

ALASKA LEGISLATURE COMMITTEE FILES 1997-1998 00/2

9352 HOUSE LABOR & COMMERCE

**Section 15**

**Section 45.55.040(b)**

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

Old law contained effectiveness language.

**Section 16**

**Section 45.55.040(c)**

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

Old law did not provide for notice fees.

**Section 17**

**Section 45.55.040(d)**

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

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

**Section 18**

**Section 45.55.040(e)**

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

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

**Section 19**

**Section 45.55.040(f)**

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

Old law required bonding now largely prohibited by NSMIA.

**Section 20**

**Section 45.55.040(g)**

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

Old law did not provide for notice filings nor mention coordinated examinations.

**Section 21**

**Section 45.55.040(h)-(j)**

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

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

**Section 22**

**Section 45.55.050(a)**

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

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

**Section 23**

**Section 45.55.050(b)**

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

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

**Section 24**

**Section 45.55.050(c)**

Language added to require notice filers to update filed material.

Old law did not mention notice filers.

**Section 25**

**Section 45.55.050(d)**

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

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

**Section 26**

**Section 45.55.050(e)-(k)**

Sections added:

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

(4) to require broker-dealers to comply with NASD supervision requirements (k).

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

**Section 27**

**Section 45.55.060(a)**

Language added

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

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

**Section 28**

**Section 45.55.060(b)**

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

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

**Section 29**

**Section 45.55.060(d)**

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

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

**Section 30**

**Section 45.55.060(f)**

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

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

**Section 31**

**Section 45.55.060(g)**

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

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

**Section 32**

**Section 45.55.070**

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

Old law did not mention federal covered securities.

**Section 33**

**Section 45.55.075**

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

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

**Section 34**

**Section 45.55.090**

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

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

**Section 35**

**Section 45.55.110(a)**

Adds notice filings for federal covered securities created by NSMIA.

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

**Section 36**

**Section 45.55.110(b)**

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

Old law did not provide for notice filing fees.

**Section 37**

**Section 45.55.110(c)**

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

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

**Section 38**

**Section 45.55.110(d)**

Adds reference to notice filings to incorporate documents by reference.

Old law did not mention notice filings.

**Section 39**

**Section 45.55.110(e)**

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

Old law did not mention notice filings.

**Section 40**

**Section 45.55.110(i)**

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

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

**Section 41**

**Section 45.55.110(k)**

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

Old law referred to registrations and not to notice filings.

**Section 42**

**Section 45.55.139**

Adds reference to the administrator's designee as provided in the current definition of "administrator" at AS 45.55.990, allowing the administrator to remain at arms' length.

Old law did not mention the administrator's designee.

**Section 43**

**Section 45.55.139(b)**

New subsection (b) clarifies that the administrator may establish regulations and enforce the proxy rules which are currently in place.

Old law does not explicitly state the administrator's authority to establish and enforce certain requirements.

**Section 44**

**Section 45.55.150**

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

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

**Section 45**

**Section 45.55.170**

Subsection (a) is amended to cover notice filings for federal covered advisers and federal covered securities, and subsection (b) adds corporations and shareholders of corporations meeting the requirements of AS 45.55.139 to those prohibited from making unlawful representations about filing.

Old law did not mention notice filings, and did not refer to qualifying ANCSA corporations and their shareholders as filers.

**Section 46**

**Section 45.55.900(a)**

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

Old law did not mention federal covered securities.

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

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

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

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

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

Old law on covered commercial paper.

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

Old law did not include plans allowed by NSMIA.

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

Old law did not include the Philadelphia Stock Exchange.

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

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

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

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

## Section 47

### Section 45.55.900(b)

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

Old law did not mention federal covered securities.

(2) Subsections (b)(5)(A)(ii) and (b)(5)(B)(iii) have been increased by 50% to \$150,000 and \$750,000 respectively partially to account for inflation without posing a public problem.

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

(3) New subsection (b)(5)(C) is added as a self-executing exemption, without a dollar limitation, to cover initial issuance of stock to up to 10 persons who are forming the corporation or limited liability company, and therefore meet the definition of promoters.

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

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

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

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

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

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

Old law generally required listing in a securities manual.

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

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

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

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

**Section 48**

**Section 45.55.900(g)**

This section is added to provide an exemption for certain offers on the Internet, as drafted by NASAA and adopted by order of the administrator.

Old law does not provide for offers on the Internet.

**Section 49**

**Section 45.55.910**

This section, dealing with investigations and subpoenas, is amended by adding a new subsection clarifying that investigative files and materials are confidential until the Administrator determines otherwise.

Old law does not specifically provide for confidential investigative files.

**Section 50**

**Section 45.55.915**

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

Old law covers only examinations, not investigations.

**Section 51**

**Section 45.55.925**

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

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

**Section 52**

**Section 45.55.930(a)**

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

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

**Section 53**

**Section 45.55.930(b)**

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

Old law set damages at 6%.

**Section 54**

**Section 45.55.930(f)**

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

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

**Section 55**

**Section 45.55.930(g)**

Clarifies that violations referenced are violations of AS 45.55.

Old law was not clear.

**Section 56**

**Section 45.55.930(j)-(k)**

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

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

**Section 57**

**Section 45.55.935(a)**

Subsection (a)(1) is amended to clarify that orders dealing with proxy rule violations are covered by this section, and (a)(2) adds investment adviser representatives.

Old law only covered persons who filed a notice of intention to sell securities, and did not mention investment adviser representatives.

**Section 58**

**Section 45.55.950(a)**

Language is added to include notice filings and adoption of policies. This allows the administrator to adopt policies adopted by NASAA to promote uniformity among states.

Old law did not mention policies or notice filings.

**Section 59**

**Section 45.55.950(b)**

Language added to include adoption of policies and cooperation with other states, self-regulatory organizations, and the SEC to promote broader uniformity among the states.

Old law did not refer to policies, notice filings, or self-regulatory organizations, and uniformity was limited to form and content of registration statements and applications.

**Section 60**

**Section 45.55.950(c)**

Language added to limit section's applicability to financial statements that are required to be filed since NSMIA limits the abilities of the states to establish such rules.

Old language does not contain the NSMIA limitation.

**Section 61**

**Section 45.55.950(d)**

Subsection (d) is amended to include policies so that persons may rely on adopted policies without fear of liability should they be later amended or rescinded.

Old law does not include policies.

**Section 62**

**Section 45.55.970(b)**

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

Old law does not mention notice filings.

**Section 63**

**Section 45.55.970(c)**

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

Old law did not mention notice filings.

**Section 64**

**Section 45.55.970(e)**

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

Old law does not explicitly state a fee is required.

**Section 65**

**Section 45.55.980(a)**

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

Old law did not contain those sections.

**Section 66**

**Section 45.55.980(b)**

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

Old law did not contain those sections.

**Section 67**

**Section 45.55.980(c)**

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

Old law did not include those relatively new entities.

**Section 68**

**Section 45.55.980(f)**

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

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

**Section 69**

**Section 45.55.980(g)**

Language adds notice filings.

Old law did not mention notice filings.

**Section 70**

**Section 45.55.990(2)**

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

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

**Section 71**

**Section 45.55.990(3)**

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

Old law based on offers which are difficult to trace.

**Section 72**

**Section 45.55.990(9)**

Language adds relatively new entities to the definition of person.

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

**Section 73**

**Section 45.55.990(11)**

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

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

**Section 74**

**Section 45.55.990(12)**

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

Old law did not contain this clarifying language.

**Section 75**

**Section 45.55.990(14)-(37)**

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

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

**Section 76**

Short title of the chapter is the Alaska Securities Act.

**Section 77**

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

**Section 78**

The Department may begin work on adopting necessary regulations.

**Section 79-81**

Various technical sections.

**Section 82**

Provides the effective date of the Act.

## Comments On Non-NSMIA-Related Sections Of HB 486

### Overview

HB 486 preserves over \$4 million in annual State revenue and maintains the State's role in investor protection by amending the Alaska Securities Act (AS 45.55) to conform with federal law (National Securities Markets Improvement Act of 1996 (NSMIA)) passed in October 1996. The uniform language for those sections of the bill dealing with NSMIA (55 of 82 in whole or part) was drafted by the North American Securities Administrators Association (NASAA), and is supported by the Investment Company Institute (ICI) and the Investment Counsel Association of America (ICAA).

The sections of the bill that deal with non-NSMIA changes (30 of 82 in whole or part), are included to add or update language to current uniform language as drafted by NASAA, to clarify certain sections of the Act to improve understanding of current policy, and to add certain exemptions from registration to the Act to improve access to capital markets for Alaska businesses. The sections below are the non-NSMIA sections in HB486. Sections indicated with "(Part)" are sections that include some NSMIA and some non-NSMIA changes. This paper concentrates its comments on the non-NSMIA changes. The full comment paper provides comments on all sections of the bill.

### Section 12 (Part)

#### Section 45.55.030(f), (j)

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

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

### Section 13

#### Section 45.55.035

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

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

### Section 15

#### Section 45.55.040(b)

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

Old law contained effectiveness language.

**Section 25**

**Section 45.55.050(d)**

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

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

**Section 26 (Part)**

**Section 45.55.050(k)**

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

Old law did not mention broker-dealer supervision.

**Section 27 (Part)**

**Section 45.55.060(a)**

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

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

**Section 34**

**Section 45.55.090**

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

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

**Section 37**

**Section 45.55.110(c)**

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

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

**Section 42**

**Section 45.55.139**

Adds reference to the administrator's designee as provided in the current definition of "administrator" at AS 45.55.990. This would allow the administrator to remain at arms length in the event a hearing is required.

Old law did not mention the administrator's designee in this section.

**Section 43**  
**Section 45.55.139(b)**

New subsection (b) clarifies that the administrator may establish and enforce proxy, as the Division does currently.

Old law does not explicitly state the administrator's authority to establish and enforce certain requirements, although AS 45.55.950 provides general rule making authority.

**Section 45 (Part)**  
**Section 45.55.170**

Subsection (b), in accordance with current Division policy, adds corporations and shareholders of corporations meeting the requirements of AS 45.55.139 to those prohibited from making unlawful representations about filing.

Old law did not refer to qualifying ANCSA corporations and their shareholders as filers.

**Section 46 (Part)**  
**Section 45.55.900(a)**

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

Old law did not mention federal covered securities.

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

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

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

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

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

Old law on covered commercial paper.

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

Old law did not include plans allowed by NSMIA.

*politically sensitive - see 9-15-01 report  
ANCSA  
hard to file  
part of the  
reports  
confirm what  
do - regulation  
under existing  
authority*

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

Old law did not include the Philadelphia Stock Exchange.

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

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

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

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

#### **Section 47 (Part)**

#### **Section 45.55.900(b)**

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

Old law did not mention federal covered securities.

(2) Subsections (b)(5)(A)(ii) and (b)(5)(B)(iii) have been increased by 50% to \$150,000 and \$750,000 respectively partially to account for inflation without posing a public problem.

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

(3) New subsection (b)(5)(C) is added as a self-executing exemption, without a dollar limitation, to cover initial issuance of stock to up to 10 persons who are forming the corporation or limited liability company, and therefore meet the definition of promoters.

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

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

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

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

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

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

Old law generally required listing in a securities manual.

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

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

(8) New subsection (b)(19) is added to provide a noticed exemption for rescission offers pursuant to AS 45.55.930. This is clarifying language reflecting current requirements, while making it easier for people to comply with the Act.

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

#### **Section 48**

##### **Section 45.55.900(g)**

This subsection is added to provide an exemption for certain offers on the Internet, as drafted by NASAA and adopted by order of the administrator.

*Adopted by  
the board*

Old law does not provide for offers on the Internet.

#### **Section 49**

##### **Section 45.55.910(c)**

This section, dealing with investigations and subpoenas, is amended by adding a new subsection (e) clarifying that investigative files and materials are confidential until the administrator determines otherwise.

Old law does not specifically provide for confidential investigative files.

**Section 50**

**Section 45.55.915**

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

Old law covers only examinations, not investigations.

*930 - calls about the liability of seller to buyer*

**Section 52 (Part)**

**Section 45.55.930(a)**

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

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

**Section 53**

**Section 45.55.930(b)**

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

Old law set damages at 6%.

*in the case of federal it is 2 years from date of purchase of securities*

**Section 54**

**Section 45.55.930(f)**

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

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

**Section 55**

**Section 45.55.930(g)**

Language added to clarify that violations referenced in subsection (g) mean violations of AS 45.55.

Old law was not clear.

**Section 56**

**Section 45.55.930(j)-(k)**

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

registration, unless exempt from registration under AS 45.55.900, as provided in the new exemption at AS 45.55.900(b)(19).

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

**Section 57**

**Section 45.55.935(a)**

Subsection (a)(1) is amended to clarify that orders dealing with proxy rule violations are covered by this section, and (a)(2) adds investment adviser representatives.

Old law only covered persons who filed a notice of intention to sell securities, and did not mention investment adviser representatives.

**Section 58 (Part)**

**Section 45.55.950(a)**

Language is added to include notice filings and adoption of policies. This allows the administrator to adopt policies adopted by NASAA to promote uniformity among states.

Old law did not mention policies or notice filings.

**Section 59 (Part)**

**Section 45.55.950(b)**

Language added to include adoption of policies and cooperation with other states, self-regulatory organizations, and the SEC to promote broader uniformity among the states.

Old law did not refer to policies, notice filings, or self-regulatory organizations, and uniformity was limited to form and content of registration statements and applications.

**Section 61**

**Section 45.55.950(d)**

Subsection (d) is amended to include policies so that persons may rely on adopted policies without fear of liability should they be later amended or rescinded.

Old law does not include policies.

**Section 64**

**Section 45.55.970(e)**

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

Old law does not explicitly state a fee is required.

**Section 67**

**Section 45.55.980(c)**

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

*all new  
entities  
to include  
limited  
liability  
corp. etc.  
with out  
file  
with*

Old law did not include those relatively new entities.

**Section 71**

**Section 45.55.990(3)**

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

*buyer/dealer  
if do as  
small  
amount of  
business  
to not  
register  
with  
150  
into the  
state*

Old law based on offers which are difficult to trace.

**Section 72**

**Section 45.55.990(9)**

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

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

**Section 74**

**Section 45.55.990(12)**

Subsection (12) is amended to clarify a potential confusion between AS 45.55 and AS 45.08.

Old law did not contain this clarifying language.

## Sectional Comments on Amendments to AS 45.55

### Overview

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

In particular, NSMIA created a new security, the Federal Covered Security (FCS), which is preempted from the registration requirements of the states. While some FCSs were already exempt from registration under the Alaska Securities Act (the Act), the largest impact of NSMIA in Alaska was the preemption of mutual fund and Regulation D 506 securities registrations. These securities may no longer be registered by Alaska, but Alaska may require the issuers of these securities to file a notice and pay a notice fee in order to sell the security in this state. NSMIA requires states to change their statutes to provide for these notice filings and notice fees before October 1999, however, in order to preserve the state's ability to require notices and collect fees. Without such changes as those described below, Alaska would lose between \$3-4 million, its primary source of fee revenue available for regulation of securities and investor protection.

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

Additional language is needed in our Act for SIAs registered with the states because those SIAs are no longer subject to some of the rules of the SEC as they were prior to NSMIA. Further, additional language is needed to specifically license Investment Adviser Representatives (IARs). These are essentially equivalent to agents of broker-dealers. In the past, we have licensed them based on the fact that they meet the statutory definition of an investment adviser. NSMIA, however, provided that the SEC would define IARs and further provided that the states could register IARs of FCAs, if those IARs have a place of business in the state. Thus, it becomes important to treat IARs of SIAs and FCAs more like agents of broker-dealers.

Many of the changes described below are made to bring the Act into conformity with NSMIA and to preserve the ability of the state to provide investor protection for Alaskans and to continue to collect the fees from market participants who seek to provide various

investment services to Alaskans. Much of the language proposed in these changes was developed by the North American Securities Administrators Association (NASAA) in order to promote uniformity among states, a major policy of the Act. For the same reason, some other changes are suggested to conform with language adopted by NASAA and essentially similar to that used in other states. The changes to our statutes have the support of the Investment Company Institute (ICI), the major association for the mutual fund industry, and the Investment Counsel Association of America, Inc. (ICAA), the major association for investment advisers.

### **Section 1**

#### **Section 45.55.010**

This subsection is amended by adding a new subsection (b) which makes it clear that exemption by statute or preemption by NSMIA from registration will not exempt a person from the anti-fraud provision of the Act dealing with effecting transactions in securities.

### **Section 2**

#### **Section 45.55.020**

Subsections (b), (b)(1), new (b)(2), and new (d) are amended to limit these restrictions to SIAs since FCAs are covered by SEC rules.

Subsections old (b)(2) and old (d) are deleted because the language is now included in a new section 45.55.023 covering unethical business practices by SIAs, FCAs, and IARs.

### **Section 3**

#### **Section 45.55.023**

A new section is added covering unethical business practices by SIAs, FCAs, and IARs. Previously we did not have similar language in the Act because we could rely on SEC rules since all investment advisers were also registered with the SEC. With NSMIA, we can no longer rely on some of those rules for SIAs at all, and NSMIA does permit states to monitor FCAs for fraudulent or unethical practices. Without this section, we would not be able to provide investor protection in dealing with those who provide advisory services.

#### **Sections 45.55.025, 45.55.027, and 45.55.028**

A new section is added covering fraudulent or unethical business practices by broker-dealers (025), agents (027), and broker-dealers or agents (028). Most of these restrictions currently are found in regulations at 3 AAC 08.060 and 08.061, but are now placed in statute to be consistent with the handling of limitations on persons performing advisory services. These fraudulent activities are not expected to change much over time, and so they are appropriate to place in statute rather than regulation. Without this section, we would have to amend our regulations.

### **(Article 2**

The title of Article 2 should be amended to provide for notice filings for FCAs and licensing of IARs.)

## **Section 4**

### **Section 45.55.030**

The title of this section is amended to cover notice filings permitted by NSMIA.

A new subsection (c) is added prohibiting in most cases dual registration of agents of broker-dealers and issuers. This resolves a supervision problem that can and has arisen in the past when agents are registered by more than one broker-dealer.

Renumbered (d) is amended to limit the registration to SIAs and IARs as permitted by NSMIA. Further, old (d)(2) is deleted as unneeded since broker-dealers ordinarily may not provide advisory services for compensation without registering as either an SIA or FCA. Old (d)(3) is deleted because its language is included in the new (d)(2)(A) and (B) based on language previously in the definition subsection for investment advisers and now limited to SIAs (see AS 45.55.990(26)). It makes more sense to include this language as an exclusion from the requirement to register rather than as an exclusion from the definition of an SIA.

New subsections (e)-(g) are added to provide separately for the licensing of IARs of SIAs and FCAs. Without this language and that in new (d)(1), SIAs and FCAs would not be prohibited from employing unlicensed IARs, to the detriment of investor protection.

New subsection (h) is amended to provide for notice filings as required by NSMIA. Without this language, we could not require FCAs to file a notice when they offer advisory services, nor preserve our fee base.

New subsection (i) is added to require FCAs to make notice filings, since NSMIA prohibits the state from requiring registration of FCAs, but does allow states to require notices and fees. Without this subsection, we could not require FCAs to file a notice to provide advisory services in Alaska.

New subsection (j) is added to codify current national practice by which broker-dealers are not required to register as SIAs or FCAs simply for participating in popular programs such as wrap accounts. Without this subsection, an argument could be made that the additional registration may be required, and such registration in our view is not required for investor protection.

## **Section 5**

### **Section 45.55.035**

A new section is added providing a limited registration of Canadian broker-dealers and their agents so long as the broker-dealer's principal office is located in a province or territory that provides at least an equivalent registration of a US-resident broker-dealer. This section allows the Canadian broker-dealer to provide services to their established clients who are temporarily in this state or who manage a self-directed tax advantaged retirement plan in Canada. The limited registration only subjects the Canadian broker-dealer to the provisions of this section and to the anti-fraud provision of AS 45.55.010. Without this section Canadian broker-dealers and their agents could not provide services

to their bona fide clients without full registration under the Act. Further, US-resident broker-dealers are in the same position when their clients are in Canada. Since this section only works when there is reciprocity, this section could benefit US-resident broker-dealers and their clients, who may be Alaskans.

## **Section 6**

### **Section 45.55.040**

The title of the section is amended to provide for notice filings as required by NSMIA.

Subsection (a) is amended to provide for the registration of IARs and SIAs as permitted by NSMIA. Language requiring fingerprints and photographs is deleted since electronic filing of broker-dealers and agents has made such requirements unworkable, and this requirement is not needed for investor protection. Changes in (a)(3) limit the section to SIAs, and (a)(6) is added to require SIAs, if requested, to file copies of information provided clients and prospective clients. This was allowed by SEC rules, but, under NSMIA, we would no longer have the authority to require these materials without language in our Act.

Subsection (b) is amended to delete the language describing effectiveness dates since the Division plans to include this language in its regulations.

New subsection (c) is added to provide the authority to require notice filings for FCAs who are not otherwise exempt from filing notices. Without this subsection, we would lack authority to require notice filings for FCAs.

New subsection (d) (old (c)) is repealed and reenacted to separately provide for registration and notice fees as indicated for broker-dealers and their agents, SIAs and IARs, and FCAs. Without this subsection, we would lack authority to collect fees, at least, for IARs and FCAs.

New subsection (e) (old (d)) is amended to provide separately for SIAs, which are registered, and FCAs, which are noticed. Language is added allowing SIAs and FCAs the same rights to transfer IARs from a predecessor advisory business or to register or notice a successor, similar to the existing language allowing those actions for agents of broker-dealers. Without this subsection, FCAs, at least, would not be able to transfer a notice to a successor.

New subsection (f) provides authority to adopt regulations for fees and other procedures relating to registrations, notice filings and transfers. Without this subsection, the Division would lack authority to adopt such regulations.

New subsection (g) (old (e)) allows the administrator the discretion to impose certain financial requirements on broker-dealers and SIAs. Previous language ("shall") was not discretionary. Under NSMIA (as indicated by references to federal laws), however, states may not impose financial requirements on broker-dealers in addition to those imposed by the US Securities and Exchange Commission, and may not impose financial requirements

on SIAs greater than those of their "home" state, and may not impose financial requirements on FCAs at all. Greater flexibility is needed to deal with this new landscape. This language will provide the basis for the adoption of regulations.

New subsections (h) and (i) (old (f)) is amended to allow the Division to adopt regulations concerning the posting of bonds where permitted by NSMIA. Without this language, the Division would lack authority to require SIAs to post bonds in various amounts depending on whether the SIAs have custody of funds or discretion over client accounts.

New subsection (j) (old (g)) is amended to provide for notice filings and allows the Division to enter into procedures that may enhance uniformity among states and regulatory entities, including coordinated equity reviews with other states. Without this section, the Division may not be able to take positive steps to increase uniformity with other states and regulatory entities.

## **Section 7**

### **Section 45.55.050**

The title is amended to provide for post-notice provisions.

Subsections (a) and (b) is amended and added, respectively, to conform with the NSMIA limitations on states with respect to required books and records. States may not impose books and records requirements on broker-dealers which are in addition to those imposed by the SEC, and may not impose books and records requirements on SIAs which are in addition to those imposed by their "home" state, and may not impose books and records requirements on FCAs at all.

New subsection (c) is added to provide authority to require certain disclosures of information by SIAs which had been required by the SEC but would no longer be required of SIAs since they will not be registered with the SEC. Without this section the Division may lack the authority to require disclosures to potential and current advisory clients of SIAs.

Subsections (d) and (e) (old (b)) is amended and added, respectively, to provide authority to require, if desired, the filing financial reports, subject to the limitations of NSMIA as described for subsection (a) of this section.

Subsection (f) (old (c)) is amended to require FCAs to update inaccurate materials filed with the administrator at the same time the material must be furnished to the SEC. Without this section, we would lack authority to require updated notice filings.

Subsection (g) (old (d)) is amended to clarify that the Division may inspect records at any time. This codifies current policy. Without this subsection the Division might be challenged on its ability to review records which would harm its ability to protect the investor.

New subsections (h)-(j) are all required by NSMIA since it limits the ability of states to require certain books, records and reports of broker-dealers and SIAs with "home" offices outside the state.

New subsection (k) is added to include supervisory rules for broker-dealers established by the National Association of Securities Dealers, Inc. (NASD). Investor complaints often raise the question of adequate supervision of agents, and this subsection will allow the Division to take action, if needed, against supervisors. Without this subsection, the Division's enforcement capabilities would be limited in situations where supervision is brought into question.

## **Section 8**

### **Section 45.55.060**

Subsection (a) is amended to limit its applicability to SIAs and not FCAs.

Subsection (a)(2) is amended to make repeated violations of the Act a basis for administrative action and not just willful acts. Without this subsection, the Division would have to show the acts were willful even if there were repeated violations.

Subsection (a)(3) is amended to clarify that "convicted" includes pleas, judgments and verdicts. Without this subsection applicants can assert that convicted is narrowly defined to the result of a trial.

Subsections (a)(5) and (a)(6) are amended to limit their applicability to SIAs and to include IARs.

Subsection (a)(7) is amended to add conduct to practices so that an established pattern need not be shown to take administrative action, and to include such activities in the investment advisory business and not just the securities business. Without this subsection persons may assert that one or two actions do not constitute "practices" and may further assert that the securities business is limited to broker-dealers effecting trades and not to investment advisory services. This would be detrimental to our enforcement capabilities and to the welfare of the investing public.

Subsection (a)(8) is amended to broaden insolvency to include lack of safety to customers. Without this amendment insolvency is limited to excess liabilities and inability to meet obligations which may be too late to protect the customers.

New subsection (a)(10) is added to provide authority to take action against a person who fails to maintain and produce required records. Without this subsection the Division may not be able to take action to deny, suspend, revoke, or cancel a registration if records are not maintained or produced.

New subsection (a)(11) is added to refer to the list of persons developed with respect to child support enforcement laws. This provides authority to revoke or deny a license based on failure to meet child support requirements.

Subsection (b)(1) is amended to provide the authority to take administrative action against an applicant or registrant for a failure to reasonably supervise agents and IARs. Without this subsection the Division would arguably lack authority to take such action when it found a failure to supervise.

Subsections (d)(2)(A) and (B), (d)(5), (d)(6), (f), and (g) are amended to clarify that they are applicable only to SIAs and their IARs in addition to any other specified persons, but not to FCAs.

**(Article 3**

The title should be amended to include notice filings for FCSs.)

**Section 9**

**Section 45.55.070**

This section is amended to include a new type of security created by NSMIA, the Federal Covered Security (FCS). Previously, a person could not offer or sell a security in Alaska unless it was registered or exempt under AS 45.55.900. With enactment of NSMIA, a third type of security may be sold which is neither registered nor exempt under AS 45.55.900. Without this section the Act would not be in compliance with NSMIA.

**Section 10**

**Section 45.55.075**

A new section is added to provide for the filing of notices and payment of fees with respect to FCSs. The bulk of FCSs for which registrations had been required and now notices are required consists of mutual fund offerings and Regulation D 506 offerings. Without this section, we would lack authority to require notice filings or fees for such FCSs.

**Section 11**

**Section 45.55.080**

Subsection (b) is amended to reflect a section number change in the statute.

**Section 12**

**Section 45.55.090**

Subsections (b)(1) and (b)(4) contain modest amendments to clarify the SEC is the US Securities and Exchange Commission, and to update an old numbered statute reference.

**Section 13**

**Section 45.55.100**

Subsection (b) is amended to update an old numbered statute reference, and (b)(10) is amended to change "per cent" to "percent."

**Section 14**

**Section 45.55.110(a)**

Subsection (a) is amended to include notice filings for FCSs created by NSMIA.

## **Section 15**

### **Section 45.55.110(b)**

Subsection (b) is amended to require notice filing fees for FCSs. The amendment provides that the state will retain the fee if the notice is withdrawn. This is similar to the provision for registrations in which the filing fee (though not the registration fee) is retained in the event of withdrawal. There will be no filing fees for FCSs, only notice fees. Without these sections, we would lack authority to require notice filings or fee payments for mutual fund sales and Regulation D 506 offerings.

## **Section 16**

### **Section 45.55.110(c)**

Subsection (c)(3) is amended to clarify that the SEC is the US Securities and Exchange Commission.

## **Section 17**

### **Section 45.55.110(d)**

Subsection (d) is amended to add reference to notice filings.

## **Section 18**

### **Section 45.55.110(e)**

Subsection (e) is amended to add reference to notice filings.

## **Section 19**

### **Section 45.55.110(i)**

Subsection (i) is amended to include a provision allowing the administrator to establish different expiration dates for registrations and notice filings in order to coordinate with any national system that might be developed for uniformity. Further, although registrations and notices are generally effective for one year, the amendment allows the administrator to provide for an automatic extension of notices for FCSs for one year provided that the extension is set at the time the notice is made effective and the notice fee reflects the extension. Language in this section for registrations has allowed pre-NSMIA registrations of mutual funds to be effective for two years. The amendment will allow the same treatment for notice filings as long as the fee reflects the extension. Without this subsection we would lack authority to issue notice filings with an effective date exceeding one year which would be more costly for the industry and the Division to administer.

## **Section 20**

### **Section 45.55.110(k)**

Subsection (k) is amended to allow notice filers to amend notice filings to increase the amount of FCSs permitted to be offered in Alaska after payment of the appropriate notice fee. This will provide notice filers with the same treatment as registration filers. The word "filing" is deleted in the last sentence of the subsection because the amended subsection (b) to which it refers now includes notice fees for notice filers as well as filing and registration fees for registration filers. Without this section notice filers would not be

able to amend notice filings to increase the amount of securities offered in Alaska as registration filers may.

## **Section 21**

### **Section 45.55.139**

This section is amended by adding a subsection (b) and numbering the current section as subsection (a).

The new subsection (a) is amended to provide for filing of required reports with the administrator's designee. Without this subsection the administrator lacks authority to delegate the activity to a designee.

New subsection (b) is added to clarify that the administrator may establish regulations and enforce the proxy rules which are currently in place. While the administrator already has authority to establish and enforce regulations, with this amendment to the Act to accommodate NSMIA, we believe it would be beneficial to include a clear statement in the Act. Without this subsection it might be argued that some or all of the administrator's regulations lack sufficient statutory basis.

## **Section 22**

### **Section 45.55.150**

This section is amended to allow the administrator to establish requirements for specified sales literature and not just for the filing of the literature. The amendment excludes (1) securities exempted by AS 45.55.900 unless the subsections relied upon place a limitation on sales literature, (2) securities that are FCSs, and (3) broker-dealers, SIAs and FCAs that are exempted by the Act or federal law. Without this amendment this section would not be in compliance with NSMIA since states are limited in what they may require to be filed with respect to FCSs and FCAs, in particular.

## **Section 23**

### **Section 45.55.170**

The title is amended to cover filings of proxy materials and notice filings.

Subsection (a) is amended to cover notice filings for FCAs and FCSs. Without this amendment it could be argued that we lack authority to take action against a person making unlawful representations as to the notice filings.

Subsection (a) also is amended to include proxy materials filed pursuant to AS 45.55.139. Without this amendment it may be argued that we lack authority to take administrative action against a person making unlawful representations as to filings of proxy materials.

Subsection (c) is amended to add shareholders of corporations meeting the requirements of AS 45.55.139. Currently, the subsection only covers explicitly prospective purchasers, customers and clients. We believe shareholders should be protected from the same unlawful representations. Without this amendment it may be argued that we lack

authority to take administrative action against a person who makes an unlawful representation to a shareholder.

## **Section 24**

### **Section 45.55.900**

Subsections (a) and (b) are amended to include exemption from notice filing requirement in addition to the current exemption from registration. Without these amendments it could be argued that the securities covered in subsection (a) and transactions covered in subsection (b) are exempt from registration but not from notice filing.

Subsection (a)(1) is amended to include US territories and the District of Columbia in order to update this exemption to the current uniform language. Without this amendment, securities issued by US territories or the District of Columbia are not exempt from registration and notice filing.

Subsection (a)(3) is amended to cover any security issued or guaranteed by a bank or other issuer listed in the subsection and not only a security representing an interest in or debt of the issuer. In addition, obligations of a Federal Reserve Bank are explicitly added to the exemption. Without this amendment it could be argued that some bank securities and Federal Reserve Bank securities are subject to registration.

A new subsection (a)(4) is added to provide an exemption from registration of securities issued in connection with the acquisition of a bank by a holding company under specified circumstances which require the holding company to be substantially equivalent to a bank. This amendment puts holding company acquisitions on an equal footing with the current exemption at (a)(3). Without this amendment such acquisitions may be subject to a registration requirement.

Subsection (a)(5) (old (a)(4)) is amended to expand the types of short-term debt securities that are covered by the exemption from commercial paper to other types of securities that are also eligible for discount by a federal reserve bank. Without this amendment such securities are not eligible for the exemption even though they are similar.

Subsection (a)(6) (old (a)(5)) is amended to reflect a provision in NSMIA which excluded certain plans from the definition of an investment company if the assets were used exclusively for the benefit of the beneficiaries, thus putting these plans on the same footing as similar employee benefit plans covered by this exemption. Without this amendment this section would not comply with NSMIA.

Subsection (a)(11) (old (a)(10)) is amended to update the names of stock exchanges and add the Philadelphia Stock Exchange which has been accepted by the administrator as having sufficiently high financial standards to be comparable to other exchanges currently covered by the exemption. NSMIA included some national exchanges as FCSs and that list is expected to be expanded over time to include regional exchanges such as the Philadelphia Stock Exchange.

Subsection (a)(12) (old (a)(11) is amended to include securities of funds excluded from the definition of an investment company. This was added by the Philanthropy Protection Act of 1995 to include pooled funds of charitable organizations. Without this amendment the subsection would not comply with the Philanthropy Protection Act of 1995.

Subsections (b)(5)(A)(ii) and (b)(5)(B)(iii) have been increased by 50% to \$150,000 and \$750,000 respectively to account for inflation. The current dollar limitations have not been changed for many years and now more often prevent otherwise qualified applications from meeting the requirements of the exemption. Without this amendment some offerings that fall below the dollar amounts covered by registration provisions may still not qualify for exemption from registration.

New subsection (b)(5)(C) is added as a self-executing exemption to cover initial issuance of stock to up to 10 persons who are forming the corporation (and therefore meet the definition of promoters). There is no dollar limit on what they may pay for the stock their corporation issues to them. Often this stock is never intended for public sale, and, for example, may be a small business person incorporating and issuing stock to him or herself and a spouse. If the assets being transferred exceed the current limits of (b)(5), there is no exemption available to these people. Also, some people who form a company issue stock to themselves without registration or exemption, and this amendment will cover them as well. Without this amendment many people are either in violation of the Act or must seek exemption from registration even if they are only issuing stock to themselves.

New subsection (b)(5)(D) is added to cover sales by an issuer to the buyer of a business when the transfer of stock is solely incidental to the sale of the business. If a buyer wishes to buy a small business from someone who happens to have incorporated and, thereby, own all 100 shares of stock outstanding, the seller must either register the stock or seek exemption from registration. Failure to do that can mean the seller of the business sold unregistered stock and is liable to the buyer for up to three years pursuant to AS 45.55.930. In these cases, the real transaction is the purchase of a business and not investment in stock. This amendment will provide a self-executing exemption to cover these sales. Without this amendment sellers will have to seek registration or exemption of the stock, or be subject to potential liability for the sale of unregistered securities.

Subsection (b)(9) is amended to exclude promoters or controlling persons from claiming this exemption and escaping a registration requirement altogether. This exemption is designed to cover individuals who are selling stock, such as 100 shares of General Motors, and not people who are controlling persons and cannot be distinguished from the issuer of the security. Without this amendment it can be argued that someone who forms a company and issues stock to him or herself can sell it off to the public without registration so long as they make it appear "isolated."

Subsection (b)(10) is amended by adopting the new language for the "manual exemption," as (b)(10) is sometimes called, which was developed by NASAA and

supported by the Securities Industry Association (SIA). The new language protects investors at least as much as the old language while allowing reliance on publicly available filings with the SEC as well as manuals.

New subsection (b)(18) is added to provide an exemption for qualifying issuers that are limiting sales to accredited investors (essentially, institutions and wealthy natural persons). This language was drafted by NASAA and is being adopted by many states. It is not self-executing, but requires the filing of a notice and payment of a fee. Without this amendment issuers that are limiting sales to accredited investors may be required to register the issue even when they plan to make few sales in Alaska.

New subsection (b)(19) is added to clarify that rescission offers pursuant to AS 45.55.930 are offers of securities under the Act. This has been the historical position of the Division which has required such offers to be either registered or exempted from registration. In practice, such offers are exempted from registration. This amendment codifies the historical practice and makes it clear to those making rescission offers that they must file them with the administrator. Such filing alerts the Division to potential violations of the Act. Without this amendment some makers of rescission offers may not file proper notice because it is not clear they have to, and thereby create another violation of the Act.

New subsection (b)(20) is added to cover offers on the Internet. The administrator issued an order adopting this Internet offer policy as drafted by NASAA, and this amendment brings the policy order into the statute. Without this amendment we will be in increasing conflict with issuers who place web pages on the Internet.

## **Section 25**

### **Section 45.55.910**

This section, dealing with investigations and subpoenas, is amended by adding a new subsection clarifying that investigative files and materials are confidential until the Administrator determines otherwise. Without this section, investigations may be hampered, sources compromised, and innocent people's names made public before the investigation is concluded.

## **Section 26**

### **Section 45.55.915**

The title is amended to clarify that the administrator may require reimbursement of costs associated with investigating a complaint as well as routine examinations.

Subsection (a) is amended to allow the administrator the option (not the obligation) to require reimbursement for expenses. In addition, those who may be charged is expanded to include IARs, SIAs, and FCAs. Finally, reimbursement may be required to cover expenses of investigations and not just examinations. Without this amendment the administrator may lack authority to seek reimbursement for investigations, and reimbursement is limited to issuers, agents and broker-dealers.

Subsections (b), (c) and (d) are amended to cover investigations and to include IARs, FCAs, and SIAs. Without this amendment we would lack authority to adopt investigation fees and seek reimbursement from IARs, FCAs and SIAs.

#### **Section 27**

##### **Section 45.55.925**

Subsection (a) is amended to add notice filings for FCAs and FCSs as excluded from violations that are covered under the criminal penalties section of the Act. Notice filers are subject to the anti-fraud provisions of the Act, but failure to properly file a notice does not constitute a willful violation subject to this section. Without this amendment the Act would not comply with NSMIA which only provides authority to require a notice, collect fees, and administer the anti-fraud provisions of state law.

#### **Section 28**

##### **Section 45.55.930**

Subsection (a) is amended to change the interest rate for rescission offers from 6% to the stated rate of the security if it had a stated, fixed rate or 8% whichever is less. The spelling of "per cent" is changed to "percent" and "the seller" is corrected to read "the buyer" in the last line of the section. We believe that the stated rate of 6% is not sufficient to deter potential violators of the Act and 8% is more in line with modern rates. The rates in this section have not been changed for many years. On the other hand, we believe that the penalty should not necessarily result in an increased benefit to the buyer if the stated rate of the security was less than 8%. Clearly, the last line should read "or for damages if the buyer no longer owns the security" and not the seller. The seller no longer owned it as soon as the seller sold it to the buyer.

Subsection (a)(1) is amended to make it clear that this section does not cover FCSs since the violations cited that cause a state civil liability to rise are violations related to registration. Failure to notice an FCS does not give rise to civil liability. Without this amendment investors may believe the civil liability section of the Act is available to them when they invest in FCSs.

Subsection (b) is amended to change the interest rate associated with damages for the same reasons as discussed in Subsection (a) above.

Subsection (f) is amended to allow more time to bring suit when the violation alleged is that of misrepresentation or fraud. The nature of these violations is such that their existence may not become clear until after the time for filing suit has passed. This amendment will allow a victim to bring suit after three years after the contract of sale as long as the suit is filed within two years after the violation was or should have been discovered.

Subsection (f)(1) is amended to change the interest rate as described and discussed in Subsection (a) above. And subsection (f)(2) is amended to improve readability. Without the amendment to (f)(1) the rates could differ from that in (a) if it is changed there or it would remain at 6%.

New subsection (g) is added to allow a buyer to sue if the buyer accepted a rescission offer pursuant to subsection (a) and has not been paid. Current language only describes the making of the offer and stops a suit once the offer is made (see (f)(1)), but does not state clearly the rights of the buyer should the payment not be received. Without this amendment buyers may be forced to have to deal with a new, separate issue of what is timely payment of a rescission.

New subsection (h) is added to make it clear to those reading AS 45.55.930 that a rescission offer is an offer of a security subject to registration, unless exempt from registration. The new exemption at AS 45.55.900(b)(19), described above, provides the exemption for the transaction described in this subsection. Without this subsection sellers offering rescission may not be aware that the rescission must be registered or exempt. It would be ironic if they violate the Act by issuing a nonregistered security while making a rescission to a buyer for selling a nonregistered security.

Subsection (k) (old (i)) is amended to change the reference from AS 45.55.040(f) to (h) to reflect amendments in that section. Without this amendment the reference will not be correct.

#### **Section 29**

##### **Section 45.55.935**

Subsection (a)(1) is amended to clarify that orders dealing with proxy rule violations are covered by this section. Current language only refers to issuers and sellers of securities, but hearings are also available to respondents involved in proxy rule violations. Without this amendment it is not clear that persons involved in proxy rule orders have a right to a hearing.

Subsection (a)(2) is amended to include IARs as well as agents. Without this amendment there would be no requirement to notify the employing FCA or SIA as there is for agents of a broker-dealer.

#### **Section 30**

##### **Section 45.55.950**

The title is amended to add policies.

Subsection (a) is amended to add the ability to adopt policies related to registration statements, appellations, reports and, with this amendment, notice filings. Generally, policies are adopted by NASAA and it may be appropriate to adopt them to promote uniformity in dealing with specific matters. Without this amendment, the administrator is limited in the ability to promote uniformity by adopting NASAA policies and there would be no reference to notice filings as required by NSMIA.

Subsection (b) is amended to add policy and allow the administrator to waive regulations and policies, again, for the purpose of promoting uniformity, which is a purpose of the chapter. Language is also added to expand the cooperation the administrator can provide to promote uniformity and includes cooperating with self regulatory organizations such as

stock exchanges, etc. Finally, the uniformity policy statement of the chapter is expanded to include uniformity in examination and processing of registrations and, with this amendment, notice filings, and explicitly recognizes the benefit of coordinated securities examinations with other states. Without these amendments the policy statement to promote uniformity would be much weaker.

Subsection (c) is amended to limit its applicability to financial statements that are required to be filed since NSMIA limits the abilities of the states to establish rules for broker-dealers and SIAs and FCAs. Without this amendment this section would not comply with NSMIA.

Subsection (d) is amended to include policies so that persons may rely on them without fear of liability should they be later amended or rescinded.

### **Section 31**

#### **Section 45.55.970(b)**

Subsection (b) is amended to require that a register of notice filings be maintained as it is for registrations. Without this amendment there would be no requirement for the Division to keep a record of notice filings.

### **Section 32**

#### **Section 45.55.970(c)**

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

### **Section 33**

#### **Section 45.55.970(e)**

Subsection (e) is amended to clarify that the administrator may require a fee to be submitted along with requests for interpretative opinions. Without this amendment it might be argued that the administrator lacks authority to charge a fee for such requests.

### **Section 34**

#### **Section 45.55.980(a)**

Subsection (a) is amended to add the new sections on fraudulent, dishonest and unethical business practices of broker-dealers and agents (45.55.025-028); limited registration of Canadian broker-dealers and agents (45.55.035); and federal covered securities (45.55.075) to cover those who sell or offer to sell. Without this amendment there would not be a tie to the anti-fraud sections in dealing with FCSs and US and Canadian broker-dealers and agents when they sell or offer to sell.

### **Section 35**

#### **Section 45.55.980(b)**

Subsection (b) is amended to add 45.05.025-028 and 45.55.035 as described in (a) above to cover those who buy or offer to buy. Without this amendment there would not be a tie to the anti-fraud sections in dealing with US and Canadian broker-dealers and agents when they buy or offer to buy.

### **Section 36**

#### **Section 45.55.980(f)**

Subsection (f) is amended to include unethical business practices of SIAs, IARs, and FCAs (45.55.023) and the notice filing requirements for FCAs (45.55.030(i) and 45.55.040(c)) and to include SIAs, IARs, and FCAs. Without this amendment, anti-fraud provisions of the Act would not be tied to SIAs, FCAs and IARs.

### **Section 37**

#### **Section 45.55.980(g)**

Subsection (g) is amended to include notice filings. Without this amendment we lack authority to require consent to service of process of notice filers.

### **Section 38**

#### **Section 45.55.990**

Subsection (2) is amended to add to those excluded from the definition of agent. Currently persons who represent issuers in effecting transactions covered by the exemptions at AS 45.55.900(a)(1)-(5), and (b) are excluded from the definition of agent. This amendment includes in that exclusion all of the exemptions under AS 45.55.900(a). Those exemptions do not exempt the person from the anti-fraud provisions of the Act. There is little benefit to be gained from requiring registration of an agent when we are not requiring registration of the transaction or security. The amendment also excludes those who represent issuers in effecting transactions in specified FCSs (sales to qualified buyers and Regulation D 506 offerings). Finally, the amendment exempts from the definition the agent of a broker-dealer relying on certain provisions of NSMIA in the referenced federal act. Without these amendments the definition would conflict with NSMIA which places certain limits on state's abilities to regulate FCSs.

New subsection (3) is added to refer to a federal law mentioned in the Act.

New subsection (4)(D) (old (3)(D)) is amended to make reference to a new definition of "place of business" to add consistency for broker-dealers and SIAs, FCAs, and IARs.

New subsection (4)(E) (old(3)(E)) is amended to make reference to a new definition of "place of business," and to base the de minimis exclusion on unsolicited orders, providing a definition of unsolicited orders. Current language limits the broker-dealer to directing no more than 15 offers to sell or buy in a 12 month period. This is almost impossible for us or the industry to measure. The amendment allows a broker-dealer to effect up to 15 unsolicited orders and prohibits any solicited offers. That is something we and the industry can measure. Without this amendment the de minimis exclusion from the definition is not effective.

New subsection (5) is added to define an FCA. Without this subsection the Act would lack a definition of FCAs and not comply with NSMIA.

New subsection (6) is added to define an FCS as required by NSMIA. Without this subsection, the Act would lack a definition of FCS and not comply with NSMIA.

New subsection (7) is added to refer to a federal law mentioned in the Act.

New subsection (8) is old (4).

New subsection (9) is old (5).

New subsection (10) is added to refer to a federal law mentioned in the Act.

New subsection (11) is added to refer to a federal law mentioned in the Act.

New subsection (12)(A)-(E) is added to define an IAR which was made necessary by NSMIA. The definition is largely tied to that adopted by the US Securities and Exchange Commission as provided by NSMIA to minimize conflicts between the Act and SEC rules. Without this subsection the Act would lack a definition of IARs and not comply with NSMIA.

New subsection (13) is added to refer to a federal law mentioned in the Act.

New subsection (14) is old (7).

New subsection (15) defines NASDAQ.

New subsection (16) is added to refer to a federal law mentioned in the Act.

New subsection (17) is old (8).

New subsection (18) (old (9)) is amended to add new entities such as limited liability companies and limited liability partnerships.

New subsection (19) is added to define place of business which becomes most important in regulating SIAs and IARs. This definition is based on language used by the SEC in defining a place of business. Without a definition of a place of business we could not determine when an IAR of an FCA should be registered in this State.

New subsection (20) is added to define the principal place of business of an SIA, FCA, and IAR. This definition is based on language used by the SEC in defining a principal place of business. Without a definition of a principal place of business we could not determine the jurisdiction which sets financial and records requirements for SIAs.

New subsection (21) is added to refer to a federal law mentioned in the Act.

New subsection (22) is old (10).

New subsection (23) is added to refer to a federal law mentioned in the Act.

New subsection (24) is added to refer to a federal law mentioned in the Act.

New subsection (25) (old (12)) adds clarifying language to limited liability company (LLC) interests under AS 10.50. There appears to be an arguable conflict between AS 45.55.990(25) and AS 45.08.103(c) which limits interests in limited liability companies to being securities only under certain circumstances such as trading on an exchange or trading in the securities market. Our position is that LLC interests sold to the public are trading in the securities market and therefore are securities and are covered under AS 45.55.990(25). The amendment would clarify that. Without this amendment there may be some confusion and conflict over whether LLC interests must be registered or exempted under the Act.

New subsection (26) is old (13).

New subsection (27) (old (6)) is amended to cover the new category of SIAs created by NSMIA. Language is added to clarify that financial planners and others who provide investment advisory services for compensation must register as SIAs. Without this amendment we would lack a definition of a state investment adviser, and others offering such services would lack the clarity provided by the amendment.

New subsection (27)(A) (old (6)(A)) is amended to exclude from the definition of SIA the newly created IAR.

New subsection (27)(B) (old (6)(B)) is amended to add bank holding companies to banks as excluded from the definition of SIA.

New subsection (27)(D) (old (6)(C)) is amended to exclude agents as well as broker-dealers who meet the criteria of the subsection.

New subsection (27)(E) (old (6)(D)) is amended to expand the list of covered publications and provide for electronic delivery.

New subsection (27)(F) (old (6)(E)) is repealed and reenacted to add FCAs to the list of those excluded from the definition of SIAs.

(Old subsection (6)(F) is repealed because that language is now picked up in amended AS 45.55.030(d)(2). It was decided to treat these circumstances as an exclusion from registration rather than as an exclusion from the definition of an SIA.)

New subsection (27)(G) is added to exclude persons who provide services for family members and not to the general public. Without this amendment such persons would have to register as an SIA.

### **Section 39**

Short title of the chapter is the Alaska Securities Act.

### **Section 40**

Regulations may be adopted to take effect January 1, 1999.

**Section 41**

Section 40 takes effect immediately.

**Section 42**

Except as provided in Section 41, this Act takes effect January 1, 1999.

# ICAA

1998 JAN 3 09 09 AM  
January 2, 1998

*By Facsimile and U.S. Mail*

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

Re: Draft Legislation to Amend Alaska Securities Act

Dear Mr. Kirkpatrick:

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

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

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

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

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

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

Sincerely,

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

Karen L. Barr  
General Counsel



INVESTMENT COMPANY INSTITUTE

Jan 7 1998  
January 5, 1998

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

Re: Proposed Securities Legislation

Dear Director Kirkpatrick:

The Investment Company Institute<sup>1</sup> is writing to you to express our support for the amendments recently proposed by the Department of Commerce & Economic Development to the Alaska Securities Act. In particular, these amendments will faithfully and comprehensively implement the provisions of the National Securities Markets Improvements Act of 1996 ("NSMIA"), which effected sweeping reforms of the nation's federal securities acts. We are most supportive of the legislative enactment of the amendments proposed by the Department and stand ready to assist the Department in this process.

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

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

Sincerely,

Tamara K. Reed  
Associate Counsel

---

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

LAW OFFICES OF  
**DAVID G. SHAFTEL**  
A PROFESSIONAL CORPORATION  
BANK OF AMERICA CENTER  
550 WEST SEVENTH AVE., SUITE 705  
ANCHORAGE, ALASKA 99501

(907) 278-6015  
FAX (907) 278-6015

**FAX TRANSMITTAL**

TO: Terry Elder  
Division of Securities, State of Alaska

FAX NO.: (907) 465-2521

FROM: David G. Shaftel

DATE: April 23, 1998

SENDING FAX: (907) 278-6015

NUMBER OF PAGES (INCLUDING THIS PAGE): 2

RE: Amendment to House Bill 486

MESSAGE: Terry, attached is the exemption which our estate planning group discussed with you on April 23, 1998. Please call Bob Manley or me if you have any questions or need any additional input. Bob's number is 263-8251, my number is 276-6015

Thank you very much for your consideration of this amendment. As I discussed, it is quite important to professionals working in the estate planning area in Alaska.

David G. Shaftel

-----  
SHOULD YOU FAIL TO RECEIVE THE NUMBER OF PAGES INDICATED ABOVE,  
PLEASE CALL US IMMEDIATELY AT (907) 276-6015 AND ASK FOR SHARON

IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, OR THE EMPLOYEE OR AGENT RESPONSIBLE TO DELIVER IT TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR OR ARE NOT SURE WHETHER IT IS PRIVILEGED, PLEASE NOTIFY US BY COLLECT TELEPHONE CALL, AND RETURN THE ORIGINAL MESSAGE TO US AT THE ABOVE ADDRESS VIA THE U.S. POSTAL SERVICE, AT OUR EXPENSE.

**AMENDMENT TO HOUSE BILL 486**

Add a new subsection to A.S. 45.55.900(b), as follows:

(#) a transaction involving only family members who are related within the fourth degree of affinity or consanguinity (including adoption).

# HOMPESCH & ASSOCIATES

## ATTORNEYS AT LAW

A PROFESSIONAL CORPORATION  
119 N. CUSHMAN STREET, SUITE 400  
FAIRBANKS, ALASKA 99701-2879

517 NORTHERN LIGHTS BLVD.  
ANCHORAGE, ALASKA 99503

SHELLEY D. EDENAL  
SUSAN L. EVANS  
RICHARD W. HOMPESCH II  
(FAIRBANKS) TELEPHONE  
(907) 452-1700  
FACSIMILE  
(907) 456-5693  
(ANCHORAGE) TELEPHONE  
(907) 277-1701  
FACSIMILE  
(907) 278-8603

PROFESSIONAL STAFF  
BARBARA CORY HOMPESCH  
ACCREDITED TAX ADVISOR  
ENROLLED AGENT (IRS)  
CINDY L. VIOLETTE  
CERTIFIED LEGAL ASSISTANT  
Email hompesch@polamet.com

April 23, 1998

VIA FAX (907) 465-4588

Representative Joe Ryan  
Alaska State Legislature  
State Capitol (MS 3100)  
Juneau, AK 99801-1182

Re: House Bill 486 / Securities Law

Dear Representative Ryan:

You asked if HB 486 in its current form resolves the securities bottleneck upon formation of Alaska limited liability companies and limited partnerships. HB 486 does not eliminate the problem. Section 47 of HB 486 should be amended (AS 45.55.900(b)(5)(C); lines 4 through 12 on page 44). Proposed language is attached.

HB 486 adds new AS 45.55.900(b)(5)(C), but this provision has three defects. There are three problems. First, the exemption applies for sales made to 10 or fewer persons in this state. There is no reason why an exemption should apply when sales are made in Alaska, but should not apply when sales are made outside of Alaska. Any sales made outside of Alaska are subject to regulation by federal and other state law. Federal and other state law is sufficient to regulate sales outside of Alaska without additional regulation from Alaska.

Second, HB 486's version of AS 45.55.900(b)(5)(C)(i) does not apply to limited partnerships.

Third, HB 486's version of AS 45.55.900(b)(5)(C)(i) would allow the Division to "gut" the benefit of the new law by narrowly defining "promotor" in such a way that few transactions would qualify for this exemption. Alaska would not benefit if HB

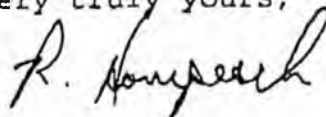
Letter to Rep. Joe Ryan  
04/23/98  
page 2

486 was passed and then the Division "took-away" the benefits by administrative order.

I understand that Bob Manley and Dave Shaftel spoke with Terry Elder this morning and that Mr. Elder agreed to an amendment that would allow an exemption for family members. A copy of this amendment is attached along with a cover sheet from Dave Shaftel's office. Unfortunately the amendment does not include a good definition of "family members." It is unclear whether step-parents would be considered to be "family members."

If you have any questions, please call me.

Very truly yours,



Richard W. Hompesch II

pc: R. Manley (w/encls)  
J. Blattmachr (w/encls)

Section 47. AS 45.55.900(b) is amended to read:

(5) sales by an issuer

(C) to 10 or fewer persons who are to receive the initial issue of shares of a nonpublicly traded corporation, limited liability company or limited partnership if a legend is placed on the certificate or other document evidencing ownership of the security, stating that the security is not registered under this chapter and cannot be resold without registration or exemption from it.

**LEGAL SERVICES**

**DIVISION OF LEGAL AND RESEARCH SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA**

*received 4/2/98  
10:30 AM sh*

(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101

130 Seward Street, Suite 409  
Juneau, Alaska 99801-2105

**MEMORANDUM**

April 1, 1998

**SUBJECT:** Securities bill (Work Order No. 20-LS1426\A)  
**TO:** Representative Norman Rokeberg  
Attn: Shirley Armstrong  
**FROM:** *TB*  
Theresa Bannister  
Legislative Counsel

This memo accompanies a draft of the bill described above.

1. Canadian regulation. The registration of Canadian broker-dealers and agents in sec. 45.55.035 may raise an equal protection issue due to the fact that Canadian broker-dealers and agents are receiving preferential treatment over other alien broker-dealers and agents. There probably is sufficient state justification for doing this. However, I have not researched the issue.
2. Delegation of authority. The draft occasionally incorporates future versions of federal laws. This incorporation raises an issue under the state constitution of whether the legislature is unlawfully delegating its legislative authority to the federal government. I have not researched this issue.

If I may be of further assistance, please advise.

TLB:glc:jr  
98-177.glc

Enclosure

*4/2/98*  
*Now,*  
*This is the*  
*Commerce Securities*  
*Bill*  
*sh -*

HOUSE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - SECOND SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE BY REQUEST

Introduced:  
Referred:

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the Alaska Securities Act; and providing for an effective  
2 date."

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

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

5 (1) "license" [MEANS,]

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

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

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

14 (iii) teacher certificate under AS 14.20;

- 1 (iv) authorization under AS 18.08 to perform emergency  
2 medical services;
- 3 (v) asbestos worker certification under AS 18.31;  
4 (vi) boiler operator's license under AS 18.60.395;  
5 (vii) certificate of fitness under AS 18.62;  
6 (viii) hazardous painting certification under AS 18.63;  
7 (ix) certification as a correctional, probation, or parole  
8 officer under AS 18.65.245;
- 9 (x) security guard license under AS 18.65.400 -  
10 18.65.490;
- 11 (xi) license relating to insurance under AS 21.27;  
12 (xii) employment agency permit under AS 23.15.330 -  
13 23.15.520;
- 14 (xiii) registration as a broker-dealer, an agent, a state  
15 [OR] investment adviser, or an investment adviser representative of  
16 a state investment adviser under AS 45.55.030;
- 17 (xiv) certification as a pesticide applicator under  
18 AS 46.03.320;
- 19 (xv) certification as a storage tank worker or contractor  
20 under AS 46.03.375;
- 21 (xvi) certification as a water and wastewater works  
22 operator under AS 46.30; and
- 23 (B) does not include
- 24 (i) a commercial fishing license under AS 16.05.480,  
25 including a crewmember fishing license;
- 26 (ii) a vessel license issued under AS 16.05.490 or  
27 16.05.530;
- 28 (iii) a license issued under AS 47.35;  
29 (iv) a business license issued under AS 43.70;  
30 (v) an entry permit or interim-use permit issued under  
31 AS 16.43; or

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

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

3 (2) "license"

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

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

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

12 (iii) teacher certificate under AS 14.20;

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

15 (v) asbestos worker certification under AS 18.31;

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

17 (vii) certificate of fitness under AS 18.62;

18 (viii) hazardous painting certification under AS 18.63;

19 (ix) security guard license under AS 18.65.400 -  
20 18.65.490;

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

22 (xi) employment agency permit under AS 23.15.330 -  
23 23.15.520;

24 (xii) registration as a broker-dealer, an agent, a state  
25 [OR] investment adviser, or an investment adviser representative of  
26 a state investment adviser under AS 45.55.030;

27 (xiii) certification as a pesticide applicator under  
28 AS 46.03.320;

29 (xiv) certification as a storage tank worker or contractor  
30 under AS 46.03.375;

31 (xv) certification as a water and wastewater works

1 operator under AS 46.30; and

2 (xvi) commercial crewmember fishing license under  
3 AS 16.05.480 other than an entry permit or interim-use permit under  
4 AS 16.43;

5 (B) does not include

6 (i) a vessel license issued under AS 16.05.490 or  
7 16.05.530;

8 (ii) a license issued under AS 47.35;

9 (iii) a business license issued under AS 43.70;

10 (iv) an entry permit or interim-use permit issued under  
11 AS 16.43; or

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

13 \* Sec. 3. AS 25.27.244(s)(2), as repealed and reenacted under sec. 148(c), ch. 87, SLA  
14 1997, is amended to read:

15 (2) "license"

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

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

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

24 (iii) teacher certificate under AS 14.20;

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

27 (v) asbestos worker certification under AS 18.31;

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

29 (vii) certificate of fitness under AS 18.62;

30 (viii) hazardous painting certification under AS 18.63;

31 (ix) security guard license under AS 18.65.400 -

- 1 18.65.490;
- 2 (x) license relating to insurance under AS 21.27;
- 3 (xi) employment agency permit under AS 23.15.330 -
- 4 23.15.520;
- 5 (xii) registration as a broker-dealer, an agent, a state
- 6 [OR] investment adviser, or an investment adviser representative
- 7 under AS 45.55.030;
- 8 (xiii) certification as a pesticide applicator under
- 9 AS 46.03.320;
- 10 (xiv) certification as a storage tank worker or contractor
- 11 under AS 46.03.375; and
- 12 (xv) certification as a water and wastewater works
- 13 operator under AS 46.30;
- 14 (B) does not include
- 15 (i) a commercial fishing license under AS 16.05.480,
- 16 including a crewmember fishing license;
- 17 (ii) a vessel license issued under AS 16.05.490 or
- 18 16.05.530;
- 19 (iii) a license issued under AS 47.35;
- 20 (iv) a business license issued under AS 43.70;
- 21 (v) an entry permit or interim-use permit issued under
- 22 AS 16.43; or
- 23 (vi) a driver's license issued under AS 28.15;

24 \* Sec. 4. AS 37.23.050 is amended to read:

25 **Sec. 37.23.050. Investment management.** The public entities participating

26 in an investment pool under this chapter shall provide for management of investments

27 in the pool by contracting for investment management and related services with

28 (1) a securities broker-dealer registered under AS 45.55.030 and under

29 15 U.S.C. 78o (Securities Exchange Act of 1934);

30 (2) a state [AN] investment adviser registered under AS 45.55.030 and

31 under 15 U.S.C. 80b-3 [80b3] (Investment Advisers Act of 1940) or a federal covered

1 adviser that has made a notice filing under AS 45.55.040(h):

2 (3) the Department of Revenue; or

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

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

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

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

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

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

18 (2) [AN ASSIGNMENT OF THE CONTRACT MAY NOT BE MADE  
19 BY THE INVESTMENT ADVISER WITHOUT THE CONSENT OF THE OTHER  
20 PARTY TO THE CONTRACT; AND

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

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

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

28 The administrator, on request, may waive the provisions of (b)(1) of this section  
29 for investment advisory contracts that conform to the limitations of 15 U.S.C.  
30 80b-5 (Investment Advisers Act of 1940).

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

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

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

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

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

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

20 (1) recommending to a client to whom investment supervisory,  
21 management, or consulting services are provided, the purchase, sale, or exchange of  
22 a security without reasonable grounds to believe that the recommendation is suitable  
23 for the client on the basis of information furnished by the client after reasonable  
24 inquiry concerning the client's investment objectives, financial situation and needs, and  
25 other information known to the state investment adviser, investment adviser  
26 representative, or federal covered adviser;

27 (2) exercising discretionary power in placing an order for the purchase  
28 or sale of securities for a client without obtaining written discretionary authority from  
29 the client within 10 business days after the date of the first transaction placed under  
30 oral discretionary authority unless the discretionary power relates solely to the price  
31 at which or the time when an order involving a definite amount of a specified security

1 will be executed, or both;

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

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

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

12 (6) borrowing money or securities from a client unless the client is a  
13 financial institution engaged in the business of loaning money or the client is an  
14 affiliate of the state investment adviser or federal covered adviser borrowing the money  
15 or securities;

16 (7) loaning money to a client unless the state investment adviser or  
17 federal covered adviser loaning the money is a financial institution engaged in the  
18 business of loaning money or the client is an affiliate of the state investment adviser  
19 or federal covered adviser;

20 (8) misrepresenting to an advisory client or prospective advisory client  
21 the qualifications of the state investment adviser, an employee of the state investment  
22 adviser, the investment adviser representative, the federal covered adviser, or an  
23 employee of the federal covered adviser; misrepresenting the nature of the advisory  
24 services being offered or fees to be charged for a service; or omitting to state a  
25 material fact necessary to make the statements made regarding qualifications, services,  
26 or fees not misleading in light of the circumstances under which the statements are  
27 made;

28 (9) providing a report or recommendation to an advisory client prepared  
29 by someone other than the state investment adviser, the investment adviser  
30 representative, or the federal covered adviser without disclosing that the report or  
31 recommendation was prepared by someone else, except that this prohibition does not

1 apply to a situation where the state investment adviser, investment adviser  
2 representative, or federal covered adviser uses published research reports or statistical  
3 analyses to render advice or where a state investment adviser, an investment adviser  
4 representative, or a federal covered adviser orders the research reports or statistical  
5 analyses in the normal course of providing service;

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

7 (11) failing to disclose to clients in writing before any advice is  
8 rendered a material conflict of interest relating to the state investment adviser, federal  
9 covered adviser, an employee of the state investment adviser or federal covered  
10 adviser, or the investment adviser representative that could reasonably be expected to  
11 impair the rendering of unbiased and objective advice, including

12 (A) compensation arrangements connected with advisory  
13 services to a client if the arrangements are in addition to compensation from  
14 the client for those services; and

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

19 (12) guaranteeing a client that a specific investment result will be  
20 achieved with the advice given;

21 (13) publishing, circulating, or distributing an advertisement that does  
22 not comply with 17 C.F.R. 275.206(4) - 1 adopted under 15 U.S.C. 80b-1 - 80b-21  
23 (Investment Advisers Act of 1940);

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

26 (15) taking action, directly or indirectly, with respect to securities or  
27 funds in which a client has a beneficial interest if the state investment adviser or  
28 federal covered adviser has custody or possession of the securities or funds and the  
29 adviser's action does not comply with the requirements of 17 C.F.R. 275.206(4) - 2  
30 adopted under 15 U.S.C. 80b-1 - 80b-2 (Investment Advisers Act of 1940);

31 (16) entering into, extending, or renewing an investment advisory

1 contract unless the contract is in writing and discloses in substance

2 (A) the services to be provided;

3 (B) the term of the contract;

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

7 (D) whether the contract grants discretionary power to the  
8 adviser; and

9 (E) that an assignment of the contract may not be made by a  
10 state investment adviser without the consent of the other party to the contract;  
11 in this subparagraph, "assignment" includes a direct or indirect transfer or  
12 hypothecation of an investment advisory contract by the assignor or of a  
13 controlling block of the assignor's outstanding voting securities by a security  
14 holder of the assignor, but, if the adviser is a partnership, an assignment of an  
15 investment advisory contract is not considered to result from the death or  
16 withdrawal of a minority of the partners of the adviser having only a minority  
17 interest in the business of the adviser, or from the admission to the adviser of  
18 one or more partners who, after admission, will be only a minority of the  
19 partners and will have only a minority interest in the business;

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

23 (18) entering into, extending, or renewing an advisory contract that  
24 would violate 15 U.S.C. 80b-5 (Investment Advisers Act of 1940); this paragraph  
25 applies to all advisers registered or required to be registered under this chapter,  
26 notwithstanding whether the adviser would be exempt from federal registration under  
27 15 U.S.C. 80b-3 (Investment Advisers Act of 1940);

28 (19) including in an advisory contract a condition, stipulation, or  
29 provision binding a person to waive compliance with a provision of this chapter or  
30 15 U.S.C. 80b-1 - 80b-21 (Investment Advisers Act of 1940); or engaging in a practice  
31 that would violate 15 U.S.C. 80b-15 (Investment Advisers Act of 1940);

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

6 (21) engaging in conduct or an act, indirectly, through or by another  
7 person, that would be unlawful for the person to do directly under this chapter or a  
8 regulation adopted under his chapter;

9 (22) acting as principal for the person's own account, knowingly selling  
10 a security to or purchasing a security from a client, acting as broker for a person other  
11 than the client, or knowingly effecting a sale or purchase of a security for the account  
12 of the client without disclosing to the client in writing before the completion of the  
13 transaction the capacity in which the person is acting and without obtaining the written  
14 consent of the client to the transaction; the prohibitions in this paragraph do not apply  
15 to a transaction with a customer of a broker or dealer if the broker or dealer is not  
16 acting as a state investment adviser or federal covered adviser in relation to the  
17 transaction.

18 (b) The conduct prohibited by (a) of this section is not exclusive. Engaging  
19 in other similar conduct, including nondisclosure, incomplete disclosure, or a deceptive  
20 practice, is considered an unethical business practice. With respect to a state  
21 investment adviser and a registered investment adviser representative of either a state  
22 investment adviser or a federal covered adviser, the federal statutory and regulatory  
23 provisions referred to in this section apply to the state investment adviser and the  
24 registered investment adviser representative regardless of whether the federal provision  
25 limits its application to state investment advisers or federal covered advisors subject  
26 to federal registration. With respect to a federal covered adviser, the provisions of this  
27 section apply only to the extent permitted under P.L. 104 - 290, 101 Stat. 3416 - 3440  
28 (National Securities Markets Improvement Act of 1996) and only when the conduct  
29 proscribed involves fraud or deceit within the meaning of AS 45.55.010(a) and  
30 45.55.020(a).

31 **Sec. 45.55.025. Fraudulent, dishonest, and unethical business practices of**

1 **broker-dealers.** A broker-dealer shall observe high standards of commercial honor  
2 and just and equitable principles of trade in the conduct of its business. The acts and  
3 practices that are contrary to those standards and principles, that constitute dishonest  
4 or unethical practices in the securities business under AS 45.55.060(a), and that are  
5 grounds for imposition of administrative fines, censure, denial, suspension, revocation  
6 of a registration, or other appropriate disciplinary action include

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

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

13 (3) recommending to a customer the purchase, sale, or exchange of a  
14 security without reasonable grounds to believe that the transaction or recommendation  
15 is suitable for the customer based on reasonable inquiry concerning the customer's  
16 investment objectives, financial situation, and needs, and other relevant information  
17 known by the broker-dealer;

18 (4) executing a transaction on behalf of a customer without  
19 authorization to execute the transaction;

20 (5) exercising discretionary power in effecting a transaction for a  
21 customer's account without first obtaining written discretionary authority from the  
22 customer unless the discretionary power relates solely to the time or price for the  
23 execution of orders;

24 (6) executing a transaction in a margin account without securing from  
25 the customer a properly executed written margin agreement promptly after the initial  
26 transaction in the account;

27 (7) failing to segregate a customer's free securities or securities held in  
28 safekeeping;

29 (8) hypothecating a customer's securities without having a lien on the  
30 securities unless the broker-dealer receives from the customer a properly executed  
31 written consent promptly after the initial transaction, except as permitted by the rules

1 of the United States Securities and Exchange Commission;

2 (9) entering into a transaction with or for a customer at a price not  
3 reasonably related to the current market price of the securities or receiving an  
4 unreasonable commission or profit;

5 (10) failing to furnish to a customer purchasing securities in a  
6 registered offering a final or preliminary prospectus no later than the date of  
7 confirmation of the transaction and, if the prospectus is preliminary, failing to furnish  
8 a final prospectus within a reasonable time after the effective date of the offering;

9 (11) charging unreasonable or inequitable fees for services performed,  
10 including fees for miscellaneous services, such as the collection of money due for  
11 principal, dividends, or interest, the exchange or transfer of securities, appraisals,  
12 safekeeping, the custody of securities, and other services related to the broker-dealer's  
13 securities business;

14 (12) offering to buy from or sell to a person a security at a stated price  
15 unless the broker-dealer is prepared to purchase or sell at that price and under the  
16 conditions that are stated at the time of the offer to buy or sell;

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

21 (A) the broker-dealer;

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

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

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

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

31 (B) entering an order for the purchase or sale of security with

1 the knowledge that another order of substantially the same price for the sale of  
2 the same security has been or will be entered by or for the same or different  
3 parties for the purpose of creating a false or misleading appearance of active  
4 trading in the security or a false or misleading appearance with respect to the  
5 market for the security; nothing in this subparagraph prohibits a broker-dealer  
6 from entering a bona fide agency cross transaction for its customers as long as  
7 the cross transaction is noted on the confirmation and monthly account  
8 statements;

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

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

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

19 (A) report a transaction as a purchase or sale of a security  
20 unless the broker-dealer believes that the transaction described was a bona fide  
21 purchase or sale of the security; or

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

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

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

1 (B) using supplementary material in connection with the offer  
2 of a particular security if the information in the material is not consistent with  
3 or adequately supported by the prospectus or is not filed as part of the  
4 registration statement;

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

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

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

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

20 (21) being found by a court or an administrative proceeding of  
21 competent jurisdiction to have violated the anti-fraud or registration provisions of  
22 federal or any state's securities laws;

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

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

29 (24) failing to provide to a customer for a month in which activity has  
30 occurred in a customer's account, but in no event less than every three months, a  
31 statement of account that contains a value for each over-the-counter non-NASDAQ

1 equity security based on the closing market bid on a certain date; this paragraph  
2 applies only if the broker-dealer has been a market maker in that security at any time  
3 during the month in which the monthly or quarterly statement is issued;

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

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

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

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

15 **Sec. 45.55.027. Fraudulent, dishonest, and unethical business practices of**  
16 **agents.** An agent shall observe high standards of commercial honor and just and  
17 equitable principles of trade in the conduct of the agent's business. The acts and  
18 practices that are contrary to those standards and principles, that constitute dishonest  
19 or unethical practices in the securities business under AS 45.55.060(a), and that are  
20 grounds for imposition of administrative fines, censure, denial, suspension, revocation  
21 of a registration, or other appropriate disciplinary action include

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

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

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

30 (4) sharing directly or indirectly in profits and losses in the account of  
31 a customer without the written authorization of the customer and the broker-dealer that

1 the agent represents;

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

8 (6) failing to disclose to a customer or prospective customer at the time  
9 of the first contact with the customer or prospective customer the name of the principal  
10 if different from the name under which the agent is doing business;

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

13 (8) conducting business by telephone at unreasonable times.

14 **Sec. 45.55.028. Fraudulent, dishonest, and unethical business practices of**  
15 **broker-dealers and agents.** Acts and practices of broker-dealers or agents that are  
16 considered fraudulent or deceitful acts, practices, or courses of business under  
17 AS 45.55.010(a) include

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

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

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

30 (4) in connection with the solicitation of a sale or purchase of a  
31 security, engaging in a pattern or practice of making contradictory recommendations

1 to different investors with similar investment objectives for some to sell and others to  
2 purchase the same security, at or about the same time, when not justified by the  
3 particular circumstances of each investor;

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

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

10 (B) parking or withholding securities;

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

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

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

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

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

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

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

31 (B) the use of scripts designed to meet the customer's

- 1 objections;
- 2 (C) repeated phone calls;
- 3 (D) phone calls designed to entrap the customer;
- 4 (E) threatening tones on the telephone informing the customer
- 5 that there is little time within which to make a decision;
- 6 (8) failing to comply with a prospectus delivery requirement adopted
- 7 under federal law;
- 8 (9) making a false, misleading, deceptive, or exaggerated representation
- 9 or prediction in the solicitation or sale of a security, including a statement that
- 10 (A) the security will be resold or repurchased;
- 11 (B) the security will be listed or traded on an exchange or
- 12 established market;
- 13 (C) purchasing the security will result in an assured, immediate,
- 14 or extensive increase in value, future market price, or return on investment; or
- 15 (D) refers to the issuer's financial condition, anticipated
- 16 earnings, potential growth, or success;
- 17 (10) failing to disclose a dual agency capacity; or
- 18 (11) effecting a transaction on terms and conditions other than those
- 19 stated by the confirmation.

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

- 21 (c) A person may not transact business in this state as a state investment
- 22 adviser or an investment adviser representative unless
- 23 (1) the person is registered as required under this chapter; or
- 24 (2) the person does not have a place of business in this state and
- 25 (A) the person's only clients in this state are investment
- 26 companies as defined in 15 U.S.C. 80a-3 (Investment Company Act of 1940),
- 27 other state investment advisers, federal covered advisers, broker-dealers, banks,
- 28 trust companies, savings and loan associations, insurance companies, employee
- 29 benefit plans with assets of not less than \$1,000,000, governmental agencies or
- 30 instrumentalities whether acting for themselves or as trustees with investment
- 31 control, or other institutional investors that are designated by regulation or

1 order of the administrator; or

2 (B) during the preceding 12 months has not had more than five  
3 clients who are residents of this state other than those specified in (A) of this  
4 paragraph; in this subparagraph, the number of the person's clients shall be  
5 determined under 17 C.F.R. 275.203(b)(3)-1 and 17 C.F.R. 275.222-2.

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

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

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

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

14 (f) A person may not be registered concurrently as an agent of more than one  
15 broker-dealer or issuer. The administrator may waive this requirement if the  
16 administrator determines that it would not interfere with effective supervision of the  
17 agent by the broker-dealer or issuer and the waiver is in the public interest.

18 (g) A person who is registered or required to be registered as a state  
19 investment adviser under this chapter may not employ an investment adviser  
20 representative who provides advisory services in or emanating from this state unless  
21 the investment adviser representative is registered under this chapter or is exempt from  
22 registration, except that the registration of the investment adviser representative is not  
23 effective during any period when the representative is not employed by a state  
24 investment adviser registered under this chapter.

25 (h) A federal covered adviser who has filed notice under this chapter may not  
26 employ, supervise, or associate with an investment adviser representative having a  
27 place of business located in this state unless the investment adviser representative is  
28 registered under this chapter or is exempt from registration, except that the registration  
29 of the investment adviser representative is not effective during any period when the  
30 representative is not employed by a federal covered adviser.

31 (i) If an investment adviser representative terminates employment with a state

1 investment adviser or federal covered adviser, the state investment adviser or federal  
2 covered adviser shall promptly notify the administrator.

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

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

9 **Sec. 45.55.035. Limited registration of Canadian broker-dealers and**  
10 **agents.** (a) If a broker-dealer is registered under this section and its principal office  
11 is located in a province or territory of Canada that provides at least equivalent  
12 registration for a broker-dealer that is resident in the United States, a broker-dealer that  
13 is resident in Canada and does not have an office or other physical presence in this  
14 state may effect transactions in securities with or for or induce or attempt to induce  
15 the purchase or sale of a security by a person from Canada who is

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

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

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

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

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

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

30 (3) is registered as a broker or dealer in good standing in the  
31 jurisdiction from which the broker-dealer is effecting transactions into this state and

1 files evidence of the registration; and

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

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

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

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

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

13 (e) Registration under this section becomes effective on the 30th day after an  
14 application is filed unless it is made effective earlier by the administrator or a denial  
15 order is in effect and a proceeding is pending under AS 45.55.060.

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

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

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

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

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

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

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

29 (2) inform the administrator promptly of any criminal action taken  
30 against the agent or of any finding or sanction imposed on the broker-dealer or agent  
31 as a result of regulatory action, including that of a self-regulating organization,

1 involving fraud, theft, deceit, misrepresentation, or similar conduct.

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

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

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

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

12 (2) with or through

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

14 (B) other broker-dealers; or

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

20 (3) as otherwise permitted by this chapter.

21 (k) A Canadian broker-dealer or agent registered under this section and acting  
22 in accordance with the limitations in (j) of this section is exempt from all of the  
23 requirements of this chapter except the anti-fraud provisions under AS 45.55.010 and  
24 the requirements of this section. The registration of a Canadian broker-dealer or agent  
25 under this section may not be denied, suspended, or revoked except in accordance with  
26 the provisions of AS 45.55.060 for a breach of the anti-fraud provisions under  
27 AS 45.55.010 or the requirements of this section.

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

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

31 (a) A broker-dealer, agent, [OR] investment adviser representative, or state

1 investment adviser may obtain an initial or renewal registration by filing with the  
2 administrator or the administrator's designee an application together with a consent  
3 to service of process under AS 45.55.980(g). The application must [SHALL BE  
4 ACCOMPANIED BY THE FINGERPRINTS AND A PHOTOGRAPH OF THE  
5 APPLICANT AND MUST] contain whatever information the administrator by  
6 regulation may require [REQUIRES] concerning such matters as

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

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

9 (3) the qualifications and business history of the applicant; in the case  
10 of a broker-dealer or state investment adviser, the qualifications and business history  
11 of a partner, officer, or director, any [A] person occupying a similar status or  
12 performing similar functions, or any [A] person directly or indirectly controlling the  
13 broker-dealer or state investment adviser; [AND, IN THE CASE OF AN  
14 INVESTMENT ADVISER, THE QUALIFICATIONS AND BUSINESS HISTORY OF  
15 AN EMPLOYEE;]

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

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

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

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

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

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

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

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

8 (d) A registered broker-dealer, state investment adviser, or a federal covered  
9 adviser who has filed notice under this chapter may file an application for registration  
10 or notice filing, as applicable, of a successor for the unexpired portion of the year  
11 regardless of whether the successor is then in existence. A broker-dealer may file a  
12 request to transfer from a previous broker-dealer an agent's unexpired portion of the  
13 registration if the provisions of AS 45.55.030(b) have been met. A state investment  
14 adviser may file an application to transfer from a predecessor state investment adviser  
15 or federal covered adviser the investment adviser representative's unexpired portion  
16 of the registration. The filing fee for filing applications under this subsection shall be  
17 established by the department by regulation.

18 \* Sec. 18. AS 45.55.040(e) is repealed and reenacted to read:

19 (e) The administrator may by regulation or order require a minimum level of  
20 capitalization for registered broker-dealers, subject to the limitations of 15 U.S.C. 78o  
21 (Securities Exchange Act of 1934), and establish minimum financial requirements for  
22 state investment advisers, subject to the limitations of 15 U.S.C. 80b-18a (Investment  
23 Advisers Act of 1940). The financial requirements may differ for those state  
24 investment advisers who have discretionary authority over or maintain custody of  
25 clients' funds or securities and those who do not.

26 \* Sec. 19. AS 45.55.040(f) is repealed and reenacted to read:

27 (f) The administrator may by regulation or order require registered broker-  
28 dealers and agents to post a bond in an amount the administrator may prescribe subject  
29 to the limitations provided in 15 U.S.C. 78o (Securities Exchange Act of 1934). The  
30 administrator may determine the conditions of the bond. Any appropriate deposit of  
31 cash or securities shall be accepted in place of a required bond. A bond may not be

1 required of a registrant whose net capital exceeds the amounts required by the  
2 administrator. A bond must provide for suit on it by a person who has a cause of  
3 action under AS 45.55.930 and, if required by the administrator by regulation, by a  
4 person who has a cause of action not arising under this chapter. A bond must provide  
5 that a suit may not be maintained to enforce a liability on the bond unless brought  
6 within three years after the sale or other act on which it is based.

7 \* Sec. 20. AS 45.55.040(g) is amended to read:

8 (g) The administrator may permit initial and renewal registration and notice  
9 filings required for state investment advisers, federal covered advisers, investment  
10 adviser representatives, broker-dealers, and agents under this chapter to be filed  
11 with the United States Securities and Exchange Commission, the National Association  
12 of Securities Dealers, or other similar authority [AUTHORITIES]. The administrator  
13 may accept uniform securities examinations or other procedures designed to implement  
14 a uniform national securities regulatory system or facilitate common practices and  
15 procedures among the states, including participation in joint, coordinated securities  
16 examinations with other states.

17 \* Sec. 21. AS 45.55.040 is amended to adding new subsections to read:

18 (h) Except with respect to federal covered advisers whose only clients are  
19 those described in AS 45.55.030(c)(2), a federal covered adviser shall file with the  
20 administrator, before acting as a federal covered adviser in this state, those documents  
21 that have been filed with the United States Securities and Exchange Commission as  
22 the administrator, by regulation, by order, or otherwise, may require.

23 (i) The administrator shall by regulation or order specify procedures, fees, and  
24 an effective date for registrations, notice filings under this section, transfers of agents,  
25 and other registrations or notice filings allowed or required under this chapter.

26 (j) The administrator may by regulation or order require registered state  
27 investment advisers who have custody of or discretionary authority over clients' funds  
28 or securities to post a bond in an amount the administrator may establish subject to the  
29 limitations provided in 15 U.S.C. 80b-18a (Investment Advisers Act of 1940). The  
30 administrator may determine the conditions of the bond. Any appropriate deposit of  
31 cash or securities shall be accepted in place of a required bond. A bond may not be

1 required of a registrant whose minimum financial condition, which may be defined by  
2 regulation, or net capital exceeds the amounts required by the administrator. A bond  
3 must provide for suit on it by a person who has a cause of action under AS 45.55.930  
4 and, if required by the administrator by regulation, by a person who has a cause of  
5 action not arising under this chapter. A bond must provide that a suit may not be  
6 maintained to enforce a liability on the bond unless brought within three years after  
7 the sale or other act on which it is based.

8 \* Sec. 22. AS 45.55.050(a) is amended to read:

9 (a) Except as provided under 15 U.S.C. 78c (Securities Exchange Act of  
10 1934), a [EVERY] registered broker-dealer [AND INVESTMENT ADVISER] shall  
11 make and keep the accounts, correspondence, memoranda, papers, books, and other  
12 records that the administrator establishes [PRESCRIBES BY REGULATION]. All  
13 required records [SO REQUIRED] shall be preserved for three years unless the  
14 administrator by regulation prescribes otherwise [FOR PARTICULAR TYPES OF  
15 RECORDS].

16 \* Sec. 23. AS 45.55.050(b) is repealed and reenacted to read:

17 (b) Subject to 15 U.S.C. 78o (Securities Exchange Act of 1934), a registered  
18 broker-dealer shall file the financial reports the administrator requires.

19 \* Sec. 24. AS 45.55.050(c) is amended to read:

20 (c) If the information contained in a document filed with the administrator is  
21 or becomes inaccurate or incomplete in a material respect, the person who made the  
22 filing [REGISTRANT] shall promptly file a correcting amendment unless notification  
23 of the correction is given under AS 45.55.030(b). If the document is filed with  
24 respect to a federal covered adviser, the amendment shall be filed when it is  
25 required to be filed with the United States Securities and Exchange Commission  
26 unless notification of the correction is given under AS 45.55.030(b).

27 \* Sec. 25. AS 45.55.050(d) is amended to read:

28 (d) All the records referred to in [(a) OF] this section are subject at any time  
29 to reasonable periodic, special, or other examinations by representatives of the  
30 administrator, inside or outside this state, as the administrator considers necessary or  
31 appropriate in the public interest or for the protection of investors. For the purpose

1 of avoiding unnecessary duplication of examinations, the administrator, insofar as the  
2 administrator considers it practicable in administering this subsection, may cooperate  
3 with the securities administrators of other states, the United States Securities and  
4 Exchange Commission, and any national securities exchange or national securities  
5 association registered under 15 U.S.C. 78a - 78III ( [THE] Securities Exchange Act of  
6 1934).

7 \* Sec. 26. AS 45.55.050 is amended by adding a new subsections to read:

8 (e) Subject to 15 U.S.C. 80b-18a (Investment Advisers Act of 1940), an  
9 investment adviser representative or state investment adviser shall make and keep the  
10 accounts, correspondence, memoranda, papers, books, and other records that the  
11 administrator prescribes. All required records shall be preserved for three years unless  
12 the administrator by regulation prescribes otherwise.

13 (f) The administrator may by regulation or order require that certain  
14 information be furnished or disseminated by persons registered or required to be  
15 registered as state investment advisers as necessary or appropriate in the public interest  
16 or for the protection of investors and advisory clients. The administrator may  
17 determine that certain information may be used in whole or partial satisfaction of this  
18 requirement if the information complies with 15 U.S.C. 80b-1 - 80b-21 (Investment  
19 Advisers Act of 1940) and the rules adopted under that act.

20 (g) Subject to 15 U.S.C. 80b-18a (Investment Advisers Act of 1940), a state  
21 investment adviser shall file the financial reports the administrator prescribes.

22 (h) A state investment adviser that has its principal place of business in a state  
23 other than this state and the investment adviser representatives of that state investment  
24 adviser are exempt from the requirements of (e) of this section if the state investment  
25 adviser is registered as an investment adviser in the state where the state investment  
26 adviser has its principal place of business and is in compliance with that state's  
27 requirements relating to accounts and records.

28 (i) A broker-dealer and an agent of a broker-dealer shall file with the  
29 administrator only the financial reports or other information required to be filed with  
30 the United States Securities and Exchange Commission under 15 U.S.C. 78a - 78III  
31 (Securities Exchange Act of 1934).

1 (j) A state investment adviser that has its principal place of business in a state  
2 other than this state and the investment adviser representatives of that state investment  
3 adviser shall file with the administrator only the financial reports or other information  
4 required by the state in which the state investment adviser maintains its principal place  
5 of business if the state investment adviser is licensed in that state and is in compliance  
6 with that state's reporting requirements.

7 (k) A broker-dealer shall comply with the supervision requirements set out in  
8 Conduct Rule 3010 of the National Association of Securities Dealers, Inc.

9 \* Sec. 27. AS 45.55.060(a) is amended to read:

10 (a) The administrator may by order deny, suspend, or revoke a registration if  
11 the administrator finds that the order is in the public interest and that the applicant or  
12 registrant or, in the case of a broker-dealer or state investment adviser, a partner,  
13 officer, or director, a person occupying a similar status or performing similar functions,  
14 or a person directly or indirectly controlling the broker-dealer or state investment  
15 adviser

16 (1) has filed an application for registration that, as of its effective date,  
17 or as of a date after filing in the case of an order denying effectiveness, was  
18 incomplete in a material respect or contained a statement that was, in light of the  
19 circumstances under which it was made, false or misleading with respect to a material  
20 fact;

21 (2) has wilfully or repeatedly violated or [WILFULLY] failed to  
22 comply with a provision of this chapter or a regulation or order under this chapter;

23 (3) has been convicted, within the past 10 years, of a misdemeanor  
24 involving a security or an aspect of the securities business [,] or a felony; in this  
25 paragraph. "convicted" includes a finding of guilt based on a verdict, judgment,  
26 plea of guilty, or plea of nolo contendere, if the verdict, judgment, or plea has not  
27 been reversed, set aside, or withdrawn, regardless of whether sentence has been  
28 imposed;

29 (4) is permanently or temporarily enjoined by a court from engaging  
30 in or continuing [A] conduct or a practice involving an aspect of the securities  
31 business;

1 (5) is the subject of an order of the administrator denying, suspending,  
2 or revoking registration as a broker-dealer, agent, state [OR] investment adviser, or  
3 investment adviser representative;

4 (6) is the subject of an order entered within the past five years by the  
5 securities administrator of another state or by the United States Securities and  
6 Exchange Commission denying or revoking registration as a broker-dealer, agent, state  
7 [OR] investment adviser, investment adviser representative, or the substantial  
8 equivalent of those terms as defined in this chapter, or is the subject of an order of the  
9 United States Securities and Exchange Commission suspending or expelling the  
10 person from a national securities exchange or national securities association registered  
11 under 15 U.S.C. 78a - 78III ( [THE] Securities Exchange Act of 1934), or is the  
12 subject of a United States Post Office fraud order; but the administrator may not

13 (A) institute a revocation or suspension proceeding under this  
14 paragraph more than one year from the date of the order relied on; and

15 (B) enter an order under this paragraph on the basis of an order  
16 under another state act unless that order was based on facts that [WHICH]  
17 would currently constitute a ground for an order under this section;

18 (7) has engaged in dishonest or unethical practices or conduct in the  
19 securities or investment advisory business;

20 (8) is insolvent, [EITHER] in the sense that liabilities exceed assets,  
21 [OR IN THE SENSE] that the person cannot meet obligations as they mature, or that  
22 the person cannot continue in business safely for the customers of the applicant  
23 or registrant, [;] but the administrator may not enter an order against a broker-dealer  
24 or state investment adviser under this paragraph [CLAUSE] without a finding of  
25 insolvency as to the broker-dealer or state investment adviser; [OR]

26 (9) is not qualified on the basis of such factors as training, experience,  
27 and knowledge of the securities business, except as otherwise provided in (d) of this  
28 section;

29 (10) has failed to comply with the requirements of AS 45.55.050 to  
30 make, keep, or produce records required by the administrator, or to file financial  
31 reports or other information the administrator by regulation or order may

1        require; or

2                                (11) is a person whose license renewal is denied under AS 14.43.148

3        or whose license issuance or renewal is denied under AS 25.27.244.

4        \* Sec. 28. AS 45.55.060(b) is amended to read:

5                (b) The administrator may by order deny, suspend, or revoke any registration  
6                if the administrator finds that the order is in the public interest and that the applicant  
7                or registrant

8                                (1) has failed reasonably to supervise agents if the applicant or  
9                registrant is a broker-dealer, or has failed reasonably to supervise employees and  
10                investment adviser representatives if the applicant or registrant is a state [AN]  
11                investment adviser; or

12                                (2) has failed to pay the proper filing fee; but the administrator may  
13                enter only a denial order under this paragraph [CLAUSE], and the administrator shall  
14                vacate the order when the deficiency is corrected.

15        \* Sec. 29. AS 45.55.060(d) is amended to read:

16                (d) The following provisions govern the application of (a)(9) of this section:

17                                (1) the administrator may not enter an order against a broker-dealer on  
18                the basis of the lack of qualification of a person other than

19                                        (A) the broker-dealer if the broker-dealer is an individual; or

20                                        (B) an agent of the broker-dealer;

21                                (2) the administrator may not enter an order against a state [AN]  
22                investment adviser on the basis of the lack of qualification of a [ANY] person other  
23                than

24                                        (A) the state investment adviser if the state investment adviser  
25                is an individual; or

26                                        (B) an investment adviser representative [ANOTHER  
27                PERSON] who represents the state investment adviser in doing any of the acts  
28                that [WHICH] make the state investment adviser a state [AN] investment  
29                adviser;

30                                (3) the administrator may not enter an order solely on the basis of lack  
31                of experience if the applicant or registrant is qualified by training or knowledge or

1 both;

2 (4) the administrator shall consider that an agent who will work under  
3 the supervision of a registered broker-dealer need not have the same qualifications as  
4 a broker-dealer;

5 (5) the administrator shall consider that a state [AN] investment adviser  
6 is not necessarily qualified solely on the basis of experience as a broker-dealer or  
7 agent; if [WHEN] the administrator finds that an applicant for initial or renewal  
8 registration as a broker-dealer is not qualified as a state [AN] investment adviser, the  
9 administrator may by order condition the applicant's registration as a broker-dealer  
10 upon the applicant's not transacting business in this state as a state [AN] investment  
11 adviser;

12 (6) the administrator may by regulation provide for an examination,  
13 which may be written or oral or both, to be taken by any class of or all applicants, as  
14 well as persons who represent or will represent a state [AN] investment adviser in  
15 doing any of the acts that [WHICH] make the state investment adviser a state [AN]  
16 investment adviser, if [PROVIDED THAT] examinations required by this paragraph  
17 are not required of a registrant under this chapter who was doing business in this state  
18 and was a resident of this state on May 9, 1959.

19 \* Sec. 30. AS 45.55.060(f) is amended to read:

20 (f) If the administrator finds that a registrant or applicant for registration no  
21 longer exists or has ceased to do business as a broker-dealer, agent, state investment  
22 adviser, or investment adviser representative, or is subject to an adjudication of  
23 mental incompetence or to the control of a committee, conservator, or guardian, or  
24 cannot be located after reasonable search, the administrator may by order cancel the  
25 registration or application.

26 \* Sec. 31. AS 45.55.060(g) is amended to read:

27 (g) Withdrawal from registration as a broker-dealer, agent, state investment  
28 adviser, or investment adviser representative becomes effective 30 days after receipt  
29 of an application to withdraw or within a shorter period of time as the administrator  
30 may determine, unless a revocation or suspension proceeding is pending when the  
31 application is filed or a proceeding to revoke or suspend or to impose conditions upon

1 the withdrawal is instituted within 30 days after the application is filed. If a proceeding  
2 is pending or instituted, withdrawal becomes effective at the time and upon the  
3 conditions as the administrator by order determines. If a [NO] proceeding is not  
4 pending or instituted and withdrawal automatically becomes effective, the administrator  
5 may nevertheless institute a revocation or suspension proceeding under (a)(2) of this  
6 section within one year after withdrawal is effective and enter a revocation or  
7 suspension order as of the last date on which registration was effective.

8 \* Sec. 32. AS 45.55.070 is amended to read:

9 **Sec. 45.55.070. Registration requirement.** A person may not offer or sell a  
10 security in this state unless

11 (1) it is registered under this chapter; [OR]

12 (2) the security or transaction is exempted under AS 45.55.900; or

13 (3) it is a federal covered security.

14 \* Sec. 33. AS 45.55 is amended by adding a new section to read:

15 **Sec. 45.55.075. Federal covered securities.** (a) Unless otherwise exempt  
16 under AS 45.55.900, a security that ~~is~~ a federal covered security under 15 U.S.C.  
17 77r(b)(2), as amended (Securities Act of 1933), may only be offered for sale and sold  
18 into, from, or within the state upon the administrator's receipt of

19 (1) a copy of the registration statement filed by the issuer with the  
20 United States Securities and Exchange Commission, or in place of the registration  
21 statement, the Uniform Investment Company Notice Filing Form adopted by North  
22 American Securities Administrators Association, Inc., or a similar notice filing form;

23 (2) a consent to service of process signed by the issuer; and

24 (3) a notice filing fee as prescribed by the administrator for a notice  
25 filing under this section and, if necessary to compute the fee, a report of the value of  
26 the federal covered securities offered or sold in this state.

27 (b) A notice filing under this section may be renewed by filing, before the  
28 expiration of an effective notice filing, a renewal notice and filing fee as prescribed  
29 by the administrator, and, if necessary to compute the fee, a report of the value of the  
30 federal covered securities offered or sold in this state. A renewal notice filing is  
31 effective on the expiration date of the previous notice filing.

1 (c) A notice filing under this section may be amended as provided by the  
2 administrator by regulation or order. A notice filing may be terminated by an issuer  
3 upon providing the administrator with notice of the termination.

4 (d) With respect to a security that is a covered security under 15 U.S.C.  
5 77r(b)(4)(D), as amended (Securities Act of 1933), the administrator, by regulation or  
6 otherwise, may require the issuer to file a notice on United States Securities and  
7 Exchange Commission's Form D and a consent to service of process signed by the  
8 issuer no later than 15 days after the first sale of a covered security in this state and  
9 a fee established by the administrator for a notice filing under this section.

10 (e) The administrator, by regulation or order, may require the filing of any  
11 document filed with the United States Securities and Exchange Commission under 15  
12 U.S.C. 77a - 77bbbb, as amended (Securities Act of 1933), with respect to a covered  
13 security under 15 U.S.C. 77r(b)(3) or (4), as amended (Securities Act of 1933).

14 (f) The administrator may issue a stop order suspending the offer and sale of  
15 a federal covered security, except a federal covered security under 15 U.S.C. 77r(b)(1),  
16 as amended (Securities Act of 1933), if the administrator finds that

17 (1) the order is in the public interest; and

18 (2) there is a failure to comply with a condition established under this  
19 section.

20 (g) The administrator, by regulation or order, may waive any or all of the  
21 provisions of this section.

22 \* Sec. 34. AS 45.55.090(b) is amended to read:

23 (b) A registration statement under this section must contain the following  
24 information and be accompanied by the following documents in addition to the  
25 information specified in AS 45.55.110(c) and the consent to service of process required  
26 by AS 45.55.980(g):

27 (1) one copy of the latest form of prospectus filed under 15 U.S.C. 77a  
28 - 77bbbb ( [THE] Securities Act of 1933);

29 (2) if the administrator requires, copies of the articles of incorporation  
30 and bylaws, or their substantial equivalent, currently in effect; a copy of an agreement  
31 with or among underwriters; a copy of an indenture or other instrument governing the

1 issuance of the security to be registered; and a specimen or copy of the security;

2 (3) if the administrator requests, any other information, or copies of any  
3 other documents, filed under 15 U.S.C. 77a - 77bbbb ( [THE] Securities Act of 1933);  
4 and

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

10 \* Sec. 35. AS 45.55.110(a) is amended to read:

11 (a) A registration statement or a notice filing under AS 45.55.075 may be  
12 filed by the issuer, another person on whose behalf the offering is to be made, or a  
13 registered broker-dealer.

14 \* Sec. 36. AS 45.55.110(b) is amended to read:

15 (b) A [EVERY] person filing a registration statement or a notice filing under  
16 AS 45.55.075 shall pay a filing fee and a registration or notice filing fee in amounts  
17 established by the department by regulation. If [WHEN] a registration statement is  
18 withdrawn before the effective date or a pre-effective stop order is entered under  
19 AS 45.55.120, the administrator shall retain the filing fee. If a notice filing is  
20 withdrawn before the effective date, the administrator shall retain the notice filing  
21 fee.

22 \* Sec. 37. AS 45.55.110(c) is amended to read:

23 (c) A [EVERY] registration statement must specify

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

25 (2) the states in which a registration statement or similar document in  
26 connection with the offering has been or is to be filed; and

27 (3) an adverse order, judgment, or decree entered in connection with  
28 the offering by the regulatory authorities in each state or by any court or the United  
29 States Securities and Exchange Commission.

30 \* Sec. 38. AS 45.55.110(d) is amended to read:

31 (d) A document filed under this chapter within five years preceding the filing