

ALASKA LEGISLATURE COMMITTEE FILES 1999-2000 8672

9914 HOUSE LABOR & COMMERCE

1 assets and liabilities of the enterprise or business if

2 (i) the transfer of stock to the buyer is solely
 3 incidental to the sale of the enterprise or business and its assets and
 4 liabilities;

5 (ii) the seller provides full access to the buyer of the
 6 books and records of the enterprise or business; and

7 (iii) a legend is placed on the certificate or other
 8 document evidencing ownership of the security, stating that the
 9 security is not registered under this chapter and cannot be resold
 10 without registration under this chapter or exemption from it;

11 (6) an offer or sale of a preorganization certificate or subscription if

12 (A) a [NO] commission or other remuneration is not paid or
 13 given directly or indirectly for soliciting a prospective subscriber; [,]

14 (B) the number of subscribers does not exceed 10; [,] and

15 (C) a [NO] payment is not made by any subscriber;

16 (7) a transaction under an offer to existing security holders of the
 17 issuer, including persons who at the time of the transaction are holders of convertible
 18 securities, nontransferable warrants, or transferable warrants exercisable within not
 19 more than 90 days of their issuance, if

20 (A) a [NO] commission or other remuneration, other than a
 21 standby commission, is not paid or given directly or indirectly for soliciting a
 22 security holder in this state; [,] or

23 (B) the issuer first files a notice specifying the terms of the
 24 offer and the administrator does not by order disallow the exemption within the
 25 next five full business days;

26 (8) an offer, [(] but not a sale, [)] of a security for which registration
 27 statements have been filed under both this chapter and 15 U.S.C. 77a - 77bbbb(
 28 [THE] Securities Act of 1933) if a [NO] stop order or refusal order is not in effect and
 29 a [NO] public proceeding or examination looking toward an order is not pending
 30 under either this chapter or 15 U.S.C. 77a - 77bbbb (Securities [THE] Act of 1933);

31 (9) an isolated nonissuer transaction, regardless of whether effected

1 through a broker-dealer, if the seller is [OR] not a promoter or controlling person
 2 as the administrator may define by regulation or order or if the administrator at
 3 the request of the seller waives the requirement that the seller not be a promoter
 4 or controlling person;

5 (10) [A NONISSUER DISTRIBUTION OF AN OUTSTANDING
 6 SECURITY IF

7 (A) A RECOGNIZED SECURITIES MANUAL CONTAINS
 8 THE NAMES OF THE ISSUER'S OFFICERS AND DIRECTORS, A
 9 BALANCE SHEET OF THE ISSUER AS OF A DATE WITHIN 18
 10 MONTHS, AND A PROFIT AND LOSS STATEMENT FOR EITHER THE
 11 FISCAL YEAR PRECEDING THAT DATE OR THE MOST RECENT YEAR
 12 OF OPERATIONS, OR

13 (B) THE SECURITY HAS A FIXED MATURITY OR A
 14 FIXED INTEREST OR DIVIDEND PROVISION AND THERE HAS BEEN
 15 NO DEFAULT DURING THE CURRENT FISCAL YEAR OR WITHIN THE
 16 THREE PRECEDING FISCAL YEARS, OR DURING THE EXISTENCE OF
 17 THE ISSUER AND ANY PREDECESSORS IF LESS THAN THREE YEARS,
 18 IN THE PAYMENT OF PRINCIPAL, INTEREST, OR DIVIDENDS ON THE
 19 SECURITY;

20 (11) a nonissuer transaction effected by or through a registered broker-
 21 dealer under an unsolicited order or offer to buy; however, the administrator may by
 22 regulation require that the customer acknowledge on [UPON] a specified form that the
 23 sale was unsolicited, and that a signed copy of each form be preserved by the broker-
 24 dealer for a specified period;

25 (11) [(12)] a transaction executed by a bona fide pledgee without
 26 intending to evade [ANY PURPOSE OF EVADING] this chapter;

27 (12) [(13)] a transaction incident to a right of conversion or a statutory
 28 or judicially approved reclassification, recapitalization, reorganization, quasi-
 29 reorganization, stock split, reverse stock split, merger, consolidation, or sale of assets
 30 [, IF]

31 (A) [NO COMMISSION OR OTHER REMUNERATION,

1 OTHER THAN A STANDBY COMMISSION IS PAID OR GIVEN
2 DIRECTLY OR INDIRECTLY FOR SOLICITING A SECURITY HOLDER
3 IN THIS STATE; AND

4 (B) THE ISSUER FILES A NOTICE IN THE FORM
5 SPECIFIED BY THE ADMINISTRATOR NOT LESS THAN 30 DAYS
6 BEFORE MAKING THE OFFER];

7 (13) [(14)] a stock dividend, regardless of whether the corporation
8 distributing the dividend is the issuer of the stock [OR NOT], if nothing of value is
9 given by stockholders for the dividend other than the surrender of a right to a cash or
10 property dividend when each stockholder may elect to take the dividend in cash or
11 property or in stock;

12 (14) [(15)] an act incident to a statutory [CLASS] vote by security
13 holders [STOCKHOLDERS, UNDER THE CERTIFICATE OF INCORPORATION
14 OR THE APPLICABLE CORPORATION STATUTE,] on a merger, consolidation,
15 reclassification of securities, or sale of assets in consideration of the issuance of
16 securities of another issuer [CORPORATION];

17 (15) [(16)] the offer or sale by a registered broker-dealer, acting either
18 as principal or agent, of securities previously sold and distributed to the public if the
19 securities

20 (A) [THE SECURITIES] are sold at prices reasonably related
21 to the current market price at the time of sale, and, if the broker-dealer is
22 acting as agent, the commission collected by the broker-dealer on account of
23 the sale is not in excess of usual and customary commissions collected with
24 respect to securities and transactions having comparable characteristics;

25 (B) [THE SECURITIES] do not constitute the whole or a part
26 of an unsold allotment to or subscription or participation by the broker-dealer
27 as an underwriter of the securities or as a participant in the distribution of the
28 securities by the issuer, by an underwriter, or by a person or group of persons
29 in substantial control of the issuer or of the outstanding securities of the class
30 being distributed; and

31 (C) [THE SECURITIES] have been lawfully sold and

1 distributed in this state under this chapter;

2 (16) [(17)] offers or sales of certificates of interest or participation in
3 oil, gas, or mining rights, titles, or leases, or in payments out of production under such
4 rights, titles, or leases, if the purchasers

5 (A) are or have been during the preceding two years engaged
6 primarily in the business of exploring for, mining, producing, or refining oil,
7 gas, or minerals; or

8 (B) have been found by the administrator upon written
9 application to be substantially engaged in the business of exploring for, mining,
10 producing, or refining oil, gas, or minerals so as not to require the protection
11 provided by AS 45.55.070;

12 (17) a nonissuer transaction by a registered agent of a registered
13 broker-dealer, and a resale transaction by a sponsor of a unit investment trust
14 registered under 15 U.S.C. 80a-1 - 80a-64 (Investment Company Act of 1940), in
15 a security of a class that has been outstanding in the hands of the public for at
16 least 90 days if, at the time of the transaction,

17 (A) the issuer of the security is actually engaged in business
18 and not in the organization stage or in bankruptcy or receivership and is
19 not a blank check, blind pool, or shell company whose primary plan of
20 business is to engage in a merger or combination of the business with, or
21 an acquisition of, an unidentified person or persons;

22 (B) the security is sold at a price reasonably related to the
23 current market price of the security;

24 (C) the security does not constitute the whole or part of an
25 unsold allotment to, or a subscription or participation by, the
26 broker-dealer as an underwriter of the security;

27 (D) a nationally recognized securities manual, which may be
28 designated by rule or order of the administrator, or a document filed with
29 the United States Securities and Exchange Commission that is publicly
30 available through the United States Securities and Exchange Commission's
31 electronic data gathering and retrieval system, contains

- 1 (i) a description of the business and operations of the
2 issuer;
- 3 (ii) the names of the issuer's officers and directors,
4 if anv. or, in the case of an issuer not domiciled in the United
5 States, the corporate equivalents of the issuer's officers and
6 directors in the issuer's country of domicile;
- 7 (iii) an audited balance sheet of the issuer as of a
8 date within 18 months or, in the case of a reorganization or merger
9 where parties to the reorganization or merger had that audited
10 balance sheet, a pro forma balance sheet; and
- 11 (iv) an audited income statement for each of the
12 issuer's immediately preceding two fiscal years or for the period of
13 existence of the issuer if the issuer has been in existence for less
14 than two years or, in the case of a reorganization or merger where
15 the parties to the reorganization or merger had that audited income
16 statement, a pro forma income statement; and
- 17 (E) the issuer of the security has a class of equity securities
18 listed on a national securities exchange registered under 15 U.S.C. 78a -
19 78lll (Securities Exchange Act of 1934) or designated for trading on the
20 National Association of Securities Dealers Automated Quotation System,
21 unless the issuer of the security
- 22 (i) is a unit investment trust registered under 15
23 U.S.C. 80a-1 - 80a-64 (Investment Company Act of 1940);
- 24 (ii) including predecessors, has been engaged in
25 continuous business for at least three years; or
- 26 (iii) has total assets of at least \$2,000,000 based on an
27 audited balance sheet as of a date within 18 months or, in the case
28 of a reorganization or merger where parties to the reorganization
29 or merger had that balance sheet, a pro forma balance sheet;
- 30 (18) an offer or a sale of a security by an issuer that has a specific
31 business plan or purpose, is not in the development stage, and has not indicated

1 that its business plan is to engage in a merger or acquisition with an unidentified
2 company or other entity or person, under the following conditions:

3 (A) sales of securities are made only to persons who are or
4 the issuer reasonably believes are accredited investors as defined in
5 17 C.F.R. 230.501(a), as that regulation exists on or after the effective date
6 of this Act;

7 (B) the issuer reasonably believes that all purchasers are
8 purchasing for investment and not with the view to or for sale in
9 connection with a distribution of the security; a resale of a security sold in
10 reliance on this exemption within 12 months of sale is presumed to be with
11 a view to distribution and not for investment, except a resale under a
12 registration statement under AS 45.55.070 - 45.55.120 or to an accredited
13 investor under an exemption available under this chapter;

14 (C) the exemption in this paragraph is not available to an
15 issuer if the issuer, a predecessor of the issuer, an affiliated issuer, a
16 director, an officer, or a general partner of the issuer, a beneficial owner
17 of 10 percent or more of a class of the issuer's equity securities, a
18 promoter of the issuer presently connected with the issuer in any capacity,
19 an underwriter of the securities to be offered, or a partner, a director, or
20 an officer of the underwriter

21 (i) within the last five years has filed a registration
22 statement that is the subject of a currently effective registration
23 stop order entered by a state securities administrator or the United
24 States Securities and Exchange Commission;

25 (ii) within the last five years has been convicted of a
26 criminal offense in connection with the offer, purchase, or sale of
27 a security, of a criminal offense involving fraud or deceit, or of a
28 felony;

29 (iii) is currently subject to a state or federal
30 administrative enforcement order or judgment entered within the
31 last five years finding fraud or deceit in connection with the

1 purchase or sale of a security; or

2 (iv) is currently subject to an order, judgment, or
3 decree of a court of competent jurisdiction entered within the last
4 five years, temporarily, preliminarily, or permanently restraining
5 or enjoining the person from engaging in or continuing to engage
6 in conduct or a practice involving fraud or deceit in connection
7 with the purchase or sale of a security;

8 (D) the nonavailability of the exemption under (C) of this
9 paragraph does not apply if

10 (i) the person subject to the disqualification is
11 licensed or registered to conduct securities related business in the
12 state in which the order, judgment, or decree creating the
13 disqualification was entered against the person;

14 (ii) before the first offer under this exemption, the
15 state securities administrator or the court or regulatory authority
16 that entered the order, judgment, or decree waives the
17 disqualification; or

18 (iii) the issuer establishes that it did not know and,
19 in the exercise of reasonable care, based on a factual inquiry, could
20 not have known that a disqualification existed under this
21 paragraph;

22 (E) a general announcement of the proposed offering may
23 be made by any means and may include only the following information
24 unless the administrator specifically permits additional information:

25 (i) the name, address, and telephone number of the
26 issuer of the security;

27 (ii) the name, a brief description, and the price, if
28 known, of the security to be issued;

29 (iii) a brief description in 25 words or less of the
30 business of the issuer;

31 (iv) the type, number, and aggregate amount of

1 securities being offered;

2 (v) the name, address, and telephone number of the
3 person to contact for additional information;

4 (vi) a statement that sales will be made only to
5 accredited investors;

6 (vii) a statement that money or other consideration
7 is not being solicited or will not be accepted by way of this general
8 announcement; and

9 (viii) a statement that the securities have not been
10 registered with or approved by a state securities agency or the
11 United States Securities and Exchange Commission and are being
12 offered and sold under an exemption from registration;

13 (F) the issuer in connection with any offer may provide
14 information in addition to the general announcement under (E) of this
15 paragraph if the information is delivered

16 (i) through an electronic database that is restricted
17 to persons who have been prequalified as accredited investors; or

18 (ii) to a prospective purchaser that the issuer
19 reasonably believes is an accredited investor;

20 (G) a telephone solicitation is not permitted unless, before
21 placing the call, the issuer reasonably believes that the prospective
22 purchaser being solicited is an accredited investor;

23 (H) dissemination of the general announcement of the
24 proposed offering to persons who are not accredited investors does not
25 disqualify the issuer from claiming this exemption;

26 (I) the issuer shall file a notice of the transaction with the
27 administrator, a copy of the general announcement, and the fee for
28 exemption filings established by regulation within 15 days after the first
29 sale in this state;

30 (19) an offer to repay, under AS 45.55.930, the buyer of a security
31 if the offeror first files with the administrator a notice specifying the terms of the

1 offer at least two days before the offer is made;

2 (20) a transaction involving only family members who are related,
 3 including related by adoption, within the fourth degree of affinity or
 4 consanguinity, or involving only those family members and the corporations,
 5 partnerships, limited liability companies, limited partnerships, limited liability
 6 partnerships, associations, joint-stock companies, or trusts that are organized,
 7 formed, or created by those family members or at the direction of those family
 8 members.

9 * Sec. 47. AS 45.55.900 is amended by adding new subsections to read:

10 (g) An offer on the Internet by an issuer is exempt from the registration
 11 provisions of AS 45.55.070 and the advertising regulations adopted under this chapter
 12 and does not preclude the issuer from relying on other available exemptions for offers
 13 provided under this chapter if

14 (1) the offer directly discloses, in a format and at a prominent place in
 15 the offer and in an advertisement of the offer on the Internet, that the securities are not
 16 being offered to persons in this state;

17 (2) the offer is not otherwise specifically directed to a person in this
 18 state by or on behalf of the issuer; and

19 (3) a sale of the issuer's securities is not made in this state as a result
 20 of the offer.

21 (h) For any security or transaction or any type of security or transaction, the
 22 administrator may by order, waive, withdraw, or modify any of the requirements or
 23 conditions of (b)(5) of this section.

24 * Sec. 48. AS 45.55.910 is amended by adding a new subsection to read:

25 (e) Notwithstanding AS 45.55.905(b), all investigative files are confidential,
 26 except that they must be disclosed by the administrator as required for discovery in an
 27 administrative or a judicial proceeding.

28 * Sec. 49. AS 45.55.915 is amended to read:

29 Sec. 45.55.915. Reimbursement of expenses incident to examination or
 30 investigation. (a) The administrator may require an [AN] issuer, broker-dealer,
 31 agent, investment adviser representative, federal covered adviser, or state

1 investment adviser to [SHALL] reimburse the administrator for actual travel expenses
 2 and per diem incurred in connection with an examination or investigation [INCIDENT
 3 TO A REGISTRATION] under this chapter.

4 (b) The administrator may by regulation or order adopt a schedule of charges
 5 for annual examination and investigation [FEES] of issuers, broker-dealers, agents,
 6 investment adviser representatives, federal covered advisers, and state investment
 7 advisers.

8 (c) If an issuer, broker-dealer, agent, investment adviser representative,
 9 federal covered adviser, or state investment adviser fails to pay the fees and expenses
 10 provided for in this section, the fees and expenses shall be paid out of the funds of the
 11 administrator in the same manner as other disbursements made by the administrator.
 12 The amounts paid from the funds of the administrator are a lien on [UPON] all of the
 13 assets and property in this state of the issuer, broker-dealer, agent, investment adviser
 14 representative, federal covered adviser, or state investment adviser, and the amount
 15 may be recovered by the attorney general on behalf of the state.

16 (d) Failure of the issuer, broker-dealer, agent, investment adviser
 17 representative, or state investment adviser to pay fees and expenses under this section
 18 is a wilful violation of this chapter, and the violation falls within the provisions of
 19 AS 45.55.060, 45.55.120, 45.55.920, and 45.55.925.

20 * Sec. 50. AS 45.55.920 is amended by adding a new subsection to read:

21 (e) After an order issued by the administrator under (b) or (c) of this section
 22 becomes final and all rights of appeal are exhausted, the administrator may petition the
 23 superior court to enter a judgment against a person who is a respondent in the order
 24 for the amount of the civil penalty levied against the person. Subject to AS 44.62.570,
 25 the filing of the petition for a judgment does not reopen the final order to further
 26 substantive review unless the court orders otherwise. A judgment entered under this
 27 subsection may be executed on and levied under in the manner provided in AS 09.35.

28 * Sec. 51. AS 45.55.925(a) is amended to read:

29 (a) In addition to the civil penalties assessed under AS 45.55.920, a person
 30 who wilfully violates a provision of this chapter except AS 45.55.030(e), 45.55.040(h),
 31 45.55.075, or 45.55.160 [AS 45.55.160], or who wilfully violates a regulation or order

1 under this chapter, or who wilfully violates AS 45.55.160 knowing the statement made
 2 to be false or misleading in a material respect or the omission to be misleading by any
 3 material respect, upon conviction, is punishable by a fine of not more than \$5,000, or
 4 by imprisonment for not less than one year nor more than five years, or both. Upon
 5 conviction of an individual for a felony under this chapter, imprisonment for not less
 6 than one year is mandatory. However, an individual may not be imprisoned for the
 7 violation of a regulation or order if the individual proves that the individual had no
 8 knowledge of the regulation or order. An indictment or information may not be
 9 returned under this chapter more than five years after the alleged violation.

10 * Sec. 52. AS 45.55.930(a) is amended to read:

11 (a) A person is liable to the person buying the security from the person for the
 12 consideration paid for the security, together with interest at eight percent [SIX PER
 13 CENT] a year or the stated rate of the security if the security has a stated, fixed
 14 rate less than eight percent, from the date of payment, costs, and reasonable attorney
 15 [ATTORNEYS'] fees, less the amount of income received on the security, on [UPON]
 16 the tender of the security, or for damages if the buyer [SELLER] no longer owns the
 17 security, if the seller offers or sells a security

18 (1) other than a federal covered security, [OFFERS OR SELLS A
 19 SECURITY] in violation of AS 45.55.030(a), 45.55.070, or 45.55.170(b) or of a
 20 regulation or order under AS 45.55.150 that requires the filing of sales literature before
 21 it is used, or of a condition imposed under AS 45.55.100(d) or 45.55.110(g) or (h); [,]
 22 or

23 (2) [OFFERS OR SELLS A SECURITY] by means of an untrue
 24 statement of a material fact, or omits to state a material fact, the omission of which
 25 makes a statement misleading.

26 * Sec. 53. AS 44.55.930(b) is amended to read:

27 (b) Damages are the amount that would be recoverable on [UPON] a tender
 28 less the value of the security when the buyer disposed of it and interest at eight
 29 percent [SIX PER CENT] a year, or the stated rate of the security if the security
 30 had a stated, fixed rate less than eight percent, from the date of disposition.

31 * Sec. 54. AS 45.55.930(f) is amended to read:

1 (f) A person may not sue under this section more than three years after the
 2 contract of sale, except as otherwise provided in this subsection. For a violation
 3 of (a)(2) of this section or AS 45.55.010, an action under this section may be
 4 brought within three years after the sale or two years after the person bringing
 5 the action discovered or should have discovered the facts on which the action is
 6 based, whichever is later. Failure to bring an action on a timely basis is an
 7 affirmative defense. A person may not sue under this section if the buyer received

8 (1) [IF THE BUYER RECEIVED] a written offer, before suit and at
 9 a time when the buyer owned the security, to refund the consideration paid together
 10 with interest at eight percent [SIX PER CENT] a year, or the stated rate of the
 11 security if the security has a stated, fixed rate less than eight percent, from the
 12 date of payment, less the amount of income received on the security, and the buyer
 13 failed to accept the offer within 30 days of its receipt; [,] or

14 (2) [IF THE BUYER RECEIVED] the offer before suit and at a time
 15 when the buyer did not own the security [,] unless the buyer rejected the offer in
 16 writing within 30 days of its receipt.

17 * Sec. 55. AS 45.55.930 is amended by adding new subsections to read:

18 (j) Notwithstanding the time limitation in (f) of this section, an action under
 19 this section may be started after receipt of a written offer described in (a) of this
 20 section if the buyer accepted the payment offer within 30 days after receipt of the offer
 21 and has not been paid the full amount offered.

22 (k) An offer to pay the buyer under this section involves the offer or sale of
 23 a security, and the transaction must be registered under this chapter or exempt from
 24 registration under AS 45.55.900.

25 * Sec. 56. AS 45.55.935(a) is amended to read:

26 (a) The administrator shall adopt regulations, consistent with the provisions of
 27 this chapter, governing administrative hearings conducted by the administrator or a
 28 designee of the administrator for the following:

29 (1) orders issued under AS 45.55.120, 45.55.900(d), or 45.55.920; in
 30 these instances, the administrator shall promptly send a notice of opportunity for
 31 hearing to the issuer of the securities and to all persons who have filed with the

1 department a notice of intention to sell the securities; and

2 (2) orders issued under AS 45.55.060; before the administrator enters
3 an order under AS 45.55.060, the administrator shall send to the person involved a
4 notice of opportunity for hearing; if the person involved is an agent or investment
5 adviser representative, then the administrator shall, in addition, notify the employing
6 broker-dealer, state investment adviser, federal covered adviser [ADVISOR], or
7 issuer.

8 * Sec. 57. AS 45.55.970(b) is amended to read:

9 (b) The administrator shall keep a register of all applications for registration
10 and registration statements that [WHICH] are or have ever been effective under this
11 chapter, all notice filings under this chapter, and all denial, suspension, or revocation
12 orders that [WHICH] have been entered under this chapter. The register must
13 [SHALL] be open for public inspection.

14 * Sec. 58. AS 45.55.970(c) is amended to read:

15 (c) The information contained in or filed with a registration statement,
16 application, notice filing, or report may be made available to the public under the
17 regulations adopted by the administrator.

18 * Sec. 59. AS 45.55.970(e) is amended to read:

19 (e) The administrator may honor requests from interested persons for
20 interpretative opinions and may establish appropriate fees by regulation.

21 * Sec. 60. AS 45.55.980(a) is amended to read:

22 (a) Unless the persons are exempt elsewhere in this chapter, AS 45.55.010,
23 45.55.025, 45.55.027, 45.55.028, 45.55.030(a), 45.55.035, 45.55.070, 45.55.075,
24 45.55.170, and 45.55.930 apply to persons who sell or offer to sell when an offer to

25 (1) [AN OFFER TO] sell is made in this state; or

26 (2) [AN OFFER TO] buy is made and accepted in this state.

27 * Sec. 61. AS 45.55.980(b) is amended to read:

28 (b) Unless the persons are exempt elsewhere in this chapter, AS 45.55.010,
29 45.55.025, 45.55.027, 45.55.028, 45.55.030(a), 45.55.035, and 45.55.170 apply to
30 persons who buy or offer to buy when an offer to

31 (1) [AN OFFER TO] buy is made in this state; or

1 (2) [AN OFFER TO] sell is made and accepted in this state.

2 * Sec. 62. AS 45.55.980(c) is amended to read:

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

5 (1) originates from this state;

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

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

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

14 (5) is for an interest or participation in real property located in the
15 state, or in a domestic corporation, a domestic limited liability company, [OR] a
16 domestic limited partnership, or a domestic limited liability partnership; jurisdiction
17 under this paragraph may be exercised only when the exercise is not inconsistent with
18 the constitution of this state or of the United States.

19 * Sec. 63. AS 45.55.980(f) is amended to read:

20 (f) AS 45.55.020, 45.55.023, 45.55.030(c), 45.55.030(e), 45.55.040(h), and
21 45.55.170, so far as state investment advisers, federal covered advisers, and
22 investment adviser representatives are concerned, apply when any act instrumental
23 in effecting prohibited conduct is done in this state, regardless of whether [OR NOT]
24 either party is then present in this state.

25 * Sec. 64. AS 45.55.980(g) is amended to read:

26 (g) An [EVERY] applicant for registration under this chapter, an [AND
27 EVERY] issuer that proposes to offer a security in this state through a person acting
28 on an agency basis in the common law sense, and a person making a notice filing
29 under this chapter shall file with the administrator, in the form that the administrator
30 prescribes by regulation, an irrevocable consent appointing the administrator or a
31 successor in office to be the applicant's or issuer's attorney to receive service of lawful

1 process in a civil suit, an action, or a proceeding against the applicant or issuer or a
 2 successor executor or administrator that [WHICH] arises under this chapter or a
 3 regulation or order under this chapter after the consent has been filed [,] with the same
 4 force and validity as if served personally on the person filing the consent. A person
 5 who has filed a [FILES THE] consent in connection with a previous registration or
 6 notice filing need not file another. Service may be made by leaving a copy of the
 7 process in the office of the administrator, but it is not effective unless

8 (1) the plaintiff, who may be the administrator in a suit, action, or
 9 proceeding instituted by the administrator, immediately sends notice of the service and
 10 a copy of the process by registered mail to the defendant or respondent at the last
 11 address on file with the administrator; and

12 (2) the plaintiff's affidavit of mailing is filed in the case on or before
 13 the return day of the process, if any, or within the further time that [WHICH] the
 14 court allows.

15 * Sec. 65. AS 45.55.990(2) is amended to read:

16 (2) "agent" means an individual other than a broker-dealer who
 17 represents a broker-dealer or an issuer in effecting or attempting to effect purchase or
 18 sale of securities; a partner, an officer, or a director of a broker-dealer or issuer, or a
 19 person occupying a similar status or performing similar functions, is an agent only if
 20 the person otherwise comes within this definition; "agent" does not include an
 21 individual who represents

22 (A) an issuer in effecting transactions

23 (i) [(A)] in a security exempted by AS 45.55.900(a)
 24 [AS 45.55.900(a)(1) - (5)];

25 (ii) [(B)] exempted by AS 45.55.900(b);

26 (iii) in a covered security as described in 15 U.S.C.
 27 77r(b)(3) and (4)(D) (Securities Act of 1933); or

28 (iv) [(C)] with existing employees, partners, or directors
 29 of the issuer if a [NO] commission or other remuneration is not paid
 30 or given directly or indirectly for soliciting any person in this state; or

31 (B) a broker-dealer in effecting transactions in this state

1 described in 15 U.S.C. 78o(h)(2) and (3) (Securities Exchange Act of 1934);

2 * Sec. 66. AS 45.55.990(3) is amended to read:

3 (3) "broker-dealer" means a person engaged in the business of effecting
4 transactions in securities for the account of others or for the person's own account;
5 "broker-dealer" does not include

6 (A) an agent;

7 (B) an issuer;

8 (C) a bank, savings institution, or trust company;

9 (D) a person who has no place of business in this state if the
10 person effects transactions in this state exclusively with or through

11 (i) the issuers of the securities involved in the
12 transactions;

13 (ii) other broker-dealers; or

14 (iii) banks, savings institutions, trust companies,
15 insurance companies, investment companies as defined in 15 U.S.C.
16 80a-1 - 80a-64 ([THE] Investment Company Act of 1940), pension or
17 profit-sharing trusts, or other financial institutions or institutional
18 buyers, whether acting for themselves or as trustees; or

19 (E) a person who has no place of business in this state if, during
20 a period of 12 consecutive months, the person does not effect more than 15
21 transactions at the initiation and direction of the customer and on behalf
22 of residents of this state regardless of whether the residents are then
23 present in this state and does not direct any [MORE THAN 15] offers
24 initiated by the person to sell or buy into this state in any manner to persons
25 other than those specified in (D) of this paragraph, regardless of whether [OR
26 NOT] the offeror or any offeree is then present in this state;

27 * Sec. 67. AS 45.55.990(9) is amended to read:

28 (9) "person" means an individual, a corporation, a partnership, a
29 limited liability company, a limited partnership, a limited liability partnership, an
30 association, a joint-stock company, a trust in which [WHERE] the interests of the
31 beneficiaries are evidenced by a security, an unincorporated organization, a

1 government, or a political subdivision of a government;

2 * Sec. 68. AS 45.55.990(11) is repealed and reenacted to read:

3 (11) "Securities Act of 1933" means 15 U.S.C. 77a - 77bbbb, as that
4 act exists on or after the effective date of this Act;

5 * Sec. 69. AS 45.55.990(12) is amended to read:

6 (12) "security" means a note; stock; treasury stock; bond; debenture;
7 evidence of indebtedness; certificate of interest or participation in any profit-sharing
8 agreement; [A] limited liability company interest under AS 10.50, notwithstanding the
9 limitations of AS 45.08.103(c); collateral-trust certificate [CERTIFICATES];
10 preorganization certificate or subscription; transferable share; investment contract;
11 voting-trust certificate; certificate of deposit for a security; fractional or pooled
12 interest in a viatical settlement contract; [A] certificate of interest or participation
13 in an oil, gas, or mining title or lease or in payments out of production under the title
14 or lease or in any sale of or indenture or bond or contract for the conveyance of land
15 or any interest in land; an option on a contract for the future delivery of agricultural
16 or mineral commodities or any other commodity offered or sold to the public and not
17 regulated by the Commodity Futures Trading Commission; however, the contract or
18 option is not subject to the provisions of AS 45.55.070 if it is sold or purchased on the
19 floor of a bona fide exchange or board of trade and offered or sold to the public by
20 a broker-dealer or agent registered under this chapter; investment of money or money's
21 worth including goods furnished or services performed in the risk capital of a venture
22 with the expectation of some benefit to the investor where the investor has no direct
23 control over the investment or policy decision of the venture; or, in general, any
24 interest or instrument commonly known as a "security," or any certificate of interest
25 or participation in, temporary or interim certificate for, receipt for, guarantee of, or
26 warrant or right to subscribe to or purchase, any of the foregoing; "security" does not
27 include an insurance or endowment policy or annuity contract under which an
28 insurance company promises to pay a fixed or variable sum of money either in a lump
29 sum or periodically for life or for some other specified period;

30 * Sec. 70. AS 45.55.990 is amended by adding new paragraphs to read:

31 (14) "advisory client" means a person to whom services are provided

1 under an investment advisory contract;

2 (15) "advisory fee" means the fee for providing services under an
3 investment advisory contract;

4 (16) "advisory services" means advising a person as to the value of
5 securities or their purchase or sale, whether through the issuance of analyses or reports
6 or otherwise;

7 (17) "Bank Holding Company Act of 1956" means 12 U.S.C. 1841 -
8 1850, as that act exists on or after the effective date of this Act;

9 (18) "clients who are natural persons" means natural persons who are
10 clients of a state investment adviser or federal covered adviser, except that natural
11 persons with at least \$750,000 under management with the state investment adviser or
12 federal covered adviser or with a net worth of at least \$1,500,000 at the time they
13 initially contract for services described in (23)(A)(i) of this section, and other natural
14 persons who may be designated by regulation or order of the administrator, are not
15 considered natural persons for the purpose of determining under (23)(A)(ii) of this
16 section if a supervised person provides the services described under (23)(A)(i) of this
17 section to natural persons;

18 (19) "federal covered adviser" means a person who is registered with
19 the United States Securities and Exchange Commission under 15 U.S.C. 80b-3
20 (Investment Advisers Act of 1940); "federal covered adviser" does not include a person
21 that is excluded from the definition of "state investment adviser" under (35)(B) of this
22 section;

23 (20) "federal covered security" means a security that is a covered
24 security under 15 U.S.C. 77r(b) (Securities Act of 1933), or regulations adopted under
25 that Act;

26 (21) "Federal Deposit Insurance Act" means 12 U.S.C. 1811 - 1835a,
27 as that act exists on or after the effective date of this Act;

28 (22) "Home Owners' Loan Act" means 12 U.S.C. 1461 - 1470, as that
29 act exists on or after the effective date of this Act;

30 (23) "investment adviser representative"

31 (A) means a natural person who

1 (i) makes a recommendation or otherwise renders advice
2 regarding securities; manages accounts or portfolios of clients;
3 determines which recommendation or advice regarding securities should
4 be given; solicits, offers, or negotiates for the sale of or sells advisory
5 services; or supervises employees who perform an activity described in
6 this sub-subparagraph; and

7 (ii) is a supervised person of a state investment adviser
8 that is registered or required to be registered under this chapter if a
9 substantial portion of the business of the supervised person is providing
10 to clients who are natural persons the services described in (i) of this
11 subparagraph, or who is a supervised person of a federal covered
12 adviser, has a place of business located in this state, and has six or
13 more clients who are natural persons, if a substantial portion of the
14 business of the supervised person is providing to clients who are natural
15 persons the services described in (i) of this subparagraph;

16 (B) means other persons who are not otherwise covered by this
17 paragraph but who are designated by regulation or order of the administrator;

18 (C) except persons covered by (37)(A)(ii) of this section, does
19 not include a person that would not be defined as an investment adviser
20 representative under 17 C.F.R. 275.203A-3 adopted under 15 U.S.C. 80b-3a
21 (Investment Advisers Act of 1940), as that regulation exists on or after the
22 effective date of this Act;

23 (24) "Investment Advisers Act of 1940" means 15 U.S.C. 80b-1 - 80b-
24 21, as that act exists on or after the effective date of this Act;

25 (25) "investment advisory business" means a business in which a
26 person receives compensation primarily for providing advisory services;

27 (26) "investment advisory contract" means a contract in which one
28 person receives consideration from another person primarily for providing advisory
29 services;

30 (27) "Investment Company Act of 1940" means 15 U.S.C. 80a-1 - 80a-
31 64, as that act exists on or after the effective date of this Act;

1 (28) "NASDAQ" means National Association of Securities Dealers
2 Automatic Quotation System;

3 (29) "National Securities Markets Improvement Act of 1996" means
4 P.L. 104 - 290, 101 Stat. 3416 - 3440, as that act exists on or after the effective date
5 of this Act;

6 (30) "notice filing" means a filing made under AS 45.55.040(h) or
7 45.55.075 unless the context indicates otherwise;

8 (31) "place of business" of a state investment adviser, investment
9 adviser representative, or federal covered adviser means

10 (A) an office at which the state investment adviser, federal
11 covered adviser, or investment adviser representative regularly provides
12 advisory services, solicits, meets with, or otherwise communicates with clients;
13 and

14 (B) another location that is held out to the general public as a
15 location at which the state investment adviser, federal covered adviser, or
16 investment adviser representative provides advisory services, solicits, meets
17 with, or otherwise communicates with clients;

18 (32) "principal place of business" of a state investment adviser,
19 investment adviser representative, or federal covered adviser means the executive
20 office of the state investment adviser, investment adviser representative, or federal
21 covered adviser from which the officers, partners, or managers of the state investment
22 adviser, investment adviser representative, or federal covered adviser direct, control,
23 and coordinate the activities of the state investment adviser, investment adviser
24 representative, or federal covered adviser;

25 (33) "Securities Exchange Act of 1934" means 15 U.S.C. 78a - 78lll,
26 as that act exists on or after the effective date of this Act;

27 (34) "securities business" means a business that provides the services
28 provided by

29 (A) state investment advisers, federal covered advisers, or
30 investment adviser representatives; or

31 (B) broker-dealers, issuers, or agents of broker-dealers or

1 issuers;

2 (35) "state investment adviser"

3 (A) means

4 (i) a person who, for compensation, engages in the
5 business of advising others, either directly or through publications or
6 writings, as to the value of securities or as to the advisability of
7 investing in, purchasing, or selling securities, or who, for compensation
8 and as a part of a regular business, issues or promulgates analyses or
9 reports concerning securities, or who, for compensation, engages in this
10 state in the business of managing an investment or trading account in
11 securities for other persons;

12 (ii) a financial planner or other person who, as an
13 integral component of other financially related services, provides the
14 services described in (i) of this subparagraph to others for compensation
15 and as part of a business or who holds out to provide the services
16 described in (i) of this subparagraph to others for compensation;

17 (B) does not include

18 (i) an investment adviser representative;

19 (ii) a savings institution, a trust company, a bank
20 holding company as defined in 12 U.S.C. 1841 (Bank Holding
21 Company Act of 1956), or a bank that is not an investment company;

22 (iii) a lawyer, an accountant, an engineer, or a teacher
23 whose performance of the services described in (A)(i) of this paragraph
24 is incidental to the practice of the person's profession;

25 (iv) a broker-dealer or its agent whose performance of
26 the services described in (A)(i) of this paragraph is incidental to the
27 conduct of business as a broker-dealer or an agent and who does not
28 receive special compensation for the services;

29 (v) a publisher of a bona fide newspaper, news column,
30 newsletter, news magazine, or business or financial publication or
31 service, whether communicated in hard copy form, by electronic means,

1 or otherwise, that does not consist of the rendering of advice on the
2 basis of the specific investment situation of each client;

3 (vi) a person that is a federal covered adviser;

4 (vii) a person whose sole clients are the person's spouse,
5 parents, children, or siblings by blood or adoption, and who does not
6 hold out to provide the services described in (A)(i) of this paragraph to
7 the general public;

8 (viii) other persons not within the intent of this
9 paragraph whom the administrator may designate by regulation or order;

10 (36) "substantial portion of the business" means that more than 10
11 percent of the clients of a supervised person during the preceding 12 months are clients
12 who are natural persons to whom the supervised person is providing the services
13 described in (23)(A)(i) of this section;

14 (37) "supervised person"

15 (A) means

16 (i) a partner, an officer, a director, or another person
17 occupying a similar status or performing similar functions, an employee
18 of a state investment adviser or federal covered adviser, or another
19 person who provides services described in (23)(A)(i) of this section to
20 clients on behalf of the state investment adviser or federal covered
21 adviser if the person is subject to the supervision and control of the
22 state investment adviser or federal covered adviser;

23 (ii) a third-party natural person employed primarily to
24 solicit, offer, or negotiate for the sale of or to sell the services described
25 in (23)(A)(i) of this section for a state investment adviser or federal
26 covered adviser, even if the person is not subject to the supervision or
27 control of the state investment adviser or federal covered adviser;

28 (B) does not include a person who

29 (i) does not on a regular basis solicit, meet with, or
30 otherwise communicate with clients of a state investment adviser or
31 federal covered adviser as a normal and ordinary part of the duties of

1 the person; or

2 (ii) provides the services described in (23)(A)(i) of this
3 section only by means of written material or oral statements that do not
4 claim to meet the objectives or needs of specific individuals or
5 accounts;

6 (38) "viatical settlement" means the purchase of a terminally ill person's
7 life insurance policy for a certain percentage of the policy's face value.

8 * Sec. 71. AS 45.55.995 is amended to read:

9 Sec. 45.55.995. **Short title.** This chapter may be cited as the Alaska Securities
10 Act [OF 1959].

11 * Sec. 72. AS 45.55.020(d) and 45.55.990(6) are repealed.

12 * Sec. 73. **TRANSITION: REGULATIONS.** Notwithstanding sec. 77 of this Act, the
13 Department of Commerce and Economic Development may immediately proceed to adopt
14 regulations necessary to implement the changes made by this Act. The regulations take effect
15 under AS 44.62 (Administrative Procedure Act), but not before the effective date of secs. 1 -
16 2 and 4 - 72 of this Act.

17 * Sec. 74. Section 3 of this Act takes effect only if AS 25.27.244(s)(2) is repealed and
18 reenacted under sec. 148(c), ch. 87, SLA 1997, as amended by sec. 53, ch. 132, SLA 1998.

19 * Sec. 75. Section 73 of this Act takes effect immediately under AS 01.10.070(c).

20 * Sec. 76. If sec. 3 of this Act takes effect, it takes effect on the effective date of the
21 repeal and reenactment of AS 25.27.244(s)(2) under sec. 148(c), ch. 87, SLA 1997, as
22 amended by sec. 53, ch. 132, SLA 1998.

23 * Sec. 77. Except as provided in secs. 75 and 76 of this Act, this Act takes effect
24 October 1, 1999.

ALASKA STATE LEGISLATURE

HOUSE LABOR AND COMMERCE COMMITTEE

Representative Norman Rokeberg, Chairman
Representative Andrew Halcro, Vice-Chairman
Representative John Harris
Representative Lisa Murkowski
Representative Jerry Sanders
Representative Tom Brice
Representative Sharon Cissna



State Capitol
Juneau, AK 99801-1182
Telephone: (907) 465-4954
Fax: (907) 465-2040

MEMORANDUM

TO: Those Interested in the Alaska Securities Act

FROM: Rep. Norman Rokeberg, Chairman
House Labor & Commerce Committee

DATE: February 17, 1999

RE: House Bill 83
Alaska Securities Act

Norman Rokeberg/jp

I wanted to let you know that the House Labor & Commerce Committee has introduced and started hearings on House Bill 83. This legislation amends the Alaska Securities Act to bring our laws in line with the federal 1996 National Securities Markets Improvement Act.

The text of the bill is available on the WEB at:

<http://www.legis.state.ak.us>

Select "BASIS 21st"

In Bill Root section, type "HB 83" and select "Display"

For the text of the bill, select "Full Text" button

If you want to print out the bill, I would suggest selecting the "PDF" version

The bill is rather long (over 60 pages). Your review would be appreciated. The House Labor & Commerce Committee will be meeting again on this bill Friday, Feb. 19th, beginning at 3:15 p.m. The bill has a further referral to the House Judiciary Committee.

While all information I have indicates that there should be no problems with this legislation, I would ask you to let me know if you have any suggestions, concerns or comments on the bill. My fax number is: (907) 465-2040; my e-mail address is:

Representative_Norman_Rokeberg@legis.state.ak.us

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258-4633 fax

FISERV INVESTOR SERVICES, INC.
301 WEST NORTHERN LIGHTS
BOULEVARD
ANCHORAGE, AK 99503

no listing

INVESTMENT MANAGEMENT &
RESEARCH, INC.
1851 BUCCANEER PLACE
ANCHORAGE, AK 99501

2581-1395 phone
278-7442 fax

KEY INVESTMENTS INC.
101 WEST BENSON BOULEVARD
ANCHORAGE, AK 99510-0420

564-0300 phone
left message

KMS FINANCIAL SERVICES, INC.
118 AMERICAN STREET
SITKA, AK 99835

LNC EQUITY SALES CORPORATION
8300 BRIARWOOD STREET, SUITE B
ANCHORAGE, AK 99518-3331

337-4884 phone
left message

MERRILL LYNCH, PIERCE, FENNER &
SMITH INCORPORATED
ONE SEALASKA PLAZA
JUNEAU, AK 99801

586-4103 phone

LUTHERAN BROTHERHOOD
SECURITIES CORP.
2525 BLUEBERRY ROAD, SUITE 102
ANCHORAGE, AK 99503

277-0035 phone
274-6841 fax

MERRILL LYNCH, PIERCE, FENNER &
SMITH INCORPORATED
3601 C STREET, PENTHOUSE SUITE W
ANCHORAGE, AK 99503

561-4433 phone
562-5789 fax

SMITH BARNEY INC.
NATIONAL BANK OF ALASKA BUILDING
JUNEAU, AK 99801

586-6000 phone
left message

~~TITAN/VALUE EQUITIES GROUP, INC.
716 WEST FOURTH AVENUE, SUITE
102
ANCHORAGE, AK 99501~~

no listing

UNITED SERVICES PLANNING
ASSOCIATION, INC.
301 NORTHERN LIGHTS BLVD WEST,
SUITE 408
ANCHORAGE, AK 99503

272-8172 phone
907-272-5259 fax

WADDELL & REED, INC.
800 EAST DIMOND, SUITE 3-350
ANCHORAGE, AK 99515

349-3559 phone
344-0881 fax

~~XCU CAPITAL CORPORATION, INC.
738 H STREET, SUITE 100
ANCHORAGE, AK 99501~~

no listing

~~SUNAMERICA SECURITIES, INC.
1400 WEST BENSON SUITE 110
ANCHORAGE, AK 99503~~

no listing

UNITED PACIFIC SECURITIES, INC.
119 NORTH CUSHMAN STREET
FAIRBANKS, AK 99707

456-4384 phone
458-4240 fax

UNITED SERVICES PLANNING
ASSOCIATION, INC.
1300 WASHINGTON DRIVE, SUITE 200
FAIRBANKS, AK 99709

479-3000 phone
474-8828 fax

WEDBUSH MORGAN SECURITIES INC.
101 WEST BENSON, SUITE 500
ANCHORAGE, AK 99503

273-2300 phone
563-8372 fax

THE LINCOLN NATIONAL LIFE
INSURANCE COMPANY
8300 BRIARWOOD STREET, SUITE B
ANCHORAGE, AK 99518-3331

522-1184 phone
522-3415 fax

UNITED SERVICES PLANNING
ASSOCIATION, INC.
201-A SANTA CLAUS LANE
NORTH POLE, AK 99705

488-4800 phone
488-1316 fax

WADDELL & REED, INC.
1075 CHECK STREET, SUITE 212
WASILLA, AK 99654

376-8373 phone
376-8374

WEDBUSH MORGAN SECURITIES INC.
714 FOURTH AVENUE, SUITE 305
FAIRBANKS, AK 99701

452-8101 phone
452-8104 fax

LEGAL SERVICES

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

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

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

MEMORANDUM

January 28, 1999

SUBJECT: Bill on Alaska Securities Act (Work Order No. 21-LS0253\A)

TO: Representative Norman Rokeberg
Attn: Janet

FROM: ^{ab} Theresa Bannister
Legislative Counsel

This memo accompanies a draft of the bill described above.

At the request of the persons with whom I have been working in the Department of Commerce and Economic Development, the federal statutes and regulations cited in the draft are described or defined to include future amendments to those laws. This approach raises the constitutional issue of whether the legislature, when passing the bill, is improperly delegating its legislative powers to another entity. This issue arises because the bill accepts as part of state law those changes that the federal government makes to its securities laws in the future without legislative review of the changes at that time. However, this approach is not uncommon, particularly where federal laws significantly affect the area being regulated, as here. Although I believe that the federal courts do not view this type of delegation as a significant problem for their statutes, I do not know how a state court would view the matter. See Northern Lights Motel v. Sweaney, 561 P.2d 1176, 1181, n.5 (Alaska 1977)

If I may be of further assistance, please advise.

TLB:glc
99-121.glc

Enclosure

HR:2
Sent to
Banking for
review +
answer to
concern 1/29/99

1-LS0253VA
Bannister
1/28/99

HOUSE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY

Introduced:

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 definition 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

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AS 46.03.320;

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

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

(B) does not include

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

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

(iii) a license issued under AS 47.35;

(iv) a business license issued under AS 43.70;

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

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

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

(2) "license"

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

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

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

(iii) teacher certificate under AS 14.20;

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

(v) asbestos worker certification under AS 18.31;

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

(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. 45.55.03.5. 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 ~~to~~ 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 - 78iii ([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; if
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 (c) 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. 77a - 77bbbb (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 - 77b ([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 .he 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
8 present 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
27 present 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

1 assets and liabilities of the enterprise or business if

2 (i) the transfer of stock to the buyer is solely
3 incidental to the sale of the enterprise or business and its assets and
4 liabilities;

5 (ii) the seller provides full access to the buyer of the
6 books and records of the enterprise or business; and

7 (iii) a legend is placed on the certificate or other
8 document evidencing ownership of the security, stating that the
9 security is not registered under this chapter and cannot be resold
10 without registration under this chapter or exemption from it;

11 (6) an offer or sale of a preorganization certificate or subscription if

12 (A) a [NO] commission or other remuneration is not paid or
13 given directly or indirectly for soliciting a prospective subscriber; [,]

14 (B) the number of subscribers does not exceed 10; [,] and

15 (C) a [NO] payment is not made by any subscriber;

16 (7) a transaction under an offer to existing security holders of the
17 issuer, including persons who at the time of the transaction are holders of convertible
18 securities, nontransferable warrants, or transferable warrants exercisable within not
19 more than 90 days of their issuance, if

20 (A) a [NO] commission or other remuneration, other than a
21 standby commission, is not paid or given directly or indirectly for soliciting a
22 security holder in this state; [,] or

23 (B) the issuer first files a notice specifying the terms of the
24 offer and the administrator does not by order disallow the exemption within the
25 next five full business days;

26 (8) an offer, [(] but not a sale, [)] of a security for which registration
27 statements have been filed under both this chapter and 15 U.S.C. 77a - 77bbb(
28 [THE] Securities Act of 1933) if a [NO] stop order or refusal order is not in effect and
29 a [NO] public proceeding or examination looking toward an order is not pending
30 under either this chapter or 15 U.S.C. 77a - 77bbb (Securities [THE] Act of 1933);

31 (9) an isolated nonissuer transaction, regardless of whether effected

1 through a broker-dealer, if the seller is [OR] not a promoter or controlling person
2 as the administrator may define by regulation or order or if the administrator at
3 the request of the seller waives the requirement that the seller not be a promoter
4 or controlling person:

5 (10) [A NONISSUER DISTRIBUTION OF AN OUTSTANDING
6 SECURITY IF

7 (A) A RECOGNIZED SECURITIES MANUAL CONTAINS
8 THE NAMES OF THE ISSUER'S OFFICERS AND DIRECTORS, A
9 BALANCE SHEET OF THE ISSUER AS OF A DATE WITHIN 18
10 MONTHS, AND A PROFIT AND LOSS STATEMENT FOR EITHER THE
11 FISCAL YEAR PRECEDING THAT DATE OR THE MOST RECENT YEAR
12 OF OPERATIONS, OR

13 (B) THE SECURITY HAS A FIXED MATURITY OR A
14 FIXED INTEREST OR DIVIDEND PROVISION AND THERE HAS BEEN
15 NO DEFAULT DURING THE CURRENT FISCAL YEAR OR WITHIN THE
16 THREE PRECEDING FISCAL YEARS, OR DURING THE EXISTENCE OF
17 THE ISSUER AND ANY PREDECESSORS IF LESS THAN THREE YEARS,
18 IN THE PAYMENT OF PRINCIPAL, INTEREST, OR DIVIDENDS ON THE
19 SECURITY;

20 (11)] a nonissuer transaction effected by or through a registered broker-
21 dealer under an unsolicited order or offer to buy; however, the administrator may by
22 regulation require that the customer acknowledge on [UPON] a specified form that the
23 sale was unsolicited, and that a signed copy of each form be preserved by the broker-
24 dealer for a specified period;

25 (11) [(12)] a transaction executed by a bona fide pledgee without
26 intending to evade [ANY PURPOSE OF EVADING] this chapter;

27 (12) [(13)] a transaction incident to a right of conversion or a statutory
28 or judicially approved reclassification, recapitalization, reorganization, quasi-
29 reorg...ization, stock split, reverse stock split, merger, consolidation, or sale of assets
30 [, IF]

31 (A) [NO COMMISSION OR OTHER REMUNERATION,

1 OTHER THAN A STANDBY COMMISSION IS PAID OR GIVEN
2 DIRECTLY OR INDIRECTLY FOR SOLICITING A SECURITY HOLDER
3 IN THIS STATE; AND

4 (B) THE ISSUER FILES A NOTICE IN THE FORM
5 SPECIFIED BY THE ADMINISTRATOR NOT LESS THAN 30 DAYS
6 BEFORE MAKING THE OFFER];

7 (13) [(14)] a stock dividend, regardless of whether the corporation
8 distributing the dividend is the issuer of the stock [OR NOT], if nothing of value is
9 given by stockholders for the dividend other than the surrender of a right to a cash or
10 property dividend when each stockholder may elect to take the dividend in cash or
11 property or in stock;

12 (14) [(15)] an act incident to a statutory [CLASS] vote by security
13 holders [STOCKHOLDERS, UNDER THE CERTIFICATE OF INCORPORATION
14 OR THE APPLICABLE CORPORATION STATUTE,] on a merger, consolidation,
15 reclassification of securities, or sale of assets in consideration of the issuance of
16 securities of another issuer [CORPORATION];

17 (15) [(16)] the offer or sale by a registered broker-dealer, acting either
18 as principal or agent, of securities previously sold and distributed to the public if the
19 securities

20 (A) [THE SECURITIES] are sold at prices reasonably related
21 to the current market price at the time of sale, and, if the broker-dealer is
22 acting as agent, the commission collected by the broker-dealer on account of
23 the sale is not in excess of usual and customary commissions collected with
24 respect to securities and transactions having comparable characteristics;

25 (B) [THE SECURITIES] do not constitute the whole or a part
26 of an unsold allotment to or subscription or participation by the broker-dealer
27 as an underwriter of the securities or as a participant in the distribution of the
28 securities by the issuer, by an underwriter, or by a person or group of persons
29 in substantial control of the issuer or of the outstanding securities of the class
30 being distributed; and

31 (C) [THE SECURITIES] have been lawfully sold and

1 distributed in this state under this chapter;

2 (16) [(17)] offers or sales of certificates of interest or participation in
3 oil, gas, or mining rights, titles, or leases, or in payments out of production under such
4 rights, titles, or leases, if the purchasers

5 (A) are or have been during the preceding two years engaged
6 primarily in the business of exploring for, mining, producing, or refining oil,
7 gas, or minerals; or

8 (B) have been found by the administrator upon written
9 application to be substantially engaged in the business of exploring for, mining,
10 producing, or refining oil, gas, or minerals so as not to require the protection
11 provided by AS 45.55.070;

12 (17) a nonissuer transaction by a registered agent of a registered
13 broker-dealer, and a resale transaction by a sponsor of a unit investment trust
14 registered under 15 U.S.C. 80a-1 - 80a-64 (Investment Company Act of 1940), in
15 a security of a class that has been outstanding in the hands of the public for at
16 least 90 days if, at the time of the transaction,

17 (A) the issuer of the security is actually engaged in business
18 and not in the organization stage or in bankruptcy or receivership and is
19 not a blank check, blind pool, or shell company whose primary plan of
20 business is to engage in a merger or combination of the business with, or
21 an acquisition of, an unidentified person or persons;

22 (B) the security is sold at a price reasonably related to the
23 current market price of the security;

24 (C) the security does not constitute the whole or part of an
25 unsold allotment to, or a subscription or participation by, the
26 broker-dealer as an underwriter of the security;

27 (D) a nationally recognized securities manual, which may be
28 designated by rule or order of the administrator, or a document filed with
29 the United States Securities and Exchange Commission that is publicly
30 available through the United States Securities and Exchange Commission's
31 electronic data gathering and retrieval system, contains

1 (i) a description of the business and operations of the
2 issuer;

3 (ii) the names of the issuer's officers and directors,
4 if any, or, in the case of an issuer not domiciled in the United
5 States, the corporate equivalents of the issuer's officers and
6 directors in the issuer's country of domicile;

7 (iii) an audited balance sheet of the issuer as of a
8 date within 18 months or, in the case of a reorganization or merger
9 where parties to the reorganization or merger had that audited
10 balance sheet, a pro forma balance sheet; and

11 (iv) an audited income statement for each of the
12 issuer's immediately preceding two fiscal years or for the period of
13 existence of the issuer if the issuer has been in existence for less
14 than two years or, in the case of a reorganization or merger where
15 the parties to the reorganization or merger had that audited income
16 statement, a pro forma income statement; and

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

22 (i) is a unit investment trust registered under 15
23 U.S.C. 80a-1 - 80a-64 (Investment Company Act of 1940);

24 (ii) including predecessors, has been engaged in
25 continuous business for at least three years; or

26 (iii) has total assets of at least \$2,000,000 based on an
27 audited balance sheet as of a date within 18 months or, in the case
28 of a reorganization or merger where parties to the reorganization
29 or merger had that balance sheet, a pro forma balance sheet;

30 (18) an offer or a sale of a security by an issuer that has a specific
31 business plan or purpose, is not in the development stage, and has not indicated

1 that its business plan is to engage in a merger or acquisition with an unidentified
2 company or other entity or person, under the following conditions:

3 (A) sales of securities are made only to persons who are or
4 the issuer reasonably believes are accredited investors as defined in
5 17 C.F.R. 230.501(a), as that regulation exists on or after the effective date
6 of this Act;

7 (B) the issuer reasonably believes that all purchasers are
8 purchasing for investment and not with the view to or for sale in
9 connection with a distribution of the security; a resale of a security sold in
10 reliance on this exemption within 12 months of sale is presumed to be with
11 a view to distribution and not for investment, except a resale under a
12 registration statement under AS 45.55.070 - 45.55.120 or to an accredited
13 investor under an exemption available under this chapter;

14 (C) the exemption in this paragraph is not available to an
15 issuer if the issuer, a predecessor of the issuer, an affiliated issuer, a
16 director, an officer, or a general partner of the issuer, a beneficial owner
17 of 10 percent or more of a class of the issuer's equity securities, a
18 promoter of the issuer presently connected with the issuer in any capacity,
19 an underwriter of the securities to be offered, or a partner, a director, or
20 an officer of the underwriter

21 (i) within the last five years has filed a registration
22 statement that is the subject of a currently effective registration
23 stop order entered by a state securities administrator or the United
24 States Securities and Exchange Commission;

25 (ii) within the last five years has been convicted of a
26 criminal offense in connection with the offer, purchase, or sale of
27 a security, of a criminal offense involving fraud or deceit, or of a
28 felony;

29 (iii) is currently subject to a state or federal
30 administrative enforcement order or judgment entered within the
31 last five years finding fraud or deceit in connection with the

1 purchase or sale of a security; or

2 (iv) is currently subject to an order, judgment, or
3 decree of a court of competent jurisdiction entered within the last
4 five years, temporarily, preliminarily, or permanently restraining
5 or enjoining the person from engaging in or continuing to engage
6 in conduct or a practice involving fraud or deceit in connection
7 with the purchase or sale of a security;

8 (D) the nonavailability of the exemption under (C) of this
9 paragraph does not apply if

10 (i) the person subject to the disqualification is
11 licensed or registered to conduct securities related business in the
12 state in which the order, judgment, or decree creating the
13 disqualification was entered against the person;

14 (ii) before the first offer under this exemption, the
15 state securities administrator or the court or regulatory authority
16 that entered the order, judgment, or decree waives the
17 disqualification; or

18 (iii) the issuer establishes that it did not know and,
19 in the exercise of reasonable care, based on a factual inquiry, could
20 not have known that a disqualification existed under this
21 paragraph;

22 (E) a general announcement of the proposed offering may
23 be made by any means and may include only the following information
24 unless the administrator specifically permits additional information:

25 (i) the name, address, and telephone number of the
26 issuer of the security;

27 (ii) the name, a brief description, and the price, if
28 known, of the security to be issued;

29 (iii) a brief description in 25 words or less of the
30 business of the issuer;

31 (iv) the type, number, and aggregate amount of

1 securities being offered;

2 (v) the name, address, and telephone number of the
3 person to contact for additional information;

4 (vi) a statement that sales will be made only to
5 accredited investors;

6 (vii) a statement that money or other consideration
7 is not being solicited or will not be accepted by way of this general
8 announcement; and

9 (viii) a statement that the securities have not been
10 registered with or approved by a state securities agency or the
11 United States Securities and Exchange Commission and are being
12 offered and sold under an exemption from registration;

13 (F) the issuer in connection with any offer may provide
14 information in addition to the general announcement under (E) of this
15 paragraph if the information is delivered

16 (i) through an electronic database that is restricted
17 to persons who have been prequalified as accredited investors; or

18 (ii) to a prospective purchaser that the issuer
19 reasonably believes is an accredited investor;

20 (G) a telephone solicitation is not permitted unless, before
21 placing the call, the issuer reasonably believes that the prospective
22 purchaser being solicited is an accredited investor;

23 (H) dissemination of the general announcement of the
24 proposed offering to persons who are not accredited investors does not
25 disqualify the issuer from claiming this exemption;

26 (I) the issuer shall file a notice of the transaction with the
27 administrator, a copy of the general announcement, and the fee for
28 exemption filings established by regulation within 15 days after the first
29 sale in this state;

30 (19) an offer to repay, under AS 45.55.930, the buyer of a security
31 if the offeror first files with the administrator a notice specifying the terms of the

1 offer at least two days before the offer is made;

2 (20) a transaction involving only family members who are related,
3 including related by adoption, within the fourth degree of affinity or
4 consanguinity, or involving only those family members and the corporations,
5 partnerships, limited liability companies, limited partnerships, limited liability
6 partnerships, associations, joint-stock companies, or trusts that are organized,
7 formed, or created by those family members or at the direction of those family
8 members.

9 * Sec. 47. AS 45.55.900 is amended by adding new subsections to read:

10 (g) An offer on the Internet by an issuer is exempt from the registration
11 provisions of AS 45.55.070 and the advertising regulations adopted under this chapter
12 and does not preclude the issuer from relying on other available exemptions for offers
13 provided under this chapter if

14 (1) the offer directly discloses, in a format and at a prominent place in
15 the offer and in an advertisement of the offer on the Internet, that the securities are not
16 being offered to persons in this state;

17 (2) the offer is not otherwise specifically directed to a person in this
18 state by or on behalf of the issuer; and

19 (3) a sale of the issuer's securities is not made in this state as a result
20 of the offer.

21 (h) For any security or transaction or any type of security or transaction, the
22 administrator may by order, waive, withdraw, or modify any of the requirements or
23 conditions of (b)(5) of this section.

24 * Sec. 48. AS 45.55.910 is amended by adding a new subsection to read:

25 (e) Notwithstanding AS 45.55.905(b), all investigative files are confidential,
26 except that they must be disclosed by the administrator as required for discovery in an
27 administrative or a judicial proceeding.

28 * Sec. 49. AS 45.55.915 is amended to read:

29 **Sec. 45.55.915. Reimbursement of expenses incident to examination or**
30 **investigation.** (a) **The administrator may require an** [AN] issuer, broker-dealer,
31 agent, **investment adviser representative, federal covered adviser, or state**