in the service, the degree ...sability thereby created, the amount ...government pension received by ap-...and appellee's inability to obtain em-...ment because of his wounds and disa-... Admission of this testimony is as-...d as error.

...ppellant's first objection was overruled, ...ently on the ground that appellee's ...cal ability to earn money was ma-...to the determination of the issues. ...econd objection was overruled on the ...d that the evidence was necessary to ...the intent of the parties.

[10, 11] We hold that no error was com-... The financial condition of the ...t in a suit of this nature is a rele-...factor to be considered.[17] So also may his physical ability to earn be relevant and material.

[12] Appellant's allegation of error committed in admitting certain exhibits is not briefed sufficiently to be readily understandable and will not be considered.

The findings of fact, conclusions of law and judgment are set aside and the case remanded for retrial.



ALVEST, INC., Appellant,

v.

SUPERIOR OIL CORPORATION, Appellee.

No. 503.

Supreme Court of Alaska.

Jan. 21, 1965.

Proceeding on appeal from a judgment of the Superior Court, Third Judicial District, Ralph E. Moody, J., affirming decision of state division of lands cancelling award to corporation which had been awarded first priority at noncompetitive oil and gas lease drawing. The Supreme Court, Dimond, J., held that fact that two officers of corporation filed applications for themselves in noncompetitive oil and gas lease drawing conducted by state division of lands when corporation itself had filed application violated administrative regulation providing that each applicant shall have only one chance in any one drawing, and division of lands properly cancelled award to corporation which had been awarded first priority at drawing.

Judgment affirmed.

...e 5 Wigmore, Evidence § 1640 (3d ... 1940) for a discussion of the subject ...d tabulations of the holding of the ...rious jurisdictions.

17. Emmons v. Emmons, 217 Miss. 594, 64 So.2d 753, 755 (1953).

1. Corporations ⇐307

Corporate officer or director stands in fiduciary relationship to his corporation.

2. Corporations ⇐310(1)

Out of fiduciary relationship between corporate officer or director and corporation arises duty of reasonably protecting interests of corporation.

3. Corporations ⇐315

It is inconsistent with and breach of duty of corporate officer to reasonably protect interests of corporation for officer or director to take advantage of business opportunity for his own personal profit when, applying ethical standards of what is fair and equitable in particular situation, opportunity should belong to corporation.

4. Corporations ⇐315

Where business opportunity is one in which corporation has legitimate interest, officer or director may not take opportunity for himself, and if he does, he will hold all resulting benefit and profit in his fiduciary capacity for use and benefit of corporation.

5. Corporations ⇐315

Whether business opportunity is corporate one or one within legitimate scope of individual interests of officer or director depends on facts and circumstances of each case.

6. Mines and Minerals ⇐5

Fact that two officers of corporation filed applications for themselves in noncompetitive oil and gas lease drawing conducted by state division of lands when corporation itself had filed application violated administrative regulation providing that each applicant shall have only one chance in any one drawing, and division of lands properly cancelled award to corporation which had been awarded first priority at drawing.

7. Mines and Minerals ⇐5

Administrative regulation providing that each applicant in noncompetitive oil and gas lease drawing should have only one chance in any one drawing would not have precluded corporation from making successful claim for lease or its benefits against corporate officers who filed applications for themselves had either been successful at drawing.

8. Corporations ⇐315

In absence of shareholder approval, business opportunity involving application by corporate officers, as individuals and for themselves, in noncompetitive oil and gas lease drawing conducted by state division of lands was not within legitimate scope of individual interests of officers where corporation itself had filed application.

9. Corporations ⇐315

Showing of bad faith is not essential to establish duty on part of officers or directors of corporation in connection with business opportunities which they wish to acquire for themselves, and fact that business opportunity is of such nature that under particular circumstances it should fairly belong to corporation is sufficient to establish duty on part of officer or director to acquire opportunity for corporation.

Clifford J. Groh and Ronald G. Benkert, Groh & Benkert, Anchorage, for appellant.

Paul F. Robison, Robison, McCaskey & Lewis, Anchorage, for appellee.

Before NESBETT, C. J., and DIMOND and AREND, JJ.

DIMOND, Justice.

Appellant was awarded first priority for an oil and gas lease at a non-competitive lease drawing conducted by the state Division of Lands. Appellee was given second priority. Later the Division of Lands cancelled the award to appellant and gave it to appellee for the reason that two of appellant's officers and directors, White and Mueller, had filed applications for themselves in the same drawing. The Division of Lands held that this action on the part of White and Mueller gave appellant more than one chance at the drawing in violation

of an administrative regulation which provided:

"Each drawing shall be conducted in such a manner as the Director shall determine and each applicant shall have only one chance in any one drawing."[1]

The superior court affirmed the decision of the Division of Lands and this appeal followed.

[1–4] A corporate officer or director stands in a fiduciary relationship to his corporation. Out of this relationship arises the duty of reasonably protecting the interests of the corporation. It is inconsistent with and a breach of such duty for an officer or director to take advantage of a business opportunity for his own personal profit when, applying ethical standards of what is fair and equitable in a particular situation, the opportunity should belong to the corporation. Where a business opportunity is one in which the corporation has a legitimate interest, the officer or director may not take the opportunity for himself. If he does, he will hold all resulting benefit and profit in his fiduciary capacity for the use and benefit of the corporation.[2]

[5, 6] Whether a business opportunity is a corporate one or one within the legitimate scope of the individual interests of the officer or director depends upon the facts and circumstances of each case.[3] Here appellant's chance to be the successful applicant at the lease drawing was a business opportunity in which appellant had expressed a definite interest. That interest was a legitimate one because appellant had made similar applications in previous drawings, and the leasing of oil and gas lands was within the scope of appellant's corporate activities. This was a corporate opportunity which appellant's officers and directors, White and Mueller, had no right to seek for themselves. If either had been the successful applicant at the drawing he would have held the lease in a fiduciary capacity for the use and benefit of appellant. This means that appellant did not have only one chance at the drawing, but three—its own, represented by the corporate application filed on its behalf, plus two additional chances, represented by White's and Mueller's individual applications. Since appellant had more than one chance in the drawing, it was not a qualified applicant under section 507.31 of the administrative regulations. The Division of Lands was correct in holding that appellant was not entitled to the lease.

[7] Appellant argues that it had only one chance at the drawing, because the regulation would have precluded appellant from making a successful claim for the lease or its benefits against White or Mueller had either been successful at the drawing. This argument is untenable. The regulation deals with the element of chance. When a lease drawing has been concluded and the successful applicant known, the element of chance is gone. What had been chance has now become something certain. The regulation pertains only to the situation which exists while the element of chance is present, and not afterwards. The regulation would have no pertinency in an action by a corporation claiming that one of its officers or directors held a lease as constructive trustee for the corporation. What the rights would be as between those parties

1. 11 Alaska Adm.Code § 507.31 (1964).

2. Diedrick v. Helm, 217 Minn. 483, 14 N.W.2d 913, 919, 153 A.L.R. 649 (1944); Durfee v. Durfee & Canning, Inc., 323 Mass. 187, 80 N.E.2d 522, 527, 529 (1948); Lutherland, Inc. v. Dahlen, 357 Pa. 143, 53 A.2d 143, 147 (1947); Guth v. Loft, Inc., 23 Del.Ch. 255, 5 A.2d 503, 510 (1939); McKay v. Wahlenmaier, 96 U.S.App.D.C. 313, 226 F.2d 35, 45–46 (1955).

3. American Inv. Co. v. Lichtenstein, 134 F.Supp. 857, 861 (E.D.Mo.1955); Industrial Indem. Co. v. Golden State Co., 117 Cal.App.2d 519, 256 P.2d 677, 686–687 (Dist.Ct.App.1953); Johnston v. Greene, 35 Del.Ch. 479, 121 A.2d 919, 923 (1956); Guth v. Loft, Inc., 23 Del.Ch. 255, 5 A.2d 503, 511–515 (1939); Durfee v. Durfee & Canning, Inc., 323 Mass. 187, 80 N.E.2d 522, 528–529 (1948); Henn, Corporations § 238, at 372 (1961).

would not be governed by the regulation. The regulation would be relevant after a drawing had been concluded only insofar as it was established that before the drawing took place an applicant had had more than one chance to be successful. If that is established, then the regulation can be invoked to disqualify such an applicant from securing the lease. That is what was done here.

[8] Appellant contends that it could not have claimed the benefits of the lease had it been awarded to White or Mueller, because a full disclosure of their actions in filing their individual applications had been made to the corporation, and because the filing of applications by appellant's officers and directors was consistent with corporate policy. There was evidence that the members of appellant's board of directors had generally approved the appropriateness of officers and directors filing on the same land that the corporation had filed on, although it was not established that this in fact had ever been done prior to the filings in this case. But there was no evidence that the shareholders of the corporation had consented to such a policy generally, or that in this particular instance they had approved White's and Mueller's actions in filing in competition with appellant. In the absence of such approval by the shareholders, the business opportunity in this case was not within the legitimate scope of the individual interests of appellant's officers and directors.[4]

[9] Appellant states that White and Mueller had at all times been open and above board and had acted in good faith in all their dealings here. That is apparently true. But it has no bearing on the decision of the issues in this case. A showing of bad faith is not essential to establish a duty on the part of officers or directors in connection with business opportunities which they wish to acquire for themselves. The fact that a business opportunity is of such a nature that under the particular circumstances of the case it should fairly belong to the corporation is sufficient to establish a duty on the part of an officer or director to acquire the opportunity for the corporation.[5]

The judgment is affirmed.

4. In re Lerch's Estate, 399 Pa. 59, 159 A.2d 506, 513 (1960); Remillard Brick Co. v. Remillard-Dandini Co., 109 Cal. App.2d 405, 241 P.2d 66, 74–75 (1952).

5. Rosenblum v. Judson Engineering Corp., 99 N.H. 267, 109 A.2d 558, 563 (1954).

WRIGHT TRUCK AND TRACTOR SERVICE, INC., Appellant,

v.

STATE of Alaska, Appellee.

No. 525.

Supreme Court of Alaska.

Jan. 21, 1965.

Action on construction contract against the state. The Superior Court, First Judicial District, James A. von der Heydt, J., entered judgment for contractor for $285,933.17 plus costs but disallowed claim for interest between date when sums became due and date of formal entry of judgment, and contractor appealed. The Supreme Court, Nesbett, C. J., held that state was not liable for interest between date sums became due and date of entry of judgment, under statute providing in effect that judgment entered for plaintiff against state shall be for legal amount found due with interest only from date of judgment.

Affirmed.

1. States ⇐171

Legislature intended to preclude interest on all claims, not just tort claims, against state prior to judgment. Laws 1957,

PLEASE NOTE: THE PRECEDING PAGES WERE TREATED AS A UNIT IN THE ORIGINAL DOCUMENT.

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December 5, 1979

1933 Act/2(3), 3a(11)
1934 Act/12(h), 3(a)(12)
1940 Act/6(c), 6(d)

Edward F. Greene
Director,
Division of Corporation Finance

Sydney H. Mendelsohn
Director,
Division of Investment Management

Securities and Exchange Commission
500 North Capitol Street
Washington, D.C. 20549

Re: Request for No Action and for Temporary and Partial Exemptions for the Alaska General Stock Ownership Corporation

Dear Sirs:

On behalf of the State of Alaska, we submit to each Division five copies of a memorandum which describes the General Stock Ownership Corporation ("GSOC"), a company soon to be created by Alaska under enabling federal tax legislation recently adopted by Congress. While the GSOC in many ways resembles a conventional corporation, there are significant differences -- the most striking being that one share of the company will be given without charge to each resident of Alaska.

We now request that the staff issue a no-action letter with respect to exemption of the Alaska GSOC under the 1933 Act. Moreover, in the enclosed memorandum, we have proposed desirable temporary and partial exemptions from the 1934 and 1940 Acts in light of protections for investors inherent in the planned structure of the Alaska GSOC. Since the Alaska enabling legislation has not yet been passed, there is still time to consider amendments to

meet any concern the staff may have in these areas. The state legislature hopes to consider the enabling legislation early in its next session, which begins in January.

Thank you for your attention to this matter. Please contact the undersigned if any additional information is needed or if conferring would be useful to you. On behalf of the State, your response at your early convenience is respectfully requested.

Sincerely,

Samuel A Stern

Samuel A. Stern

Enclosures

bcc: ✓Mr. Staley (w/o attachments)
Mr. Gauche (w/o attachments)
Mr. Hogan (w/o attachments)

WILMER & PICKERING
1666 K STREET, N. W.
WASHINGTON, D. C. 20006

December 5, 1979

MEMORANDUM TO THE STAFF OF THE
SECURITIES AND EXCHANGE COMMISSION

RE: Proposals for Application of the Federal Securities Laws to the Alaska General Stock Ownership Corporation

The State of Alaska is in the process of creating a private corporation to be owned by all its residents. The entity is to be a "GSOC" -- a General Stock Ownership Corporation. Upon the company's formation, one share of its stock will be issued to each person resident in Alaska (presently approximately 400,000 persons). Pursuant to a recent amendment to the Internal Revenue Code, 26 U.S.C. §§ 1391-97 (Subchapter U), each state may create a GSOC which, if it meets the federal statutory definition, will receive certain favorable tax treatment previously available only to closely held "subchapter S" corporations. The purpose of the GSOC, as envisioned by the sponsors of the federal legislation and by the State of Alaska, is to afford all state residents the experience of participating in capitalism, while expanding the base of ownership of projects which generate profits from the development of the state's natural resources.[1/]

1/ S. Rep. No. 1263, 95th Cong. 2d Sess. 107 (1978); 124 Cong. Rec. S 19,168-69 (daily ed. Oct. 14, 1978) (remarks of Senator Gravel).

Subchapter U gives a state legislature considerable flexibility in structuring its GSOC. While the extent to which various federal securities laws apply to the unique features of the GSOC is unclear, it is Alaska's intention to structure the GSOC in a way that provides its citizen-shareholders with all the relevant protections embodied in the securities laws. Hopefully, it would not then be necessary to burden this new entity with the full range of the Commission's procedural and substantive regulations during the critical stages of its development.

For reasons discussed in this Memorandum, we believe that the GSOC bill introduced at the last session of the Alaska legislature (S. 170) will provide complete protection to GSOC shareholders without unduly hampering the GSOC experiment in its initial phase. The State seeks the staff's concurrence in this view, and the staff's suggestions for amendments, if any, to the present bill so that the legislation may be enacted in a form satisfactory to the Commission without need for the consideration of amendments after enactment.

I. The Federal Legislation

Subchapter U provides for special tax treatment of GSOCs established in conformance with its terms.[2/] The GSOC

2/ A copy of Subchapter U is attached as Exhibit A.

will not be subject to corporate tax; instead the shareholders will be taxed on their pro rata share of the corporation's taxable income whether or not distributed. 26 U.S.C. §§ 1392, 1393. Shareholders also receive investment tax credits which would otherwise accrue to the corporation. § 1393(b). A GSOC is required to distribute 90 percent of its taxable income each year to its shareholders, § 1396, but must withhold 25 percent of such distribution for the IRS on behalf of shareholders. § 3402(r).[3/]

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 special tax benefits of the Subchapter, its corporate charter must contain the following restrictions with respect to stock ownership and transferability:

1. only one class of stock may be issued (§ 1391(a)(4)(A));

2. shares may be issued only to "eligible individuals"[4/] (§1391(a)(4)(B));

3/ A GSOC must maintain a segregated shareholder income account for such distributions. § 1394.

4/ An "eligible individual" is defined as a person who is a resident of the chartering state on a date specified in the state's enabling legislation and remains a resident between that date and the date of issuance of shares. § 1391(c).

3. at least one share of stock must be issued to each "eligible individual" who does not elect not to receive his share (§ 1391(a)(4)(C));

4. shares may not be transferred for a five-year period, other than by will or by the laws of descent, except where the shareholder ceases to be a resident of the state (§ 1391(a)(4)(D)(i));

5. shares may not be transferred to anyone other than a "resident individual" (§ 1391(a)(4)(D)(ii);[5/] and

6. each individual's ownership is limited to ten shares (§ 1391(a)(4)(D)(iii)).

In addition, a GSOC may not hold a 20 percent or greater interest in any subsidiary,[6/] may not acquire business properties from an unwilling seller through the use of the state's power of eminent domain[7/] and is required to file an annual report with the Secretary of the Treasury summarizing its operations for the year.[8/]

5/ This language excludes corporate ownership of GSOC shares.

6/ §§ 1391(a)(1), 1504.

7/ § 1391(a)(5).

8/ 26 U.S.C. § 6039B. In addition, a GSOC must file an informational tax return that, inter alia, identifies all shareholders and the distributions they have received. Id. Moreover, the staff of the Joint Committee on Taxation is required to report to Congress on the GSOC experiment within two years of the formation of the first GSOC and again by September 30, 1983. § 1391(e).

It is contemplated that a GSOC will acquire an interest in one or more business enterprises with borrowed funds; the acquired interests would be pledged to secure this debt, perhaps supplemented by state grants or guarantees. 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. In order to generate a sufficient cash flow, a GSOC is not likely to make portfolio investments, but will, instead, seek to participate directly as a joint venturer in specific projects. For example, while the Alaska GSOC's specific investments have not yet been identified, one possible investment might be a participating interest in an existing Alaskan pipeline in an arm's-length transaction with one of the consortium of companies that now own it. As a joint venturer, the GSOC's share of pre-tax income from the project would be sheltered under Subchapter U -- a considerable advantage over portfolio investments, where income would be limited to the issuer's after-tax distributions.

The details of the distribution of the GSOC's shares and the precise mechanisms by which the above restrictions are to be implemented have been left by Congress to be determined by each state's enabling legislation.

II. Alaska's Enabling Legislation

As far as we are aware, only one state has as yet prepared legislation to take advantage of Subchapter U. Attached as Exhibit B is a Bill which was introduced in the last session of the Alaska legislature.[9/] Its sponsors are considering and will consider possible refinements, especially in response to the views of the SEC and IRS -- (a ruling as to the U.S. tax consequences of ownership of shares in the Alaska GSOC is currently being sought) -- but it is anticipated that the substance of S.170 will be reintroduced and enacted early in 1980.

S.170 contains the obligatory provisions required by Subchapter U,[10/] and establishes an entity otherwise consistent with the general corporation law of Alaska.

9/ CSSS Senate Bill No. 170, introduced as amended April 27, 1979 (hereinafter "S.170"). Section 1 of S.170 constitutes the Alaska General Stock Ownership Act, which will herein be cited as "Act § _____."

10/ See Act §§ 10.50.320 (a). Of necessity, certain provisions of the Alaska legislation interpret rather than simply mirror the provisions of Subchapter U. See for example, the definitions of "eligible individual" and "resident", Act §§ 10.50.320(a)(6) and 10.50.645(11), and Alaska's decision as to what happens when a shareholder leaves Alaska, a point left open in Subchapter U. S.170, § 4(c).

III. The Securities Act of 1933

The Securities Act of 1933 ("the 33 Act") requires that a registration statement be filed, and a prospectus disclosing material information be delivered to potential investors, in connection with the offer or sale of securities. We seek the staff's concurrence in our opinion that the initial issuance of shares in the Alaska GSOC to all "eligible individuals" will not require registration under section 5 of the 33 Act.

A. No Sale is Involved.

We believe the issuance of GSOC shares will not involve a "sale" or "offer to sell" within the meaning of section 2(3) of the 33 Act. That section defines "sale" as "every . . . disposition of a security . . . for value" and defines "offer to sell" as "every attempt . . . to dispose of . . . a security . . . for value."

Subchapter U does not specify whether the initial issuance of shares in a state's GSOC must be with or without charge. However, the primary sponsor of the legislation (Senator Gravel) anticipated that shares would be issued without charge.[11/] Although the current draft of the Alaska

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11/ 124 Cong. Rec. S.19,168 (daily ed. Oct. 14, 1978).

enabling legislation contemplates the possibility of subsequent issues for value,[12] the initial issuance of shares in the Alaska GSOC will be free of charge to all "eligible individuals", and all stock so issued will be considered fully paid and nonassessable.[13]

Assuming that the shares are issued to "eligible individuals" free of charge, there has been no "value" moving from the individuals to the GSOC and no investment decision made on the part of the individuals receiving shares. A no-action letter issued in the case of corporations created under the Alaska Native Claims Settlement Act supports this conclusion. See The Native Alaska Federation of Natives, Inc. (Jan. 28, 1974).[14]

12/ Section 10.50.080 of the Act provides that:

> "Shares may be issued without consideration or for consideration fixed by the shareholders before issuance. Consideration for shares shall be fixed by a vote of a majority of the shares voting on the issue."

This provision is intended to permit the Alaska GSOC to charge consideration for shares only in issuances subsequent to the initial issuance, as no shareholders will exist until then to fix the consideration.

13/ Of course, subsequent issuances of GSOC stock may well be for consideration; the present request for a no-action letter is not intended to encompass any such later issuances. See, e.g., Act § 10.50.085.

14/ While an Alaska resident has the right to decline receipt of his GSOC share, the availability of this option by

[Footnote continued next page]

In Part IV of this Memorandum we discuss application of the Securities Exchange Act of 1934 to the Alaska GSOC. In that discussion we propose dissemination of an annual report which should satisfy the disclosure principle of the 33 Act and allay any fears that granting our request for a no-action letter will result in uninformed shareholders. Compare the regulations with respect to filings by the Asian Development Bank authorized by 22 U.S.C. § 285h(a), (1978) Fed. Sec. L. Rep. (CCH) ¶ 2025. In any event, since the 33 Act is designed

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[Footnote continued from preceding page]

no means renders the distribution of shares to the accepting Alaska residents, a disposition "for value." A decision to accept stock in GSOC does not entail the sacrifice of any right or claim or the making of any investment decision. For example, the SEC has long held that a dividend paid either in the form of stock or cash at the election of the shareholder is not a "sale" of the shares so distributed. Sec. Rel. No. 33-929 (July 29, 1936). The Commission's position has been that while a waiver of a vested right might constitute "value," simple election between two mutually exclusive, alternative rights, granted without consideration, does not involve the surrender of something of "value" sufficient to bring an optional stock/cash dividend within the statutory meaning of the word "sale." Id. Furthermore, the initial distribution of GSOC stock would appear to be even less a disposition "for value" than an optional stock/cash dividend since a person who elects to receive a share does not give up a right to receive cash or other property. And while it is true that a GSOC shareholder will have made a "decision" to retain his share, he will not have made an "investment" in the GSOC, which would require the giving up of "some tangible and definable consideration in return for an interest" in the corporation. Int'l Bhd. of Teamsters v. Daniel, 439 U.S. 551, 560 (1979) (discussing whether employee makes an "investment" for purposes of the securities laws in noncontributory, compulsory pension plan).

primarily to ensure disclosure sufficient to enable an investor to decide whether to invest his funds in the securities of an issuer, the test of disclosure required under the 33 Act and its regulations seems largely irrelevant to the initial free distribution of GSOC shares. We would appreciate your advising whether the staff would recommend that the Commission take no action with respect to the initial issuance of shares in the Alaska GSOC assuming that the shares are issued without charge.

B. The Transaction is Intrastate.

Even if the Alaska GSOC were to establish a subscription price for its shares, registration should not be required by virtue of the "intrastate offering" exemption provided in Section 3a(11) of the 33 Act for:

> "[a]ny security which is a part of an issue offered and sold only to persons resident within a single State or Territory, where the issuer of such security is a . . . corporation, incorporated by and doing business within, such State or Territory."

The Alaska GSOC should have no difficulty meeting the requirements of this exemption. As a precaution, the legislative draftsmen are considering several changes in the draft legislation (such as legends on share certificates disclosing the various restraints on transfer) which will bring the Alaska GSOC squarely within non-exclusive Rule 147 (17

C.F.R. § 230.147). However, in the event certain technical requirements of the Rule are not satisfied, we would be prepared to submit for the staff's review the procedures the Alaska GSOC will adopt to assure that its intent to make an intrastate issue is carried out. While we realize that since the adoption of Rule 147 (S.E.C. Rel. No. 33-5420, January 7, 1974), no-action letters under section 3a(11) are not ordinarily forthcoming, we believe that staff assistance and review before an unregistered issuance of this magnitude by a unique entity would be in the public interest.

IV. The Securities Exchange Act of 1934

Subchapter U, as implemented in Alaska by S.170, will result in a novel entity. In many ways the Alaska GSOC can be seen as a conventional private corporation. Although it is primarily subject to control by the legislature at its formative stage, it is thereafter subject to governance of shareholders[15/] and the board of directors.[16/] Yet the GSOC is unique in other respects which are highly relevant to the purposes underlying the regulation of the Securities Exchange

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

16/ The directors may create and amend the by-laws, Act § 10.50.125, and have other standard management powers of corporate directors.

Act of 1934 ("the 34 Act"). In short, the Alaska GSOC will be owned by over 400,000 citizens of Alaska who have made no equity investment and who each hold one share of the one class of stock issued by the GSOC.[17] There will be no corporate shareholders.[18] There can be no transfer of GSOC shares for five years from the date of issuance except by reason of death.[19] There can be no aggregation of shares as each resident is limited to ownership of ten shares, and for the first five years few residents will hold more than one or two shares.[20] Even after the initial five-year period there will remain severe restrictions on the transferability of GSOC shares which will make it difficult if not impossible for a trading market in these shares to develop.[21]

17/ Although the legislation provides that "at least one share" shall be issued to all eligible individuals, it is our understanding that Alaska plans to issue only one share to each qualifying person.

18/ 26 U.S.C. § 1391(a)(4)(D)(ii).

19/ 26 U.S.C. § 1391(a)(4)(D)(i); Act § 10.50.320 (a)(8)(A). The one exception is the case of the "eligible individual" who has received his share and then decides to leave Alaska. If he leaves Alaska within five years after date of issuance, the corporation must purchase his share (or shares) at book value. S.170, § 4(c)(1). (The corporation must also purchase at book value the share of an eligible individual who dies within five years and whose share passes by operation of law to a non-resident.)

20/ 26 U.S.C. § 1391(a)(4)(D)(iii); Act, § 10.50.320 (a)(8)(C). The only way a resident can hold more than his one original share during the first five years is if he inherits a share from another resident.

21/ Even after the five-year period shares may be transferred only to "resident individuals" of Alaska. 26

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It is probable that the Alaska GSOC will at some time qualify for application of the 34 Act.[22/] However, the Commission has authority under two separate sections to provide an exemption from the 34 Act by administrative action. Section 12(h) of the 34 Act provides in relevant part:

> "The Commission may by rules and regulations, or upon application of an interested person, by order, after notice and opportunity for hearing, exempt in whole or in part any issuer or class of issuers from [the registration, reporting and proxy provisions of the 34 Act] . . . any security of which is required to be registered . . . upon such terms and conditions and for such period as it deems necessary or appropriate, if the Commission finds, by reason of the number of public investors, amount of trading interest in the securities, the nature and extent of the activities of the issuer, income

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U.S.C. § 1391(a)(4)(D)(ii). It will not be possible for security brokers or dealers to make a market in Alaska GSOC shares if this section is interpreted to mean such entities cannot hold GSOC shares. Also, since an individual can own no 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.

22/ Assuming that our request for a no-action letter under the 33 Act is successful, later issuances may still require registration under the 33 Act, bringing the 34 Act into play. 34 Act, § 15(d). In addition, the Alaska GSOC may well reach $1 million in assets soon after its initial distribution of shares. 34 Act, § 12(g). No express statutory exemption to the 34 Act appears applicable to GSOC securities.

> or assets of the issuer, or otherwise, that such action is not inconsistent with the public interest or the protection of investors.

Section 3(a)(12) of the 34 Act also gives the Commission the discretion to declare the securities of a GSOC "exempted securities." Section 3(a)(12) provides that "exempted securities" include:

> "such other securities (which may include, among others, unregistered securities, the market in which is predominantly intra-state) as the Commission may, by such rules and regulations as it deems consistent with the public interest and the protection of investors, either unconditionally or upon specified terms and conditions or for stated periods, exempt from the operation of any one or more provisions of this title which by their terms do not apply to an 'exempted security' or to 'exempted securities.'"

We seek the staff's recommendation that the Commission exercise its discretion under sections 12(h) and 3(a)(12) to grant the Alaska GSOC a conditional and temporary exemption from operation of the 34 Act for the five-year period during which shares can generally not be transferred. We think such an exercise of discretion would be appropriate on the conditions set out below for the following reasons.

First, the anticipated market for GSOC shares will always be totally within Alaska because of the permanent

prohibition against transfer to a non-resident. The only non-Alaskans to receive shares will be those few individuals who inherit a share from an Alaskan. S.170, § 4(c). See also and compare Rule 3(a)12-2, 17 C.F.R. § 240.3a 12-2 (an exemption granted for securities guaranteed and managed by a state or political sub-division).

Moreover, while there is no trading market in GSOC shares, potential investors will not require the types of disclosure the 34 Act was designed to foster, that is, the periodic disclosure of financial and other information to aid the public in making a decision whether to buy or sell shares other than in an initial distribution. Given that there will be no opportunity to make any such investment decision for the first five years, we believe that blanket application of the 34 Act's requirements for initial and periodic reporting would be unduly expensive, burdensome and unnecessary. The Commmission has recognized this principle in exempting an Indian tribal corporation, whose shares were not transferable for a period of time, from the requirements of the 34 Act "until 60 days prior to the date the certificates . . . become alienable." See, In the Matter of Menominee Enterprises, Inc., Menominee Common Stock and Voting Trust. Rel. No. 10725 (April 10, 1974).[23/]

23/ The common stock of the corporation was actually issued to Trustees who in turn issued trust certificates to the

[Footnote continued next page]

Nonetheless, it remains important that shareholders receive accurate and timely financial information to allow them to review the actions of GSOC management and thereby effectively exercise their rights to select the persons to control GSOC operations. The Commission also has an interest in reviewing these materials. Accordingly, Alaska GSOC is prepared as a condition of the temporary exemption requested to distribute and file an annual report to shareholders containing substantially all the information required in annual reports under the 34 Act.[24/] Similarly, although the Alaska legislation restricts matters that may be considered at a

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tribal members; the trust certificates were not transferable until January 1, 1976.

24/ This report would be in addition to the disclosure obligations mandated by S.170, which include each shareholder's right to examine the GSOC's books and records (Act § 10.50.270 et seq.); each shareholder's right to the GSOC's most recent financial statement (Act, § 10.50.285); the requirement that the GSOC file with the state administrator all annual reports, ballots and other materials which go to shareholders for his review and subject to his regulation concerning fairness, completeness, and non-discrimination (S.170, § 3). S.170 also makes false statements or statements with a tendency to mislead a misdemeanor by the responsible GSOC director, office or agent (Act, § 10.50.630).

In addition, Subchapter U requires the GSOC to file an informational tax return and an annual report with the Secretary of the Treasury "summarizing its operations for each year." (24 U.S.C. § 6039B.) The requirement of reports to Congress by the Joint Committee on Taxation (24 U.S.C. § 1391(e)) provides an added measure of scrutiny of GSOC operations.

shareholder's meeting to a specific agenda, requires direct shareholder voting, and does not permit voting by proxy (Act § 10.50.155), the GSOC would distribute information to shareholders regarding director candidates and other matters to be voted upon at shareholder meetings, as would be required by § 14(c) of the 34 Act and implementing regulations.

Moreover, although we believe that there is a question whether the antifraud provisions of the 34 Act would apply to these reports and to other activities of the Alaska GSOC due to the absence of any purchase or sale of securities,[25/] the Alaska GSOC is prepared to accept that the

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25/ While the SEC has on occasion taken the position that the term "sale" for purposes of the antifraud provisions of the Securities Acts encompasses transactions that are not "sales" for the purposes of the registration and reporting requirements of those Acts, the propriety of such a "bifurcated definition of a sale" is by no means certain. Int'l Bhd. of Teamsters v. Daniel, 439 U.S. 551, 567, n.2 (1979); see also id. at 556-557, n.8. The agency itself has stated that its inconsistent interpretations of the term "sale" have resulted in "anomalous applications of the securities laws." Rel. No. 5316 (Oct. 6, 1972) (notice of adoption of Rule 145 requiring certain "business combinations" [e.g., mergers, reorganizations, etc.] be treated as "sales" for purposes of registration requirements of the 1933 Act). Not surprisingly, courts have reached divergent conclusions as to whether the term "sale" should be given the same meaning in each of the various parts of the securities laws in which it appears. Compare Lawrence v. SEC, 398 F.2d 276 (1st Cir. 1968) and Gurvitz v. Bregman & Co., 379 F. Supp. 1283 (S.D.N.Y. 1974) with Dasho v. Susquehanna Corp., 380 F.2d 262 (7th Cir. 1967). In any event, it does seem clear that the term "sale," even as used in the antifraud provisions of the securities laws, does not include transfers made without consideration. See, e.g., Shaw v. Dreyfus, 172 F.2d 140 (2nd Cir. 1949); Turncale v. Blumberg, 80 F. Supp. 387 (S.D.N.Y.

[Footnote continued next page]

exemption it requests should not apply to relieve it of whatever application of the antifraud provisions of the 34 Act would otherwise obtain.

We believe that the legislative treatment of the Regional Corporations created by the Alaska Native Claims Settlement Act (43 U.S.C. §§ 1601 et seq.) provides a useful model for the type of limited exemption we seek. Under that Act, Congress disbursed federal funds to native peoples of Alaska in settlement of outstanding aboriginal land claims, and authorized the creation under Alaska law of a number of Regional Corporations to administer the funds and oversee land investment on behalf of native residents. The Act, as amended, provides for total exemption of the Corporations from the 34 Act during the period that shares cannot be traded, but also accomplishes in large measure the disclosure function of the 34 Act by requiring that the Corporations send an annual report to shareholders. 43 U.S.C. § 1625.[26/] The original legislation,

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1948). 1 L. Loss Securities Laws 1082-1084 (2d ed. 1961). As discussed at pp. 7-8, supra, the initial issuance of shares will be made without payment of consideration of any type by the citizens of Alaska and, therefore, the distribution of these shares would not seem to provide an occasion for applying the antifraud provisions of the securities laws to the Alaska GSOC.

26/ Section 1625 provides:

[Footnote continued next page]

passed in 1971, did not address the question of the applicability of the federal securities laws and regulations to the Regional Corporations, but provided for an annual independent audit of each corporation, the results of which were to be transmitted to each shareholder, to the Secretary of the Interior, and to appropriate committees of Congress. As a result, the various Corporations were forced to seek individual administrative relief from the SEC. In 1975, the Act was amended to provide for total exemption of the Regional Corporations from operation of the 33 Act, the 34 Act and the Investment Company Act of 1940, for the years during which

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

shares in the Regional Corporations could not be transferred except by divorce, separation or death.[27] We believe that our proposed disclosures, which follow the line Congress took in the Alaska Native Claims Settlement Act, will promote all relevant purposes of the 34 Act while dispensing with those requirements that, with respect to the Alaska GSOC, would simply create unnecessary burdens without compensating benefits for shareholders.

As a model of the type of disclosure we recommend we attach as Exhibit C the regulations designed for the Asian Development Bank, set out in Rel. No. 33-4889 (December 18, 1967).[28]

27/ One reason Congress noted for its decision was that the lack of sophistication of most native residents of Alaska made an elaborate prospectus as required by SEC rules less likely to be useful than the SEC suggested. Congress also was moved by the assurance that no trading in the shares would occur, and decided that application of the 34 Act was unnecessary while the stock could not be transferred. However, in the interest of disclosure to the public of relevant information about the Corporations, Congress required an annual report to shareholders containing substantially all information required in the annual reports under the 34 Act. H. Rep. No. 94-729, 94th Cong., 1st Sess. at 17-20 (1975). While the Alaska Native Claims Settlement Act does not require submission of the Annual Report to the SEC, the Alaska GSOC would of course be willing to file with the SEC as a condition of the requested exemption.

28/ The Asian Development Bank Act "deemed" the securities of the Bank to be exempt within the meaning of section 3(a)(2) of the 33 Act as well as section 3(a)(12) of the 34 Act, but also provided for periodic filings with the Commission. 2 U.S.C. § 285h(a). Similar treatment is given

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The 34 Act's rules that provide for the registration and regulation of brokers, dealers and transfer agents involved in the trading of non-exempt securities may well become applicable at the end of the five-year period when transfer of shares between Alaska residents is allowed. Alaska hopes to use the five-year period to consider the most suitable way to create and monitor trading activities, and hopes to have the continuing opportunity to engage in discussions with the SEC staff in working out in advance whatever problems can be anticipated. For example, it may be possible to use GSOC employees to facilitate transfers between buyers and the GSOC and sellers and the GSOC, at a price set at the pro rata share of the GSOC's current asset value, without matching buyers and sellers and thereby "making" a market.29/ Or the Alaska GSOC may at some stage decide to create some sort of unique shareholder voting method using the state's ballot process or some other type of public pronouncement.

[Footnote continued from preceding page]

securities of the World Bank. (1978) 2 Fed. Sec. L. Rep. (CCH) ¶ 21,200.

29/ Cf. proposed rule 3a4-1, as proposed in Sec. Rel. No. 34-13195 (January 21, 1977) (persons associated with an issuer are deemed not to be brokers solely for performing "the ministerial and clerical work of effecting any transaction" if other tests of the rule are met).

V. Investment Company Act of 1940

The Investment Company Act of 1940 ("the 40 Act") provides for the registration and regulation of companies whose business is principally investing in the securities of other companies. Assuming that the Alaska GSOC intends to invest in projects which would be considered "securities," it appears that it will come within the definition of "investment company" in section 3(a) of the 40 Act. None of the 40 Act's specific exemptions appear to apply to the Alaska GSOC.

Section 6(c) of the 40 Act provides in general terms that the Commission may exempt a company from the Act where "such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of this title." In addition, section 6(d) provides that the Commission shall, under certain conditions, exempt closed-end investment companies that do not sell shares for more than $100,000 and whose securities are not sold or offered outside the state in which the issuer is organized. Section 6(d), like section 6(c), conditions any exemption on its not being "contrary to the public interest or inconsistent with the protection of investors." Since the Alaska GSOC

issues its securities without charge, solely to Alaska residents, it meets all the technical tests for section 6(d).[30/] Accordingly, if the Commission finds that an exemption is in the public interest and does not jeopardize investors, section 6(c) authorizes, and section 6(d) requires, the Commission to exempt the Alaska GSOC from the 40 Act.

While the Alaska GSOC may fall within the formal definition of an investment company, its unique character and function place it far outside that class of companies which Congress deemed to be in need of SEC regulation. Most of the 40 Act's regulatory provisions were designed to protect investors from the schemes of incompetent or unscrupulous promoters of investment companies. But the Alaska GSOC is not the invention of private promoters seeking to profit from either the sale to investors of shares in an investment company or the sale to the investment company of securities that it may also be marketing. Rather, it is the creation of the State of Alaska which, under the auspices of unique federal tax legislation, is engaging in an experiment in public ownership

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30/ The Alaska GSOC appears to be a closed-end management company under the definitions of sections 4 and 5 of the 40 Act since shares in the GSOC cannot be redeemed by a resident in exchange for "approximately his proportionate share of the issuer's current net assets" so as to create a "redeemable security" within the meaning of § 2(a)(32) of the 1940 Act.

of Alaskan business. Compliance with the Act's particular requirements should not be necessary to protect the State's citizens from abuses of an experiment of their own creation and for their own benefit.

Section 1(b) of the 40 Act lists the specific abuses that Congress intended to eliminate. It is readily apparent that, while Alaska's legislation does not, in each case, take the same approach as the 40 Act, the GSOC is designed to minimize such abuses. As we now show, GSOC investors will be adequately protected against each of the eight types of abuses specified in section 1(b):

> "(1) when investors purchase, pay for, exchange, receive dividends upon, vote, refrain from voting, sell, or surrender securities issued by investment companies without adequate, accurate, and explicit information, fairly presented, concerning the character of such securities and the circumstances, policies, and financial responsibility of such companies and their management."

Since, at least during the first five years, Alaska's citizens will not be buying, selling or otherwise making investment decisions regarding their GSOC securities, there is little need for the type of information supplied in a registration statement pursuant to Section 8 of the 40 Act. In any event, the annual report that we have agreed to provide as

a condition to exemption from the 34 Act should be more than sufficient to meet the information needs of the citizen shareholders.

> "(2) when investment companies are organized, operated, managed or their portfolio securities are selected, in the interest of directors, officers, investment advisers, depositors, or other affiliated persons thereof, in the interest of underwriters, brokers, or dealers, in the interest of special classes of their security holders, or in the interest of other investment companies or other persons engaged in other lines of business rather than in the interest of all classes of such companies' security holders;"

The 40 Act protects against these abuses both by attempting to prevent control of an investment company either by its "interested persons" or by its investment adviser or principal underwriter, and by prohibiting an investment company from entering into conflict-of-interest transactions with its investment adviser or other interested or "affiliated" persons without SEC approval. Thus, Section 10 of the 40 Act requires that no more than 60 percent of the board of directors of a registered investment company consist of "interested" persons, and that no investment banker serve as director, officer or employee of the company unless the majority of the Board consists of persons who are neither investment bankers nor affiliated with investment bankers.

It has been noted that

> "[t]hese limitations on the composition of the board of directors help to insure that someone in a position of power will serve a 'watchdog' function on behalf of investment company shareholders, especially in situations involving the possible conflicts of interest of external investment advisers."31/

The unique public nature of the GSOC experiment should ensure that "watchdogs" will be present, regardless of whether such watchdogs are included on the Board of Directors or in the company's management. Initial selection of the GSOC's directors must be approved by a majority of the Governor, the Speaker of the Alaska House of Representatives and the President of the Senate. Subsequent elections -- as well as GSOC operations -- should receive sufficient public attention and press coverage to protect against apparent conflicts of interest. In any event, it is highly unlikely that the composition of the GSOC Board of Directors will not comply with the terms of Section 10 of the 40 Act, and the bylaws of the GSOC will undoubtedly provide fully adequate protections against any such danger.

31/ A. Rosenblat and M. Lybecker, Some Thoughts on the Federal Securities Laws Regulating External Investment Management Arrangements and the ALI Federal Securities Code Project, 124 U. Pa. L. Rev. 587, 597 (1976).

Section 15 of the 40 Act regulates the relationship between an investment company and its investment advisers and underwriters, and, with Section 17, seeks to protect shareholders from self-dealing between the company and such persons. However, as discussed above, the GSOC will not be investing in portfolio securities and is not expected to employ investment advisers or underwriters. Unlike the typical investment company, the GSOC will not be buying and selling securities in high volume, nor will it be entering into numerous business transactions. Its investments and loan transactions will be few and highly visible, and shareholders will not need the protections of Section 15 or Section 17 to prevent conflict-of-interest transactions.

> "(3) when investment companies issue securities containing inequitable or discriminatory provisions, or fail to protect the preferences and the privileges of the holders of their outstanding securities;"

Section 18 of the 40 Act protects against these abuses by requiring that every share of stock issued by a registered company be voting stock with voting rights equal to all other shares, and by prohibiting the issuance of senior securities exempt by closed-end funds with a specified high level of asset coverage. These provisions are unnecessary in the case of the GSOC, since subchapter U itself provides that a GSOC may issue only one class of stock.

> "(4) when the control of investment companies is unduly concentrated through pyramiding or inequitable methods of control, or is inequitably distributed, or when investment companies are managed by irresponsible persons."

Control of the GSOC cannot become concentrated, since GSOC stock will be distributed to all Alaska citizens, trading will be prohibited for five years, and no shareholders will be permitted to own more than 10 shares. Thus, the 40 Act safeguards against pyramiding, and other provisions designed to protect against concentration of control are unnecessary.

Moreover, the GSOC legislation provides adequate protection against irresponsible management, though not always by the same means as the 40 Act. As noted above, it is probable that the GSOC will have a substantial proportion of outside directors as safeguards against mismanagement. The GSOC legislation, like Section 17(h) of the 40 Act, does not permit indemnification of the company's officers and directors for grossly negligent or irresponsible actions. While the GSOC has no provision similar to section 17(f) governing custody of its portfolio securities, it is expected, for reasons described above, that the GSOC will not invest in portfolio securities, so that such a provision is unnecessary. Moreover, the Alaska legislation contains a unique protection of against mismanagement that does not apply to ordinary investment

companies. The proposed Act establishes a GSOC "loan guarantee fund," which will be used to guarantee loans made to the GSOC to cover its initial start-up costs. The statute provides that "[i]n 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." (S. 170, § 4(d).) This unique provision, along with the other safeguards described above, should -- at least during the initial start-up period -- afford protections equivalent to those provided by the 40 Act against fraudulent or irresponsible management.

> "(5) when investment companies, in keeping their accounts, in maintaining reserves, and in computing their earnings and the asset value of their outstanding securities, employ unsound or misleading methods, or are not subjected to adequate independent scrutiny."

The special nature of the GSOC should relieve it from the particular accounting requirements of the 40 Act. As noted above, subchapter U requires a GSOC to file an annual report with the Secretary of the Treasury summarizing its operations for that year. Any accounting requirements imposed by the Secretary of the Treasury -- along with the review of the GSOC which will, by statute, be conducted for Congress by the Joint Committee on Taxation -- should subject the GSOC's accounts to more than adequate independent scrutiny.

"(6) when investment companies are reorganized, become inactive, or change the character of their business, or when the control or management thereof is transferred, without the consent of their security holders;"

Subchapter U and the Alaska enabling legislation together provide for shareholder participation in the selection of directors, in corporate decisions regarding reorganization, and in amending the corporation's articles of incorporation with regard to its corporate purposes. There is no provision similar to Section 13 of the 40 Act, which requires shareholder approval of changes in an investment company's investment policies. But, unlike the typical mutual fund or investment company, the GSOC does not, initially, offer investors an opportunity to invest in a specific investment approach. While the GSOC may, in time, develop identifiable investment policies and goals, the experimental nature of the venture is not presently amenable to provisions requiring either immediate identification of such policies or shareholder approval of changes in such policies.[32/] At least during the initial

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32/ In this respect, the Alaska GSOC is similar to the Regional Corporations formed pursuant to the Alaska Native Claims Settlement Act. Congress specifically exempted those corporations from the 40 Act coverage during the initial period when their shares were non-transferable because, inter alia, "It is too early for those fledgling corporations to know even what their investment policies and legal and accounting problems may be to make registration practicable for them under the Investment Company Act." H. R. Rep. No. 94-729, 94th Cong., 1st Sess. 17.

five-year period, when citizens are not making investment decisions with regard to the purchase or sale of GSOC shares, there is no need to impose the Act's requirements on the GSOC's investment policies.

> "(7) when investment companies by excessive borrowing and the issuance of excessive amounts of senior securities increase unduly the speculative character of their junior securities;"

As noted above, the GSOC is not permitted to issue more than one class of securities, so that the 40 Act's protections against these abuses need not be imposed upon the GSOC.

> "(8) when investment companies operate without adequate assets or reserves."

During the GSOC's initial five years, Alaska's citizen-shareholders bear virtually no risk of GSOC insolvency insofar as they have simply been issued stock and have neither bought nor sold shares in the market. Should the GSOC experiment fail, the citizens would, of course, share the costs of funds expended by the State to establish the company and to guarantee loans, but this loss is attributable to their status as taxpaying citizens, and not as investors. Thus, at least during these initial years, there is no need to encumber the GSOC with rules regulating its capital structure -- many of

which, in any event, apply only to companies issuing more than one class of securities.

* * *

In short, the 40 Act is designed to protect against abuses which either are not likely to be associated with a GSOC or are adequately protected against by the GSOC's own structure and enabling legislation. In these circumstances, exempting the GSOC from the 40 Act's requirements would be wholly consistent with the protection of investors -- and thus with the provisions of sections 6(c) and (d) of the Act. Moreover, such an exemption would clearly be in the public interest, as required by the Act, insofar as it relieves the GSOC of burdensome and unnecessary regulation, and affords the GSOC the flexibility that it will require in its initial years to determine how best to pursue this social experiment.

We hope that the Commission will exempt the Alaska GSOC from operation of the 40 Act, at least for the first five years of its existence. We would, as discussed above, expect that any such exemption be made conditional upon compliance with the modified 34 Act disclosures that we have proposed. And we propose that the question of 40 Act regulation -- like the question of the 34 Act coverage -- be revisited after the end of the initial five-year period.

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On behalf of the proposed Alaska GSOC, we thank the staff for its consideration of this matter. We would be pleased to meet to discuss any of the issues involved at your early convenience.

Wilmer & Pickering

WILMER & PICKERING

EXHIBIT A

Internal Revenue Code, 26 U.S.C. §§ 1391-1397

SUBCHAPTER U—GENERAL STOCK OWNERSHIP CORPORATIONS

§ 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.

Added Pub.L. 95-600, Title VI, § 601(a), Nov. 6, 1978, 92 Stat. 2892.

References in Text. This title, referred to in subsec. (d), probably means Title VI of Pub.L. 95-600, which enacted this subchapter, section 6039B of this title, amended sections 172, 1016, and 3402 of this title, and enacted provision set out as a note under this section.

Effective Date. Section 601(d) of Pub. L. 95-600 provided that: "The amendments made by this section [enacting this subchapter, section 6039B of this title, and amending sections 172, 1016, and 3402 of this title] shall apply with respect to corporations chartered after December 31, 1978, and before January 1, 1984."

Legislative History. For legislative history and purpose of Pub.L. 95-600, see 1978 U.S.Code Cong. and Adm.News, p. 6761.

§ 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.

Added Pub.L. 95-600, Title VI, § 601(a), Nov. 6, 1978, 92 Stat. 2893.

Legislative History. For legislative history and purpose of Pub.L. 95-600, see 1978 U.S.Code Cong. and Adm.News, p. 6761.

§ 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.

Added Pub.L. 95-600, Title VI, § 601(a), Nov. 6, 1978, 92 Stat. 2894.

Legislative History. For legislative history and purpose of Pub.L. 95-600, see 1978 U.S.Code Cong. and Adm.News, p. 6761.

§ 1394. Rules applicable to distributions of an electing GSOCs

(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.

Added Pub.L. 95-600, Title VI, § 601(a), Nov. 6, 1978, 92 Stat. 2895.

Legislative History. For legislative history and purpose of Pub.L. 95-600, see 1978 U.S.Code Cong. and Adm.News, p. 6761.

§ 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.

Added Pub.L. 95-600, Title VI, § 601(a), Nov. 6, 1978, 92 Stat. 2895.

Legislative History. For legislative history and purpose of Pub.L. 95-600, see 1978 U.S.Code Cong. and Adm.News, p. 6761.

§ 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.

Added Pub.L. 95-600, Title VI, § 601(a), Nov. 6, 1978, 92 Stat. 2895.

Legislative History. For legislative history and purpose of Pub.L. 95-600, see 1978 U.S.Code Cong. and Adm.News, p. 6761.

§ 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.

Added Pub.L. 95-600, Title VI, § 601(a), Nov. 6, 1978, 92 Stat. 2895.

Legislative History. For legislative history and purpose of Pub.L. 95-600, see 1978 U.S.Code Cong. and Adm.News, p. 6761.

EXHIBIT C

For RELEASE Monday, December 18, 1967

SECURITIES AND EXCHANGE COMMISSION
Washington, D. C.

ASIAN DEVELOPMENT BANK ACT
Release No. 1
SECURITIES ACT OF 1933
Release No. 4889
SECURITIES EXCHANGE ACT OF 1934
Release No. 8209
TRUST INDENTURE ACT OF 1939
Release No. 242

ADOPTION OF REGULATION AD

The Securities and Exchange Commission today adopted rules and regulations specifying the periodic and other reports to be filed with it by the Asian Development Bank. This action is taken pursuant to Section 11(a) of the Asian Development Bank Act.

Section 11 of the above-mentioned Act exempts from registration under both the Securities Act of 1933 and the Securities Exchange Act of 1934 securities issued in connection with the raising of funds for inclusion in the Bank's ordinary capital resources and securities guaranteed as to both principal and interest by the Bank. However, the Bank is required to file with the Commission such annual and other reports with respect to such securities as the Commission shall determine to be appropriate in view of the special character of the Bank and its operations and necessary in the public interest or for the protection of investors. It would appear that an exemption is available under the Trust Indenture Act of 1939.

The new rules and regulations adopted today require the Bank to file with the Commission substantially the same information, documents and reports as would be required if the Bank had securities registered under the Securities Exchange Act of 1934. The Bank is also required to file a report with the Commission not less than seven days prior to the date on which any of its primary obligations are sold to the public in the United States, or such shorter period as the Commission may authorize. This report and the periodic reports to be filed will make available at the Commission information quite similar to the information which would be required in a registration statement under the Securities Act of 1933.

The Commission is informed by the Bank that no public offering of securities guaranteed by the Bank is presently contemplated. Accordingly, the new rules, insofar as they require the reporting of the proposed public sale of securities, are limited to the sale of primary obligations of the Bank. Rules with respect to reporting the proposed sale of securities guaranteed by the Bank will be adopted by the Commission when the need therefor arises.

The new regulation, which is designated Regulation AD, was adopted pursuant to Section 11(a) of the Asian Development Bank Act, the Commission finding such action appropriate in view of the special character of the Asian Development Bank and its operations and necessary in the public interest and for the protection of investors. The text of the regulation follows.

REGULATION AD

Rule 1. Applicability of Regulation.

Regulation AD prescribes the reports to be filed with the Securities and Exchange Commission by the Asian Development Bank pursuant to Section 11(a) of the Asian Development Bank Act.

Rule 2. Periodic Reports.

(a) Within 60 days after the end of each of its fiscal quarters, the Bank shall file with the Commission the following information:

(1) Information as to any purchases or sales by the Bank of its primary obligations during such quarter.

(2) Copies of the Bank's regular quarterly financial statement.

(3) Copies of any material modifications or amendments during such quarter of any exhibits (other than (i) constituent documents defining the rights of holders of securities of other issuers guaranteed by the Bank, and (ii) loans and guaranty agreements to which the Bank is a party) previously filed with the Commission under any statute.

(b) Copies of each annual report of the Bank to its Board of Governors shall be filed with the Commission within 10 days after the submission of such report to the Board of Governors.

Rule 3. Reports with Respect to Proposed Distribution of Primary Obligations.

The Bank shall file with the Commission, not less than seven days prior to the date on which it proposes to sell any of its primary obligations in connection with a distribution of such obligations in the United States, or such shorter period as the Commission may authorize, a report containing the information and documents specified in Schedule A below. The term "sell" as used in this rule and in Schedule A means the making of a completed sale or a firm commitment to sell.

Rule 4. Preparation and Filing of Reports.

(a) Every report required by this regulation shall be filed under cover of a letter of transmittal which shall state the nature of the report and indicate the particular rule and subdivision thereof pursuant to which the report is filed. At least the original of every such letter shall be signed on behalf of the Bank by a duly authorized officer thereof.

(b) Two copies of every report, including the letter of transmittal, exhibits and other papers and documents comprising a part of the report, shall be filed with the Commission.

(c) The report shall be in the English language. If any exhibit or other paper or document filed with the report is in a foreign language, it shall be accompanied by a translation into the English language.

(d) Reports pursuant to Rule 3 may be filed in the form of a prospectus to the extent that such prospectus contains the information specified in Schedule A.

SCHEDULE A

This schedule specifies the information and documents to be furnished in a report pursuant to Rule 3 with respect to a proposed distribution of primary obligations of the Bank. Information not available at the time of filing the report shall be filed as promptly thereafter as possible.

Item 1. Description of Obligations.

As to each issue of primary obligations of the Bank which is to be distributed, furnish the following information:

(a) The title and date of the issue.

(b) The interest rate and interest payment dates.

(c) The maturity date or, if serial, the plan of serial maturities. If the maturity of the obligation may be accelerated, state the circumstances under which it may be so accelerated.

(d) A brief outline of (1) any redemption provisions and (2) any amortization, sinking fund or retirement provisions, stating the annual amount, if any, which the Bank will be under obligation to apply for the satisfaction of such provisions.

(e) If secured by any lien, the kind and priority thereof, and the nature of the property subject to the lien; if any other indebtedness is secured by an equal or prior lien on the same property, state the nature of such other liens.

(f) If any obligations issued or to be issued by the Bank will, as to the payment of interest or principal, rank prior to the obligations to be distributed, describe the nature and extent of such priority.

(g) Outline briefly any provisions of the governing instruments under which the terms of the obligations to be distributed may be amended or modified by the holders thereof or otherwise.

(h) Outline briefly any other material provisions of the governing instruments pertaining to the rights of the holders of the obligations to be distributed or pertaining to the duties of the Bank with respect thereto.

(i) The name and address of the fiscal or paying agent of the Bank, if any.

Item 2. Distribution of Obligations.

(a) Outline briefly the plan of distribution of the obligations and state the amount of the participation of each principal underwriter, if any.

(b) Describe any arrangements known to the Bank or to any principal underwriter named above designed to stabilize the market for the obligations for the account of the Bank or the principal underwriters as a group and indicate whether any transactions have already been effected to accomplish that purpose.

(c) Describe any arrangements for withholding commissions, or otherwise, to hold each underwriter or dealer responsible for the distribution of his participation.

Item 3. Distribution Spread.

The following information shall be given, in substantially the tabular form indicated, as to all obligations which are to be offered for cash (estimate, if necessary):

	Price to the Public	Selling Discounts and Commissions	Proceeds to the Bank
Per Unit	_____	_____	_____
Total	_____	_____	_____

Item 4. Discounts and Commissions to Sub-Underwriters and Dealers.

State briefly the discounts and commissions to be allowed or paid to dealers. If any dealers are to act in the capacity of sub-underwriters and are to be allowed or paid any additional discounts or commissions for acting in such capacity, a general statement to that effect will suffice, without giving the additional amounts to be so paid.

Item 5. Other Expenses of Distribution.

Furnish a reasonably itemized statement of all expenses of the Bank in connection with the issuance and distribution of the obligations, except underwriters' or dealers' discounts and commissions.

Instruction. Insofar as practicable, the itemization shall include transfer agents' fees, cost of printing and engraving, and legal and accounting fees. The information may be given as subject to future contingencies. If the amounts of any items are not known, estimates, designated as such, shall be given.

Item 6. Application of Proceeds.

Make a reasonably itemized statement of the purposes, so far as determinable, for which the net proceeds to the Bank from the obligations are to be used, and state the approximate amount to be used for each such purpose.

Item 7. Exhibits to be Furnished.

The following documents shall be attached to or otherwise furnished as a part of the report:

(a) Copies of the constituent instruments defining the rights evidenced by the obligations.

(b) Copies of an opinion of counsel, in the English language, as to the legality of the obligations.

(c) Copies of all material contracts pertaining to the issuance or distributions of the obligations, to which the Bank or any principal underwriter of the obligations is or is to be a party, except selling group agreements.

(d) Copies of any prospectus or other sales literature to be provided by the Bank or any of the principal underwriters for general use in connection with the initial distribution of the obligations to the public.

* * * * *

Because of the limited applicability of Regulation AD, on which the views and comments of the Bank have been received and considered, the Commission finds that notice and procedure pursuant to the Administrative Procedure Act are unnecessary.

The foregoing action of the Commission shall become effective upon publication, December 18, 1967.

By the Commission.

Orval L. DuBois
Secretary

EXHIBIT B

Original sponsors: Colletta, Stimson, and Fahrenkamp

Offered: 4/27/79
Referred: Rules

IN THE SENATE BY THE FINANCE COMMITTEE

CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO. 170

IN THE LEGISLATURE OF THE STATE OF ALASKA

ELEVENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to general stock ownership corporations and creating the Alaska General Stock Ownership Corporation; changing Rule 23.1, Rules of Civil Procedure; and providing for an effective date."

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

* Section 1. AS 10 is amended by adding a new chapter to read:

CHAPTER 50. GENERAL STOCK OWNERSHIP CORPORATIONS.

ARTICLE 1. SUBSTANTIVE PROVISIONS.

Sec. 10.50.005. PURPOSES. A general stock ownership corporation may be organized under this chapter for any lawful purpose unless limited by the chartering legislation of a corporation.

Sec. 10.50.010. GENERAL STOCK OWNERSHIP CORPORATIONS. (a) A corporation organized under this chapter is a general stock ownership corporation and 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), and with this chapter. A corporation is subject to the provisions of this chapter and subchapter U, chapter 1 of the Internal Revenue Code of 1954, as amended (26 U.S.C. sec. 1391 - 1397).

(b) A corporation is not an agency, instrumentality, or political subdivision of the state for any purpose.

Sec. 10.50.015. GENERAL POWERS. A corporation may

(1) have perpetual succession in its corporate name unless a limited period of duration is stated in its articles of incorporation;

(2) sue and be sued in its corporate name;

(3) adopt a corporate seal and alter it, and use it by having it or a facsimile of it impressed, affixed or reproduced;

(4) buy, lease, or otherwise acquire, own, hold, improve, use and otherwise deal in, real or personal property or any interest in property, except that the corporation may not invest in property acquired by it, or for its benefit, through the right of eminent domain;

(5) sell or otherwise dispose of all or any part of its property and assets;

(6) lend money to its employees other than its officers and directors, and otherwise assist its employees, officers and directors;

(7) buy or otherwise acquire, own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of, and otherwise use and deal in shares or other interests in, or obligations of, other corporations, associations, partnerships or individuals, or in direct or indirect obligations of the United States or of any other government, state, territory, or municipality or of any instrumentality of them;

(8) make contracts and incur liabilities, borrow money at the rates of interest the corporation determines, issue notes, bonds, and other obligations, and secure its obligations by mortgage or pledge of all or any of its property, franchise and income;

(9) lend money for its corporate purposes, invest and reinvest its funds, and take and hold real and personal property as security for the payment of funds loaned or invested;

(10) conduct business, carry on operations, and have offices and exercise the powers granted by this chapter in a state, territory, district, or possession of the United States, or in a foreign country;

(11) elect or appoint officers and agents of the corporation, define their duties, and fix their compensation;

(12) make and alter bylaws not inconsistent with its articles

of incorporation or with the laws of the state, for the administration and regulation of the affairs of the corporation;

(13) donate for the public welfare or for charitable, scientific or educational purposes, and in time of war donate in aid of war activities;

(14) transact lawful business in time of war in aid of the United State in the prosecution of the war;

(15) pay pensions and establish pension plans, pension trusts, profit-sharing plans, and other incentive plans for its directors, officers and employees;

(16) cease it corporate activities and surrender its corporate franchise;

(17) have and exercise the powers of a limited or general partner or a joint adventurer in association with one or more persons, corporations, partnerships or associations;

(18) have and exercise lawful powers necessary to carry out the purposes for which the corporation is organized.

Sec. 10.50.020. INDEMNIFICATION OF OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS; INSURANCE. (a) A corporation may indemnify a person who was or is a party or is threatened to be made a party to a threatened, pending, or completed action or proceeding, whether civil, criminal, administrative, or investigative, other than an action by or in the right of the corporation, by reason of the fact that he is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise. Indemnification may be against expenses including attorney fees, judgments, fines, and amounts paid in settlement actually and reasonably incurred by him in connection with the

action or proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to a criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of an action or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, does not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to a criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

(b) A corporation may indemnify a person who was or is a party or is threatened to be made a party to a threatened, pending or completed action by or in the right of the corporation to procure a judgment in its favor by reason of the fact that he is or was a director, officer, employee, or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust or other enterprise. Indemnification may be against expenses, including attorney fees, actually and reasonably incurred by him in connection with the defense or settlement of the action if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation. However, indemnification may not be made for any claim, issue or matter as to which the person has been adjudged to be liable for negligence or misconduct in the performance of his duty to the corporation except to the extent that the court in which the action was brought determines upon application that, despite the adjudication of liability, in view of all the circumstances of the case the person is fairly and reasonably entitled to indemnity for the expenses which the

court considers proper.

(c) To the extent that a director, officer, employee or agent of a corporation has been successful on the merits or otherwise in defense of an action or proceeding referred to in (a) or (b) of this section, or in defense of any claim, issue or matter in the action or proceeding, he shall be indemnified against expenses, including attorney fees, actually and reasonably incurred by him in connection with it.

(d) Indemnification under (a) or (b) of this section, unless ordered by a court, shall be made by the corporation only as authorized in the specific case upon a determination that indemnification of the director, officer, employee or agent is proper in the circumstances because he has met the applicable standard of conduct set out in (a) and (b) of this section. This determination shall be made

(1) by the board of directors by a majority vote of a quorum consisting of directors who were not parties to the action or proceeding, or

(2) if such a quorum is not obtainable, or, even if obtainable if a quorum of disinterested directors so directs, by independent legal counsel in a written opinion, or

(3) by the stockholders.

(e) Expenses incurred in defending a civil or criminal action or proceeding may be paid by the corporation in advance of the final disposition of the action or proceeding as authorized by the board of directors in the specific case upon receipt of an undertaking by or on behalf of the director, officer, employee or agent to repay the amount unless it is ultimately determined that he is entitled to be indemnified by the corporation as authorized in this section.

(f) The indemnification provided by this section is not exclusive of any other rights to which a person seeking indemnification may be

entitled under any bylaw, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding the office, and continues as to a person who has ceased to be a director, officer, employee or agent, and inures to the benefit of the heirs, executors and administrators of that person.

(g) A corporation may purchase and maintain insurance on behalf of a person who is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him and incurred by him in such a capacity, or arising out of his status as such, whether or not the corporation would have the power to indemnify him against the liability under the provisions of this section.

Sec. 10.50.030. DEFENSE OF ULTRA VIRES. No act of a corporation and no conveyance or transfer or real or personal property to or by a corporation is invalid because the corporation did not have capacity or power to perform the act or to convey or receive the property. However, lack of capacity or power may be asserted as follows.

(1) The assertion may be made in a proceeding by a shareholder against the corporation to enjoin the performance of any act or the transfer of real or personal property by or to the corporation. If the unauthorized act or tranfer sought to be enjoined is being or to be performed or made under a contract to which the corporation is a party, the court may, if the parties to the contract are parties to the proceeding and if the court considers it equitable, set aside and enjoin the performance of the contract, and in so doing may allow compensation to the corporation or to the other parties to the contract for the loss

or damage sustained by either of them resulting from the action of the court in setting aside and enjoining the performance of the contract. The court may not award anticipated profits to be derived from the performance of the contract as a loss or damage sustained.

(2) The assertion may be made in a proceeding by the corporation, whether acting directly or through a receiver, trustee, or other legal representative, or through shareholders in a representative suit, against the incumbent or former officers or directors of the corporation.

(3) The assertion may be made in a proceeding by the attorney general to dissolve the corporation, or to enjoin the corporation from the transaction of unauthorized business.

Sec. 10.50.035. CORPORATE NAME. The corporate name shall contain the words "general stock ownership corporation" or an abbreviation of these words. It may not contain a word or phrase which indicates or implies that it is organized for a purpose other than the purpose contained in the articles of incorporation. It may not be the same as, or deceptively similar to, the name of a domestic corporation existing under the laws of the state or a foreign corporation authorized to transact business in the state, or a name which has been reserved or registered as provided in this chapter.

Sec. 10.50.040. RESERVATION OF CORPORATE NAME. (a) The exclusive right to the use of a corporate name may be reserved by

(1) a person intending to organize a corporation under this chapter;

(2) a corporation intending to change its name.

(b) Reservation of a corporate name is made by filing an application with the commissioner. If the commissioner finds that the name is available for corporate use, and not a reserved or registered business

name as set out in AS 10.35.010 - 10.35.090, he shall reserve it for the exclusive use of the applicant for a period of two years. A reservation of corporate name may be renewed for one year.

(c) The holder of a reserved corporate name may transfer the right to the exclusive use of the corporate name to another person by filing a notice of transfer with the commissioner, signed by the holder and specifying the name and address of the transferee.

Sec. 10.50.045. FOREIGN GENERAL STOCK OWNERSHIP CORPORATIONS. Corporations organized under the laws of another state shall be governed according to AS 10.05.

Sec. 10.50.050. REGISTERED OFFICE AND REGISTERED AGENT. A corporation shall continuously maintain in the state a registered office which may be, but need not be, the same as its place of business, and a registered agent. The registered agent may be either an individual resident of the state whose business office is the same as the registered office, or a corporation organized under AS 10.05 whose business office is the same as the registered office.

Sec. 10.50.055. FILING LIST OF REGISTERED CORPORATIONS WITH SUPERIOR COURT. The commissioner shall file a list of the name of each corporation, the address of the registered office, and the name and address of the registered agent with each clerk of the superior court. The commissioner shall provide a periodic supplement to the list indicating additions, deletions and changes at least once every six months. The commissioner shall make the list available to the public for a fee prescribed by him.

Sec. 10.50.060. CHANGE OF REGISTERED OFFICE OR AGENT. (a) A corporation may change its registered office, agent, or both, by filing with the department a verified statement signed by the president or vice-president setting out

(1) the name of the corporation;

(2) the address of its registered office;

(3) the address of its new registered office if the registered office is to be changed;

(4) the name of its registered agent;

(5) the name of its new registered agent, if its registered agent is to be changed;

(6) that the change is authorized by resolution of its board of directors.

(b) If the commissioner finds that the verified statement complies with this chapter, he shall file it in his office. The change becomes effective when the statement is filed.

Sec. 10.50.065. REGISTRATION OF REGISTERED AGENT. (a) If the registered agent of a corporation changes the location of his office from one address to another within a city or town, or from one city or town in the state to another, he may change the registered office for each corporation for whom he is acting as registered agent by filing in the office of the commissioner a statement setting out

(1) the name of the agent;

(2) the address of his office before change;

(3) the address to which the office is changed; and

(4) a list of corporations for whom he is furnishing a registered office.

(b) The statement in (a) of this section must be executed by the registered agent in his individual name and, if the agent is a corporation it must be executed by its president or a vice-president and verified by him. The statement must be delivered to the commissioner and if he finds that the statement complies with this chapter, he shall file it in his office. The change becomes effective when the statement is

filed.

(c) A registered agent may resign by filing a written notice, executed in duplicate, with the commissioner. The written notice of resignation shall set out the latest address of the principal office of the corporation and the names, addresses and titles of the most recent officers of the corporation known by the agent. The commissioner shall immediately mail a copy of the notice to the corporation at its principal office. The appointment of the agent terminates 30 days after receipt of the notice by the commissioner.

Sec. 10.50.070. SERVICE OF PROCESS ON CORPORATION. (a) The registered agent of a corporation is an agent upon whom process, notice or demand required or permitted by law to be served upon the corporation may be served.

(b) When a corporation fails to appoint or maintain a registered agent in the state, or when its registered agent cannot, with reasonable diligence, be found at the registered office, the commissioner is an agent of the corporation upon whom the process, notice, or demand may be served. Service is made upon the commissioner as agent by leaving with him, or with a clerk having charge of the corporation department of his office, duplicate copies of the process, notice or demand. When process, notice or demand is served on the commissioner, he shall immediately forward a copy of it by registered mail to the corporation at its registered office. Service on the commissioner is returnable in not less than 30 days.

(c) The commissioner shall keep a record of processes, notices and demands served upon him showing the time of service and his action with reference to the service. This chapter does not limit or affect the right to serve process, notice or demand required or permitted by law to be served upon a corporation in any other manner permitted by law.

Sec. 10.50.075. CREATION AND ISSUANCE OF SHARES. A corporation may create and issue the number of shares stated in its articles of incorporation and as provided in AS 10.50.320(a)(5) - (7). The shares shall be without par value.

Sec. 10.50.080. CONSIDERATION FOR SHARES. (a) Shares may be issued without consideration or for consideration fixed by the shareholders before the issuance. Consideration for shares shall be fixed by a vote of a majority of the shares voting on the issue.

(c) Treasury shares may be disposed of by the corporation for consideration not more than the book value of the shares.

Sec. 10.50.085. PAYMENT FOR SHARES. (a) Consideration for the issuance of shares if required may be paid, in whole or in part, in money, in other property, tangible or intangible, or in labor or services actually performed for the corporation. When payment of the consideration for shares is received by the corporation, the shares are considered fully paid and nonassessable.

(b) A promissory note or future service does not constitute payment or part payment for shares of a corporation.

Sec. 10.50.090. JUDGMENT OF BOARD OR SHAREHOLDER AS TO VALUE OF CONSIDERATION CONCLUSIVE. In the absence of fraud in the transaction, the judgment of the board of directors or the shareholders as to the value of the consideration received for shares is conclusive.

Sec. 10.50.095. EXPENSES OF ORGANIZATION, REORGANIZATION AND FINANCING. The reasonable charges and expenses of organization or reorganization of a corporation, and the reasonable expenses of and compensation for the sale or underwriting of its shares, may be paid or allowed by the corporation out of the consideration received by it in payment for its shares without rendering the shares not fully paid and nonassessable.

Sec. 10.50.100. CERTIFICATES REPRESENTING SHARES. The shares of a corporation shall be represented by certificates signed by the president or vice-president and the secretary or an assistant secretary of the corporation, and may be sealed with the seal of the corporation or a facsimile of the seal. The signatures of the president or vice-president and the secretary or assistant secretary on a certificate may be facsimiles if the certificate is countersigned by a transfer agent, or registered by a registrar, other than the corporation itself or an employee of the corporation. If an officer who has signed or whose facsimile signature has been placed on a certificate ceases to be an officer before the certificate is issued, it may be issued by the corporation with the same effect as if he were an officer at the date of its issue.

Sec. 10.50.105. INFORMATION REQUIRED TO BE STATED ON CERTIFICATE. Each certificate representing shares shall state on the face

(1) that the corporation is organized under the laws of the state;

(2) the name of the person to whom issued;

(3) the number of shares which the certificate represents;

(4) a statement that the shares are without par value.

Sec. 10.50.110. FULL PAYMENT REQUIRED FOR CERTIFICATE. A certificate may not be issued for a share until the share is fully paid if consideration is required.

Sec. 10.50.115. ISSUANCE OF FRACTIONAL SHARES. (a) A corporation may issue a certificate for a fractional share.

(b) A certificate for a fractional share entitles the holder to exercise voting rights, to receive dividends, and to participate in the assets of the corporation in the event of liquidation.

Sec. 10.50.120. LIABILITY OF SUBSCRIBERS AND SHAREHOLDERS. (a) A

holder of or subscriber to shares of a corporation is under no obligation to the corporation or its creditors with respect to the shares other than the obligation to pay to the corporation the full consideration for which the shares were issued or to be issued.

(b) An assignee or transferee of shares or of a subscription for shares in good faith and without knowledge or notice that the full consideration has not been paid is not personally liable to the corporation or its creditors for any unpaid portion of the consideration.

(c) An executor, administrator, conservator, guardian, trustee, assignee for the benefit of creditors, or receiver is not personally liable to the corporation as a holder of or subscriber to shares of a corporation but the estate and funds held by him are liable.

(d) A pledgee or other holder of shares as collateral security is not personally liable as a shareholder.

Sec. 10.50.125. BYLAWS. The board of directors shall adopt the initial bylaws of a corporation in accordance with AS 10.50.335. The power to alter, amend or repeal the bylaws or to adopt new bylaws is vested in the board of directors and the shareholders. The bylaws may contain provisions for the regulation and management of the affairs of the corporation consistent with law and the articles of incorporation.

Sec. 10.50.130. MEETINGS OF SHAREHOLDERS. (a) Meetings of shareholders shall be held in the state, as may be provided in the bylaws. The board of directors shall designate the place of the meeting.

(b) An annual meeting of the shareholders shall be held at the time provided in the bylaws. Failure to hold the annual meeting at the designated time does not work a forfeiture or dissolution of the corporation.

(c) Special meetings of the shareholders may be called by the president, by the board of directors, by the holders of not less than

1,000 shares, or by the other officers or persons provided in the articles of incorporation or the bylaws.

(d) The shareholders of a corporation may participate in a meeting of the shareholders by communicating simultaneously with the other shareholders from places designated in the notice of meeting by means of conference telephones or other communications equipment, so long as all shareholders participating in the meeting can hear one another.

Sec. 10.50.135. NOTICE OF SHAREHOLDERS' MEETINGS. (a) Beginning not less than 150 days before a meeting of shareholders, the corporation shall notify the shareholders of the time and manner in which (1) nominations for the board of directors of the corporation may be made and (2) issues may be placed on the corporation ballot for consideration by the shareholders. Notice shall be by publication in newspapers in all regions of the state and shall appear at least weekly for not less than four weeks.

(b) Written or printed notice stating the place, day and hour of the meeting and, in case of a special meeting, the purpose for which the meeting is called, shall be delivered not less than 60 nor more than 90 days before the date of the meeting, either personally or by mail, by or at the direction of the president, the secretary, or the officer or persons calling the meeting, to each shareholder of record entitled to vote at the meeting. If mailed, the notice is considered delivered when deposited in the United States mail addressed to the shareholder at his address as it appears on the stock transfer books of the corporation, with postage prepaid.

Sec. 10.50.140. CLOSING OF TRANSFER BOOKS AND FIXING RECORD DATE. (a) To determine the shareholders entitled to notice of or to vote at a meeting of shareholders or an adjournment of a meeting, or entitled to receive payment of a dividend, or in order to make a determination of

shareholders for any other proper purpose, the board of directors of a corporation may provide that the stock transfer books shall be closed for a stated period not exceeding 90 days. If the stock transfer books are closed to determine shareholders entitled to notice of or to vote at a meeting of shareholders, they shall be closed for at least 60 days immediately preceding the meeting.

(b) Instead of closing the stock transfer books, the bylaws, or in the absence of an applicable bylaw the board of directors, may fix in advance a date as the record date for the determination of shareholders. This record date shall be not more than 90 days and, in case of a meeting of shareholders, not less than 60 days before the date on which the particular action requiring the determination of shareholders is to be taken. If the stock transfer books are not closed and no record date is fixed for the determination of shareholders entitled to notice of or to vote at a meeting of shareholders, or shareholders entitled to receive payment of a dividend, the date on which notice of the meeting is mailed or the date on which the resolution of the board of directors declaring the dividend is adopted is, as the case may be, the record date for the determination of shareholders. When a determination of shareholders entitled to vote at a meeting of shareholders is made, the determination applies to an adjournment of the meeting except when the determination has been made through the closing of the stock transfer books and the stated period of closing has expired.

Sec. 10.50.145. VOTING LIST. (a) At least 60 days before each meeting of shareholders, the officer or agent having charge of the stock transfer books for shares of a corporation shall make a list of the shareholders entitled to vote at the meeting or an adjournment of the meeting, arranged in alphabetical order, with the address of and the number of shares held by each. The list shall be kept on file at the

registered office of the corporation and is subject to inspection by a shareholder at any time during usual business hours for a period of 60 days before the meeting. The list shall also be produced and kept open at the time and place of the meeting and shall be subject to the inspection of a shareholder during the meeting. The original stock transfer books are prima facie evidence as to who are the shareholders entitled to examine the list or transfer books or to vote at a meeting of shareholders.

(b) Failure to comply with the requirements of this section does not affect the validity of the action taken at the meeting.

Sec. 10.50.150. QUORUM OF SHAREHOLDERS. One-third of the shares entitled to vote, represented in person or by ballots, constitutes a quorum at a meeting of shareholders. Each outstanding share is entitled to one vote on each matter submitted to a vote at a meeting of shareholders. If a quorum is present, the affirmative vote of the majority of the shares represented at the meeting and entitled to vote on the subject matter is the act of the shareholders, unless the vote of a great number is required by this chapter or the articles of incorporation or the bylaws.

Sec. 10.50.155. PROXY VOTING PROHIBITED. A shareholder may not vote by proxy.

Sec. 10.50.160. VOTING FOR DIRECTORS. At an election for directors every shareholder entitled to vote may vote the number of shares owned by him for as many persons as there are directors to be elected and for whose election he has a right to vote. Shareholders may not cumulate their votes.

Sec. 10.50.165. VOTING OF SHARES IN THE NAME OF ANOTHER. (a) Shares held by an administrator, executor, guardian or conservator may be voted by him, either in person or by ballot, without a transfer of

the shares into his name.

(b) Shares standing in the name of a receiver may be voted by him, and shares held by or under the control of a receiver may be voted by him without the transfer of the shares into his name if authority to do so is contained in an appropriate order of the court by which the receiver was appointed.

Sec. 10.50.170. VOTING OF PLEDGED SHARES. A shareholder whose shares are pledged may vote the shares until they have been transferred into the name of the pledgee, and thereafter the pledgee may vote the shares so transferred.

Sec. 10.50.175. CORPORATION BALLOT. (a) The corporation shall prepare one ballot for each meeting of the shareholders. The ballot shall be mailed to the shareholders with the notice of meeting. Candidates for the board of directors and proposals for shareholder consideration shall be included in the ballot as provided in this section.

(b) A candidate for director shall be nominated by

(1) a resolution adopted by the board of directors; or

(2) a petition signed by at least 1,000 shareholders and filed with the secretary of the corporation at least 120 days before the meeting at which the election is to be held.

(c) A proposal for amendment of the bylaws or other proper corporate purpose shall be included on the ballot if authorized by

(1) a resolution adopted by the board of directors setting out the proposal and directing that it be submitted to a vote at the meeting of shareholders; or

(2) a petition, setting out the proposal and directing that it be submitted to a vote at the next meeting of shareholders, signed by at least 1,000 shareholders and filed with the secretary of the corporation at least 120 days before the next meeting of shareholders.

(d) A written or printed notice setting out the candidates' qualifications for office and the proposals to be put to a vote of the shareholders and any materials in opposition to the proposals shall be given to each shareholder of record entitled to vote within the time and in the manner provided in this chapter for the giving of notice of meetings of shareholders.

Sec. 10.50.180. BOARD OF DIRECTORS. (a) The business and affairs of a corporation shall be managed by a board of directors. At least three-quarters of the board of directors, including the chairman of the board of directors, must be residents of the state. The articles of incorporation or bylaws may prescribe other qualifications for directors. The compensation of directors shall be fixed by the bylaws.

(b) A director is entitled to attend any meeting of a committee of the board of directors whether or not he is a member of the committee. A director is entitled to inspect all records of any committee of the board of directors.

(c) An officer or employee of the corporation may not serve as a member of the board of directors.

Sec. 10.50.185. NUMBER OF DIRECTORS. (a) The number of directors of a corporation shall be at least three. The number of directors shall be fixed by the bylaws, except that the number constituting the initial board of directors shall be fixed by the chartering legislation.

(b) The number of directors may be increased or decreased by amendment to the bylaws, but a decrease may not shorten the term of an incumbent director.

(c) In the absence of a bylaw fixing the number of directors, the number shall be the same as that stated in the chartering legisation.

(d) The board of directors shall be divided into two classes, each class to be as nearly equal in number as possible, with the term of

office of directors of the first class to expire at the first annual meeting of shareholders after their election, that of the second class to expire at the second annual meeting after their election. At each annual meeting after the classification the number of directors equal to the number of the class whose term expires at the time of the meeting shall be elected to hold office until the second succeeding annual meeting if there are two classes. No classification of directors is effective prior to the first annual meeting of shareholders.

Sec. 10.50.190. ELECTION OF DIRECTORS. At the first annual meeting of shareholders and at each annual meeting thereafter the shareholders shall elect directors. Each director holds office for the term for which he is elected and until his successor is elected and qualified.

Sec. 10.50.195. VACANCIES. A vacancy occurring in the board of directors may be filled by the affirmative vote of a majority of the remaining directors though the majority is less than a quorum of the board. A director elected by the board of directors to fill a vacancy shall serve until the next annual meeting. The shareholders shall elect a director for the unexpired term, if any, of the director's position to which the board elected his predecessor. A directorship to be filled by reason of an increase in the number of directors shall be filled by election at an annual meeting or at a special meeting of shareholders called for that purpose. In no case may a vacancy continue for longer than six months or until the next annual meeting, whichever occurs first.

Sec. 10.50.200. QUORUM OF DIRECTORS. A majority of the number of directors fixed by the bylaws, or in the absence of a bylaw fixing the number of directors, then of the number stated in the articles of incorporation, constitutes a quorum for the transaction of business unless a

greater number is required by the articles of incorporation or the bylaws. The act of the majority of the directors present at a meeting at which a quorum is present is the act of the board of directors, unless the act of a greater number is required by the articles of incorporation or the bylaws.

Sec. 10.50.205. PLACE AND NOTICE OF DIRECTORS' MEETINGS. (a) Regular or special meetings of the board of directors maybe held only in the state.

(b) Regular meetings of the board of directors may be held with or without notice as prescribed in the bylaws. Special meetings of the board of directors may be held only after the notice prescribed in the bylaws. Attendance of a director at a meeting constitutes a waiver of notice of the meeting, except when a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. The business to be transacted or the purpose of a special meeting of the board of directors must be specified in the notice or waiver of notice of the meeting.

Sec. 10.50.210. PARTICIPATION BY TELEPHONE. The members of the board of directors of a corporation, or a committee designated by it, may participate in a meeting of the board or committee by communicating simultaneously with each other by means of conference telephones or similar communications equipment, so long as all members participating in the meeting can hear one another. Participation in a meeting under this section constitutes presence in person at the meeting.

Sec. 10.50.215. DISTRIBUTIONS. (a) Except for distributions required to comply with subchapter U, chapter 1 of the Internal Revenue Code of 1954, as amended (26 U.S.C. secs. 1391 - 1397), a corporation may not make a distribution to its shareholders unless

(1) the amount of the retained earning of the corporation

immediately before the proposed distribution equals or exceeds the amount of the proposed distribution; or

(2) immediately after giving effect to the proposed distribution

(A) the sum of the assets of the corporation, exclusive of goodwill, capitalized research and development expenses and deferred charges would be at least equal to one and one-fourth times its liabilities, not including deferred taxes, deferred income and other deferred credits; and

(B) the current assets of the corporation would be at least equal to its current liabilities or, if the average of the earnings of the corporation before taxes on income and before interest expense for the two preceding fiscal years was less than the average of the interest expense of the corporation for those fiscal years, at least equal to one and one-fourth times its current liabilities.

(b) In determining the amount of the assets of the corporation, no appreciation in value not yet realized may in any event be included, except for readily marketable securities, and profits derived from an exchange of assets may not be included unless the assets received are currently realizable in cash.

(c) For the purpose of this section "current assets" may include net amounts which the board has determined in good faith may reasonably be expected to be received from customers during the 12-month period used in calculating current liabilities under existing contractual relationships obligating the customers to make fixed or periodic payments during the term of the contract, after giving effect to future costs not then included in current liabilities but reasonably expected to be incurred by the corporation in performing the contracts.

(d) The amount of a distribution payable in property shall, for the purpose of this chapter, be determined on the basis of the value at which the property is carried on the corporation's financial statements in accordance with generally accepted accounting principles.

(e) Subparagraph (a)(2)(B) of this section does not apply to a corporation which does not classify its assets into current and fixed assets under generally accepted accounting principles.

Sec. 10.50.220. DISTRIBUTIONS IN PARTIAL LIQUIDATION. The board of directors may, from time to time, distribute to its shareholders in partial liquidation a portion of its assets, subject to the following provisions:

(1) A distribution may not be made at a time when the corporation is insolvent or when the distribution would render the corporation insolvent.

(2) A distribution may not be made unless the distribution is authorized by the affirmative vote of the holders of at least two-thirds of the shares voting on the issue at a meeting of shareholders.

(3) Each distribution, when made, shall be identified as a distribution in partial liquidation and the amount per share disclosed to the shareholders concurrently with the distribution.

Sec. 10.50.225. CERTAIN LOANS PROHIBITED. A loan may not be made by a corporation to its officers or directors, and a loan may not be made by a corporation secured by its shares.

Sec. 10.50.230. LIABILITY OF DIRECTORS IN CERTAIN CASES. (a) Directors who vote for or assent to the declaration of a dividend or other distribution of the assets of a corporation to its shareholders contrary to the provisions of this chapter or contrary to restrictions contained in the articles of incorporation are jointly and severally liable to the corporation for the amount of the dividend paid, or the

value of assets distributed in excess of the amount of the dividend or distribution which could have been paid or distributed without a violation of the provisions of this chapter or the restrictions in the articles of incorporation.

(b) Directors who vote for or assent to the purchase by a corporation of its own shares contrary to the provisions of this chapter are jointly and severally liable to the corporation for the amount of consideration paid in excess of the maximum amount which could have been paid without a violation of the provisions of this chapter.

(c) The directors who vote for or assent to the distribution of assets of a corporation to its shareholders during the liquidation of the corporation without the payment and discharge of, or making adequate provision for, all known debts, obligations, and liabilities of the corporation are jointly and severally liable to the corporation for the value of the assets distributed, to the extent that the debts, obligations and liabilities of the corporation are not paid and discharged.

(d) The directors who vote for or assent to the making of a loan to an officer or director of the corporation, or the making of a loan secured by shares of the corporation, are jointly and severally liable to the corporation for the amount of the loan until it is repaid.

Sec. 10.50.235. EFFECT OF GOOD FAITH RELIANCE ON FINANCIAL STATEMENTS OR BOOK VALUE. A director is not liable under AS 10.50.230(a), (b) or (c) if

(1) he relied and acted in good faith upon financial statements of the corporation represented to him to be correct by the president or the officer of the corporation having charge of its books of account, or certified by an independent public or certified public accountant or firm of certified public accountants fairly to reflect the financial condition of the corporation; or

(2) in good faith in determining the amount available for a dividend or distribution he considered the assets to be of their book value.

Sec. 10.50.240. PRESUMPTION OF CONSENT OF DIRECTOR AND FILING OF DISSENT. A director present at a meeting of the board of directors at which action on a corporate matter is taken is presumed to have assented to the action taken unless his dissent is entered in the minutes of the meeting or unless he files his written dissent to the action with the person acting as secretary of the meeting before its adjournment or forwards his dissent by registered mail to the secretary of the corporation within five days after the adjournment of the meeting. The right to dissent does not apply to a director who voted in favor of the action.

Sec. 10.50.245. DIRECTOR'S RIGHT TO CONTRIBUTION. A director against whom a claim is asserted under AS 10.50.230 - 10.50.240 is entitled to contribution from the other directors who voted for or assented to the action upon which the claim is asserted.

Sec. 10.50.250. OFFICERS. The officers of a corporation consist of a president, one or more vice-presidents as prescribed by the bylaws, a secretary, and a treasurer. Each of the officers shall be elected by the board of directors at the time and in the manner prescribed by the bylaws. Other necessary officers and assistant officers and agents may be elected or appointed by the board of directors or chosen in the manner prescribed by the bylaws. Two or more offices may be held by the same person, except the offices of president and secretary.

Sec. 10.50.255. DUTIES OF OFFICERS. Officers and agents of the corporation, as between themselves and the corporation, may perform duties in the management of the corporation as provided in the bylaws, or as determined by resolution of the board of directors not inconsistent with the bylaws.

Sec. 10.50.260. REMOVAL OF OFFICERS. An officer or agent may be removed by the board of directors when, in its judgment, the best interests of the corporation will be served. Removal is without prejudice to the contract rights of the person removed. Election or appointment of an officer or agent does not of itself create contract rights.

Sec. 10.50.265. BOOKS AND RECORDS. (a) A corporation organized under this chapter shall keep correct and complete books and records of account, minutes of the proceedings of its shareholders and board of directors, and a record of its shareholders, containing the names and addresses of all shareholders and the number and class of the shares held by each.

(b) A corporation organized under this chapter shall make these books and records, or certified copies of them, reasonably available for inspection at the registered office or principal place of business in the state by the department or a shareholder described by AS 10.50.270.

Sec. 10.50.270. SHAREHOLDER'S RIGHT TO EXAMINE BOOKS AND RECORDS. A shareholder, upon written demand stating the purpose of the demand, may, in person or by agent or attorney, at a reasonable time for a proper purpose, examine and make extracts from its books and records of account, minutes and record of shareholders.

Sec. 10.50.275. LIABILITY FOR REFUSAL OF EXAMINATION. An officer or agent who, or a corporation which, refuses to allow a shareholder, or his agent or attorney, to examine and make extracts from its books and records of account, minutes, and record of shareholders, for a proper purpose, is liable to the shareholder in a penalty of $1,000 for each day, in addition to other damages or remedy given him by law. It is a defense to an action for penalties under this section that the person suing has within two years sold or offered for sale a list of shareholders of the corporation or any other corporation or has aided or

abetted a person in procuring a list of shareholders for this purpose, or has improperly used information secured through a prior examination of the books and records of account, or minutes, or record of shareholders of the corporation or any other corporation, or was not acting in good faith or for a proper purpose in making his demand.

Sec. 10.50.280. COURT MAY COMPEL INSPECTION. AS 10.50.265 - 10.50.285 do not impair the power of a court, upon proof by a shareholder of proper purpose, to compel the production for examination by the shareholder of the books and records of account, minutes, and record of shareholders of a corporation.

Sec. 10.50.285. SHAREHOLDERS' RIGHT TO FINANCIAL STATEMENT. Upon the written request of a shareholder of a corporation, the corporation shall mail to the shareholder its most recent financial statements showing in reasonable detail its assets and liabilities and the results of its operations.

Sec. 10.50.290. REMOVAL OF DIRECTORS BY SUPERIOR COURT. The superior court may upon an action filed by the attorney general or at least 100 shareholders of at least 18 years of age, remove from office any director in case of fraudulent or dishonest acts or gross abuse of authority or discretion with reference to the corporation and may bar from reelection a director so removed for a period prescribed by the court. The corporation shall be made a party to the action.

Sec. 10.50.295. SHAREHOLDER REMOVAL OF DIRECTORS. (a) The entire board of directors an initial director, or a director elected by the board of directors may be removed from office by the affirmative vote of the holders of a majority of the shares voting at an annual or special meeting for which notice of the proposal has been given.

(b) An individual director may be removed if the number of votes cast for his removal exceeds the number of votes he received at the last

preceding election during which he was a candidate for the office of director.

Sec. 10.50.300. SHAREHOLDERS' DERIVATIVE ACTION. (a) An action may be brought on behalf of a corporation, by a shareholder of the corporation, for a judgment in its favor.

(b) A person bringing suit under this section must be a shareholder at the time of bringing the action, and must have been a shareholder at the time of the transaction of which he complains or have received his shares by operation of law at that time.

(c) In an action under this section, the complaint shall set out with particularity the efforts of the plaintiff to secure the initiation of an action by the board of directors or the reasons for not making those efforts.

(d) An action under this section may not be discontinued, compromised or settled, without the approval of the court having jurisdiction of the action. If the court determines that the interests of the shareholders will be substantially affected by a discontinuance, compromise, or settlement, the court, in its discretion, may direct that notice, by publication or otherwise, be given to the shareholders whose interests it determines will be affected. If notice is required, the court may determine which one or more of the parties to the action must bear the expense of giving the notice, in an amount the court determines and finds to be reasonable, and the amount determined shall be awarded as special costs of the action and recoverable by the prevailing party.

(e) If the action on behalf of the corporation is successful, in whole or in part, or if anything is received by the plaintiff as the result of a judgment, compromise or settlement of an action, the court may award the plaintiff reasonable expenses, including reasonable attorney fees, and shall direct the plaintiff to account to the corporation

for the remainder of the proceeds received by him. This subsection does not apply to a judgment rendered only for the benefit of an injured shareholder and limited to a recovery of the loss or damage sustained by him.

(f) In an action under this section, at any time within 30 days after service of summons upon the corporation or upon any defendant who is an officer or director of the corporation, or who held such office at the time of the transaction complained of, the corporation or other defendant may move the court for an order, upon notice and hearing, requiring the plaintiff to furnish security. The motion shall be based upon one or both of the following grounds:

(1) that there is no reasonable possibility that the prosecution of the cause of action alleged in the complaint will benefit the corporation or its shareholders; or

(2) that the moving party, if other than the corporation, did not participate in the transaction complained of in any capacity.

(g) If the court determines, after hearing the evidence adduced by the parties, that the moving party has established by a preponderance of the evidence any of the grounds upon which the motion is based, the court shall fix the nature and amount of security, not to exceed $50,000, to be furnished by the plaintiff for reasonable expenses, including attorney fees, which may be incurred by the moving party or the corporation in connection with the action, including expenses for which the corporation may become liable under this chapter. A ruling by the court on the motion is not considered a determination of any issue in the action or of its merits. The amount of the security may be increased or decreased in the discretion of the court upon a showing that the security provided has or may become inadequate or excessive, but the court may not increase the total amount of the security beyond $50,000 in the

aggregate for all defendants. If the court, upon motion, decides that security must be furnished by the plaintiff as to any one or more defendants, the action shall be dismissed as to the defendant or defendants, unless the security required by the court is furnished within a reasonable time fixed by the court. The corporation and the moving party have recourse to the security in the amount the court determines upon the termination of the action.

(h) If the plaintiff, before an order or determination pursuant to a motion under (f) of this section, posts bond in the aggregate amount of $50,000 to secure the reasonable expenses of the parties entitled to make the motion, the plaintiff has complied with the requirements of this section and with any order for security. A pending motion under (f) of this section shall be dismissed and no further or additional bond or other security may be required.

(i) If a motion is filed under (f) of this section, no pleadings need be filed by the corporation or any other defendant and the prosecution of the action shall be stayed until 10 days after the motion has been disposed of.

Sec. 10.50.305. FRAUDULENT TRANSFERS OF SHARES. An individual who transfers or obtains shares of the corporation, or in his capacity as legal guardian obtains shares of the corporation for another, through fraud, misrepresentation, or any deceitful or illegal means is guilty of a felony.

Sec. 10.50.310. POLITICAL ACTIVITIES. (a) A corporation may not

(1) make contributions or spend money to influence the nomination or election of a candidate for office or the outcome of a ballot proposition or question;

(2) endorse a candidate for office or any side of a ballot proposition or question;

(3) make any expenditures, including reimbursement for travel and living expenses, or employ any person for the purpose of influencing legislative action.

(b) A corporation that knowingly violates this section or that knowingly causes, participates in, aids, or confirms a violation of this section is, upon conviction, punishable by a fine of not more than $10,000 for each offense.

(c) An individual who knowingly violates this section, whether acting for himself, on behalf of an employer, or in concert with another person, is, upon conviction, guilty of a misdemeanor.

(d) An individual who knowingly causes, participates in, aids, or confirms any violation of this section is, upon conviction, guilty of a misdemeanor.

ARTICLE 2. FORMATION OF CORPORATIONS.

Sec. 10.50.315. INCORPORATORS. Three or more natural persons at least 18 years of age may act as incorporators of a corporation by signing, verifying and delivering in duplicate to the commissioner articles of incorporation for the corporation.

Sec. 10.50.320. ARTICLES OF INCORPORATION. (a) The articles of incorporation of a corporation shall set out

(1) the name of the corporation;

(2) the period of duration, which may be perpetual;

(3) the purpose or purposes for which the corporation is organized;

(4) the aggregate number of shares which the corporation may issue;

(5) that only one class of stock may be issued by the corporation;

(6) that shares of stock may be issued only to individuals

who were residents of the state on the effective date of its chartering legislation and who continued to be residents until the date of issuance of the shares;

(7) that at least one share of stock shall be issued to each individual eligible under (6) of this subsection, unless that individual elects within one year after the date of issuance not to receive the share;

(8) that no share of stock may be voluntarily or involuntarily transferred

(A) or encumbered by a shareholder, other than by will or under the laws relating to intestate succession, until five years after the date of issuance of the share, except if the shareholder ceases to be a resident of the state;

(B) to an individual other than one who is a resident on the date of transfer;

(C) to an individual who, after the transfer, would own more than 10 shares of stock of the corporation;

(D) or encumbered by a shareholder under 18 years of age or encumbered by that shareholder's parent or legal guardian;

(9) that the corporation must qualify as a general stock ownership corporation under subchapter U of the Internal Revenue Code of 1954, as amended (26 U.S.C. secs. 1391 - 1397);

(10) any other provision consistent with law which the incorporators elect to set out in the articles of incorporation for the regulation of the internal affairs of the corporation, including a provision which, under this chapter, is required or permitted to be set out in the bylaws;

(11) the address of its initial registered office, and the name of its initial registered agent at that address;

(12) the number of directors constituting the initial board of directors and the names and addresses of the persons who are to serve as directors until their successors are elected and qualify;

(13) the name and address of each incorporator.

(b) It is not necessary to set out in the articles of incorporation any of the corporate powers enumerated in this chapter.

Sec. 10.50.325. FILING OF ARTICLES OF INCORPORATION. (a) Duplicate originals of the articles of incorporation shall be delivered to the commissioner. If the commissioner finds that the articles of incorporation conform to law, he shall, when all fees prescribed in AS 10.-05.708 - 10.05.774 have been paid,

(1) endorse on each duplicate original the word "filed" and the date of the filing;

(2) file one duplicate original in his office;

(3) issue a certificate of incorporation and affix the other duplicate original to it.

(b) The certificate of incorporation, together with the duplicate original of the articles of incorporation affixed by the commissioner, shall be returned to the incorporators or their representative.

Sec. 10.50.330. EFFECT OF ISSUANCE OF CERTIFICATE OF INCORPORATION. Upon the issuance of the certificate of incorporation, the corporate existence begins. The certificate of incorporation is conclusive evidence that all conditions required to be performed by the incorporators have been complied with and that the corporation has been incorporated. The issuance of the certificate does not affect the right of the state to bring a proceeding to cancel or revoke the certificate of incorporation or for involuntary dissolution of the corporation.

Sec. 10.50.335. ARTICLES OF INCORPORATION AND INITIAL BYLAWS. (a) The corporation shall submit copies of the original articles of incor-

poration and the initial bylaws adopted under AS 10.05.340 to the legislature within 30 days of the issuance of the certificate of incorporation.

(b) The legislature, within 60 legislative days after receipt of a copy of the original articles of incorporation and the initial bylaws, may disapprove any provision of the articles of incorporation or bylaws by concurrent resolution. Disapproval by the legislature of a provision of the articles of incorporation or the bylaws of a corporation does not alter or impair the power of a corporation to fulfill the terms of a contractual agreement or impair the rights of a person with whom a corporation has entered into a contractual agreement.

(c) A provision of the articles of incorporation or the bylaws is suspended upon disapproval by the legislature and is of no effect unless approved by a majority of the shares voting on the issue at the next meeting of the shareholders.

Sec. 10.50.340. ORGANIZATION MEETING OF DIRECTORS. After the issuance of the certificate of incorporation an organizational meeting of the board of directors named in the articles of incorporation shall be held in the state, at the call of a majority of the incorporators, for the purpose of adopting bylaws, electing officers, and the transaction of other business as may come before the meeting. The incorporators calling the meeting shall give at least 10 days notice of the meeting by mail to each director named. The notice shall state the time and place of the meeting.

ARTICLE 3. APPLICATION FOR SHARES.

Sec. 10.50.345. NOTIFICATION OF ELIGIBLE SHAREHOLDERS. Beginning not less than 90 days before the initial issue of stock, the corporation shall at least weekly notify the public of its intention to issue stock and the method for qualifying and applying for shares. The notice shall

be by publication in newspapers of all regions of the state, by radio and television announcements, and by other means the corporation determines to be appropriate and reasonable, and shall be continued at least one each month for 11 months following the date of issuance of shares.

Sec. 10.50.350. CORPORATION NOT LIABLE TO SHAREHOLDERS. Registration for issuance of the initial shares of the corporation is a responsibility solely of an individual eligible under AS 10.50.320(a)(6) to receive the initial shares of the corporation. The corporation may not be held liable for

(1) any loss resulting directly on indirectly from the failure of an individual to apply for shares of the corporation; or

(2) payment of a declared or paid dividend to an individual who would have been entitled to receive the dividend had he been a shareholder at the time of declaration or payment.

Sec. 10.50.355. LATE APPLICATION FOR SHARES. An individual eligible under AS 10.50.320(a)(6) to receive the initial shares of the corporation who failed to apply for the shares within one year after their issuance may apply for and receive the shares any time after one year and within two years after the date of issuance if he is otherwise qualified to own stock of the corporation and upon the payment of the book value of the shares.

Sec. 10.50.360. PENALTIES FOR MISREPRESENTATION OF ELIGIBILITY AS SHAREHOLDER. The ownership interest in shares of the corporation's stock issued to an individual ineligible to receive the initial shares, who has presented fraudulent or misleading information regarding his eligibility to own those shares, is void upon the issuance of an appropriate order by the superior court. The ineligible individual is also liable for the full amount of dividends, or other distributions to shareholders received by him plus interest from the date of distribu-

tion, and legal fees and costs of recovery incurred by the corporation. This section applies to an individual who has presented fraudulent or misleading information regarding the eligibility of another person for whom he acts in the capacity of legal guardian.

ARTICLE 4. AMENDMENT.

Sec. 10.50.365. RIGHT TO AMEND ARTICLES OF INCORPORATION. A corporation may amend its articles of incorporation so long as its articles of incorporation as amended contain provisions which could be lawfully contained in original articles of incorporation at the time the amendment is made.

Sec. 10.50.370. PURPOSES FOR WHICH ARTICLES MAY BE AMENDED. Without limitation on the general power of amendment, a corporation may amend its articles of incorporation to

(1) change its corporate name;

(2) change its period of duration;

(3) change, enlarge or diminish its corporate purposes;

(4) increase or decrease the aggregate number of shares, or shares of a class, which the corporation may issue;

(5) exchange or cancel its shares, whether issued or unissued.

Sec. 10.50.375. PROCEDURE TO AMEND ARTICLES OF INCORPORATION. Amendments to the articles of incorporation shall be made in the following manner.

(1) The board of directors may adopt a resolution setting out the proposed amendment and directing that it be submitted to a vote at the next meeting of shareholders.

(2) A proposed amendment shall be submitted to a vote at the next meeting of shareholders if the secretary of the corporation receives a petition setting out the proposed amendment and is signed by at

least 1,000 shareholders.

(3) Written or printed notice setting out the proposed amendment or a summary of the changes to be effected shall be given to each shareholder of record entitled to vote within the time and in the manner provided in this chapter for the giving of notice of meetings of shareholders. If the meeting is an annual meeting, the proposed amendment or summary may be included in the notice of the annual meeting.

(4) At the meeting a vote of the shareholders entitled to vote shall be taken on the proposed amendment. The proposed amendment shall be adopted if it receives the affirmative vote of the holders of at least two-thirds of the shares voting.

(5) More than one amendment may be submitted to the shareholders and voted upon at one meeting.

Sec. 10.50.380. ARTICLES OF AMENDMENT. The articles of amendment shall be executed in duplicate by the corporation by its president or vice-president and by its secretary or an assistant secretary, and verified by one of the officers signing the articles, and shall set out

(1) the name of the corporation;

(2) the amendment adopted;

(3) the date of the adoption of the amendment by the shareholders;

(4) the number of shares outstanding and the number of shares voting;

(5) the number of shares voted for and against the amendment, respectively;

(6) if the amendment provides for an exchange or cancellation of issued shares, and if the manner in which this is carried out is not set out in the amendment, a statement of the manner in which it is to be carried out.

Sec. 10.50.385. FILING OF ARTICLES OF AMENDMENT. (a) Duplicate originals of the articles of amendment shall be delivered to the commissioner. If the commissioner finds that the articles of amendment conform to law, he shall, when all fees and franchise taxes prescribed in this chapter have been paid,

(1) endorse on each duplicate original the word "filed" and the date of the filing;

(2) file one duplicate original in his office;

(3) issue a certificate of amendment and affix the other duplicate original to it.

(b) The certificate of amendment, together with the duplicate original of the articles of amendment affixed by the commissioner, shall be returned to the corporation or its representative.

Sec. 10.50.390. EFFECT OF CERTIFICATE OF AMENDMENT. (a) Upon the issuance of the certificate of amendment by the commissioner, the amendment becomes effective and the articles of incorporation are considered amended accordingly.

(b) No amendment may affect an existing cause of action in favor of or against the corporation, or a pending suit to which the corporation is a party, or the existing rights of persons other than shareholders. In the event the corporate name is changed by amendment, no suit brought by or against the corporation under its former name abates for that reason.

Sec. 10.50.395. RESTATED ARTICLES OF INCORPORATION. A corporation may at any time, by resolution adopted by the board of directors, restate its articles of incorporation as amended up to that time. Upon the adoption of the resolution, restated articles of incorporation shall be executed in duplicate by the corporation by its president or a vice-president and by its secretary or assistant secretary and verified by

one of the officers signing the articles and shall set out all of the operative provisions of the articles of incorporation as amended up to that time together with a statement that the restated articles of incorporation correctly set out without change the corresponding provisions of the articles of incorporation as amended up to that time and that the restated articles of incorporation supersede the original articles of incorporation and all amendments to them.

Sec. 10.50.400. EXECUTION OF RESTATED ARTICLES OF INCORPORATION. Upon approval of the restated articles of incorporation, they shall be executed in duplicate by the corporation by its president or vice-president and by its secretary or assistant secretary, and verified by one of the officers signing the articles.

Sec. 10.50.405. CONTENTS OF RESTATED ARTICLES OF INCORPORATION. The restated articles of incorporation shall set out

(1) the name of the corporation;

(2) the period of its duration;

(3) the purpose or purposes which the corporation is authorized to pursue;

(4) the aggregate number of shares which the corporation may issue;

(5) any provisions, not inconsistent with law, which are set out in the articles of incorporation as amended, for the regulation of the internal affairs of the corporation;

(6) a statement that the restated articles of incorporation correctly set out without change the corresponding provisions of the articles of incorporation as amended, and that the restated articles of incorporation supersede the original articles of incorporation and all amendments to the original articles of incorporation.

Sec. 10.50.410. FILING OF RESTATED ARTICLES OF INCORPORATION WITH

COMMISSIONER. (a) Duplicate originals of the restated articles of incorporation shall be delivered to the commissioner. If the commissioner finds that the restated articles of incorporation conform to law, he shall, when all fees and franchise taxes prescribed in this chapter have been paid,

(1) endorse on each duplicate original the word "filed" and the date of the filing;

(2) file one duplicate original in his office;

(3) issue a restated certificate of incorporation and affix the other duplicate original to it.

(b) The restated certificate of incorporation, together with the duplicate original of the restated articles of incorporation affixed by the commissioner, shall be returned to the corporation or its representative.

Sec. 10.50.415. EFFECT OF ISSUANCE OF RESTATED CERTIFICATE OF INCORPORATION. Upon the issuance of the restated certificate of incorporation, the restated articles of incorporation become effective and supersede the original articles of incorporation and all amendments.

ARTICLE 5. SALE OF ASSETS.

Sec. 10.50.420. SALE OR MORTGAGE OF ASSETS IN REGULAR COURSE OF BUSINESS. The sale, lease, exchange, mortgage, pledge, or other disposition of all, or substantially all, the property and assets of a corporation, when made in the usual and regular course of the business of the corporation, may be made upon the terms and conditions and for the consideration, which may consist in whole or in part of money or property, real or personal, including shares of another corporation, domestic or foreign, authorized by the board of directors. No authorization or consent of the shareholders is required.

Sec. 10.50.425. SALE OR MORTGAGE OF ASSETS OTHER THAN IN REGULAR

COURSE OF BUSINESS. A sale, lease, exchange, mortgage, pledge, or other disposition of all, or substantially all, the property and assets, with or without the good will, of a corporation, if not made in the usual and regular course of its business, may be made upon the terms and conditions and for the consideration, which may consist in whole or in part of money or property, real or personal, including shares of another corporation, as authorized in the following manner.

(1) The board of directors shall adopt a resolution recommending the sale, lease, exchange, mortgage, pledge, or other disposition and directing the submission of the resolution to a vote at the next meeting of shareholders.

(2) Written or printed notice shall be given to each shareholder of record entitled to vote at the meeting within the time and in the manner provided in this chapter for the giving of notice of meetings of shareholders, and, whether the meeting is an annual or a special meeting, shall state that the purpose, or one of the purposes, of the meeting is to consider the proposed sale, lease, exchange, mortgage, pledge, or other disposition.

Sec. 10.50.430. APPROVAL OF PLAN BY SHAREHOLDERS. At the meeting the shareholders may authorize the sale, lease, exchange, mortgage, pledge, or other disposition and may fix, or may authorize the board of directors to fix the terms and conditions and the consideration to be received by the corporation. Each outstanding share of the corporation is entitled to vote. The authorization requires the affirmative vote of the holders of at least two-thirds of the shares voting.

Sec. 10.50.435. ABANDONMENT OF PLAN BY BOARD OF DIRECTORS. After authorization by a vote of shareholders, the board of directors may, nevertheless, abandon the sale, lease, exchange, mortgage, pledge, or other disposition of assets, subject to the rights of third parties

under contracts relating to the disposition, without further action or approval by shareholders.

Sec. 10.50.440. RIGHTS OF DISSENTING SHAREHOLDERS UPON SALE OR EXCHANGE OF ASSETS. If a sale or exchange of all or substantially all of the property and assets of a corporation other than in the usual and regular course of its business, or in connection with the dissolution and liquidation of the corporation, is authorized by a vote of the shareholders of the corporation, a shareholder who files a written objection with the corporation, before or at the meeting of shareholders at which the sale or exchange is authorized, and who does not vote in its favor may, within 10 days after the date on which the vote was taken, make written demand on the corporation for the payment to him of the fair value of his shares as of the day before the date on which the vote was taken. If the sale or exchange is effected, the corporation shall pay to the shareholder, upon surrender of his certificate or other evidence of ownership representing the shares, their fair value. The demand shall state the number of shares owned by the dissenting shareholder. A shareholder failing to make demand within the 10-day period is bound by the terms of the sale or exchange.

Sec. 10.50.445. NOTICE TO DISSENTING SHAREHOLDER. Within 10 days after the sale or exchange is effected, the corporation shall give notice that it is effected to each dissenting shareholder who has made demand as provided in AS 10.50.440 for the payment of the fair value of his shares.

Sec. 10.50.450. PAYMENT TO DISSENTING SHAREHOLDER AFTER AGREEMENT ON VALUE OF SHARES. If within 60 days after the date on which the sale or exchange was effected the value of the shares is agreed upon between the dissenting shareholder and the corporation, payment shall be made within 90 days after the date the sale or exchange was effected, upon

the surrender of his certificate or certificates representing the shares. Upon payment of the agreed value, the dissenting shareholder ceases to have an interest in the shares or in the corporation.

Sec. 10.50.455. ACTION BY DISSENTING SHAREHOLDER TO COMPEL PAYMENT UPON FAILURE TO AGREE ON VALUE. If within the 60-day period the shareholder and the corporation do not agree, the dissenting shareholder may, within 60 days after the expiration of the 60-day period, file a petition in the superior court asking for a finding and determination of the fair value of the shares, and is entitled to judgment against the corporation for the amount of the fair value as of the day before the date on which the vote was taken approving the sale or exchange, together with interest to the date of the judgment. The judgment is payable only upon and simultaneously with the surrender to the corporation of the certificate or other evidence of ownership representing the shares. Upon payment of the judgment, the dissenting shareholder ceases to have an interest in the shares or in the corporation. Unless the dissenting shareholder files the petition within the 60-day period, he and all persons claiming under him are bound by the terms of the sale or exchange.

Sec. 10.50.460. EFFECT OF ABANDONMENT OR REVOCATION OF SALE OR EXCHANGE ON SHAREHOLDER'S RIGHTS. The right of a dissenting shareholder to be paid the fair value of his shares ceases when the corporation abandons the sale or exchange or the shareholders revoke the authority to make the sale or exchange.

Sec. 10.50.465. STATUS OF SHARES ACQUIRED FROM DISSENTING SHAREHOLDER. Shares acquired by the corporation pursuant to the payment of the agreed value or to payment of the judgment entered for the agreed value may be held and disposed of by the corporation as treasury shares.

ARTICLE 6. DISSOLUTION.

Sec. 10.50.470. EFFECT OF CERTIFICATE OF DISSOLUTION. Upon the issuance of the certificate of dissolution, the existence of the corporation ceases.

Sec. 10.50.475. VOLUNTARY DISSOLUTION BY ACT OF CORPORATION. (a) A corporation may be dissolved by the act of the corporation when authorized in the manner provided in this section and in AS 10.50.485.

(b) The board of directors shall adopt a resolution recommending that the corporation be dissolved, and directing that the question of dissolution be submitted to a vote at the next meeting of shareholders.

(c) A proposed dissolution of the corporation shall be submitted to a vote at the next meeting of shareholders if the secretary of the corporation receives a petition proposing dissolution signed by at least 100 shareholders.

(d) Written or printed notice shall be given to each shareholder of record entitled to vote at the meeting within the time and in the manner provided in this chapter for the giving of notice of meetings of shareholders, and, whether the meeting is an annual or special meeting, the notice shall state that the purpose of the meeting is to consider the advisability of dissolving the corporation.

(e) At the meeting a vote of shareholders entitled to vote shall be taken on the resolution to dissolve the corporation. Each outstanding share of the corporation may vote on the resolution. The resolution is adopted if it receives the affirmative vote of the holders of at least one-third of the shares entitled to vote.

Sec. 10.50.480. EXECUTION OF STATEMENT OF INTENT TO DISSOLVE. Upon the adoption of the resolution, a statement of intent to dissolve shall be executed in duplicate by the corporation by its president or vice-president and by the secretary or an assistant secretary, and verified by one of the officers signing the statement. The statement of

intent to dissolve shall set out

(1) the name of the corporation;

(2) the names and addresses of its officers;

(3) the names and addresses of its directors;

(4) a copy of the resolution adopted by the shareholders authorizing the dissolution of the corporation;

(5) the number of shares outstanding;

(6) the number of shares voted for and against the resolution.

Sec. 10.50.485. FILING OF STATEMENT OF INTENT TO DISSOLVE. Duplicate originals of the statement of intent to dissolve shall be delivered to the commissioner. If the commissioner finds that the statement conforms to law, he shall, when all fees and franchise taxes prescribed in this chapter have been paid,

(1) endorse on each duplicate original the word "filed" and the date of the filing;

(2) file one duplicate original in his office;

(3) return the other duplicate original to the corporation or its representative.

Sec. 10.50.490. EFFECT OF STATEMENT OF INTENT TO DISSOLVE. On the filing by the commissioner of a statement of intent to dissolve, the corporation shall cease to carry on business, except that necessary for the winding up of its business. However, corporate existence continues until a certificate of dissolution has been issued by the commissioner or until a decree dissolving the corporation has been entered by a competent court as provided in this chapter.

Sec. 10.50.495. PROCEDURE AFTER FILING OF STATEMENT OF INTENT TO DISSOLVE. After the commissioner has filed the statement of intent to dissolve, the corporation

(1) shall immediately mail notice of the filing to each known creditor of the corporation;

(2) shall proceed to collect its assets, convey and dispose of its property which is not to be distributed in kind to its shareholders, pay, satisfy and discharge its liabilities and obligations and do all other acts required to liquidate its business and affairs, and, after paying or adequately providing for the payment of its obligations, distribute the remainder of its assets, either in cash or in kind, among its shareholders according to their respective rights and interests;

(3) at any time during the liquidation of its business and affairs may apply to a court of competent jurisdiction in the state to have the liquidation continued under the supervision of the court;

(4) shall, if it has not completed dissolution proceedings within two years after the date the statement of intent to dissolve is filed, be involuntarily dissolved by the commissioner after 60 days notice of his intent to do so has been given to the corporation.

Sec. 10.50.500. MANNER OF REVOKING A VOLUNTARY DISSOLUTION PROCEEDING. (a) The board of directors may adopt a resolution recommending that the voluntary dissolution proceedings be revoked, and directing that the question of revocation be submitted to a vote at a special meeting of shareholders.

(b) A proposed revocation of a voluntary dissolution of the corporation shall be submitted to a vote at the next meeting of shareholders if the secretary of the corporation receives a petition proposing revocation signed by at least 1,000 shareholders.

(c) Written or printed notice, stating that the purpose of the meeting is to consider the advisability of revoking the voluntary dissolution proceedings, shall be given to each shareholder of record entitled to vote at the meeting within the time and in the manner pro-

vided in this chapter for the giving of notice of special meetings of shareholders.

(d) At the meeting a vote of the shareholders entitled to vote shall be taken on the resolution to revoke the voluntary dissolution proceeding. Adoption of the resolution requires the affirmative vote of the holders of at least two-thirds of the shares voting.

(e) Upon the adoption of the resolution, a statement of revocation of voluntary dissolution proceedings shall be executed in duplicate by the corporation by its president or vice-president and by its secretary or an assistant secretary, and verified by one of the officers signing the statement. The statement of revocation of voluntary dissolution shall set out

(1) the name of the corporation;

(2) the names and addresses of its officers;

(3) the names and addresses of its directors;

(4) a copy of the resolution adopted by the shareholders revoking the voluntary dissolution proceedings;

(5) the number of shares outstanding;

(6) the number of shares voted for and against the resolution.

Sec. 10.50.505. FILING OF STATEMENT OF REVOCATION OF A VOLUNTARY DISSOLUTION PROCEEDING. Duplicate originals of the statement of revocation of voluntary dissolution proceedings shall be delivered to the commissioner. If the commissioner finds that the statement conforms to law, he shall, when all fees and franchise taxes prescribed in this chapter have been paid,

(1) endorse on each duplicate original the word "filed" and the date of the filing;

(2) file one duplicate original in his office;

(3) return the other duplicate original to the corporation or its representative.

Sec. 10.50.510. EFFECT OF STATEMENT OF REVOCATION OF A VOLUNTARY DISSOLUTION PROCEEDING. Upon the filing by the commissioner of a statement of revocation of a voluntary dissolution proceeding, the revocation of the proceeding becomes effective and the corporation may again carry on its business.

Sec. 10.50.515. EXECUTION OF ARTICLES OF DISSOLUTION. If a voluntary dissolution proceeding has not been revoked, then when all debts, liabilities, and obligations of the corporation have been paid and discharged, or adequate provision has been made for payment, and all of the remaining property and assets of the corporation have been distributed to its shareholders, articles of dissolution shall be executed in duplicate by the corporation by its president or vice-president and by its secretary or an assistant secretary, and verified by one of the officers signing the articles. The articles of dissolution shall set out

(1) the name of the corporation;

(2) that the commissioner has filed a statement of intent to dissolve the corporation, and the date on which the statement was filed;

(3) that all debts, obligations and liabilities of the corporation have been paid and discharged or that adequate provision has been made for payment;

(4) that the remaining property and assets of the corporation have been distributed among its shareholders in accordance with their respective rights and interests;

(5) that there are no suits pending against the corporation, or that adequate provison has been made for the satisfaction of a judgment, order or decree which may be entered against the corporation in a

pending suit.

Sec. 10.50.520. FILING OF ARTICLES OF DISSOLUTION. (a) Duplicate originals of the articles of dissolution shall be delivered to the commissioner. If the commissioner finds that the articles of dissolution conform to law, he shall, when all fees and franchise taxes prescribed in this chapter have been paid,

(1) endorse on each duplicate original the word "filed" and the date of the filing;

(2) file one duplicate original in his office;

(3) issue a certificate of dissolution and affix the other duplicate original to it.

(b) The certificate of dissolution, together with the duplicate original of the articles of dissolution affixed, shall be returned to the representative of the dissolved corporation.

Sec. 10.50.525. EFFECT OF CERTIFICATE OF DISSOLUTION. Upon the issuance of the certificate of dissolution the existence of the corporation ceases, except for the purpose of suits, other proceedings and appropriate corporate actior by shareholders, directors and officers as provided in this chapter.

Sec. 10.50.530. INVOLUNTARY DISSOLUTION. (a) A corporation may be dissolved involuntarily by the commissioner when

(1) the corporation is delinquent six months in fi'ng its annual report or in paying a license filing fee or penalty;

(2) the corporation has failed for 30 days to appoint and maintain a registered agent in this state; or

(3) the corporation has failed for 30 days after change of its registered office or registered agent to file in the office of the commissioner a statement of the change;

(4) the corporation has failed for two years to complete

dissolution under a statement of intent to dissolve; or

(5) a vacancy in the board of directors of a corporation is not filled within six months or the time of the next annual meeting, whichever occurs first.

(b) A corporation may not be involuntarily dissolved unless the commissioner has given the corporation at least 60 days notice of its delinquency or omission by certified mail addressed to its registered office or in care of one of its principal officers or directors, at the last known address of the officer or director, as shown by the records of the commissioner, and the corporation has failed to correct the neglect, omission or delinquency before involuntary dissolution.

(c) When a corporation has given cause for involuntary dissolution and has failed to correct the neglect, omission or delinquency as provided in this section, the commissioner shall dissolve the corporation by issuing a certificate of involuntary dissolution containing a statement that the corporation has been dissolved, the date, and the reason for which it was dissolved. The original certificate of dissolution shall be placed in the department files and a copy of it mailed to the corporation at its registered office or in care of one of its principal officers or directors, at the last known address of the officer or director, as shown by the records of the commissioner. Upon the issuance of the certificate of involuntary dissolution, the existence of the corporation shall cease, except as otherwise provided in this section, and its name shall be available to and may be adopted by another corporation no less than six months after the dissolution.

(d) A corporation dissolved by the commissioner under the provisions of this section may be reinstated by the commissioner at any time within two years from the date of the certificate of involuntary dissolution whenever it is established to the satisfaction of the commis-

sioner that in fact there was no cause for the dissolution, or whenever the neglect or delinquency resulting in dissolution has been corrected and payment made of double the amount delinquent along with the amount the corporation would have paid had it not been dissolved during the two-year period. Reinstatement may not be authorized if the same or a deceptively similar corporate, limited partnership, reserved or registered name is currently on file with the commissioner, unless the corporation being reinstated contemporaneously amends it articles of incorporation to change its name to conform with the provisions of this chapter.

(e) Nothing in this section relieves a corporation reinstated under this section from penalty of forfeiture of its powers as a corporation in case of failure to pay subsequently accruing licenses and taxes imposed by a law of this state.

(f) An action arising out of a contract assigned by a corporation dissolved under this section may be brought in the name of the assignee. The fact of assignment and of purchase by the plaintiff shall be set out in the complaint or other process. The defendant may avail himself of any matter of defense of which he might have availed himself in a suit upon the claim by the corporation, had it not been dissolved under this section.

(g) Service of process on a corporation dissolved under this section shall be made in the same manner prescribed by law as if the corporation had not been dissolved.

(h) In addition to any other remedies provided by law a corporation may be dissolved involuntarily be a decree of the superior court in an action filed by the attorney general when it is established that

(1) the corporation procured its certificate of incorporation through fraud; or

(2) the corporation has continued to exceed or abuse the authority conferred upon it by law.

Sec. 10.50.535. VENUE AND PROCESS. (a) An action for the involuntary dissolution of a corporation shall be commenced by the attorney general in the superior court.

(b) Summons shall issue and be served as in other civil actions. If process is returned not found, the attorney general shall publish notice as in other civil cases in a newspaper published in the judicial district where the registered office of the corporation is situated, containing a notice of the pendency of the action, the title of the court, the title of the action, and the date on or after which default may be entered. The attorney general may include in one notice the names of any number of corporations against which actions are pending in the same court.

(c) The attorney general shall have a copy of the notice mailed to the corporation at its registered office within 10 days after the first publication of it.

(d) Notice shall be published at least once each week for two successive weeks, and the first publication may begin at any time after the summons has been returned.

(e) Unless a corporation is served with summons, no default may be taken against it earlier than 30 days after the first publication of the notice.

Sec. 10.50.540. JURISDICTION OF COURT TO LIQUIDATE ASSETS AND BUSINESS OF CORPORATION. The superior court may liquidate the assets and business of a corporation in the cases provided in AS 10.50.545 - 10.50.560.

Sec. 10.50.545. ACTION BY SHAREHOLDER FOR LIQUIDATION. In an action by a shareholder, the superior court may liquidate the assets and

business of a corporation when it is established

(1) that the directors are deadlocked in the management of the corporate affairs and the shareholders are unable to break the deadlock, and that irreparable injury to the corporation is being suffered or is threatened by reason of the deadlock;

(2) that the acts of the directors or those in control of the corporation are illegal, oppressive or fraudulent;

(3) that the shareholders are deadlocked in voting power, and have failed, for a period which includes at least two consecutive annual meeting dates, to elect successors to directors whose terms have expired or would have expired upon the election of their successors; or

(4) that the corporate assets are being misapplied or wasted.

Sec. 10.50.550. ACTION BY CREDITOR FOR LIQUIDATION. In an action by a creditor, the superior court may liquidate the assets and business of a corporation when

(1) the claim of the creditor has been reduced to judgment and an execution on the judgment has been returned unsatisfied and it is established that the corporation is insolvent; or

(2) the corporation has admitted in writing that the claim of the creditor is due and owning and it is established that the corporation is insolvent.

Sec. 10.50.555. LIQUIDATION ON APPLICATION BY CORPORATION. Upon application by a corporation which has filed a statement of intent to dissolve, as provided in this chapter, to have its liquidation continued under the supervision of the court, the superior court may liquidate the assets and business of the corporation.

Sec. 10.50.560. LIQUIDATION IN ACTION BY ATTORNEY GENERAL FOR DISSOLUTION. When an action has been filed by the attorney general to dissolve a corporation and it is established that liquidation of its

business and affairs should precede the entry of a decree of dissolution, the superior court may liquidate the assets and business of a corporation.

Sec. 10.50.565. JOINDER OF SHAREHOLDERS NOT MANDATORY. It is not necessary to make shareholders parties to an action or proceeding for liquidation of the assets and business of a corporation unless relief is sought against them personally.

Sec. 10.50.570. PROCEDURE IN LIQUIDATION OF CORPORATION BY COURT. In a proceeding to liquidate the assets and business of a corporation, the superior court may issue injunctions, appoint a receiver pendente lite with powers and duties as the court may direct, and take other proceedings necessary to preserve the corporate assets wherever situated and carry on the business of the corporation until a full hearing is had.

Sec. 10.50.575. APPOINTMENT OF RECEIVER. After a hearing held upon such notice as the court may direct to be given to all parties to the proceedings and to any other parties in interest designated by the court, the court may appoint a liquidating receiver with authority to collect the assets of the corporation, including amounts owing to the corporation by shareholders on an unpaid portion of the consideration for the issuance of shares. The liquidating receiver may, subject to the order of the court, sell, convey and dispose of all or a part of the assets of the corporation wherever situated, either at public or private sale.

Sec. 10.50.580. DISPOSITION OF ASSETS OR PROCEEDS FROM SALE OF ASSETS. The assets of the corporation or the proceeds from a sale, conveyance or other disposition of assets shall be applied to the expenses of liquidation and to the payment of the liabilities and obligations of the corporation. Remaining assets or proceeds shall be

distributed among shareholders according to their respective rights and interests.

Sec. 10.50.585. STATED POWERS AND DUTIES OF RECEIVER. The order appointing the liquidating receiver shall state his powers and duties. The powers and duties may be increased or diminished at any time during the liquidation proceedings.

Sec. 10.50.590. COMPENSATION OF RECEIVER AND ATTORNEYS. The court may allow from time to time as expenses of the liquidation compensation to the receiver and to attorneys in the proceeding, and direct the payment of compensation out of the assets of the corporation or the proceeds of a sale or disposition of assets.

Sec. 10.50.595. POWER OF RECEIVER TO SUE AND BE SUED. A receiver of a corporation appointed under AS 10.50.570 - 10.50.600 may sue and defend in all courts in his own name as receiver of the corporation.

Sec. 10.50.600. APPOINTING COURT HAS EXCLUSIVE JURISDICTION. The court appointing the receiver has exclusive jurisdiction of the corporation and its property, wherever situated.

Sec. 10.50.605. QUALIFICATIONS OF RECEIVERS. A receiver shall be a citizen of the United States or a corporation authorized to act as receiver, which corporation may be a domestic corporation or a foreign corporation authorized to transact business in the state. A receiver shall give the bond the court directs with sureties the court requires.

Sec. 10.50.610. FILING OF CLAIMS IN LIQUIDATION PROCEEDINGS. (a) In a proceeding to liquidate the assets and business of a corporation, the court may require creditors of the corporation to file with the clerk of the court or with the receiver, in the form the court prescribes, proof under oath of their respective claims.

(b) If the court requires the filing of claims, it shall fix a date, not less than four months from the date of the order, as the last

day for the filing of claims, and shall prescribe the notice to be given to creditors and claimants of the date fixed. Before the date fixed, the court may extend the time for the filing of claims.

(c) A creditor who fails to file proof of his claim on or before the date fixed may be barred by order of the court from participating in the distribution of the assets of the corporation.

Sec. 10.50.615. DISCONTINUANCE OF LIQUIDATION PROCEEDINGS. The liquidation of the assets and business of a corporation may be discontinued at any time during the liquidation proceeding when it is established that cause for liquidation no longer exists. In this event, the court shall dismiss the proceeding and direct the receiver to redeliver to the corporation its remaining property and assets.

Sec. 10.50.620. DECREE OF INVOLUNTARY DISSOLUTION. In a proceeding to liquidate the assets and business of a corporation, when the costs and expenses of the proceeding and the debts, obligations and liabilities of the corporation have been paid and discharged and the remaining property and assets are not sufficient to satisfy and discharge the costs, expenses, debts and obligations, and all the property and assets have been applied to their payment, the court shall enter a decree dissolving the corporation.

ARTICLE 7. GENERAL PROVISIONS.

Sec. 10.50.625. AS 10.05 INCORPORATED BY REFERENCE. The provisions of AS 10.05.699 - 10.05.819 apply to a corporation organized under this chapter and are incorporated by reference as a part of this chapter, except when inconsistent with this chapter.

Sec. 10.50.630. FALSE STATEMENTS AFFECTING VALUE OF SHARES. A director, officer or agent of a corporation who knowingly concurs in making, publishing or posting either generally or privately to the shareholders or other persons (1) a written report, exhibit, statement

of its affairs or pecuniary condition or notice containing any material statement which is false, or (2) an untrue or wilfully or fraudulently exagerated report, prospectus, account, statement of operations, values, business, profits, expenditures or prospects, or (3) any other paper or document intended to produce or give, or having a tendency to produce or give, the shares of stock in the corporation a greater value or a less apparent or market value than they really possess, or who refuses to make any book entry or post any notice required by law in the manner required by law, upon conviction, is guilty of a misdemeanor.

Sec. 10.50.635. DIRECTOR MAKING UNLAWFUL DIVIDEND OR DISTRIBUTION OF ASSETS. A director of a corporation who concurs in any vote or act of the directors of the corporation to knowingly and with dishonest or fraudulent purpose make a dividend or distribution of assets either with the design of defrauding creditors or shareholders or of giving a false appearance to the value of the stock and thereby defrauding subscribers or purchasers, upon conviction, is guilty of a misdemeanor.

Sec. 10.50.640. RESERVATION OF POWER. The legislature reserves the power to make amendments to this chapter to apply to all existing and future corporations organized under this chapter. An amendment to this chapter may not alter or impair the power of a corporation to fulfill the terms of a contractual agreement or impair the rights of a person with whom a corporation has entered into a contractual agreement.

Sec. 10.50.645. DEFINITIONS. In this chapter,

(1) "articles of incorporation" means the original or re-stated articles of incorporation and all amendments;

(2) "authorized shares" means the shares which the corporation may issue;

(3) "certificate" means any evidences of ownership of shares of a corporation;

(4) "chartering legislation" means the Act of the legislature or an initiative approved by the voters that creates a general stock ownership corporation;

(5) "commisssioner" means the commissioner of commerce and economic development;

(6) "corporation" means a general stock ownership corporation;

(7) "department" means the Department of Commerce and Economic Development;

(8) "franchise tax" means the annual corporation tax imposed under Alaska law on corporations (AS 10.05.717);

(9) "insolvent" means inability of a corporation to pay its debts as they become due in the usual course of its business;

(10) "net assets" means the amount by which the total assets of a corporation, excluding treasury shares, exceed the total debts of the corporation;

(11) "resident" means an individual who maintains a permanent place of abode in the state with the intention of making the state his permanent place of residence and who resides in the state continuously except for temporary purposes only and with the intent of returning; a person may not be considered to have gained a residence solely by reason of his presence and he may not lose it solely by reason of his absence while in the civil or military service of this state or of the United States or by reason of his absence because of marriage to a person engaged in the civil or military service of this state or the United States; a person may not be considered to lose his residence while a student at an educational institution, while in an institution at public expense, while confined in prison, while engaged in the navigation of waters of this state, of the United States, or of the high seas, or

while residing upon an Indian or military reservation; a minor takes the residence of his parent or of his legal guardian; a married woman may establish her own residence and does not presumptively take the residence of her husband;

(12) "shareholder" means one who is a holder of record of a share in a corporation;

(13) "shares" means the units into which the proprietary interest in a corporation is divided;

(14) "subscriber" means one who subscribes for a share in a corporation before or after incorporation;

(15) "treasury shares" means shares which have been issued, have been subsequently acquired by and belong to the corporation, and have not either by reason of the acquisition or thereafter, been cancelled or restored to the status of authorized but unissued shares; treasury shares are "issued" shares, but not "outstanding" shares.

Sec. 10.50.650. SHORT TITLE. This chapter may be cited as the Alaska General Stock Ownership Corporation Act.

* Sec. 2. AS 37.10.070(a)(6) is amended to read:

(6) other securities, including [CORPORATE] securities <u>of corporations other than general stock ownership corporations</u>;

* Sec. 3. AS 45.55.130 is amended by adding a new subsection to read:

(b) A copy of all annual reports, ballots, consent authorizations and other materials relating to the shareholder ballots, published or made available by any person to the shareholders of a general stock ownership corporation, shall be filed with the administrator concurrently with its distribution to the shareholders. The administrator shall have authority to review all documents submitted and make regulations regarding content of shareholder materials to insure fairness, completeness, and nondiscrimination.

* Sec. 4. (a) The Alaska General Stock Ownership Corporation shall be created in accordance with this section. This section constitutes the chartering legislation for the Alaska General Stock Ownership Corporation as the term is defined in AS 10.50.645(4).

(b) The governor, the speaker of the house of representatives, and the president of the senate, shall each appoint one person to act as incorporators 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) and AS 10.50. The incorporators shall select nine persons to act as the initial board of directors of the corporation and shall submit their names to the governor, to the speaker of the house of representatives, and to the president of the senate. A majority of the governor, the speaker of the house of representatives, and the president of the senate may disapprove a candidate for the initial board of directors within 15 days of receipt of the incorporators' nominations.

(c) The articles of incorporation of the Alaska General Stock Ownership Corporation shall provide that all shareholders of the corporation shall be residents of the state as defined in AS 10.50.645(11), and that if a shareholder ceases to be a resident of the state or his shares pass by operation of law to a nonresident,

(1) within five years of the date of issuance of his shares the corporation shall purchase the shares at book value;

(2) 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 corporation at book value.

(d) 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. 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.

* Sec. 5. In sec. 1 of this Act, AS 10.50.300 has the effect of changing Rule 23.1, Rules of Civil Procedure, with respect to shareholder derivative suits brought by the shareholders of a general stock ownership corporation. The changes

(1) make provision for notification of shareholders in the event of dismissal or settlement of the suit;

(2) require that the plaintiff account to the corporation for proceeds received by him if the suit is successful; and

(3) provide that the court may require the plaintiff to furnish security for the suit.

* Sec. 6. This Act takes effect immediately in accordance with AS 01.10.-070(c).

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ROGER M. WITTEN

October 31, 1979

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

Dear Dale:

Enclosed is a copy of the IRS Ruling request as filed today.

Sincerely,

Sam

Samuel A. Stern

cc: Mr. Jay Hogan
Mr. Jerry Gauche

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October 31, 1979

Internal Revenue Service
Assistant Commissioner (Technical)
1111 Constitution Avenue, N. W.
Washington, D. C. 20224

Attention T:FP:T

Re: Alaska General Stock Ownership Corporation

Dear Sir:

On behalf of the state of Alaska and its residents, rulings are requested under sections 61, 1391-97, and related provisions of the Internal Revenue Code, with respect to the federal income tax consequences of the transaction hereinafter described.

Facts

It is proposed to form Alaska General Stock Ownership Corporation (AGSOC) pursuant to an Act of the Legislature of Alaska. This Act will be enacted by the Legislature as a result of, and in conformity with, Title VI of the Revenue Act of 1978, which added Subchapter U (sections 1391 through

1397) to Chapter 1 of the Internal Revenue Code, as well as making conforming amendments to other sections of the Code. In general, these sections provide that a corporation created and operated in accordance with their rules is not subject to federal income tax. Instead, each of its shareholders is subject to tax on his proportionate share of corporate taxable income. Under section 1391 the original shareholders of AGSOC must be individuals who are residents of Alaska at the time of the issuance of the shares. Additional rules prevent transferability of shares (except where the shareholder leaves Alaska or dies) for a period of 5 years from the date of issuance. When shares do become transferable, they may be transferred only to another individual who resides in Alaska. In any event, no individual is allowed to own more than 10 shares of AGSOC.

The principal office and place of business of AGSOC will be established in Alaska. AGSOC will not have any paid-in capital but will acquire business assets by the use of the proceeds of loans to it. The loans may be made by commercial lenders with or without the guarantee of the state. It is expected that any loans will be at commercial rates of interest. Section 1391(d) states that for purposes of federal

income taxes, a corporation qualifying for the special treatment described in sections 1391 through 1397, shall not be treated as a governmental unit. Accordingly, any interest payable by AGSOC on loans to it will be fully subject to tax.

Under the rules of section 1391, it has broad investment authority subject only to the limitations that -

1. it cannot own as much as 20 percent of the voting stock or non-voting common stock of another corporation; and
2. it cannot invest in properties acquired by it or for its benefit by eminent domain.

At the present time, the investments which AGSOC will make have not been specifically identified. By way of an example, an investment which has been considered appropriate for AGSOC is the acquisition of a participating interest in the Alaska pipeline. In the event that such an acquisition of an interest is deemed desirable, the interest would be acquired by purchase in an arms-length transaction from one of the consortium of companies that now owns the pipeline. As yet, no negotiations have been undertaken with a view to the purchase of any interest in pipeline property or in any other asset.

It is proposed to issue one share of AGSOC voting common stock (the only class of stock to be authorized) to every resident of the state of Alaska. Such share will be issued without cost to any recipient. It is estimated that there are now approximately 400,000 individuals who are residents of Alaska and who will be eligible to receive an AGSOC share.

Rulings Requested

It is respectfully requested that the following rulings be issued -

1. Where a corporation is created and operated in accordance with the proposed legislation now pending before the state of Alaska, the corporation and its shareholders will qualify for the federal income tax treatment described in subchapter U of Chapter 1 of the Internal Revenue Code. Sections 1391-97.

2. The recipients of the initial distribution of stock of AGSOC will not be considered to have received income for federal income tax purposes upon the distribution of such stock by AGSOC.

3. The cost basis in the hands of the recipients of the initial distribution of stock by AGSOC will be zero. Section 1012.

The first ruling requested herein is necessary in order to determine whether the legislation pending before the Alaska legislature (Exhibit A) which provides for the creation and operation of AGSOC is in conformity with the rules of Subchapter U so that the federal income tax consequences at both the corporate and shareholder levels which may be expected to occur after AGSOC has begun to operate are those which are prescribed in such Subchapter. In the event that there be defects in such proposed legislation which could prevent application of Subchapter U treatment to AGSOC and its shareholders, it is clearly more efficient and economical that there be an opportunity to remedy those defects before enactment.

As noted above, AGSOC proposes to issue its shares at no charge to recipient shareholders. It is believed that the recipients will not have income by reason of the issuance of the stock. Again, it is important to have advance assurance of this fact. Thus if the Internal Revenue Service should rule adversely on this question, or be unwilling to rule, it will be necessary to consider alternatives to the method of issuance now proposed - perhaps requiring a shareholder to make a nominal contribution to the capital of AGSOC. A

favorable response by the Internal Revenue Service to the second ruling requested would put this matter to rest.

The third requested ruling is simply a corollary of the second.

Discussion

The first and third rulings follow directly from the statutory sections cited. The second requested ruling should be granted pursuant to the statutory provisions, legislative history, and precedents discovered below.

Section 102 of the Internal Revenue Code provides that "gross income does not include the value of property acquired by gift . . . . " The Supreme Court has held that the issue of whether a transfer of property constitutes a gift for the purposes of Section 102 is a question of fact to be determined in the circumstances of each case. Commissioner of Internal Revenue v. Duberstein, 363 U.S. 278 (1960). "'What controls is the intention with which payment, however voluntary, has been made.'" Id. at 286, quoting Commissioner of Internal Revenue v. Bogardus, 302 U.S. 34, 45 (1937) (dissenting opinion). The inquiry in each case is directed towards determining "the dominant reason that explains his

[the donor's] action in making the transfer." Id. In the Duberstein opinion the Court considered two distinct transfers of property each made in the context of a business relationship. In the first case, the Court upheld a finding of the Tax Court that the transfer of a Cadillac from one businessman to another was actually in the nature of compensation for past services and an inducement for the continued provision of those services in the future and, therefore, not a gift. And, in the second case, the Court remanded for further findings on the question of whether a bonus payment from an employer to a departing employee was a gift or compensation for past services./*

As the Court's opinion in the Duberstein cases makes clear, the term "gift" in § 102 has never been restricted to transfers among family members and personal friends./** Rather "gift" broadly encompasses transfers of property, even those with business overtones, that proceed from a "'detached and disinterested generosity' . . . 'out of affection, respect,

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/* On remand the lower court found that the payment was a gift and hence not taxable. Stanton v. United States, 186 F. Supp. 393 (E.D.N.Y. 1960), aff'd per curiam 287 F.2d 876 (2d Cir. 1964).

/** The Supreme Court in Duberstein rejected the Government's suggestion that it adopt a "new 'test' in this area" that would have specifically limited the gift exclusion to such "personal" transfers. 363 U.S. at 284.

admiration, charity or like impulse.'" Id. at 285 (citations omitted). As a result, payments between business associates, employers and employees, labor unions and workers may be considered gifts in appropriate circumstances. Id.; United States v. Kaiser, 363 U.S. 299 (1960) (payments from labor union to striking workers held "gifts"); Bogardus v. Commissioner of Internal Revenue, 302 U.S. 34 (1937) (payments to present and former employees of a corporation by its former stockholders held "gifts"). In particular, the IRS and the federal courts have recognized that governments are capable of bestowing "gifts" on their citizens, within the meaning of § 102 (and its predecessors). See Rev. Rul. 68-158, 1968-1 C.B. 47 ("bonuses" paid by a State government to its veterans who served in the Armed Forces during certain wars are non-taxable gifts); Rev. Rul. 57-233, 1957-1 C.B. 60 (grants made by federal government to members of certain Indian tribes for relocation and vocational training are gifts).

In the instant case, a detailed exegesis of the subtle and often difficult distinctions between compensation and inducements on the one hand and gifts on the other is not necessary, since the transfer of one share of AGSOC stock to each Alaskan citizen cannot in any sense be construed as "compensation" or an "inducement." There simply is no quid pro quo associated with this transaction. 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 purpose of the Alaska legislature in creating AGSOC is to induce anyone to move to or remain in Alaska; nor is there any realistic possibility that the prospect of becoming the holder of a share of AGSOC stock will in fact induce anyone who is otherwise inclined to become or remain an Alaskan resident./*

/* This distinguishes the distribution of AGSOC stock from payments made under the Alaska Longevity Bonus Act. Revenue Ruling 76-131, 1976-1 C.B. 16 held that benefit payments under the latter Act are taxable. Those payments are available to all Alaskans 65 years of age and over who have maintained a continuous domicile in the territory or state of Alaska for 25 years. As the Revenue Ruling noted: "The purpose of the statute as stated therein is to provide an incentive to continue uninterrupted residence in the state . . . ." In other words, the explicitly stated purpose of the longevity bonus payments is to induce certain persons to change their behavior in a particular direction desired by the State of Alaska. In the language of Duberstein, supra, the dominant reason that explains the transferor's

Moreover, the requirement of state residence is not an invention of the Alaska Legislature, but rather a condition established in the federal legislation with which Alaska must comply in order that the corporate entity it establishes qualify as a general stock ownership corporation and receive the special tax treatment provided in Subchapter U of the Internal Revenue Code./* It cannot

---

(Footnote continued from Page 9:

(in this case, the State of Alaska's) action in making those "bonus" payments is to influence long-term residents of Alaska to remain in the State; and the payments of $100 per month were presumably set high enough to provide a realistic incentive for a large number of eligible persons to remain in Alaska rather than move elsewhere. There is no such changed behavior or foregone activity associated with the issuance of shares of stock in AGSOC. Furthermore, the longevity bonus payments are transfers of cash. To the extent the AGSOC generates income for its shareholders, such income will be taxed as the ordinary income of the shareholders. 26 U.S.C. §§ 1393, 1394. In that respect, the tax treatment of the longevity bonuses and of any AGSOC income actually distributed to Alaskan citizens will essentially be the same.

In substance, the incorporation of AGSOC and distribution of its shares will not be a "transfer" of anything from one person to another, but simply a change in the form of rights which already belong to all the residents of Alaska. The transaction is most analogous to a partition or other termination of concurrently-owned property -- transactions long held non-taxable by the Service. See Rev. Rul. 56-437, 1956-1 C.B. 507; Rev. Rul. 76-83, 1976-1 C.B. 213.

/* See 26 U.S.C. § 1391(a), (c).

reasonably be argued that the intent of Congress in enacting the federal legislation authorizing GSOCs was to induce residents of states establishing GSOC's to continue to reside in those states.

Rather, in amending the Internal Revenue Code to provide for the establishment of GSOC's, Congress' purposes were civic, educational, and charitable in nature as clearly indicated in the legislative history. For example, the report of the Senate Committee on Finance states:

> The committee believes that many citizens should have a greater ownership stake in the private enterprise system, and that this would lead to better understanding of the system and would encourage individuals to invest in other business enterprises. Also, in the case of individuals now receiving various forms of transfer payments from Federal, State, or local governments, the receipt of dividend income from a General Stock Ownership Corporation (GSOC) would, to some extent, reduce the need for such payments. The committee believes that an experimental program permitting States to form such private corporations for the benefit of their citizens may enable the Congress to study a method of replacing transfer payments with dividend income.

S. Rep. No. 95-1263, 95th Cong., 2d Sess. 107 (1978).

In order to fulfill these congressional goals, states have been authorized to establish GSOC's which, if they comply with the various requirements set down in Subchapter U, will be entitled to the special tax treatment provided therein. In

creating AGSOC pursuant to the federal legislation and providing for the distribution of one share of its stock to each citizen of Alaska without requiring any payment, compensation, or action in return, the State of Alaska will be bestowing a gift on its citizens, an act which should not provide the occasion for the imposition on those citizens of a federal tax liability.

At the time of the initial distribution, AGSOC will be a corporate shell with no assets. Even though its shares will have negligible value, if any, it would frustrate the intention of Congress if the IRS were to take the position that recipients of the stock have income upon receiving a share.

Senator Gravel, the chief sponsor and architect of GSOC provisions of the bill, made the following statement on this issue during the Senate debates on the conference Report:

> There are a number of questions [concerning GSOC's) which my colleagues have put to me over the past few months and I would like to include some explanation of these issues for the Record.
>
> * * * *
>
> Seventh. What about distributions of the stock itself. Will the shareholder be taxed upon receipt of the stock and will he receive a basis in his share at the time of receipt?

> If the shares are distributed before any investment has been made by the GSOC, the shares will be treated as having a zero value as of the date of receipt. Therefore, no income would accrue to the shareholder upon receipt and no tax liability would be generated. If investments have been made, the valuation of the shares should be made on a net asset basis so that if the GSOC investment were 100 percent leveraged, the shares distributed would have zero value and no income would accrue. If the shareholder receives his shares free of tax, he would have a zero basis at the time of receipt.

124 Cong. Rec. S19168-69 (daily ed. Oct. 14, 1978)

The recipients of the initial stock distribution would be most surprised if they were advised that the transaction creates income. It is outside the experience of the overwhelming majority of taxpayers to have received income in any form other than cash. It is thus consistent with the expectations of Congress and the citizens of Alaska and with the case law and IRS rulings to tax the shares of stock initially distributed by AGSOC only when sold. At that time, it is appropriate to tax the full proceeds of sale.

Other Information

To the best knowledge of the taxpayer and the taxpayer's representatives, there are no laws, regulations, treaties, court decisions, revenue rulings or revenue procedures which are contrary to the taxpayer's position in this ruling request.

To the best knowledge of the taxpayer and the taxpayer's representatives, the issue presented in this ruling request:

(1) is not under examination by a District Director in a return of the taxpayer (or of a related taxpayer within the meaning of section 267 of the Code or a member of an affiliated group of which the taxpayer is also a member within the meaning of section 1504) or in a return of another client of the taxpayer's representatives;

(2) has not been examined by a District Director for a tax year not closed by the statute of limitations or a closing agreement;

(3) is not under consideration by an Appeals Office in connection with a return of the taxpayer for a prior period, nor has been under consideration by an Appeals Office for a year not closed by the statute of limitations or a closing agreement;

(4) is not pending in litigation; and

(5) has not been ruled on by the Internal Revenue Service to the taxpayer or a predecessor taxpayer.

If it appears that the requested ruling cannot be granted, a conference is requested.

Enclosed is a power of attorney on Form 2848 authorizing the undersigned, among others, to represent the taxpayer in connection with this request.

If further information is required, or a conference is necessary, please contact the undersigned at the telephone number set forth below.

Respectfully submitted,

Samuel A. Stern
William C. Gifford
Wilmer & Pickering
(202) 872-6414

Under penalties of perjury, I declare that I have examined this request, including accompanying documents, and to the best of my knowledge and belief, the facts presented in support of the requested ruling are true, correct and complete.

James Duncan
Chairman, Legislative Budget
and Audit Committee
Alaska Legislature

Form **2848**
(Rev. July 1976)
Department of the Treasury
Internal Revenue Service

Power of Attorney

(See the separate Instructions for Forms 2848 and 2848–D.)

Name, identifying number, and address including ZIP code of taxpayer(s)

James W. Duncan
SS# 353-34-5896
Pouch V
Juneau, Alaska 99811

hereby appoints (Name, address including ZIP code, and telephone number of appointee(s)) (See Treasury Department Circular No. 230 as amended (31 C.F.R. Part 10), Regulations Governing the Practice of Attorneys, Certified Public Accountants, and Enrolled Agents before the Internal Revenue Service, for persons recognized to practice before the Internal Revenue Service.)

Samuel A. Stern, Esq.
William C. Gifford, Esq.
Wilmer & Pickering
1666 K Street, N.W.
Washington, D.C. 20006
Tel.: (202) 872-6038

as attorney(s)-in-fact to represent the taxpayer(s) before any office of the Internal Revenue Service for the following Internal Revenue tax matters (specify the type(s) of tax and year(s) or period(s) (date of death if estate tax)):

To seek ruling under sections 61, 1391 et seq. and related provisions of the Internal Revenue Code.

The attorney(s)-in-fact (or either of them) are authorized, subject to revocation, to receive confidential information and to perform on behalf of the taxpayer(s) the following acts for the above tax matters:

(Strike through any of the following which are not granted.)

To receive, but not to endorse and collect, checks in payment of any refund of Internal Revenue taxes, penalties, or interest. (See "Refund checks" on page 2 of the separate instructions.)

To execute waivers (including offers of waivers) of restrictions on assessment or collection of deficiencies in tax and waivers of notice of disallowance of a claim for credit or refund.

To execute consents extending the statutory period for assessment or collection of taxes.

To execute closing agreements under section 7121 of the Internal Revenue Code.

To delegate authority or to substitute another representative.

Other acts (specify) .....

Send copies of notices and other written communications addressed to the taxpayer(s) in proceedings involving the above matters to (Name, address including ZIP code, and telephone number):

and Same as above

This power of attorney revokes all earlier powers of attorney and tax information authorizations on file with the same Internal Revenue Service office for the same matters and years or periods covered by this form, except the following:

(Specify to whom granted, date, and address including ZIP code, or refer to attached copies of earlier powers and authorizations.)

Signature of or for taxpayer(s)

If signed by a corporate officer, partner, or fiduciary on behalf of the taxpayer, I certify that I have the authority to execute this power of attorney on behalf of the taxpayer.

James W. Duncan — Taxpayer — 11/26/79
(Signature) (Title, if applicable) (Date)

(Signature) (Title, if applicable) (Date)

(The applicable portion of the back page must also be completed.)

Form **2848** (Rev. 7-76)

If the power of attorney is granted to an attorney, certified public accountant, or enrolled agent, this declaration must be completed.

I declare that I am not currently under suspension or disbarment from practice before the Internal Revenue Service, that I am aware of Treasury Department Circular No. 230 as amended (31 C.F.R. Part 10), Regulations Governing the Practice of Attorneys, Certified Public Accountants, and Enrolled Agents before the Internal Revenue Service, and that:

I am a member in good standing of the bar of the highest court of the jurisdiction indicated below; or
I am duly qualified to practice as a certified public accountant in the jurisdiction indicated below; or
I am enrolled as an agent pursuant to the requirements of Treasury Department Circular No. 230.

Designation (Attorney, C.P.A., or Agent)	Jurisdiction (State, etc.) or Enrollment Card Number	Signature	Date
Attorney	D.C.	[signature]	10/31/79
Attorney	D.C.	Samuel A. Stern	10/31/79

If the power of attorney is granted to a person other than an attorney, certified public accountant, or enrolled agent, it must be witnessed or notarized below. (See Treasury Department Circular No. 230 as amended (31 C.F.R. Part 10), Regulations Governing the Practice of Attorneys, Certified Public Accountants, and Enrolled Agents before the Internal Revenue Service, for persons recognized to practice before the Internal Revenue Service.)

The person(s) signing as or for the taxpayer(s): (Check and complete one.)

☐ Is/are known to and signed in the presence of the two disinterested witnesses whose signatures appear here:

_____ _____
(Signature of Witness) (Date)

_____ _____
(Signature of Witness) (Date)

☑ appeared this day before a notary public and acknowledged this power of attorney as a voluntary act and deed.

_____ _____ My Commission Expires August 1, 1983
(Signature of Notary) (Date) NOTARIAL SEAL (if required)

☆ U.S. GOVERNMENT PRINTING OFFICE: 1978—707-940/1037 2-1

[EXHIBIT A OMITTED]

SB 170 of Draft 9-10-79 CSSS HB240

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October 26, 1979

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

Dear Dale:

Here is our proposed Memorandum to the Staff of the Securities and Exchange Commission regarding possible exemption of the GSOC from full application of the securities laws. For the most part, the memorandum takes the position that the GSOC legislation itself provides adequate protection to GSOC shareholders, at least during the initial five-year period when trading of shares is prohibited. However, you will note that, in a few instances, we have represented that certain protection not presently embodied in the legislation either can be included in the bill if the SEC insists, or will be included in the GSOC's by-laws.

For example, on page 16, we represent that the GSOC will agree, as a condition to exemption from the Securities Exchanage Act of 1934, to distribute, and file with the SEC, an annual report to shareholders containing substantially all the information required in annual reports under that Act. (These requirements are set forth in Attachment A.) And, on page 17, we indicate the GSOC's willingness also to distribute information to shareholders regarding director candidates and other matters to be voted upon at shareholder meetings, as would be required by § 14(c) of the 1934 Act. (These requirements are set forth in Attachment B.) On page 18, we state that the GSOC is prepared to accept a limited exemption, under which it will not be exempted from the antifraud provisions of the 1934 Act. (These provisions are set forth in Attachment C.)

Finally, Section 10 of the Investment Company Act of 1940 requires that no more than 60 percent of the board of directors of an investment company consist of "interested persons," (The definitions of "interested persons" and of "affiliated persons" are set forth in Attachment D.) and that no investment banker serve as director, officer or employee of the company unless the majority of the Board consists of persons who are neither investment bankers nor affiliated with investment bankers. On page 26, we argue that there is no need to apply such restrictions to the GSOC, but that, in any event, the bylaws of the GSOC "will undoubtedly provide full adequate protections against" the conflict-of-interest dangers for which Section 10 was designed.

In reviewing the draft, please give special attention to the above-mentioned representations and concessions. In each instance, it was our judgment that the arguments for complete exemption from the specific statutory requirement were weak, that our overall position would be stronger and more credible if we agreed to certain conditions, and that the sponsors and management of the GSOC would probably wish to incorporate these features in any event. Please make certain that these conditions are acceptable.

We await your comments on these points and on the entire draft. In the meantime, we will continue to refine and edit the memorandum with the expectation that it will be completed and transmitted to the Commission in the near future.

Sincerely,

Sam

Samuel A. Stern

Encl.

cc: Mr. Jerry Gauche

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September 19, 1979

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

Dear Dale:

As we agreed, I have drafted and enclose herewith three copies of a draft contract, executed on behalf of our firm, to cover the work contemplated for the six-month period commencing October 1, 1979. I have listed in Article I the specific services we agreed would be provided, but included as Item 5 a basis for the Committee to add any additional tasks it desires.

Since the scope and amount of work are indefinite, I have provided, as we discussed, a provision for billing at our present hourly time charges (and have maintained the rates quoted by David Lake in his proposed draft contract II even though our rates are due to increase on October 1st). We would propose to render bills on a monthly basis so that you will have full control of the amounts involved.

Please call if you have any questions. I would very much like to have the contract effective by October 1st.

I was delighted to meet you on Monday and look forward to working with you and your colleagues.

Sincerely,

Sam

Samuel A. Stern

Encl.

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BRUCE MAXINOV
JOHN B. McVEECE III
MAURY J. MECHANICK
LOWELL B. MILLER
WILLIAM J. PERLSTEIN
JOAN S. POWERS
CLAUDIA RIBET
WILLIAM R. RICHARDSON, JR.
JOHN ROUNSAVILLE, JR.
MICHAEL S. SCHOOLER
GAIL F. SCHULZ
KAREN KOSER SCHWARTZ
ELIZABETH A. SNYDER
ARTHUR B. SPITZER
LYMAN F. SPITZER
ALAN B. STERNSTEIN
STUART S. TAYLOR, JR.
ANDREW N. VOLLMER
ARTHUR M. WEISBURD
CAROL DRESCHER WEISMAN
ANDREW B. WEISSMAN
BARBARA S. WELLBERY
ANN O. WILLIAMS
ROBERT G. WILSON
JUDITH BARRY WISH
ROGER M. WITTEN

September 19, 1979

Mr. Jay Hogan
Director of Legislative Finance
Pouch WF
Juneau, Alaska 99811

Dear Mr. Hogan:

Pursuant to the requirement of the Contract effective June 1, 1979 between the Legislative Budget and Audit Committee of the State of Alaska and our firm, I am pleased to enclose herewith a copy of our memorandum of September 14, 1979 which we have sent to the Committee.

Sincerely,

SAStern

Samuel A. Stern

cc: Mr. Dale Staley

PROFESSIONAL SERVICES CONTRACT II

This Contract, effective the 1st day of October, 1979, between the LEGISLATIVE BUDGET AND AUDIT COMMITTEE, STATE OF ALASKA, Pouch V, Juneau Alaska 99811 (hereinafter called the COMMITTEE), and WILMER & PICKERING, 1666 K Street, N. W., Washington, D. C. 20006 (hereinafter called the CONTRACTOR),

WITNESSETH THAT:

WHEREAS, the Legislature of the State of Alaska is considering proposed legislation relating to general stock ownership corporations and the creation of an Alaska General Stock Ownership Corporation (hereinafter called the AGSOC); and

WHEREAS, the COMMITTEE is desirous of obtaining further review of certain technical aspects of the proposed legislation and certain additional features that might be included in any such legislation; and

WHEREAS, the CONTRACTOR has performed professional contractual services with respect to the AGSOC under PROFESSIONAL SERVICES CONTRACT I, effective June 1, 1979 and has delivered to the Committee:

(a) A memorandum dated September 14, 1979 proposing a course of action to deal with federal tax and securities laws issues

(b) A draft ruling application to the Internal Revenue Service

(c) A draft briefing memorandum to the Securities and Exchange Commission; and

WHEREAS, the State requires certain additional professional contractual services in connection with the proposed AGSOC, and

WHEREAS, the CONTRACTOR is willing to undertake the performance of this contract under the terms of this contract; and

WHEREAS, the COMMITTEE may enter into contracts for professional services:

NOW THEREFORE, the parties hereto agree as follows:

ARTICLE I

The CONTRACTOR shall provide for the COMMITTEE and report thereon in writing the following services:

1. Submit the ruling request to the Internal Revenue Service, pursue the ruling request and provide such other legal opinions and advice as may be appropriate to assure favorable federal tax consequences to the AGSOC and its shareholders.

2. Submit the briefing memorandum to the Securities and Exchange Commission, carry on discussions as necessary with the staff of the SEC, submit such formal requests for rulings or assurances as may be appropriate and provide such other opinions and advice as may be appropriate to assure favorable federal securities laws consequences to the AGSOC and its shareholders.

3. Assist in drafting a final version of the proposed AGSOC legislation to respond to the views of the IRS and SEC or as may be deemed appropriate by the COMMITTEE.

4. Review the experience of the British Columbia Resources Investment Corporation for precedents that may be useful in the establishment and operation of the AGSOC.

5. Provide such other legal consulting services with respect to the AGSOC as may be requested by the COMMITTEE.

All reports, correspondence, graphs, computer programs, and other documents prepared under this contract are the property of the COMMITTEE and it shall have the full right to use these documents for its purposes, or otherwise, when and where the COMMITTEE may designate without any claim on the part of the CONTRACTOR for additional compensation. Copies of all reports, correspondence, graphs, computer programs and other documents shall be sent to Jay Hogan, Director of Legislative Finance (the DIRECTOR), Pouch WF, Juneau, Alaska 99811, who shall act as the contracting officer on behalf of the COMMITTEE.

So that the CONTRACTOR can effectively perform its services, the DIRECTOR will keep CONTRACTOR advised with respect to developments concerning the AGSOC legislation and will provide CONTRACTOR with copies of reports, memoranda and other pertinent information prepared by other consultants concerning the AGSOC legislation, to the extent they are available to the Director.

The work shall be done in accordance with generally recognized standards of professional consulting services.

In the event that any work does not meet these standards, the DIRECTOR may serve written notice on the CONTRACTOR and satisfactory correction shall be made within ten (10) days. Completion dates for any portion(s) of the work shall be set by mutual agreement except as otherwise set forth herein. Failure to complete the work on time shall result in liquidated damages of One Hundred Dollars ($100) per day, except for delays due to causes beyond the control and without fault or negligence of the CONTRACTOR. Liquidated damages shall not exceed the total payments allowed under this contract and may be deducted from payments that are owing.

The COMMITTEE may terminate this contract upon written notice of the necessity for doing so and payment shall be made for satisfactory work performed prior to CONTRACTOR'S receipt of such written notice. Any dispute concerning a question of fact that relates to the CONTRACTOR'S Performance, if not disposed of by agreement between the parties, shall be decided in accordance with Appendix A hereto.

ARTICLE II

PERIOD OF PERFORMANCE

The period of performance under this contract shall commence on October 1, 1979 and expire on March 31, 1980. Performance may be extended for additional periods by the mutually written agreement of the parties.

ARTICLE III

CONSIDERATION

In full consideration of the CONTRACTOR's performance hereunder, the COMMITTEE shall pay the CONTRACTOR the customary hourly fees charged by CONTRACTOR which CONTRACTOR estimates will not exceed sixty thousand dollars ($60,000). Such estimate is based on a number of factors outside CONTRACTOR's control and is not binding on CONTRACTOR. It is agreed that the following specific fees shall be the hourly fee for each of the respective individuals:

Samuel J. Lanahan	$ 150 per hour
Samuel A. Stern	150 per hour
J. Roderick Heller III	130 per hour
William Gifford	125 per hour
F. David Lake, Jr.	120 per hour
Patricia Douglass	76 per hour
Thomas J. Sugrue	72 per hour

Progress reports will be required. Receipts will be required for all out-of-pocket expenses.

ARTICLE IV

ADDITIONAL CONTRACT PROVISIONS

Appendix A attached hereto and made a part hereof sets forth additional general contract provisions of this contract.

IN WITNESS WHEREOF, the parties have executed this contract effective as of this day of 1979.

CONTRACTOR

WILMER & PICKERING

By: Samuel A. Stern

Samuel A. Stern

Partner
(Official Title)

Taxpayer's ID No. 530220117

LEGISLATIVE BUDGET AND AUDIT COMMITTEE, STATE OF ALASKA

By: _____

Representative James Duncan

Chairman
(Official Title)

By: _____

Senator George Hohman

Vice-Chairman
(Official Title)

Approved as to Form:

_____

Legislative Affairs Legal Counsel

APPENDIX "A" TO PERSONAL SERVICE CONTRACT II

ARTICLE A-1. Definitions:

(a) the term "Committee" means the Legislative Budget and Audit Committee, State of Alaska;

(b) the term "Chairman" means the Chairman of the Committee;

(c) the term "Director" means the Legislative Auditor and any person or persons or board authorized to act for the Director.

ARTICLE A-2. Inspections and Reports:

(a) The Director shall have the right to inspect, in such manner and at all reasonable times as it deems appropriate, all activities of the Contractor arising in the course of its undertakings under this contract.

(b) The Contractor shall make progress and other reports in such manner and at such times as the Director may reasonably require in accordance with the contract.

ARTICLE A-3. State of Alaska Saved Harmless:

The Contractor shall hold and save the State, its officers, agents and employees, harmless from liability of any nature or kind, including costs and expenses, for or on account of any or all suits or damages of any character whatsoever resulting from injuries or damages sustained by any person or persons or property by virtue of any wrongful act or omission of Contractor not specifically directed by the State or its duly authorized agents.

ARTICLE A-4. Disputes.

(a) Except as otherwise provided in this contract, any dispute concerning a question of fact arising under this contract which is not disposed of by agreement shall be decided by the Director, who shall reduce his

decision to writing and mail or otherwise furnish a copy thereof to the Contractor. The decision of the Director shall be final and conclusive unless, within 30 days from the date of receipt of such copy, the Contractor mails or otherwise furnishes to the Director a written appeal addressed to the Chairman. The decision of the Chairman shall be final and conclusive. This provision shall not be pleaded in any suit involving a question of fact arising under this contract as limiting judicial review of any such decision to cases where fraud by such official or his representative or board is alleged: Provided, however, that any such decision shall be final and conclusive unless the same is fraudulent or capricious or arbitrary or so grossly erroneous as necessarily to imply bad faith or is not supported by substantial evidence. In connection with any appeal proceeding under this clause, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of appeal. Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of the contract and in accordance with the Director's decision.

(b) This Disputes clause does not preclude consideration of questions of law in connection with decisions provided for in Paragraph (a) above. Nothing in this contract, however, shall be construed as making final the decision of any administrative official, representative or board on a question of law.

ARTICLE A-5. Equal Employment Opportunity:

(a) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, ancestry, age, or sex. The Contractor will take affirmative action to insure that

applicants are employed and that employees are treated during employment without regard to their race, color, religion, national origin, ancestry, age, or sex. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination, rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.

(b) The Contractor shall state, in all solicitations or advertisements for employees to work on State of Alaska contract jobs, that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, ancestry, age or sex.

(c) The Contractor will include the provisions of Paragraphs (a) through (c) in this Article in every contract, and will require the inclusion of these provisions in every sub-contract entered into by any of its sub-contractors, so that such provisions will be binding upon each sub-contractor, as the case may be. For the purpose of including such provisions in any construction, maintenance, or service contract or sub-contract, as required hereby, the term "Contractor" and the term "Sub-contractor" may be changed to reflect appropriately the name or designation of the parties of such contract or sub-contract.

(d) The Contractor agrees that he will fully cooperate with the office or agency of the State of Alaska which seeks to deal with the problem of unlawful or

invidious discrimination, and with all other State efforts to guarantee fair employment practices under this contract, and said Contractor will comply promptly with all requests and directions from the State Commission of Human Rights or any of its officers or agents relating to prevention of discriminatory employment practice.

(e) Full cooperation as expressed in clause (d) shall include, but not be limited to, being a witness in any proceeding involving questions of unlawful or invidious discrimination if such is deemed necessary by any official or agency of the State of Alaska, permitting employees of said Contractor to be witnesses or complainants in any proceeding involving questions of unlawful or invidious discrimination, if such is deemed necessary by any official or agency of the State of Alaska, participating in meetings, submitting periodic reports on the equal employment aspects of present and future employment, assisting in inspection of the construction site, and promptly complying with all State directives deemed essential by any office or agency of the State of Alaska to insure compliance with all Federal and State laws, regulations and policies pertaining to the prevention of discriminatory employment practices.

(f) Failure to perform any of the above agreements pertaining to equal employment opportunities shall be deemed a material breach of the contract.

The responsible officer overseeing compliance with such fair practice and non-discrimination provision shall be the _____

_____. Such responsible officer shall report to the State Commissioner for Human Rights whenever discriminatory practices are brought to his attention.

ARTICLE A-6. Termination:

The performance of work under this contract may be terminated, in whole or from time to time in part, by the State whenever for any reason the Director shall determine that such termination is in the best interest of the State. Termination of work hereunder shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance of work under the contract is terminated and the date upon which such termination becomes effective.

ARTICLE A-7. No Assignment:

The Contractor shall not assign this contract, nor any part thereof, nor any right to any of the monies to be paid him hereunder, nor shall any part of the work done or materials furnished under said contract be sublet except with the written consent of the Director.

ARTICLE A-8. No Additional Work:

No claim for additional work or materials not specifically herein provided, done or furnished by the Contractor will be allowed by the Committee, nor shall the Contractor do any work or furnish any material not covered by the contract unless such work is ordered or confirmed in writing by the Committee.

ARTICLE A-9. Independent Contractor:

The Contractor, and any agents and employees of the Contractor, shall act in an independent capacity and not as officers or employees or agents of the State in the performance of the contract.

WILMER, CUTLER & PICKERING
1666 K STREET, N.W.
WASHINGTON, D. C. 20006

September 14, 1979

MEMORANDUM FOR THE LEGISLATIVE
BUDGET AND AUDIT COMMITTEE, STATE OF ALASKA

Subject: Proposed CSSS Senate Bill No. 170:
Federal Tax and Securities Laws Issues
and Suggested Approaches

You have asked us to review pending legislation[1/] permitting the establishment of an Alaskan General Stock Ownership Corporation ("AGSOC") in conformance with the recently enacted Subchapter U of the Internal Revenue Code.[2/] We have considered issues which may arise under the federal tax and securities laws in connection with this legislation, having previously, in our memorandum of November 2, 1978, for the Alaska Commissioner of Revenue, treated the securities law issues. This memorandum summarizes those issues, identifies optional approaches to resolution of certain problems, and identifies sections of S. 170 which you may wish to consider revising in order to facilitate regulatory approvals. We also propose an

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1/ CSSS Senate Bill No. 170, introduced as amended April 27, 1979. (Hereafter "S. 170").

2/ 26 U.S.C. §§ 1391-97, eff. November 6, 1978.

approach for our presentations to the Internal Revenue Service ("IRS"), and the Securities and Exchange Commission ("SEC") to facilitate the creation and operation of AGSOC in conformity with the federal regulatory provisions administered by those agencies.

I. SECURITIES REGULATION OF AGSOC

Our firm's Securities Law Memorandum of November 2, 1978, indicated that AGSOC will potentially be subject to provisions of three of the federal securities laws: the registration provisions of the Securities and Exchange Act of 1933 (the "1933 Act"); the registration, reporting, and proxy rules of the Securities Exchange Act of 1934 (the "1934 Act"), and the registration, conduct regulation and disclosure requirements of the Investment Company Act of 1940 (the "1940 Act").

S. 170 poses no securities regulation problems beyond those raised in our earlier memorandum.[3/] Because the statute is an adaptation of general corporation law,

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3/ However, we do recommend herein minor modifications to S. 170 to facilitate conformance with the intrastate exemption to the 1933 Act.

it does not deal with most of the subject areas which are likely to concern the SEC: particularly disclosure of risks to potential shareholders, periodic reports on financial condition, the administration of the "ballot" mechanisms, and fiduciary duties of officers and directors. Moreover, our initial approach to the SEC will be made at a time when the final form of the AGSOC has not yet been determined. For example, the question of the appropriate basis for exemption from the registration requirements of the 1933 Act must await a final decision as to whether payment of consideration will be required of Alaska citizens who wish to acquire AGSOC shares.[4/]

4/ We presume that an initial free issuance is preferred if we are able to obtain a ruling from the IRS that a tax will not be imposed upon citizens who receive shares. However, AGSOCA provides in Section 10.50.080 that

> "Shares may be issued without consideration or for consideration fixed by the shareholders before issuance. Consideration for shares shall be fixed by a vote of a majority of the shares voting on the issue."

This provision appears to suggest that AGSOC may charge consideration for shares only after the initial distribution as no shareholders will exist until then to fix the consideration. This point should be clarified if an initial charge for shares is contemplated. If you wish to leave the option open, Section 10.50.075 could be amended to read: "Shares may be issued without consideration or for consideration fixed by the Board of Directors before issuance."

We propose to present to the SEC a briefing memorandum describing the proposed AGSOC as set out in the S. 170 draft offered April 27, 1979, formally requesting a 1933 Act exemption, and requesting the commencement of negotiations to develop a modified form of 1934 Act regulation and a waiver of the 1940 Act's requirements during the first five years of AGSOC existence. We plan a preliminary presentation and discussions with the SEC prior to making detailed requests for rulings on the latter points so that we may involve them in establishing a creative approach to GSOC regulation. We hope to have received preliminary feedback from the SEC before S. 170 is passed in final form.

Provisions of the Securities Act of 1933

We believe, as we indicated in our Securities Memorandum, that AGSOC should not be subject to the registration requirements of the 1933 Act, either on the basis that an initial distribution of shares is not a "disposition . . . for value" within the meaning of Section 2(3) of the 1933 Act, or on the basis of the "intrastate exemption" provided by Section 3(a)(11) of

the same Act. We propose to argue both points to the SEC.[5/]

Even if the AGSOC shares are sold for consideration or if the SEC deems the disposition otherwise to be for value, we anticipate that we will be able to prevail on the theory that its shares are exempt from registration under the 1933 Act by virtue of the intrastate exemption in section 3(a)(11).[6/] The characteristics of offerings the SEC will deem as falling within

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5/ Of course, even if the initial distribution of shares is free of charge and thus falls within a "not for value" exemption to the Securities Act of 1933, any additional issuances which are for value would fall within the registration requirement unless they are otherwise exempt. This would include exchanges of shares for property or services as provided for in S. 170 § 10.50.085.

6/ This section exempts from registration:

> "Any security which is a part of an issue offered and sold only to persons resident within a single State or Territory, where the issuer of such security is a person resident and doing business within, or, if a corporation, incorporated by and doing business within, such State or Territory."

Section 3(a)(11) are described in non-exclusive Rule 147 (17 C.F.R. § 230.147).[7/] The rule requires that both the purchasers of the securities and the issuer have certain characteristics to ensure that both are truly residents of the state and that sales and resales are restricted to state residents. We believe that several minor changes in S. 170 are advisable in that they will bring the AGSOC within Rule 147 and thus simplify our task if the intrastate exemption need be relied on (either for the initial or any later issues).

AGSOC will be an Alaska corporation as required by Rule 147. Its principal place of business will probably be located in Alaska (Rule 147(c)(1)(i) and (2)(iv)), although the latter is not required by S. 170.[8/] We suggest that the legislature consider

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7/ Issuers may avail themselves of the intrastate exemption even if they do not satisfy all the provisions of this rule. 17 C.F.R. § 230.147 (Preliminary Notes, p. 1). If an issue satisfies all of Rule 147's provisions, however, the intrastate exemption will apply.

8/ S. 170 § 10.50.050 requires only that the corporation maintain a "registered office" within the state.

requiring AGSOC to have its principal place of business in Alaska as this would clarify this aspect of compliance with Rule 147.

Rule 147 restrictions on sales and resales to state residents are clearly satisfied by AGSOC.[9/] The basic purpose of Rule 147's limitations on resale is to ensure that securities do not enter the interstate marketplace. It does not appear that the fact that a few shares pass by descent after five years to out-of-state holders or that former residents may retain their AGSOC shares if they leave the state after five years is so inconsistent with those principles as to upset application of the exemption.

Rule 147 also requires that the issuer's business be conducted predominantly within the state in which the securities are distributed.[10/] The gross revenues and

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9/ Subchapter U and S. 170 provide that shares may only be transferred voluntarily or involuntarily to persons who are residents of the state. 26 U.S.C. § 1391(4)(D)(ii); S. 170 §§ 10.50.320(a)(6) & 8(B). The general prohibition against transfers except by descent for five years also helps to meet the Rule 147 requirement that resales in a nine-month period after the initial distribution be restricted to state residents. S. 170 also provides that if the shareholder leaves the state or shares pass by operation of law to a non-resident, the corporation shall repurchase them at book value. S.170, Section 4(c).

10/ The issuer must derive at least 80 percent of its gross revenues from within the State and have at least

[Footnote continued on following page]

asset provisions of the rule will only be applicable to the initial GSOC distribution if AGSOC becomes operational before its shares are distributed.[11/] The use of proceeds provision will only apply if AGSOC charges for the shares, and it may be satisfied easily by segregating issue proceeds to ensure that they are spent within Alaska. If AGSOC is to acquire an asset prior to share distribution we must know what the asset is to formulate arguments that the asset and its income are "within" the State within the meaning of Rule 147 and section 3(a)(11). AGSOC will presumably be acquiring a minority participation in a joint venture as an asset. If majority control of that venture is in the hands of non-Alaskans, it is arguably not an Alaska asset. Also, income may or may not be deemed derived from within the state -- e.g., sales of oil to out-of-state corporations may be deemed non-Alaska income. Even if the initial

[Footnote continued]

80 percent of its assets within the State. Rule 147 (c)(2)(i) and (ii). It must also intend to use 30 percent of the net proceeds from sales of the issues in question within the State.

11/ Rule 147 provides that if gross revenues for the most recent twelve-month period are less than $5,000, the proceeds provision is not applicable.

distribution is of shares in a shell company, it will be necessary to examine whether AGSOC revenues can be deemed to arise from the "operation of a business or of real property within the state," with regard to subsequent issues of shares. The legislature may wish to consider so restricting the corporation in its enabling legislation.

S. 170 does not now specifically provide for procedures required by Rule 147 to ensure that the reality comports with the intent of the issuer.[12/] We recommend that the legislature amend S. 170 to provide for adequate legends on share certificates;[13/] and that

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12/ A legend on the share certificates must identify the limitations on resale and warn of the lack of registration, stop transfer instructions must be given to the transfer agent, and purchasers must be required to make written representations as to their residence. Rule 147 (b)(1). The issuer must also restrict sales of shares which are part of the same issue and make appropriate disclosures. Id. § (f)(2) and (3). S. 170 does require that eligible individuals apply for shares and that their interest will become void if it is determined that they misrepresented their eligibility. § 10.50.345-360. The SEC may wish to make rules in this regard or examine AGSOC procedures for establishing residency prior to authorizing sale or distribution without registration.

13/ S. 170 § 10.50.105 provides for extremely limited information to be contained on the certificate. We recommend that the legislature amend this section to require disclosure on the certificate of all the restraints on transfer, including the fact that shares are not transferable to non-residents.

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

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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

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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,

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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

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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

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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

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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 Douglass

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

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(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;

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(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;

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ANN O. WILLIAMS
ROBERT G. WILSON
JUDITH BARRY WISH
GEORGE B. WOLFE

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

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

Sincerely,

Samuel A. Stern

Encls.

ALAS003003
3/17/80

BEFORE THE
SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

In the Matter of ALASKA GENERAL STOCK OWNERSHIP CORPORATION	Application for an Order of Temporary Exemption Pursuant to Section 6(d) or, in the Alternative, 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.

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

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

I. BACKGROUND

The Legislature is considering legislation to charter AGSOC in accordance with the provisions governing general stock ownership corporations contained in title VI of the Revenue Act of 1978.1/ The chartering legislation was introduced in the

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

Legislature in 1979[2] and will be reintroduced shortly in a revised version.[3] The revisions reflect the comments and suggestions of the staff of the Commission. Upon its formation, AGSOC will issue one share of its stock to each individual resident of Alaska; AGSOC will thus be a private corporation owned by residents of Alaska.

A. The Federal Enabling Legislation

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

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

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

4/ 26 U.S.C. §§ 1391-1397.

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

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

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6/ 26 U.S.C. § 1391(a)(4), (c).

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

B. State Enabling and Chartering Legislation

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

Section 1 of the Revised Bill would add a new chapter to the Alaska Statutes, the "Alaska General Stock Ownership Corporation Act" ("Proposed Act"). It would require that the charter of a GSOC contain the provisions prescribed by subchapter U (Proposed Act § 10.50.320(a)), and would provide for the establishment of entities otherwise consistent with the business corporation law of Alaska. For the most part, the proposed Act tracks the language of the Alaska business corporation statute and is similar to the corporation statutes of other states. Certain provisions of the Proposed Act, however, reflect the uniqueness of GSOC's. For instance, the legislation permits the Legislature to disapprove the original articles of incorporation and initial bylaws of a GSOC by legislative veto within 60 days after submission. (Id. § 10.50.335.)

The Proposed Act also sets out the procedures to be followed for the initial issuance of shares by a GSOC. The shares must be issued to all "eligible individuals" (generally all residents), unless they elect not to accept their shares. (See id. §§ 10.50.080-.085, 10.50.320(a)(7).) Beginning at least 90 days before the initial issuance, the GSOC is required weekly to notify residents of the issuance by publications in

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

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

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

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

8/ Revised Bill § 3 (to be codified as an amendment to 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.

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

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

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

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

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

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

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

[Footnote continued next page]

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

> Section 6(d) provides that the Commission shall exempt
>
> > a closed-end investment company from any or all provisions of this subchapter, but subject to such terms and conditions as may be necessary or appropriate in the public interest or for the protection of investors, if --
> >
> > > (1) the aggregate sums received by such company from the sale of all its outstanding securities, plus the aggregate offering price of all securities of which such company is

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[Footnote continued from preceding page]

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

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

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

> 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 F. Vandegrift to James L. Thompson, Oct. 29, 1979 (copy attached as Exhibit C).

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

(1) Registration and Reporting Requirements

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

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

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

In many ways, AGSOC will be unique in respects that are highly relevant to the purposes underlying the registration and reporting requirements of the ICA. AGSOC will be owned by over 400,000 citizens of Alaska who have made no equity investment and who will each hold one share of the one class of stock issued by AGSOC.14/ There can be no transfer of AGSOC shares for five years from the date of issuance except by death.15/ There can be no significant aggregation of shares, as each resident is limited to ownership of ten shares, and for the first five years few residents will hold more than one or two shares.16/ Even after the initial five-year period there

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13/ In addition, the Commission is empowered to require that financial statements sent to security holders and the Commission be certified by independent public accountants (ICA § 30(e)) and to promulgate uniform accounting rules (ICA § 31(c)); see Regulation S-X, 17 C.F.R. §§ 210.1-01(A)(4), 210.6-01--210.6-10) and rules requiring the preservation of books and records which form the basis of reports filed with the Commission and sent to security holders (ICA §§ 31(a)-(b), 32(c)).

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

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

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

[Footnote continued next page]

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

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

[Footnote continued from preceding page]

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

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

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

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

It is important to Applicant, however, that AGSOC shareholders have information sufficient to allow them to vote and act intelligently on matters of corporate policy and management. To this end, the enabling legislation contains numerous disclosure provisions, many of which are essentially duplicative of the requirements of the ICA. For instance, to the extent that any shareholder may desire detailed financial information relating to AGSOC, he can exercise his rights to examine AGSOC's books and records19/ and to have a copy of AGSOC's most recent financial statements showing in reasonable detail its assets and liabilities and the results of its operations.20/ Moreover, shareholders will have access to the reports of the Congressional Joint Committee on Taxation required by the Revenue Act of 1978.21/ They will also receive written materials on matters to be voted upon at all shareholder meetings, which will be held at least annually, and these materials will be subject to regulation by the Administrator of the Alaska Securities Act with respect to the fairness, completeness, and nondiscrimination of their content.22/ In addition, any false statements in any written document with a tendency to mislead will subject the responsible directors, officers, or agents of AGSOC to criminal prosecution. (See Proposed Act § 10.50.630.) In view of these provisions, Applicant believes that requiring AGSOC to comply with the full panoply of ICA requirements regarding registration and periodic reports is unduly burdensome and unnecessary.

19/ See Proposed Act § 10.50.270 et seq.

20/ See id. § 10.50.285.

21/ See 26 U.S.C. § 6039B.

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

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

(2) Honest and Unbiased Management

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

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

other affiliated persons from using their investment companies to assist them in their underwriting activities.23/

Section 17 of the ICA supplements section 10 with provisions designed to prevent self-dealing. It prohibits self-dealing and exaction of excessive commissions by affiliated persons. It prohibits certain loans to affiliated persons and underwriters. It provides that portfolio securities must be maintained in the custody of a bank unless otherwise permitted by regulations of the Commission and provides for bonding of the company's employees. Finally, it prohibits indemnification of directors, officers, underwriters, and investment advisers under certain circumstances.24/

Many of the prohibitions contained in sections 10 and 17 are not applicable to AGSOC or are superfluous. AGSOC is not likely to invest in portfolio securities, does not plan to use traditional investment advisers or underwriters, and will not engage in more than occasional purchases or sales of securities.25/ It cannot loan money to directors, officers, or

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23/ In addition, section 12(d)(3) prohibits investment companies from investing in the businesses of brokers, dealers, underwriters, or investment advisors unless those businesses are wholly owned by investment companies and such persons primarily underwrite or sell the securities of other persons. AGSOC is not expected to have any interest in such investments, inasmuch as it is expected to focus upon investments that will allow its citizen-shareholders to share in the economic development of Alaska.

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

25/ See generally Filbert Corporation, 15 S.E.C. 667, ['41-'44 Dec.] Fed. Sec. L. Rep. (CCH) ¶ 75,441 (1944) (partial section 6(c) exemption granted because of limited nature of

[Footnote continued next page]

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

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

[Footnote continued from preceding page]

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

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

Alaska law will provide comparable protection for AGSOC security holders. The Proposed Act authorizes AGSOC shareholders to initiate derivative actions. (Proposed Act § 10.50.300) In addition, Alaska law creates strict fiduciary duties owed corporations by its officers and directors.27/

Section 37 makes it a crime under the ICA to steal or embezzle the property of an investment company, and section 49 makes it a crime to willfully violate any provision of the ICA or to make a material misstatement in an ICA filing. Penalties of up to $10,000 and two years imprisonment are specified for such crimes.

Alaska law provides equivalent protections. Under the Proposed Act, it is a misdemeanor for a AGSOC director, officer, or agent to knowingly concur in making or publishing to anyone (1) a written statement containing any material statement that is false; (2) an untrue or willfully or fraudulently exaggerated report, prospectus, account, or statement of operations, business, profits, or prospectus; or (3) any other document intended to produce or give, or having a tendency to produce or give, AGSOC's shares a greater value or a less apparent or market value than they really possess. (Proposed Act § 10.50.630.) It is also a misdemeanor for any such person to refuse to make any book entry or post any notice in the manner required by law. (Id.) Finally, a director is guilty of a misdemeanor if he concurs in any vote or act of the directors to knowingly and with dishonest or fraudulent purpose make a dividend or distribution of assets either with the design of defrauding creditors or shareholders or of giving a

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27/ See, e.g., Alyest, Inc. v. Superior Oil Corp., 398 P.2d 213 (Alas. 1965).

false appearance to the value of the stock and thereby defrauding subscribers or purchasers. (Id. § 10.50.635.)

While Alaska law may not contain a criminal statute prohibiting theft or embezzlement from an investment company specifically, it does contain strong criminal statutes outlawing such conduct.28/ Applicant believes that these statutes are adequate to deal with any such problems that may arise with respect to AGSOC. Applicant believes further that criminal sanctions with respect to activity relating directly to AGSOC are most appropriately applied at the state, rather than the federal, level because of AGSOC's intrastate character. To the extent there may be a federal interest in such activity, AGSOC will be subject to other relevant federal criminal statutes, including those involving mail fraud.

AGSOC is in many ways a political entity; its few investments and loan transactions will be highly visible and the subject of widespread public comment and debate. This scrutiny alone provides a strong disincentive for self-dealing and dishonest or biased management. Certain provisions of the enabling legislation provide additional "sunshine" protections against conflict of interest situations.29/ Extensive publicity will undoubtedly surround the appointment of officers and directors. As for deterrence, these persons are subject to court-ordered removal for fraudulent or dishonest acts and criminal penalties for defrauding shareholders or creditors or making misleading statements.30/ Thus, persons associated with

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28/ See, e.g., ALASKA STAT. §§ 11.46.180 (larceny), 11.46.210 (embezzlement), 11.46.600 (scheme to defraud).

29/ See, e.g., pp. 4-6 supra.

30/ See Proposed Act §§ 10.50.290, 10.50.635, 10.50.630.

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

(3) Participation in Management by Security Holders

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

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

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

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

Some of these shareholder participation requirements are not applicable to AGSOC. AGSOC does not intend to use conventional investment advisers. There is therefore no need to limit the duration of investment adviser contracts or to require approval of such contracts by AGSOC's shareholders. Similarly, there is no need to require that all AGSOC's shares be voting shares or that preferred shares have certain rights upon a default in the payment of dividends. Under subchapter M and the Proposed Act, AGSOC may have only one class of stock, and the holders of that stock will wield majority voting power.33/ Likewise, problems of cross-ownership and circular ownership are unlikely to beset AGSOC, inasmuch as its stock can be held only by individuals and the aggregate holding and transfer restrictions on AGSOC stock34/ will make it virtually impossible for anyone to obtain control of three percent of AGSOC's outstanding shares.

At least one of the shareholder participation provisions, Commission regulation of proxy solicitations, is essentially superfluous with respect to AGSOC. Proxy voting will not be permitted.35/ Corporation ballots36/ and written

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

34/ See notes 14-17, pp. 13-14, supra and accompanying text.

35/ Proposed Act § 10.50.155. Shares in the name of another held by administrators, executors, guardians,

[Footnote continued next page]

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

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

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[Footnote continued from preceding page]

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

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

37/ Revised Bill § 3 (to be codified as ALASKA STAT. § 45.55.130).

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

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

(4) Adequate and Feasible Capital Structure

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

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

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

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

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

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

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

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

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

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

III. CONCLUSION

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

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

41/ S. Rep. No. 95-1263, 95th Cong., 2d Sess. 107 (1978).

42/ Id.

43/ See Union Bank, I.C. Rel. No. 9074 (Dec. 5, 1975) (section 6(c) exemption granted in part because applicant would operate to carry out congressional policy and because applicant was already regulated by another governmental authority); Fitrust Corp., 9 S.E.C. 901 (1941) (section 6(c) exemption granted in part because applicant subject to regulation by another government agency).

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

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

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

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

46/ S. Rep. No. 91-184, 91st Cong., 1st Sess. 37 (1969); H.R. Rep. No. 91-1382, 91st Cong., 1st Sess. 17 (1970) (providing rationale for excluding from ICA coverage companies engaged primarily in factoring, discounting, and real estate).

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

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

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

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

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47/ See Ampal-American Palestine Trading Corp., 25 S.E.C. 24 (1947).

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

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

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

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

48/ The amendment reads:

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

43 U.S.C. § 1625.

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

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

* * * *

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

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

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

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

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

Dated: March ___, 1980

By _____
James W. Duncan, Chairman
Legislative Budget and Audit Committee
Legislature of the State of Alaska

VERIFICATION

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

Company Act of 1940" dated March ___, 1980 for and on behalf of himself as Chairman of the Legislative Budget and Audit Committee of the Legislature of the State of Alaska. Deponent says further that he is familiar with this Application, and the contents hereof, and that the facts herein set forth are true 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 _____

Exhibit A

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.

"(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

Exhibit C

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

OFFICE OF THE
GENERAL COUNSEL

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

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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 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/

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

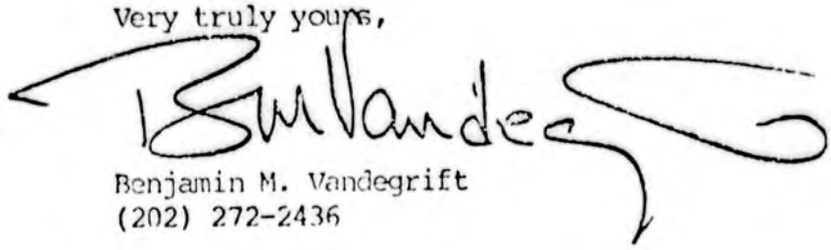
Should AGSOC own or control 10 percent of the outstanding voting securities of a public utility or another public utility holding company, it might become subject to the Public Utility Holding Act of 1935. If so, among other restrictions, it could not engage in any further financing without the approval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

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,



Benjamin M. Vandegrift
(202) 272-2436

AGSOC001
Exhibit D

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 1940[1]/

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.

Item 1. Exact name of registrant.

Alaska General Stock Ownership Corporation.

Item 2. Name of state under the laws of which registrant was organized or created and the date of such organization or creation.

Registrant has not yet been organized or created. Registrant will, however, be organized under the laws of the State of Alaska.

Item 3. Form of organization of registrant.

General stock ownership corporation.

Item 4. Classification of registrant.

Management company.

Item 5. Subclassification of management company.

(a) It is anticipated that registrant will be a closed-end company. But see note 15, page 14, of attached application.

(b) It is not known whether registrant will be a diversified or nondiversified company.

Item 6. Name and address of each investment adviser of registrant.

Registrant does not expect to use investment advisers.

Item 7. Name and address of each officer and director of registrant.

Officers and directors have not yet been selected.

Item 8. Unincorporated investment companies.

Not applicable. Registrant will be an incorporated company.

Item 9. Issuances and offerings of securities.

Registrant is not currently issuing or offering its securities, nor does registrant have any securities currently issued and outstanding. Registrant does

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.

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

Registrant, not being legally existent, has no assets.

Item 11. License to operate as a small business investment 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.

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

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

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

AGSOC002

Exhibit E

Proposed Notice of Proceeding 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

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

Applicant represents as follows:

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

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

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

Three requirements imposed by subshapter U of the Internal Revenue Code will affect the investment policy of AGSOC. Because AGSOC may not be a member of an affiliated group, it cannot own 20 percent or more of the stock of another corporation. In addition, because AGSOC will not be entitled to the 85-percent dividends received deduction, it is unlikely that AGSOC will invest in portfolio securities. Furthermore, because AGSOC will be required to distribute 90 percent of its taxable income or to pay a 20-percent penalty on any undistributed amount in excess of 10 percent, AGSOC is likely to seek investments that will produce sufficient cash flow to make dividend payments in an amount at least equal to the income tax liability incurred by any shareholder with respect to the earnings of AGSOC.

Strict compliance with the registration and reporting requirements of the Act would be burdensome for AGSOC and would not produce compensating benefits. Because AGSOC stock may not be transferred for five years, there is little need for shareholders to have the kind of detailed information required by the registration and reporting requirements. Moreover, several provisions of AGSOC's enabling legislation will provide adequate disclosure and governmental oversight. These include: (1) required shareholder access to AGSOC's books, records, and financial statements; (2) oversight reports by the staff of the Congressional Joint Committee on Taxation; (3) required filings of detailed informational tax returns with the Treasury Department; and (4) requirements for periodic submissions to shareholders and regulation of the content of such submissions by the Administrator of the Alaska Securities Act.

It is likewise inappropriate to require that AGSOC comply strictly with the provisions of the Act designed to produce honest and unbiased management for investment companies. This is so largely because AGSOC is not likely to invest in portfolio securities, does not plan to use traditional investment advisers or underwriters, and will not engage in more than occasional purchases or sales of securities. In addition, under its enabling legislation, AGSOC may not loan money to directors, officers, or employees, nor can AGSOC's officers or employees serve as directors. The legislation also will contain provisions that make most activity susceptible to the abuses suppressed by

section 17 of the Act subject to special clearance by AGSOC's board of directors. Moreover, it will be a misdemeanor for an AGSOC director, officer, or agent to make a false or fraudulent written statement affecting the value of AGSOC shares. Finally, the high visibility of AGSOC's transactions will provide a strong disincentive for self-dealing and dishonest or biased management.

Strict compliance with the provisions of the Act designed to increase participation in management by security holders is also unnecessary. The AGSOC enabling legislation will contain comparable safeguards to assure participation in management by security holders. Direct shareholder voting will be required and proxy voting will not be permitted. AGSOC will distribute to shareholders information on matters to be voted upon at shareholder meetings, and these distributions will be subject to regulation by the Administrator of the Alaska Securities Act. Required periodic shareholder review and the expected intense public scrutiny of AGSOC management will provide additional safeguards. Finally, because AGSOC will not offer an opportunity to invest in a specific investment approach, there is not the same kind of need to require security holder approval of changes in investment policy as exists with respect to traditional investment companies.

Many of the abuses sought to be prevented by the provisions of the Act relating to capital structure will be obviated by the enabling legislation, while other abuses are unlikely to beset AGSOC. In addition, some of the capital structure provisions are not relevant or are unduly burdensome with respect to AGSOC. A $5 million State fund will be established to guarantee "seed money" loans for AGSOC. The fund will be administered by the Commissioner of Revenue. It will serve to prevent any potential difficulties caused by AGSOC's low initial net worth. The Act's prohibitions on multiple classes of stock with unequal voting rights, issuance of securities for services or property other than cash, and sales of common stock below current net asset value without shareholder approval, are unnecessary with respect to AGSOC, as these practices will be prohibited by the enabling legislation. Inasmuch as AGSOC is not expected to publicly offer its stock, debt securities, warrants, or subscriptions, the provisions of the Act designed to guard against abuses

with respect to such contingencies will be inapplicable to the company. Finally, compliance with provisions of the Act regarding asset coverage for debt securities should not be required of AGSOC. Substantial borrowing is essential to the success of the enterprise.

Congress enacted federal tax enabling legislation to permit formation of entities such as AGSOC. Congress believed such entities offered promise of broadening the ownership stake of citizens in private enterprise and of promoting understanding of the private enterprise system. Congress also thought such entities offered promise as an alternative to the present system of governmental transfer payments. A temporary exemption from the Act is appropriate to allow these congressional beliefs to be tested in an atmosphere free from unnecessary regulation.

Section 6(d) of the Act provides, in part, that the Commission, subject to such terms and conditions as may be necessary or appropriate in the public interest or for the protection of investors, shall exempt from all provisions of the Act any closed-end investment company that (1) has not and will not receive $100,000 from the sale of its securities, and (2) will not publicly offer any security to any person who is not a resident of the state under the laws of which the company is organized, provided that the exemption is not contrary to the public interest or inconsistent with the protection of investors.

Applicant submits that AGSOC will meet the technical requirements for a section 6(d) exemption: It will be a closed-end company, will not have received over $100,000 from the securities it has sold or proposes to offer for sale, and will not publicly offer any security to any person who is not a resident of the state under which it will be organized. Applicant submits further that the temporary and conditional exemption requested is not contrary to the public interest or

inconsistent with the protection of investors because, as demonstrated in its application, AGSOC will be structured to provide its security holders with all the relevant protections embodied in the Act.

Section 6(c) of the Act provides, in part, that the Commission, upon application, may conditionally or unconditionally exempt any person, security, or transaction or any class or classes of persons, securities, or transactions, from any provision or provisions of the Act or of the rules thereunder, if and to the extent that such exemption is necessary or apprpriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicant submits that the temporary and conditional exemption requested is appropriate in the public interest, within the meaning of section 6(c), because it will serve to carry out congressional policy and to broaden participation in the free enterprise system. Applicant submits further that the exemption is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act, as required by section 6(c), because, as demonstrated in the application, AGSOC will be structured to provide its security holders with all the relevant protections embodied in the Act.

Applicant has stated that the following condition may be imposed in an order granting the temporary exemption it requests: AGSOC will file with the Commission and distribute to shareholders an annual report containing substantially all of the information required in reports of investment companies under section 30(a) of the Act.

NOTICE IS FURTHER GIVEN that any interested person may, not later than _____ __, 1980, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PLEASE NOTE: THE PRECEDING PAGES WERE TREATED AS A UNIT IN THE ORIGINAL DOCUMENT.