

ALASKA LEGISLATURE COMMITTEE FILES 1999-2000 8672

9913 HOUSE LABOR & COMMERCE



INVESTMENT COMPANY INSTITUTE

January 5, 1993

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. Raed  
Associate Counsel

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<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.

ICAA SUPPORT LETTER  
Tab E

# ICAA

January 2, 1998

*By Facsimile and U.S. Mail*

Willis F. Kirkpatrick, Director  
Department of Commerce and Economic Development  
Division of Banking, Securities and Corporations  
333 Willoughby Avenue, 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

ICFP SUPPORT LETTER  
Tab F



By Facsimile

December 17, 1998

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

Dear Mr. Elder:

The Institute of Certified Financial Planners<sup>1</sup> has reviewed H.B. 486 in anticipation of a similar proposal being considered during the 1999 session of the Legislature. House Bill 486, as you are aware, would have provided conforming amendments to the Alaska Securities Act of 1959 in response to a 1996 federal securities reform law<sup>2</sup> mandating certain uniform regulatory requirements for state-licensed investment advisory firms.

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

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

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

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

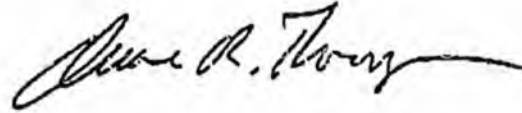
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Mr. F. Terry Elder Letter  
December 17, 1998  
Page Two

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

Sincerely,

A handwritten signature in cursive script, appearing to read "Duane R. Thompson".

Duane R. Thompson  
Director of Government Relations

cc: ICFP Board of Directors  
National Government Relations Committee

IAFP SUPPORT  
LETTER  
Tab G



INTERNATIONAL ASSOCIATION  
FOR FINANCIAL PLANNING

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

February 9, 1999

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

Dear Speaker Phillips:

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

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

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

Respectfully submitted,

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

Michael C. Herndon  
Government Affairs Manager

Cc: Franklin Terry Elder

Comments on  
Non-NSMIA  
Tab H

## Comments on Non-NSMIA-Related Sections of HB 83 (Securities Act Bill)

### Overview

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

The sections of the bill that deal with non-NSMIA changes (24 of 77 in whole or in part), are included to add or update language to current uniform language as drafted by NASAA, to clarify certain sections of the Act to improve understanding of current policy, and to add certain exemptions from registration to the Act to improve access to capital markets for Alaska businesses. The sections below are the non-NSMIA sections in the proposed legislation. The seven sections indicated with "(Part)" are sections that include some NSMIA and some non-NSMIA changes. This paper concentrates its comments on the non-NSMIA changes. The full comment paper provides comments on all sections of the bill.

### Section 12 (Part)

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

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

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

### Section 13

#### Section 45.55.035

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

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

**Section 15**

**Section 45.55.040(b)**

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

Old law contained effectiveness language.

**Section 25**

**Section 45.55.050(d)**

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

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

**Section 26 (Part)**

**Section 45.55.050(k)**

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

Old law did not mention broker-dealer supervision.

**Section 27 (Part)**

**Section 45.55.060(a)**

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

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

**Section 34**

**Section 45.55.080(a)**

Amended to allow registration by notification for fractional or pooled interests in viatical settlements. Notice only, not merit review. Agents will have to be registered.

Old law did not include interests in viatical settlements as securities.

**Section 35**

**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 38**

**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 45 (Part)**

**Section 45.55.900(a)**

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

Old law did not mention federal covered securities.

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

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

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

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

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

Old law only covered commercial paper.

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

Old law did not include plans allowed by NSMIA.

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

Old law did not include the Philadelphia Stock Exchange.

(7) Subsection (a)(11) is amended to include securities of funds excluded from the definition of an investment company. This was added by the Philanthropy Protection Act

of 1995 to include pooled funds of charitable organizations. Without this amendment the subsection would not comply with the Philanthropy Protection Act of 1995.

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

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

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

#### **Section 46 (Part)**

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

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

Old law did not mention federal covered securities.

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

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

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

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

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

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

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

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

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

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

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

Old law generally required listing in a securities manual.

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

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

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

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

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

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

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

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

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

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

#### **Section 47**

##### **Section 45.55.900(g) and (h)**

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

Old law does not provide for offers on the Internet.

**Section 48**

**Section 45.55.910(e)**

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

Old law does not specifically provide for confidential investigative files.

**Section 49 (Part)**

**Section 45.55.915**

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

Old law covers only examinations, not investigations.

**Section 50**

**Section 45.55.920(e)**

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

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

**Section 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%.

**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(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 59**

**Section 45.55.970(e)**

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

Old law does not explicitly state a fee is required.

**Section 62**

**Section 45.55.980(c)**

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

Old law did not include those relatively new entities.

**Section 66**

**Section 45.55.990(3)**

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

Old law based on offers which are difficult to trace.

**Section 67**

**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 69**

**Section 45.55.990(12)**

Language is added to definition of security to clarify potential confusion between AS 45.55 and AS 45.08 and to add fractional or pooled interests in viatical settlement contracts to the definition of a security.

Old law did not contain this clarifying language and did not include interests in viatical settlements as a security by definition.

Comments on  
all sections

Tab I

## Comments on All Sections of HB 83 (Securities Act Bill)

### Overview

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

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

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

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

Additional language is needed in the Alaska Act for SIAs registered with the states because those SIAs are no longer subject to some of the rules of the SEC as they were prior to NSMIA. Language is also needed to specifically license Investment Adviser Representatives (IARs). These are essentially equivalent to agents of broker-dealers. In the past, we have licensed them based on the fact that they met the statutory definition of an investment adviser. NSMIA, however, provided that the SEC would define IARs and

further provided that the states could register IARs 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. The North American Securities Administrators (NASAA) developed most of the language to promote uniformity among the states, a major policy of the Act. For the same reason, some other changes are suggested to conform to language adopted by NASAA that are similar to that used in other states.

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

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

#### **Section 1**

##### **Section 14.43.148(h)(1)**

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

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

#### **Sections 2 and 3**

##### **Section 25.27.244(s)(2)**

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

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

**Section 4**

**Section 37.23.050**

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

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

**Section 5**

**Section 45.55.010**

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

Old law did not mention preempted federal covered securities.

**Section 6**

**Section 45.55.020(b)**

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

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

**Section 7**

**Section 45.55.020(c)**

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

Old law prohibited all contracts based on capital appreciation.

**Section 8**

**Section 45.55.020(e)**

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

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

**Section 9**

**Section 45.55.023, 45.55.025, 45.55.027, and 45.55.028**

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

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

**Section 10**

**Section 45.55.030(e)**

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

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

**Section 11**

**Section 45.55.030(d)**

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

Old law did not provide for notice filings.

**Section 12**

**Section 45.55.030(e)-(j)**

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

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

**Section 13**

**Section 45.55.035**

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

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

**Section 14**

**Section 45.55.040(a)**

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

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

**Section 15**

**Section 45.55.040(b)**

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

Old law contained effectiveness language.

**Section 16**

**Section 45.55.040(c)**

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

Old law did not provide for notice fees.

**Section 17**

**Section 45.55.040(d)**

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

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

**Section 18**

**Section 45.55.040(e)**

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

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

**Section 19**

**Section 45.55.040(f)**

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

Old law required bonding now largely prohibited by NSMIA.

**Section 20**

**Section 45.55.040(g)**

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

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

**Section 21**

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

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

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

**Section 22**

**Section 45.55.050(a)**

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

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

**Section 23**

**Section 45.55.050(b)**

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

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

**Section 24**

**Section 45.55.050(c)**

Language added to require notice filers to update filed material.

Old law did not mention notice filers.

**Section 25**

**Section 45.55.050(d)**

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

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

**Section 26**

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

Sections added:

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

- (3) to require broker-dealers and agents to file NSMIA-allowed reports (i); and
- (4) to require broker-dealers to comply with NASD supervision requirements (k).

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

#### **Section 27**

##### **Section 45.55.060(a)**

Language added

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

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

#### **Section 28**

##### **Section 45.55.060(b)**

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

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

#### **Section 29**

##### **Section 45.55.060(d)**

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

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

**Section 30**

**Section 45.55.060(f)**

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

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

**Section 31**

**Section 45.55.060(g)**

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

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

**Section 32**

**Section 45.55.070**

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

Old law did not mention federal covered securities.

**Section 33**

**Section 45.55.075**

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

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

**Section 34**

**Section 45.55.080(a)**

Amended to allow registration by notification for fractional or pooled interests in viatical settlements. Notice only, not merit review. Agents will have to be registered.

Old law did not include interests in viatical settlements as securities.

**Section 35**

**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 36**

**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 37**

**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 38**

**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 39**

**Section 45.55.110(d)**

Adds reference to notice filings to incorporate documents by reference.

Old law did not mention notice filings.

**Section 40**

**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 41**

**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 42**

**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 43**

**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 44**

**Section 45.55.170**

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

Old law did not mention notice filings.

**Section 45**

**Section 45.55.900(a)**

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

Old law did not mention federal covered securities.

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

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

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

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

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

Old law only covered commercial paper.

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

Old law did not include plans allowed by NSMIA.

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

Old law did not include the Philadelphia Stock Exchange.

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

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

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

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

#### **Section 46**

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

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

Old law did not mention federal covered securities.

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

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

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

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

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

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

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

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

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

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

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

Old law generally required listing in a securities manual.

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

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

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

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

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

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

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

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

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

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

#### **Section 47**

##### **Section 45.55.900(g) and (h)**

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

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

#### **Section 48**

##### **Section 45.55.910**

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

Old law does not specifically provide for confidential investigative files.

**Section 49**

**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 50**

**Section 45.55.920(e)**

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

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

**Section 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(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 56**

**Section 45.55.935(a)**

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

Old law did not mention investment adviser representatives.

**Section 57**

**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 58**

**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 59**

**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 60**

**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 61**

**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 62**

**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 63**

**Section 45.55.980(f)**

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

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

**Section 64**

**Section 45.55.980(g)**

Language adds notice filings.

Old law did not mention notice filings.

**Section 65**

**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 66**

**Section 45.55.990(3)**

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

Old law based on offers that are difficult to trace.

**Section 67**

**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 68**

**Section 45.55.990(11)**

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

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

**Section 69**

**Section 45.55.990(12)**

Language is added to definition of security to clarify potential confusion between AS 45.55 and AS 45.08 and to add fractional or pooled interests in viatical settlement contracts to the definition of a security.

Old law did not contain this clarifying language and did not include interests in viatical settlements as a security by definition.

**Section 70**

**Section 45.55.990(14)-(38)**

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 71**

Short title of the chapter is the Alaska Securities Act.

**Section 72**

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

**Section 73**

The Department may immediately proceed to adopt necessary regulations.

**Section 74-76**

Various technical sections.

**Section 77**

Provides the effective date of the Act.

HB 83

Tab J

THE FOLLOWING DOCUMENT HAS NOT  
BEEN FILMED BUT IS AVAILABLE IN THE  
ORIGINAL FILE.

HOUSE BILL NO. 83

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE BY REQUEST

Introduced: 2/8/99

Referred:

A BILL

FOR AN ACT ENTITLED

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

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

1 an effective date."

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

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

4 (1) "license"

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

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

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

13 (iii) teacher certificate under AS 14.20;

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

16 (v) asbestos worker certification under AS 18.31;

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

18 (vii) certificate of fitness under AS 18.62;

19 (viii) hazardous painting certification under AS 18.63;

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

22 (x) security guard license under AS 18.65.400 -  
23 18.65.490;

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

25 (xii) employment agency permit under AS 23.15.330 -  
26 23.15.520;

27 (xiii) registration as a broker-dealer, an agent, a state  
28 [OR] investment adviser, or an investment adviser representative  
29 under AS 45.55.030;

30 (xiv) certification as a pesticide applicator under

1 AS 46.03.320;

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

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

6 (B) does not include

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

9 (ii) a vessel license issued under AS 16.05.490 or  
10 16.05.530;

11 (iii) a license issued under AS 47.35;

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

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

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

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

17 (2) "license"

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

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

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

26 (iii) teacher certificate under AS 14.20;

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

29 (v) asbestos worker certification under AS 18.31;

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

31 (vii) certificate of fitness under AS 18.62;

- 1 (viii) hazardous painting certification under AS 18.63;  
 2 (ix) security guard license under AS 18.65.400 -  
 3 18.65.490;  
 4 (x) license relating to insurance under AS 21.27;  
 5 (xi) employment agency permit under AS 23.15.330 -  
 6 23.15.520;  
 7 (xii) registration as a broker-dealer, an agent, a state  
 8 [OR] investment adviser, or an investment adviser representative  
 9 under AS 45.55.030;  
 10 (xiii) certification as a pesticide applicator under  
 11 AS 46.03.320;  
 12 (xiv) certification as a storage tank worker or contractor  
 13 under AS 46.03.375;  
 14 (xv) certification as a water and wastewater works  
 15 operator under AS 46.30; and  
 16 (xvi) commercial crewmember fishing license under  
 17 AS 16.05.480 other than an entry permit or interim-use permit under  
 18 AS 16.43;  
 19 (B) does not include  
 20 (i) a vessel license issued under AS 16.05.490 or  
 21 16.05.530;  
 22 (ii) a license issued under AS 47.35;  
 23 (iii) a business license issued under AS 43.70;  
 24 (iv) an entry permit or interim-use permit issued under  
 25 AS 16.43; or  
 26 (v) a driver's license issued under AS 28.15;

27 \* Sec. 3. AS 25.27.244(s)(2), as repealed and reenacted under sec. 148(c), ch. 87, SLA  
 28 1997, as amended by sec. 53, ch. 132, SLA 1998, is amended to read:

29 (2) "license"

30 (A) means, except as provided in (B) of this paragraph, a  
 31 license, certificate, permit, registration, or other authorization that, at the time

1 of issuance, will be valid for more than 150 days and that may be acquired  
2 from a state agency to perform an occupation, including the following:

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

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

7 (iii) teacher certificate under AS 14.20;

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

10 (v) asbestos worker certification under AS 18.31;

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

12 (vii) certificate of fitness under AS 18.62;

13 (viii) hazardous painting certification under AS 18.63;

14 (ix) security guard license under AS 18.65.400 -  
15 18.65.490;

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

17 (xi) employment agency permit under AS 23.15.330 -  
18 23.15.520;

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

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

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

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

28 (B) does not include

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

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

- 1 16.05.530;
- 2 (iii) a license issued under AS 47.35;
- 3 (iv) a business license issued under AS 43.70;
- 4 (v) an entry permit or interim-use permit issued under
- 5 AS 16.43; or
- 6 (vi) a driver's license issued under AS 28.15;

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

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

11 (1) a securities broker-dealer registered under AS 45.55.030 and under  
12 15 U.S.C. 78o (Securities Exchange Act of 1934);

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

16 (3) the Department of Revenue; or

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

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

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

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

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

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

31 (2) [AN ASSIGNMENT OF THE CONTRACT MAY NOT BE MADE

1 BY THE INVESTMENT ADVISER WITHOUT THE CONSENT OF THE OTHER  
2 PARTY TO THE CONTRACT; AND

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

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

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

10 The administrator, on request, may waive the provisions of (b)(1) of this section  
11 for investment advisory contracts that conform to the limitations of 15 U.S.C. 80b-  
12 5 (Investment Advisers Act of 1940).

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

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

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

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

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

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

1 investment advisory business under AS 45.55.060(a)(7), including

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

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

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

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

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

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

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

1 or federal covered adviser;

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

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

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

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

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

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

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

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

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

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

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

17 (A) the services to be provided;

18 (B) the term of the contract;

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

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

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

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

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

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

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

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

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

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

1 to a transaction with a customer of a broker-dealer if the broker-dealer is not acting  
2 as a state investment adviser or federal covered adviser in relation to the transaction.

3 (b) The conduct listed in (a) of this section is not the exclusive conduct  
4 prohibited by (a) of this section. Engaging in other similar conduct, including  
5 nondisclosure, incomplete disclosure, or a deceptive practice, is considered unethical  
6 practice or conduct under AS 45.55.060(a)(7). The federal statutory and regulatory  
7 provisions referred to in this section apply to a state investment adviser and a  
8 registered investment adviser representative of either a state investment adviser or a  
9 federal covered adviser, regardless of whether the federal provisions limits their  
10 application to state investment advisers or federal covered advisors subject to federal  
11 registration. With respect to a federal covered adviser, the provisions of this section  
12 apply only to the extent permitted under P.L. 104 - 290, 101 Stat. 3416 - 3440  
13 (National Securities Markets Improvement Act of 1996) and only when the conduct  
14 proscribed involves fraud or deceit within the meaning of AS 45.55.010(a) and  
15 45.55.020(a).

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

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

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

30 (3) recommending to a customer the purchase, sale, or exchange of a  
31 security without reasonable grounds to believe that the transaction or recommendation

1 is suitable for the customer based on reasonable inquiry concerning the customer's  
2 investment objectives, financial situation, and needs, and other relevant information  
3 known by the broker-dealer or agent;

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

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

10 (6) executing a transaction in a margin account without securing from  
11 the customer a properly executed written margin agreement promptly after the initial  
12 transaction in the account;

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

15 (8) hypothecating a customer's securities without having a lien on the  
16 securities unless the broker-dealer or agent receives from the customer a properly  
17 executed written consent promptly after the initial transaction, except as permitted by  
18 the rules of the United States Securities and Exchange Commission;

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

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

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

31 (12) offering to buy from or sell to a person a security at a stated price

1 unless the broker-dealer is prepared to purchase or sell at that price and under the  
2 conditions that are stated at the time of the offer to buy or sell;

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

7 (A) the broker-dealer;

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

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

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

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

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

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

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

1 the broker-dealer or agent with or for the customer;

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

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

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

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

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

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

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

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

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

1 group member or from an underwriting or a selling group member participating in the  
2 distribution as an underwriter or selling group member;

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

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

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

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

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

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

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

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

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

1           **Sec. 45.55.027. Additional fraudulent, dishonest, and unethical business**  
2 **practices of agents.** In addition to the acts and practices described in AS 45.55.025,  
3 the acts and practices of an agent that constitute dishonest or unethical practices in the  
4 securities business under AS 45.55.060(a), that are grounds for imposition of  
5 administrative fines, censure, denial, suspension, revocation of a registration, or other  
6 appropriate disciplinary action, and that are contrary to the high standards of  
7 commercial honor and just and equitable principles of trade to be observed by agents,  
8 include

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

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

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

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

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

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

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

31           **Sec. 45.55.028. Practices of broker-dealers and agents considered**

1 fraudulent or deceitful. Acts and practices of broker-dealers or agents that are  
2 considered fraudulent or deceitful acts, practices, or courses of business under  
3 AS 45.55.010(a) include

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

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

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

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

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

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

27 (B) parking or withholding securities;

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

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

31 (B) failing or refusing to promptly execute sell orders after a

1 solicited purchase by a customer;

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

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

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

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

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

19 (C) repeated phone calls;

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

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

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

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

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

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

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

1 (D) refers to the issuer's financial condition, anticipated  
2 earnings, potential growth, or success;

3 (10) failing to disclose a dual agency capacity; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 (2) with or through

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

1 (B) other broker-dealers; or

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

7 (3) as otherwise permitted by this chapter.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14                (f) The administrator may by regulation or order require registered broker-  
15        dealers and agents to post a bond in an amount the administrator may prescribe subject  
16        to the limitations provided in 15 U.S.C. 78o (Securities Exchange Act of 1934). The  
17        administrator may determine the conditions of the bond. The administrator shall  
18        accept any appropriate deposit of cash or securities from a registered broker-dealer or  
19        agent in place of a required bond. A bond may not be required of a registrant whose  
20        net capital exceeds the amounts required by the administrator. A bond must provide  
21        for suit on it by a person who has a cause of action under AS 45.55.930 and, if  
22        required by the administrator by regulation, by a person who has a cause of action not  
23        arising under this chapter. A bond must provide that a suit may not be maintained to  
24        enforce a liability on the bond unless brought within three years after the sale or other  
25        act on which it is based.

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

27                (g) The administrator may permit initial and renewal registration and notice  
28        filings required for state investment advisers, federal covered advisers, investment  
29        adviser representatives, broker-dealers, and agents under this chapter to be filed  
30        with the United States Securities and Exchange Commission, the National Association  
31        of Securities Dealers, or other similar authority [AUTHORITIES]. The administrator

1 may accept uniform securities examinations or other procedures designed to implement  
2 a uniform national securities regulatory system or facilitate common practices and  
3 procedures among the states, including participation in joint, coordinated securities  
4 examinations with other states.

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

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

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

14 (j) The administrator may by regulation or order require registered state  
15 investment advisers who have custody of or discretionary authority over clients' funds  
16 or securities to post a bond in an amount the administrator may establish subject to the  
17 limitations provided in 15 U.S.C. 80b-18a (Investment Advisers Act of 1940). The  
18 administrator may determine the conditions of the bond. The administrator shall  
19 accept any appropriate deposit of cash or securities in place of a required bond. A  
20 bond may not be required of a registered state investment adviser whose minimum  
21 financial condition, which may be defined by regulation, or net capital exceeds the  
22 amounts required by the administrator. A bond must provide for suit on it by a person  
23 who has a cause of action under AS 45.55.930 and, if required by the administrator  
24 by regulation, by a person who has a cause of action not arising under this chapter.  
25 A bond must provide that a suit may not be maintained to enforce a liability on the  
26 bond unless brought within three years after the sale or other act on which it is based.

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

28 (a) Except as provided under 15 U.S.C. 78o (Securities Exchange Act of  
29 1934), a [EVERY] registered broker-dealer [AND INVESTMENT ADVISER] shall  
30 make and keep the accounts, correspondence, memoranda, papers, books, and other  
31 records that the administrator requires [PRESCRIBES] by regulation or order. All

1        required records [SO REQUIRED] shall be preserved for three years unless the  
2        administrator by regulation prescribes otherwise [FOR PARTICULAR TYPES OF  
3        RECORDS].

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

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

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

8                (c) If the information contained in a document filed with the administrator is  
9        or becomes inaccurate or incomplete in a material respect, the federal covered  
10       adviser, state investment adviser, broker-dealer, agent, or investment adviser  
11       representative who made the filing [REGISTRANT] shall promptly file a correcting  
12       amendment unless notification of the correction is given under AS 45.55.030(b). If  
13       the document is filed with respect to a federal covered adviser, the amendment  
14       shall be filed when it is required to be filed with the United States Securities and  
15       Exchange Commission unless notification of the correction is given under  
16       AS 45.55.030(b).

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

18                (d) All the records referred to in [(a) OF] this section are subject at any time  
19       to reasonable periodic, special, or other examinations by representatives of the  
20       administrator, inside or outside this state, as the administrator considers necessary or  
21       appropriate in the public interest or for the protection of investors. For the purpose  
22       of avoiding unnecessary duplication of examinations, the administrator, insofar as the  
23       administrator considers it practicable in administering this subsection, may cooperate  
24       with the securities administrators of other states, the United States Securities and  
25       Exchange Commission, and any national securities exchange or national securities  
26       association registered under 15 U.S.C. 78a - 78III ( [THE] Securities Exchange Act of  
27       1934).

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

29                (e) Subject to 15 U.S.C. 80b-18a (Investment Advisers Act of 1940), an  
30       investment adviser representative or state investment adviser shall make and keep the  
31       accounts, correspondence, memoranda, papers, books, and other records that the

1 administrator requires by regulation or order. All required records shall be preserved  
2 for three years unless the administrator by regulation prescribes otherwise.

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

10 (g) Subject to 15 U.S.C. 80b-18a (Investment Advisers Act of 1940), a state  
11 investment adviser shall file the financial reports the administrator requires by  
12 regulation or order.

13 (h) A state investment adviser that has its principal place of business in a state  
14 other than this state and the investment adviser representatives of that state investment  
15 adviser are exempt from the requirements of (e) of this section if the state investment  
16 adviser is registered as an investment adviser in the state where the state investment  
17 adviser has its principal place of business and is in compliance with that state's  
18 requirements relating to accounts and records.

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

23 (j) A state investment adviser that has its principal place of business in a state  
24 other than this state and the investment adviser representatives of that state investment  
25 adviser shall file with the administrator only the financial reports or other information  
26 required by the state in which the state investment adviser maintains its principal place  
27 of business if the state investment adviser is licensed in that state and is in compliance  
28 with that state's reporting requirements.

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

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

1 (a) The administrator may by order deny, suspend, or revoke a registration if  
 2 the administrator finds that the order is in the public interest and that the applicant or  
 3 registrant or, in the case of a broker-dealer or state investment adviser, a partner,  
 4 officer, or director, a person occupying a similar status or performing similar functions,  
 5 or a person directly or indirectly controlling the broker-dealer or state investment  
 6 adviser

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

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

14 (3) has been convicted, within the past 10 years, of a misdemeanor  
 15 involving a security or an aspect of the securities business [,] or a felony; in this  
 16 paragraph, "convicted" includes a finding of guilt based on a verdict, judgment,  
 17 plea of guilty, or plea of nolo contendere, if the verdict, judgment, or plea has not  
 18 been reversed, set aside, or withdrawn, regardless of whether sentence has been  
 19 imposed;

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

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

26 (6) is the subject of an order entered within the past five years by the  
 27 securities administrator of another state or by the United States Securities and  
 28 Exchange Commission denying or revoking registration as a broker-dealer, agent, state  
 29 [OR] investment adviser, investment adviser representative, or the substantial  
 30 equivalent of those terms as defined in this chapter, or is the subject of an order of the  
 31 United States Securities and Exchange Commission suspending or expelling the

1 person from a national securities exchange or national securities association registered  
 2 under 15 U.S.C. 78a - 78lll ( [THE] Securities Exchange Act of 1934), or is the  
 3 subject of a United States Postal Service [POST OFFICE] fraud order; but the  
 4 administrator may not

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

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

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

12 (8) is insolvent, [EITHER] in the sense that liabilities exceed assets,  
 13 [OR IN THE SENSE] that [THE PERSON CANNOT MEET] obligations cannot be  
 14 met as they mature, or that the business cannot be continued safely for the  
 15 customers of the applicant or registrant, [;] but the administrator may not enter an  
 16 order against a broker-dealer or state investment adviser under this paragraph  
 17 [CLAUSE] without a finding of insolvency as to the broker-dealer or state investment  
 18 adviser; [OR]

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

22 (10) has failed to comply with the requirements of AS 45.55.050 to  
 23 make, keep, or produce records required by the administrator, or to file financial  
 24 reports or other information the administrator by regulation or order may  
 25 require; or

26 (11) is a person whose license renewal is denied under AS 14.43.148  
 27 or whose license issuance or renewal is denied under AS 25.27.244.

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

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

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

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

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

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

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

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

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

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

17 (A) the state investment adviser if the state investment adviser  
 18 is an individual; or

19 (B) an investment adviser representative [ANOTHER  
 20 PERSON] who represents the state investment adviser in doing any of the acts  
 21 that [WHICH] make the state investment adviser a state [AN] investment  
 22 adviser;

23 (3) the administrator may not enter an order solely on the basis of lack  
 24 of experience if the applicant or registrant is qualified by training or knowledge or  
 25 both;

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

29 (5) the administrator shall consider that a state [AN] investment adviser  
 30 is not necessarily qualified solely on the basis of experience as a broker-dealer or  
 31 agent; if [WHEN] the administrator finds that an applicant for initial or renewal

1 registration as a broker-dealer is not qualified as a state [AN] investment adviser, the  
 2 administrator may by order condition the applicant's registration as a broker-dealer  
 3 upon the applicant's not transacting business in this state as a state [AN] investment  
 4 adviser;

5 (6) the administrator may by regulation provide for an examination,  
 6 which may be written or oral or both, to be taken by any class of or all applicants,  
 7 including applicants for registration as investment adviser representatives;  
 8 however, [AS WELL AS PERSONS WHO REPRESENT OR WILL REPRESENT  
 9 AN INVESTMENT ADVISER IN DOING ANY OF THE ACTS WHICH MAKE  
 10 THE INVESTMENT ADVISER AN INVESTMENT ADVISER, PROVIDED THAT]  
 11 examinations required by this paragraph are not required of a registrant under this  
 12 chapter who was doing business in this state and was a resident of this state on May 9,  
 13 1959.

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

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

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

22 (g) Withdrawal from registration as a broker-dealer, agent, state investment  
 23 adviser, or investment adviser representative becomes effective 30 days after receipt  
 24 of an application to withdraw or within a shorter period of time as the administrator  
 25 may determine, unless a revocation or suspension proceeding is pending when the  
 26 application is filed or a proceeding to revoke or suspend or to impose conditions upon  
 27 the withdrawal is instituted within 30 days after the application is filed. If a proceeding  
 28 is pending or instituted, withdrawal becomes effective at the time and upon the  
 29 conditions as the administrator by order determines. If a [NO] proceeding is not  
 30 pending or instituted and withdrawal automatically becomes effective, the administrator  
 31 may nevertheless institute a revocation or suspension proceeding under (a)(2) of this

1 section within one year after withdrawal is effective and enter a revocation or  
2 suspension order as of the last date on which registration was effective.

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

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

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

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

8 (3) it is a federal covered security.

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

10 Sec. 45.55.075. **Federal covered securities.** (a) Unless otherwise exempt  
11 under AS 45.55.900, a security that is a federal covered security under 15 U.S.C.  
12 77r(b)(2), (Securities Act of 1933), may only be offered for sale and sold into, from,  
13 or within the state upon the administrator's receipt of

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

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

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

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

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

30 (d) With respect to a security that is a covered security under 15 U.S.C.  
31 77r(b)(4)(D) (Securities Act of 1933), the administrator, by regulation or order, may

1 require the issuer to file a notice on United States Securities and Exchange  
 2 Commission's Form D and a consent to service of process signed by the issuer no later  
 3 than 15 days after the first sale of a covered security in this state and a fee established  
 4 by the administrator for a notice filing under this section.

5 (e) The administrator, by regulation or order, may require the filing of any  
 6 document filed with the United States Securities and Exchange Commission under 15  
 7 U.S.C. 77b-77bbb (Securities Act of 1933), with respect to a covered security under  
 8 15 U.S.C. 77r(b)(3) or (4) (Securities Act of 1933).

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

12 (1) the stop order is in the public interest; and

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

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

17 \* Sec. 34. AS 45.55.080(a) is amended to read:

18 (a) The following securities may be registered by notification, whether or not  
 19 they are also eligible for registration by coordination under AS 45.55.090:

20 (1) a security whose issuer and predecessors have been in continuous  
 21 operation for at least five years if

22 (A) there has been no default during the current fiscal year or  
 23 within the three preceding fiscal years in the payment of principal, interest, or  
 24 dividends on a security of the issuer, or any predecessor, with a fixed maturity  
 25 or a fixed interest or dividend provision; and

26 (B) the issuer and predecessor during the past three fiscal years  
 27 have had average net earnings, determined in accordance with generally  
 28 accepted accounting practices

29 (i) that are applicable to all securities without a fixed  
 30 maturity or a fixed interest or dividend provision outstanding at the date  
 31 the registration statement is filed and equal at least five percent of the

1 amount of these outstanding securities as measured by the maximum  
 2 offering price or the market price on a day, selected by the registrant,  
 3 within 30 days before the date of filing the registration statement,  
 4 whichever is higher, or book value on a day, selected by the registrant,  
 5 within 90 days of the date of filing the registration statement to the  
 6 extent that there is neither a readily determinable market price nor a  
 7 cash offering price;

8 (ii) that, if the issuer and predecessors have not had any  
 9 security of the type specified in (i) of this subparagraph outstanding for  
 10 three full fiscal years, equal at least five percent of the amount, as  
 11 measured in (i) of this subparagraph, of all securities that will be  
 12 outstanding if all the securities being offered or proposed to be offered,  
 13 whether or not they are proposed to be registered or offered in this  
 14 state, are issued;

15 (2) a security, other than a certificate of interest or participation in an  
 16 oil, gas, or mining title or lease or in payments out of production under the title or  
 17 lease, registered for nonissuer distribution if

18 (A) any security of the same class has ever been registered  
 19 under this chapter; or

20 (B) the security being registered was originally issued under an  
 21 exemption under this chapter;

22 (3) a security that represents a fractional or pooled interest in a  
 23 viatical settlement contract.

24 \* Sec. 35. AS 45.55.090(b) is amended to read:

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

29 (1) one copy of the latest form of prospectus filed under 15 U.S.C. 77a  
 30 - 77bbbb ( [THE] Securities Act of 1933);

31 (2) if the administrator requires, copies of the articles of incorporation

1 and bylaws, or their substantial equivalent, currently in effect; a copy of an agreement  
2 with or among underwriters; a copy of an indenture or other instrument governing the  
3 issuance of the security to be registered; and a specimen or copy of the security;

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

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

12 \* Sec. 36. AS 45.55.110(a) is amended to read:

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

16 \* Sec. 37. AS 45.55.110(b) is amended to read:

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

24 \* Sec. 38. AS 45.55.110(c) is amended to read:

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

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

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

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

1 \* Sec. 39. AS 45.55.110(d) is amended to read:

2 (d) A document filed under this chapter within five years preceding the filing  
3 of a registration statement or a notice filing under AS 45.55.075 may be incorporated  
4 by reference in the registration statement or notice filing to the extent that the  
5 document is currently accurate.

6 \* Sec. 40. AS 45.55.110(e) is amended to read:

7 (e) The administrator may by regulation or order [OTHERWISE] permit the  
8 omission of an item of information or document from a registration statement or a  
9 notice filing under AS 45.55.075.

10 \* Sec. 41. AS 45.55.110(i) is amended to read:

11 (i) A notice filing under AS 45.55.075 is effective on receipt by the  
12 administrator. A [EVERY] registration statement or a notice filing under  
13 AS 45.55.075 is effective for one year from its effective date [,] or any longer period  
14 during which the security is being offered or distributed in a nonexempted transaction  
15 by or for the account of the issuer or other person on whose behalf the offering is  
16 being made or by an underwriter or broker-dealer who is still offering part of an  
17 unsold allotment or subscription taken by the underwriter or broker-dealer as a  
18 participant in the distribution, except during the time a stop order is in effect under  
19 AS 45.55.120. The administrator may establish a different expiration date for  
20 purposes of coordination with a national registration or notice filing system. The  
21 administrator may by regulation provide for an automatic extension for one  
22 additional year of the effective date for notice filings under AS 45.55.075 if the  
23 extended expiration date is set at the same time the notice filing is made effective  
24 and the notice filing fee reflects the extension. All outstanding securities of the  
25 same class as a registered security are considered to be registered for the purpose of  
26 any nonissuer transaction if the registration statement is effective and between the  
27 thirtieth day after the entry of a stop order suspending or revoking the effectiveness  
28 of the registration statement under AS 45.55.120, if the registration statement did not  
29 relate in whole or in part to a nonissuer distribution and one year from the effective  
30 date of the registration statement. A registration statement may not be [WITH]  
31 withdrawn for one year from its effective date if any securities of the same class are

1 outstanding. A registration statement may be withdrawn otherwise only in the  
2 discretion of the administrator.

3 \* Sec. 42. AS 45.55.110(k) is amended to read:

4 (k) A notice filing under AS 45.55.075 [REGISTRATION STATEMENT]  
5 relating to a security issued by a face-amount certificate company or a redeemable  
6 security issued by an open-end management company or unit investment trust, as those  
7 terms are defined in 15 U.S.C. 80a-1 - 80a-64 ( [THE] Investment Company Act of  
8 1940), may be amended after its effective date so as to increase the securities specified  
9 as proposed to be offered if the notice filing was for a specified dollar amount of  
10 securities to be offered in this state and if the total fees were based on the dollar  
11 amount of securities to be offered. An amendment becomes effective when the  
12 administrator so orders. A [EVERY] person filing [SUCH] an amendment shall pay  
13 a [FILING] fee, calculated in the manner specified in (b) of this section, with respect  
14 to the additional securities proposed to be offered.

15 \* Sec. 43. AS 45.55.150 is amended to read:

16 Sec. 45.55.150. Sales [FILING OF SALES] and advertising literature. The  
17 administrator may by regulation or order establish requirements for or require the  
18 filing of a prospectus, a pamphlet, a circular, a form letter, an advertisement, or other  
19 sales literature [,] or advertising communication addressed or intended for distribution  
20 to prospective investors, [INCLUDING] clients, or prospective clients by an issuer,  
21 a state investment adviser, a federal covered adviser, or a broker-dealer, unless

22 (1) the security or transaction is exempt under AS 45.55.900 and  
23 the applicable provision of that section does not place a limitation on sales and  
24 advertising literature;

25 (2) the security is a federal covered security; or

26 (3) the broker-dealer, state investment adviser, or federal covered  
27 adviser is exempt or excluded from the requirements of this section under this  
28 chapter or federal law [OF AN INVESTMENT ADVISER].

29 \* Sec. 44. AS 45.55.170(a) is amended to read:

30 (a) Neither the fact that an application for registration under AS 45.55.030 -  
31 45.55.060, [OR] a registration statement under AS 45.55.070 - 45.55.120, or a notice

1 filing under AS 45.55.040(h) or 45.55.075 is filed nor the fact that a person or  
 2 security is effectively registered constitutes a finding by the administrator that a  
 3 document filed under this chapter is true, complete, and not misleading. Neither the  
 4 fact of filing nor the fact that an exemption or exception is available for a security or  
 5 a transaction means that the administrator has passed in any way upon the merits or  
 6 qualifications of, or recommended or given approval to, a person, security, or  
 7 transaction.

8 \* Sec. 45. AS 45.55.900(a) is amended to read:

9 (a) The following securities are exempted from AS 45.55.070 and 45.55.075:

10 (1) a security, including a revenue obligation, issued or guaranteed by  
 11 the United States or a territory of the United States, the District of Columbia, a  
 12 state, a political subdivision of a state or territory, or an agency or corporate or other  
 13 instrumentality of one or more of the entities described in this paragraph  
 14 [FOREGOING]; or a certificate of deposit for one or more of the entities described  
 15 in this paragraph [ANY OF THE FOREGOING];

16 (2) a security issued or guaranteed by Canada, a Canadian province, a  
 17 political subdivision of a Canadian province, an agency or corporate or other  
 18 instrumentality of one or more of the entities described in this paragraph  
 19 [FOREGOING], or a foreign government with which the United States currently  
 20 maintains diplomatic relations, if the security is recognized as a valid obligation by the  
 21 issuer or guarantor;

22 (3) a security issued [BY AND REPRESENTING AN INTEREST IN]  
 23 or [A DEBT OF, OR] guaranteed by [,] a bank organized under the laws of the United  
 24 States, or by a bank, savings institution, savings and loan association, building and  
 25 loan association, or trust company organized and supervised under the laws of a state  
 26 or of the United States, or a security issued by or representing an interest in or a  
 27 direct obligation of a federal reserve bank;

28 (4) a commercial paper, note, draft, bill of exchange, or banker's  
 29 acceptance that arises out of a current transaction or the proceeds of which have been  
 30 or are to be used for current transactions [,] and that evidences an obligation to pay  
 31 cash within nine months of the date of issuance, exclusive of days of grace, or a

1 [ANY] renewal of the paper that is likewise limited, or a guarantee of the paper or of  
 2 the renewal, if the commercial paper, note, draft, bill of exchange, or banker's  
 3 acceptance is of the type eligible for discount by a federal reserve bank;

4 (5) a security issued in connection with an employee's stock purchase,  
 5 savings, pension, profit-sharing, or similar employee's benefit plan, or a security  
 6 issued by or an interest or participation in a church plan, company, or account  
 7 that is excluded from the definition of an investment company under 15 U.S.C.  
 8 80a-3(c)(14) (Investment Company Act of 1940):

9 (6) a security issued by and representing an interest in or a debt of, or  
 10 guaranteed by, a federal savings and loan association, or a building and loan or similar  
 11 association organized under the laws of a state and authorized to do business in this  
 12 state;

13 (7) a security issued by and representing an interest in or a debt of, or  
 14 guaranteed by, an insurance company organized under the laws of a state and  
 15 authorized to do business in this state; but this exemption does not apply to an annuity  
 16 contract, investment contract, or similar security under which the promised payments  
 17 are not fixed in dollars but are substantially dependent upon the investment results of  
 18 a segregated fund or account invested in securities; except that policies or annuity  
 19 contracts of insurance companies admitted to do business in the state are not subject  
 20 to this chapter;

21 (8) a security issued or guaranteed by a federal credit union or any  
 22 credit union, industrial loan association, or similar association organized and supervised  
 23 under the laws of this state;

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

26 (A) subject to the jurisdiction of the Interstate Commerce  
 27 Commission or its successor;

28 (B) a registered holding company under 15 U.S.C. 79 - 79z-6  
 29 { [THE] Public Utility Holding Company Act of 1935} or a subsidiary of the  
 30 company within the meaning of 15 U.S.C. 79 - 79z-6 [THAT ACT];

31 (C) regulated in respect of its rates and charges by a

1 governmental authority of the United States or a state; or

2 (D) regulated in respect of the issuance or guarantee of the  
3 security by a governmental authority of the United States, a state, Canada, or  
4 a Canadian province;

5 (10) a security listed or approved for listing upon notice of issuance on  
6 the New York Stock Exchange, the American Stock Exchange, the Chicago  
7 [MIDWEST] Stock Exchange, the Pacific Coast Stock Exchange, the Philadelphia  
8 Stock Exchange, the Chicago Board of Options Exchange, or another [ANY OTHER]  
9 securities exchange designated by order of the administrator, or any security designated  
10 or approved for designation upon notice of issuance as a national market system  
11 security on the National Association of Securities Dealers Automated Quotation  
12 National Market System or on any other quotation system designated by order of the  
13 administrator, or any other security of the same issuer that is of senior or substantially  
14 equal rank; a security called for by subscription rights or warrants so listed or  
15 approved; or a warrant or right to purchase or subscribe to an entity described in this  
16 paragraph [ANY OF THE FOREGOING];

17 (11) a security issued by a person organized and operated not for  
18 pecuniary [PRIVATE] profit but exclusively for religious, educational, benevolent,  
19 charitable, fraternal, social, athletic, or reformatory purposes [,] or as a chamber of  
20 commerce or trade or professional association, or a security of a fund that is  
21 excluded from the definition of an investment company under 15 U.S.C. 80a-  
22 3(c)(10)(B) (Investment Company Act of 1940);

23 (12) shares of membership stock in the Alaska Commercial Fishing and  
24 Agriculture Bank, and other securities issued by that bank to members or in connection  
25 with loans to members;

26 (13) an equity security issued in connection with the acquisition by  
27 a holding company of a bank under 12 U.S.C. 1842(a) (Bank Holding Company  
28 Act of 1956) or a savings association, as defined in 12 U.S.C. 1813(b) (Federal  
29 Deposit Insurance Act) and the deposits of which are insured by the Federal  
30 Deposit Insurance Corporation under 12 U.S.C. 1467(e) (Home Owners' Loan  
31 Act) if

1                   (A) the acquisition occurs solely as part of a reorganization  
 2 in which security holders exchange their shares of a bank or savings  
 3 association for shares of a newly formed holding company with no  
 4 significant assets other than securities of the bank or savings association  
 5 and the existing subsidiaries of the bank or savings association;

6                   (B) the security holders receive after the reorganization  
 7 substantially the same proportional interests in the holding company as  
 8 they held in the bank or savings association except for nominal changes in  
 9 shareholders' interests resulting from lawful elimination of fractional  
 10 interests and the exercise of dissenting shareholders' rights under state or  
 11 federal law;

12                   (C) the rights and interests of security holders in the holding  
 13 company are substantially the same as those in the bank or savings  
 14 association before the transaction except as may be required by law; and

15                   (D) the holding company has substantially the same assets  
 16 and liabilities on a consolidated basis as the bank or savings association  
 17 before the transaction.

18 \* Sec. 46. AS 45.55.900(b) is amended to read:

19                   (b) The following transactions are exempted from AS 45.55.070 and  
 20 45.55.075:

21                   (1) a transaction between the issuer or other person on whose behalf  
 22 the offering is made and an underwriter, or among underwriters;

23                   (2) a transaction in a bond or other evidence of indebtedness secured  
 24 by a real or chattel mortgage or deed of trust, or by an agreement for the sale of real  
 25 estate or chattels, if the entire mortgage, deed of trust, or agreement, together with all  
 26 the bonds or other evidence of indebtedness, secured under those documents  
 27 [THEREBY], is offered and sold as a unit;

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

30                   (4) an offer or sale to a bank, savings institution, trust company,  
 31 insurance company, investment company as defined in 15 U.S.C. 80a-1 - 80a-64 (

1 [THE] Investment Company Act of 1940), pension or profit-sharing trust, or other  
 2 financial institution or institutional buyer, or to a broker-dealer, whether the purchaser  
 3 is acting for itself or in some fiduciary capacity;

4 (5) sales by an issuer

5 (A) to no more than 10 persons in this state other than those  
 6 designated in (4) of this subsection during a period of 12 consecutive months,  
 7 regardless of whether [OR NOT] the seller or any of the buyers is then present  
 8 in this state, if

9 (i) a [NO] commission or other remuneration is not paid  
 10 or given directly or indirectly for soliciting a prospective buyer in this  
 11 state;

12 (ii) [THE TOTAL DOLLAR AMOUNT INVESTED  
 13 DURING A PERIOD OF 12 CONSECUTIVE MONTHS DOES NOT  
 14 EXCEED \$100,000;

15 (iii)] a legend is placed on the certificate or other  
 16 document evidencing ownership of the security, stating that the security  
 17 is not registered under this chapter and cannot be resold without  
 18 registration under this chapter or exemption from it;

19 (iii) [(iv)] offers are made without public solicitation or  
 20 advertisement; and

21 (iv) [(v)] the issuer files with the administrator a notice  
 22 specifying the issuer, the security to be sold, and the terms of the offer  
 23 at least two days before any sales are made;

24 (B) to no more than 25 persons in this state other than those  
 25 designated in (4) of this subsection during a period of 12 consecutive months,  
 26 regardless of whether [OR NOT] the seller or any of the buyers is then present  
 27 in this state, if

28 (i) the sales are made solely in this state;

29 (ii) before a [ANY] sale, each prospective buyer is  
 30 furnished [ACCESS TO THE] information that is sufficient to make  
 31 an informed investment decision [WOULD BE PROVIDED TO A

1 PROSPECTIVE BUYER IN A REGISTRATION UNDER  
 2 AS 45.55.100], which information shall be furnished to the  
 3 administrator upon request; in this sub-subparagraph, "information  
 4 that is sufficient to make an informed investment decision" includes  
 5 a business plan, an income and expense statement, a balance sheet,  
 6 a statement of risks, and a disclosure of any significant negative  
 7 factors that may affect the outcome of the investment;

8 (iii) [THE TOTAL DOLLAR AMOUNT INVESTED  
 9 DURING A PERIOD OF 12 CONSECUTIVE MONTHS DOES NOT  
 10 EXCEED \$500,000;

11 (iv)] commissions or other remuneration meet the  
 12 requirements of this chapter and are made only to persons registered  
 13 under AS 45.55.040;

14 (iv) [(v)] a legend is placed on the certificate or other  
 15 document evidencing ownership of the security, stating that the security  
 16 is not registered under this chapter and cannot be resold without  
 17 registration under this chapter or exemption from it;

18 (v) [(vi)] the issuer obtains a signed agreement from the  
 19 buyer acknowledging that the buyer is buying for investment purposes  
 20 and that the securities will not be resold without registration under this  
 21 chapter;

22 (vi) [(vii)] offers are made without public solicitation or  
 23 advertisement; and

24 (vii) [(viii)] the issuer files with the administrator a  
 25 notice specifying the issuer, the security to be sold, and the terms of the  
 26 offer at least two days before any sales are made;

27 (C) to no more than 10 persons who are to receive the initial  
 28 issue of shares of a nonpublicly traded corporation, limited liability  
 29 company, limited partnership, or limited liability partnership if the  
 30 requirements of (B)(ii) - (iv) and (vi) of this paragraph are met;

31 (D) to the buyer of an enterprise or a business and the