

ALASKA LEGISLATURE COMMITTEE FILES 1999-2000 00/2

9915 HOUSE LABOR & COMMERCE

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(c), 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 violated 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 \$500,000 under management with the state investment adviser or
12 federal covered adviser or with a net worth of at least \$1,000,000 at the time they
13 initially contract for services described in (23)(A)(i) of this section are not considered
14 natural persons for the purpose of determining under (23)(A)(ii) of this section if a
15 supervised person provides the services described under (23)(A)(i) of this section to
16 natural persons;

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

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

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

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

29 (23) "investment adviser representative"

30 (A) means a natural person who

31 (i) makes a recommendation or otherwise renders advice

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

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

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

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

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

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

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

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

31 (28) "NASDAQ" means National Association of Securities Dealers

1 Automatic Quotation System;

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

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

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

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

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

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

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

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

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

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

1 (35) "state investment adviser"

2 (A) means

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

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

16 (B) does not include

17 (i) an investment adviser representative;

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

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

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

28 (v) a publisher of a bona fide newspaper, news column,
29 newsletter, news magazine, or business or financial publication or
30 service, whether communicated in hard copy form, by electronic means,
31 or otherwise, that does not consist of the rendering of advice on the

1 basis of the specific investment situation of each client;

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

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

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

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

13 (37) "supervised person"

14 (A) means

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

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

27 (B) does not include a person who

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

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

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

7 * Sec. 71. AS 45.55.995 is . nended to read:

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

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

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

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

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

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

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

ALASKA STATE LEGISLATURE

House of Representatives

COMMITTEE ASSIGNMENTS:

LABOR & COMMERCE COMMITTEE, CHAIRMAN
SPECIAL COMMITTEE ON OIL & GAS, MEMBER
JUDICIARY COMMITTEE, MEMBER
CORRECTIONS BUDGET SUBCOMMITTEE, MEMBER
ADMINISTRATION BUDGET SUBCOMMITTEE, MEMBER
HESS BUDGET SUBCOMMITTEE, MEMBER



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Representative Norman Rokeberg

December 23, 1998

Commissioner Deborah B. Sedwick
Department of Commerce & Economic Development
PO Box 110800
Juneau, AK 99811-0800

RE: Alaska Securities Act

Dear Debby:

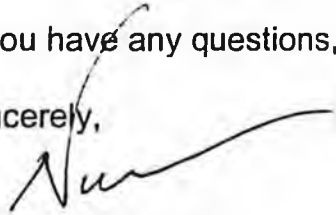
Thank you for your letter of December 7th. I, too, enjoyed meeting with you, Ginny Fay, and Terry Elder.

I have requested that our Legislative Legal Division draft the Alaska Securities Act as a committee bill by request. My staff talked with Mr. Elder today and Mr. Elder is to take the latest corrected version of the proposal over to our Legal Services along with a comparison document (comparing the proposal to HB 486).

As this will be introduced as a committee bill, it will not be prefiled. I would hope to have the bill introduced as soon as possible after the session begins and hold hearings on the bill in a short time. To that end, a sponsor statement and sectional analysis for the bill would be appreciated.

If you have any questions, please do not hesitate to contact me.

Sincerely,


Norman Rokeberg
State Representative
House District 11

cc: F. Terry Elder

STATE OF ALASKA

TONY KNOWLES, GOVERNOR

DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

OFFICE OF THE COMMISSIONER

December 7, 1998

P.O. BOX 110800
JUNEAU, ALASKA 99811-0800
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DEC 10 1998

The Honorable Norman Rokeberg
716 W. 4th Avenue, Suite 640
Anchorage, AK 99501-2133

Dear Representative Rokeberg:

Norman

Thank you for meeting with Ginny Fay, Terry Elder and me in November. We again want to congratulate you on your re-election and look forward to continuing our excellent working relationship with you and your staff.

We discussed at that meeting the introduction of the Alaska Securities Act by the House Labor and Commerce Committee, which you chair. This legislation has been finalized with the changes from last year incorporated that we discussed when we met. The draft bill is enclosed and ready for final legislative drafting by the Division of Legal and Research Services.

We sincerely appreciate your willingness to work with us on this important piece of legislation that is critical for the continued ability to conform to federal law and assist Alaska businesses to access capital. We will continue to provide any information and assistance necessary to facilitate bill passage. Please do not hesitate to contact us with any questions, comments or needed materials.

Sincerely,

Debby

Deborah B. Sedwick
Commissioner

Enclosure

I'm still looking forward to getting together with you before the legislature opens for business. I will give you a call. Hello to Jaye.

_____ BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FIRST LEGISLATURE - FIRST SESSION

Introduced:
Referred:

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to licensing, registration, consent to service, acts and practices,
2 bonding and capitalization, and record keeping and inspection of certain
3 securities occupations; to the duties of state investment advisers and federal
4 covered advisers of securities; to investment advisory contracts; to notice filings
5 required of certain securities occupations; to orders, investigations, and fees of
6 the administrator of securities; to registration of securities, federal covered
7 securities, and exempt securities and transactions; to civil penalties, interest, and
8 fees for violations of certain securities laws; to public entity investment pools;
9 and providing for an effective date."

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

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

12 (1) "license" [MEANS,]

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

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

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

9 (iii) teacher certificate under AS 14.20;

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

12 (v) asbestos worker certification under AS 18.31;

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

14 (vii) certificate of fitness under AS 18.62;

15 (viii) hazardous painting certification under AS 18.63;

16 (ix) certification as a correctional, probation, or parole
17 officer under AS 18.65.245;

18 (x) security guard license under AS 18.65.400 -
19 18.65.490;

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

21 (xii) employment agency permit under AS 23.15.330 -
22 23.15.520;

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

26 (xiv) certification as a pesticide applicator under
27 AS 46.03.320;

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

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

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(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;
- (viii) hazardous painting certification under AS 18.63;
- (ix) security guard license under AS 18.65.400 - 18.65.490;
- (x) license relating to insurance under AS 21.27;
- (xi) employment agency permit under AS 23.15.330 -

1 23.15.520;

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

5 (xiii) certification as a pesticide applicator under
6 AS 46.03.320;

7 (xiv) certification as a storage tank worker or contractor
8 under AS 46.03.375;

9 (xv) certification as a water and wastewater works
10 operator under AS 46.30; and

11 (xvi) commercial crewmember fishing license under
12 AS 16.05.480 other than an entry permit or interim-use permit under
13 AS 16.43;

14 (B) does not include

15 (i) a vessel license issued under AS 16.05.490 or
16 16.05.530;

17 (ii) a license issued under AS 47.35;

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

19 (iv) an entry permit or interim-use permit issued under
20 AS 16.43; or

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

22 * Sec. 3. AS 25.27.244(s)(2), as repealed and reenacted under sec. 148(c), ch. 87, SLA
23 1997, is amended to read:

24 (2) "license"

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

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

31 (ii) authorization to perform an occupation regulated

- 1 under AS 08;
- 2 (iii) teacher certificate under AS 14.20;
- 3 (iv) authorization under AS 18.08 to perform emergency
- 4 medical services;
- 5 (v) asbestos worker certification under AS 18.31;
- 6 (vi) boiler operator's license under AS 18.60.395;
- 7 (vii) certificate of fitness under AS 18.62;
- 8 (viii) hazardous painting certification under AS 18.63;
- 9 (ix) security guard license under AS 18.65.400 -
- 10 18.65.490;
- 11 (x) license relating to insurance under AS 21.27;
- 12 (xi) employment agency permit under AS 23.15.330 -
- 13 23.15.520;
- 14 (xii) registration as a broker-dealer, an agent, a state
- 15 [OR] investment adviser, or an investment adviser representative
- 16 under AS 45.55.030;
- 17 (xiii) certification as a pesticide applicator under
- 18 AS 46.03.320;
- 19 (xiv) certification as a storage tank worker or contractor
- 20 under AS 46.03.375; and
- 21 (xv) certification as a water and wastewater works
- 22 operator under AS 46.30;
- 23 (B) does not include
- 24 (i) a commercial fishing license under AS 16.05.480,
- 25 including a crewmember fishing license;
- 26 (ii) a vessel license issued under AS 16.05.490 or
- 27 16.05.530;
- 28 (iii) a license issued under AS 47.35;
- 29 (iv) a business license issued under AS 43.70;
- 30 (v) an entry permit or interim-use permit issued under
- 31 AS 16.43; or

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

2 * **Sec. 4.** AS 37.23.050 is amended to read:

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

6 (1) a securities broker-dealer registered under AS 45.55.030 and under
7 15 U.S.C. 78o (Securities Exchange Act of 1934);

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

11 (3) the Department of Revenue; or

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

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

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

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

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

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

26 (2) [AN ASSIGNMENT OF THE CONTRACT MAY NOT BE MADE
27 BY THE INVESTMENT ADVISER WITHOUT THE CONSENT OF THE OTHER
28 PARTY TO THE CONTRACT; AND

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

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

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

5 The administrator, on request, may waive the provisions of (b)(1) of this section
6 for investment advisory contracts that conform to the limitations of 15 U.S.C. 80b-
7 5 (Investment Advisers Act of 1940).

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

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

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

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

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

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

28 (i) recommending to a client to whom investment supervisory,
29 management, or consulting services are provided, the purchase, sale, or exchange of
30 a security without reasonable grounds to believe that the recommendation is suitable
31 for the client on the basis of information furnished by the client after reasonable

1 inquiry concerning the client's investment objectives, financial situation and needs, and
2 other information known to the state investment adviser, investment adviser
3 representative, or federal covered adviser;

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

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

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

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

20 (6) borrowing money or securities from a client unless the client is a
21 financial institution engaged in the business of loaning money or the client is an
22 affiliate of the state investment adviser or federal covered adviser borrowing the money
23 or securities;

24 (7) loaning money to a client unless the state investment adviser or
25 federal covered adviser loaning the money is a financial institution engaged in the
26 business of loaning money or the client is an affiliate of the state investment adviser
27 or federal covered adviser;

28 (8) misrepresenting to an advisory client or prospective advisory client
29 the qualifications of the state investment adviser, an employee of the state investment
30 adviser, the investment adviser representative, the federal covered adviser, or an
31 employee of the federal covered adviser; misrepresenting the nature of the advisory

1 services being offered or fees to be charged for a service; or omitting to state a
2 material fact necessary to make the statements made regarding qualifications, services,
3 or fees not misleading in light of the circumstances under which the statements are
4 made;

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

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

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

20 (A) compensation arrangements connected with advisory
21 services to a client if the arrangements are in addition to compensation from
22 the client for those services; and

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

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

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

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

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

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

10 (A) the services to be provided;

11 (B) the term of the contract;

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

15 (D) whether the contract grants discretionary power to the
16 adviser; and

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

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

31 (18) entering into, extending, or renewing an advisory contract that

1 would violate 15 U.S.C. 80b-5 (Investment Advisers Act of 1940); this paragraph
2 applies to all advisers registered or required to be registered under this chapter,
3 notwithstanding whether the adviser would be exempt from federal registration under
4 15 U.S.C. 80b-3 (Investment Advisers Act of 1940);

5 (19) including in an advisory contract a condition, stipulation, or
6 provision binding a person to waive compliance with a provision of this chapter or
7 15 U.S.C. 80b-1 - 80b-21 (Investment Advisers Act of 1940); or engaging in a practice
8 that would violate 15 U.S.C. 80b-15 (Investment Advisers Act of 1940);

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

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

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

26 (b) The conduct prohibited by (a) of this section is not exclusive. Engaging
27 in other similar conduct, including nondisclosure, incomplete disclosure, or a deceptive
28 practice, is considered an unethical business practice. With respect to a state
29 investment adviser and a registered investment adviser representative of either a state
30 investment adviser or a federal covered adviser, the federal statutory and regulatory
31 provisions referred to in this section apply to the state investment adviser and the

1 registered investment adviser representative regardless of whether the federal provision
2 limits its application to state investment advisers or federal covered advisers subject
3 to federal registration. With respect to a federal covered adviser, the provisions of this
4 section apply only to the extent permitted under P.L. 104 - 290, 101 Stat. 3416 - 3440
5 (National Securities Markets Improvement Act of 1996) and only when the conduct
6 proscribed involves fraud or deceit within the meaning of AS 45.55.010(a) and
7 45.55.020(a).

8 **Sec. 45.55.025. Fraudulent, dishonest, and unethical business practices of**
9 **broker-dealers and agents.** A broker-dealer or an agent shall observe high standards
10 of commercial honor and just and equitable principles of trade in the conduct of its
11 business. The acts and practices that are contrary to those standards and principles,
12 that constitute dishonest or unethical practices in the securities business under
13 AS 45.55.060(a), and that are grounds for imposition of administrative fines, censure,
14 denial, suspension, revocation of a registration, or other appropriate disciplinary action
15 include

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

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

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

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

29 (5) exercising discretionary power in effecting a transaction for a
30 customer's account without first obtaining written discretionary authority from the
31 customer unless the discretionary power relates solely to the time or price for the

1 execution of orders;

2 (6) executing a transaction in a margin account without securing from
3 the customer a properly executed written margin agreement promptly after the initial
4 transaction in the account;

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

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

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

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

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

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

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

30 (A) the broker-dealer;

31 (B) a person for whom the broker-dealer is acting or with whom

1 the broker-dealer is associated in the distribution of the security; or

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

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

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

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

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

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

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

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

31 (B) quote the bid price or asked price for a security unless the

1 broker-dealer believes that the quotation represents a bona fide bid for, or offer
2 of, the security;

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

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

10 (B) using supplementary material in connection with the offer
11 of a particular security if the information in the material is not consistent with
12 or adequately supported by the prospectus or is not filed as part of the
13 registration statement;

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

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

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

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

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

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

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

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

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

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

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

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

24 **Sec. 45.55.027. Additional fraudulent, dishonest, and unethical business**
25 **practices of agents.** An agent shall observe high standards of commercial honor and
26 just and equitable principles of trade in the conduct of the agent's business. In
27 addition to the acts or practices described in AS 45.55.025, the acts and practices that
28 are contrary to those standards and principles, that constitute dishonest or unethical
29 practices in the securities business under AS 45.55.060(a), and that are grounds for
30 imposition of administrative fines, censure, denial, suspension, revocation of a
31 registration, or other appropriate disciplinary action include

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

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

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

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

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

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

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

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

24 **Sec. 45.55.028. Practices of broker-dealers and agents considered**
25 **fraudulent.** Acts and practices of broker-dealers or agents that are considered
26 fraudulent or deceitful acts, practices, or courses of business under AS 45.55.010(a)
27 include

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

31 (2) contradicting or negating the importance of information contained

1 in a prospectus or other offering material with the intent to deceive or mislead or using
2 an advertising or sales presentation in a deceptive or misleading manner, including
3 using supplementary material that does not consistently reflect or is not supported by
4 information presented in prospectus or offering material required to be delivered in
5 connection with the offer;

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

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

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

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

20 (B) parking or withholding securities;

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

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

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

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

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

30 (7) effecting a transaction in or inducing the purchase or sale of a
31 security by means of any manipulative, deceptive, or other fraudulent device or

1 contrivance, including the use of boiler room tactics or the use of fictitious accounts;
2 in this paragraph, "boiler room tactics" includes high-pressure sales tactics that have
3 the effect of creating an artificially short period in which the investor must make a
4 decision or that are designed to overcome a customer's reluctance to make an
5 investment, including

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

10 (B) the use of scripts designed to meet the customer's
11 objections;

12 (C) repeated phone calls;

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

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

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

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

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

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

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

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

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

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

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

31 (c) A person may not transact business in this state as a state investment

1 adviser or an investment adviser representative unless

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

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

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

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

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

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

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

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

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

28 (g) A person who is registered or required to be registered as a state
29 investment adviser under this chapter may not employ an investment adviser
30 representative who provides advisory services in or emanating from this state unless
31 the investment adviser representative is registered under this chapter or is exempt from

1 registration, except that the registration of the investment adviser representative is not
2 effective during any period when the representative is not employed by a state
3 investment adviser registered under this chapter.

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

10 (i) If an investment adviser representative terminates employment with a state
11 investment adviser or federal covered adviser, the state investment adviser or federal
12 covered adviser shall promptly notify the administrator.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 (3) inform the administrator promptly of any criminal action taken

1 against the broker-dealer or of any finding or sanction imposed on the broker-dealer
2 as a result of regulatory action, including that of a self-regulating organization,
3 involving fraud, theft, deceit, misrepresentation, or similar conduct; and

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

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

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

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

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

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

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

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

22 (2) with or through

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

24 (B) other broker-dealers; or

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

30 (3) as otherwise permitted by this chapter.

31 (k) A Canadian broker-dealer or agent registered under this section and acting

1 in accordance with the limitations in (j) of this section is exempt from all of the
2 requirements of this chapter except the anti-fraud provisions under AS 45.55.010 and
3 the requirements of this section. The registration of a Canadian broker-dealer or agent
4 under this section may not be denied, suspended, or revoked except in accordance with
5 the provisions of AS 45.55.060 for a breach of the anti-fraud provisions under
6 AS 45.55.010 or the requirements of this section.

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

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

10 (a) A broker-dealer, agent, [OR] investment adviser representative, or state
11 investment adviser may obtain an initial or renewal registration by filing with the
12 administrator or the administrator's designee an application together with a consent
13 to service of process under AS 45.55.980(g). The application must [SHALL BE
14 ACCOMPANIED BY THE FINGERPRINTS AND A PHOTOGRAPH OF THE
15 APPLICANT AND MUST] contain whatever information the administrator by
16 regulation may require [REQUIRES] concerning such matters as

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

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

19 (3) the qualifications and business history of the applicant; in the case
20 of a broker-dealer or state investment adviser, the qualifications and business history
21 of a partner, officer, or director, any [A] person occupying a similar status or
22 performing similar functions, or any [A] person directly or indirectly controlling the
23 broker-dealer or state investment adviser; [AND, IN THE CASE OF AN
24 INVESTMENT ADVISER, THE QUALIFICATIONS AND BUSINESS HISTORY OF
25 AN EMPLOYEE;]

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

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

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

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

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

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

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

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

18 (d) A registered broker-dealer, state investment adviser, or a federal covered
19 adviser who has filed notice under this chapter may file an application for registration
20 or notice filing, as applicable, of a successor for the unexpired portion of the year
21 regardless of whether the successor is then in existence. A broker-dealer may file a
22 request to transfer from a previous broker-dealer an agent's unexpired portion of the
23 registration if the provisions of AS 45.55.030(b) have been met. A state investment
24 adviser may file an application to transfer from a predecessor state investment adviser
25 or federal covered adviser the investment adviser representative's unexpired portion
26 of the registration. The filing fee for filing applications under this subsection shall be
27 established by the department by regulation.

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

29 (e) The administrator may by regulation or order require a minimum level of
30 capitalization for registered broker-dealers, subject to the limitations of 15 U.S.C. 78o
31 (Securities Exchange Act of 1934), and establish minimum financial requirements for

1 state investment advisers, subject to the limitations of 15 U.S.C. 80b-18a (Investment
2 Advisers Act of 1940). The financial requirements may differ for those state
3 investment advisers who have discretionary authority over or maintain custody of
4 clients' funds or securities and those who do not.

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

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

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

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

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

28 (h) Except with respect to federal covered advisers whose only clients are
29 those described in AS 45.55.030(c)(2), a federal covered adviser shall file with the
30 administrator, before acting as a federal covered adviser in this state, those documents
31 that have been filed with the United States Securities and Exchange Commission as

1 the administrator, by regulation, by order, or otherwise, may require.

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

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

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

19 (a) Except as provided under 15 U.S.C. 78o (Securities Exchange Act of
20 1934), a [EVERY] registered broker-dealer [AND INVESTMENT ADVISER] shall
21 make and keep the accounts, correspondence, memoranda, papers, books, and other
22 records that the administrator establishes [PRESCRIBES BY REGULATION]. All
23 required records [SO REQUIRED] shall be preserved for three years unless the
24 administrator by regulation prescribes otherwise [FOR PARTICULAR TYPES OF
25 RECORDS].

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

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

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

30 (c) If the information contained in a document filed with the administrator is
31 or becomes inaccurate or incomplete in a material respect, the person who made the

1 filing [REGISTRANT] shall promptly file a correcting amendment unless notification
2 of the correction is given under AS 45.55.030(b). If the document is filed with
3 respect to a federal covered adviser, the amendment shall be filed when it is
4 required to be filed with the United States Securities and Exchange Commission
5 unless notification of the correction is given under AS 45.55.030(b).

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

7 (d) All the records referred to in [(a) OF] this section are subject at any time
8 to reasonable periodic, special, or other examinations by representatives of the
9 administrator, inside or outside this state, as the administrator considers necessary or
10 appropriate in the public interest or for the protection of investors. For the purpose
11 of avoiding unnecessary duplication of examinations, the administrator, insofar as the
12 administrator considers it practicable in administering this subsection, may cooperate
13 with the securities administrators of other states, the United States Securities and
14 Exchange Commission, and any national securities exchange or national securities
15 association registered under 15 U.S.C. 78a - 78III ([THE] Securities Exchange Act of
16 1934).

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

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

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

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

1 (h) A state investment adviser that has its principal place of business in a state
2 other than this state and the investment adviser representatives of that state investment
3 adviser are exempt from the requirements of (e) of this section if the state investment
4 adviser is registered as an investment adviser in the state where the state investment
5 adviser has its principal place of business and is in compliance with that state's
6 requirements relating to accounts and records.

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

11 (j) A state investment adviser that has its principal place of business in a state
12 other than this state and the investment adviser representatives of that state investment
13 adviser shall file with the administrator only the financial reports or other information
14 required by the state in which the state investment adviser maintains its principal place
15 of business if the state investment adviser is licensed in that state and is in compliance
16 with that state's reporting requirements.

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

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

20 (a) The administrator may by order deny, suspend, or revoke a registration if
21 the administrator finds that the order is in the public interest and that the applicant or
22 registrant or, in the case of a broker-dealer or state investment adviser, a partner,
23 officer, or director, a person occupying a similar status or performing similar functions,
24 or a person directly or indirectly controlling the broker-dealer or state investment
25 adviser

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

31 (2) has wilfully or repeatedly violated or [WILFULLY] failed to

1 comply with a provision of this chapter or a regulation or order under this chapter;

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

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

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

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

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

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

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

30 (8) is insolvent, [EITHER] in the sense that liabilities exceed assets,
31 [OR IN THE SENSE] that the person cannot meet obligations as they mature, or that

1 the person cannot continue in business safely for the customers of the applicant
2 or registrant. [;] but the administrator may not enter an order against a broker-dealer
3 or state investment adviser under this paragraph [CLAUSE] without a finding of
4 insolvency as to the broker-dealer or state investment adviser; [OR]

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

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

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

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

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

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

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

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

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

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

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

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

31 (2) the administrator may not enter an order against a state [AN]

1 investment adviser on the basis of the lack of qualification of a [ANY] person other
2 than

3 (A) the state investment adviser if the state investment adviser
4 is an individual; or

5 (B) an investment adviser representative [ANOTHER
6 PERSON] who represents the state investment adviser in doing any of the acts
7 that [WHICH] make the state investment adviser a state [AN] investment
8 adviser;

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

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

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

22 (6) the administrator may by regulation provide for an examination,
23 which may be written or oral or both, to be taken by any class of or all applicants,
24 including applicants for registration as investment adviser representatives, if [AS
25 WELL AS PERSONS WHO REPRESENT OR WILL REPRESENT AN
26 INVESTMENT ADVISER IN DOING ANY OF THE ACTS WHICH MAKE THE
27 INVESTMENT ADVISER AN INVESTMENT ADVISER, PROVIDED THAT]
28 examinations required by this paragraph are not required of a registrant under this
29 chapter who was doing business in this state and was a resident of this state on May 9,
30 1959.

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

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

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

8 (g) Withdrawal from registration as a broker-dealer, agent, state investment
9 adviser, or investment adviser representative becomes effective 30 days after receipt
10 of an application to withdraw or within a shorter period of time as the administrator
11 may determine, unless a revocation or suspension proceeding is pending when the
12 application is filed or a proceeding to revoke or suspend or to impose conditions upon
13 the withdrawal is instituted within 30 days after the application is filed. If a proceeding
14 is pending or instituted, withdrawal becomes effective at the time and upon the
15 conditions as the administrator by order determines. If a [NO] proceeding is not
16 pending or instituted and withdrawal automatically becomes effective, the administrator
17 may nevertheless institute a revocation or suspension proceeding under (a)(2) of this
18 section within one year after withdrawal is effective and enter a revocation or
19 suspension order as of the last date on which registration was effective.

20 * Sec. 32. AS 45.55.070 is amended to read:

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

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

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

25 (3) it is a federal covered security.

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

27 **Sec. 45.55.075. Federal covered securities.** (a) Unless otherwise exempt
28 under AS 45.55.900, a security that is a federal covered security under 15 U.S.C.
29 77r(b)(2), as amended (Securities Act of 1933), may only be offered for sale and sold
30 into, from, or within the state upon the administrator's receipt of

31 (1) a copy of the registration statement filed by the issuer with the

1 United States Securities and Exchange Commission, or in place of the registration
2 statement, the Uniform Investment Company Notice Filing Form adopted by North
3 American Securities Administrators Association, Inc., or a similar notice filing form;

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

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

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

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

16 (d) With respect to a security that is a covered security under 15 U.S.C.
17 77r(b)(4)(D), as amended (Securities Act of 1933), the administrator, by regulation or
18 otherwise, may require the issuer to file a notice on United States Securities and
19 Exchange Commission's Form D and a consent to service of process signed by the
20 issuer no later than 15 days after the first sale of a covered security in this state and
21 a fee established by the administrator for a notice filing under this section.

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

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

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

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

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

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

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

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

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

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

15 (i) that are applicable to all securities without a fixed
16 maturity or a fixed interest or dividend provision outstanding at the date
17 the registration statement is filed and equal at least five percent of the
18 amount of these outstanding securities as measured by the maximum
19 offering price or the market price on a day, selected by the registrant,
20 within 30 days before the date of filing the registration statement,
21 whichever is higher, or book value on a day, selected by the registrant,
22 within 90 days of the date of filing the registration statement to the
23 extent that there is neither a readily determinable market price nor a
24 cash offering price;

25 (ii) that, if the issuer and predecessors have not had any
26 security of the type specified in (i) of this subparagraph outstanding for
27 three full fiscal years, equal at least five percent of the amount, as
28 measured in (i) of this subparagraph, of all securities that will be
29 outstanding if all the securities being offered or proposed to be offered,
30 whether or not they are proposed to be registered or offered in this
31 state, are issued;

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

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

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

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

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

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

15 (1) one copy of the latest form of prospectus filed under 15 U.S.C. 77a
16 - 77bbbb ([THE] Securities Act of 1933);

17 (2) if the administrator requires, copies of the articles of incorporation
18 and bylaws, or their substantial equivalent, currently in effect; a copy of an agreement
19 with or among underwriters; a copy of an indenture or other instrument governing the
20 issuance of the security to be registered; and a specimen or copy of the security;

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

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

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

30 (a) A registration statement or a notice filing under AS 45.55.075 may be
31 filed by the issuer, another person on whose behalf the offering is to be made, or a

1 registered broker-dealer.

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

3 (b) A [EVERY] person filing a registration statement or a notice filing under
4 AS 45.55.075 shall pay a filing fee and a registration or notice filing fee in amounts
5 established by the department by regulation. If [WHEN] a registration statement is
6 withdrawn before the effective date or a pre-effective stop order is entered under
7 AS 45.55.120, the administrator shall retain the filing fee. If a notice filing is
8 withdrawn before the effective date, the administrator shall retain the notice filing
9 fee.

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

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

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

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

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

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

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

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

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

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

28 (i) A notice filing under AS 45.55.075 is effective on receipt by the
29 administrator. A [EVERY] registration statement or a notice filing under
30 AS 45.55.075 is effective for one year from its effective date [,] or any longer period
31 during which the security is being offered or distributed in a nonexempted transaction

1 by or for the account of the issuer or other person on whose behalf the offering is
2 being made or by an underwriter or broker-dealer who is still offering part of an
3 unsold allotment or subscription taken by the underwriter or broker-dealer as a
4 participant in the distribution [,] except during the time a stop order is in effect under
5 AS 45.55.120. The administrator may establish a different expiration date for
6 purposes of coordination with a national registration or notice filing system. The
7 administrator may by regulation provide for an automatic extension for one
8 additional year of the effective date for notice filings under AS 45.55.075 if the
9 extended expiration date is set at the same time the notice filing is made effective
10 and the notice filing fee reflects the extension. All outstanding securities of the
11 same class as a registered security are considered to be registered for the purpose of
12 any nonissuer transaction if the registration statement is effective and between the
13 thirtieth day after the entry of a stop order suspending or revoking the effectiveness
14 of the registration statement under AS 45.55.120, if the registration statement did not
15 relate in whole or in part to a nonissuer distribution, and one year from the effective
16 date of the registration statement. A registration statement may not be [WITH]
17 withdrawn for one year from its effective date if any securities of the same class are
18 outstanding. A registration statement may be withdrawn otherwise only in the
19 discretion of the administrator.

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

21 (k) A notice filing under AS 45.55.075 [REGISTRATION STATEMENT]
22 relating to a security issued by a face-amount certificate company or a redeemable
23 security issued by an open-end management company or unit investment trust, as those
24 terms are defined in 15 U.S.C. 80a-1 - 80a-64 ([THE] Investment Company Act of
25 1940), may be amended after its effective date so as to increase the securities specified
26 as proposed to be offered if the notice filing was for a specified dollar amount of
27 securities to be offered in this state and if the total fees were based on the dollar
28 amount of securities to be offered. An amendment becomes effective when the
29 administrator so orders. A [EVERY] person filing [SUCH] an amendment shall pay
30 a [FILING] fee, calculated in the manner specified in (b) of this section, with respect
31 to the additional securities proposed to be offered.

1 * Sec. 43. AS 45.55.150 is amended to read:

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

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

11 **(2) the security is a federal covered security; or**

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

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

16 (a) Neither the fact that an application for registration under AS 45.55.030 -
17 45.55.060, [OR] a registration statement under AS 45.55.070 - 45.55.120, **or a notice**
18 **filing under AS 45.55.040(h) or 45.55.075,** is filed nor the fact that a person or
19 security is effectively registered constitutes a finding by the administrator that a
20 document filed under this chapter is true, complete, and not misleading. Neither the
21 fact of filing nor the fact that an exemption or exception is available for a security or
22 a transaction means that the administrator has passed in any way upon the merits or
23 qualifications of, or recommended or given approval to, a person, security, or
24 transaction.

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

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

27 (1) a security, including a revenue obligation, issued or guaranteed by
28 the United States **or a territory of the United States, the District of Columbia,** a
29 state, a political subdivision of a state **or territory,** or an agency or corporate or other
30 instrumentality of one or more of the **entities described in this paragraph**
31 **[FOREGOING]; or a certificate of deposit for one or more of the entities described**

1 in this paragraph [ANY OF THE FOREGOING];

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

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

14 (4) a commercial paper, note, draft, bill of exchange, or banker's
15 acceptance that arises out of a current transaction or the proceeds of which have been
16 or are to be used for current transactions [,] and that evidences an obligation to pay
17 cash within nine months of the date of issuance, exclusive of days of grace, or a
18 [ANY] renewal of the paper that is likewise limited, or a guarantee of the paper or of
19 the renewal, if the commercial paper, note, draft, bill of exchange, or banker's
20 acceptance is of the type eligible for discount by a federal reserve bank;

21 (5) a security issued in connection with an employee's stock purchase,
22 savings, pension, profit-sharing, or similar employee's benefit plan, or a security
23 issued by or an interest or participation in a church plan, company, or account
24 that is excluded from the definition of an investment company under 15 U.S.C.
25 80a-3(c)(14) (Investment Company Act of 1940);

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

30 (7) a security issued by and representing an interest in or a debt of, or
31 guaranteed by, an insurance company organized under the laws of a state and

1 authorized to do business in this state; but this exemption does not apply to an annuity
2 contract, investment contract, or similar security under which the promised payments
3 are not fixed in dollars but are substantially dependent upon the investment results of
4 a segregated fund or account invested in securities; except that policies or annuity
5 contracts of insurance companies admitted to do business in the state are not subject
6 to this chapter;

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

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

12 (A) subject to the jurisdiction of the Interstate Commerce
13 Commission;

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

17 (C) regulated in respect of its rates and charges by a
18 governmental authority of the United States or a state; or

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

22 (10) a security listed or approved for listing upon notice of issuance on
23 the New York Stock Exchange, the American Stock Exchange, the Chicago
24 [MIDWEST] Stock Exchange, the Pacific Coast Stock Exchange, the Philadelphia
25 Stock Exchange, the Chicago Board of Options Exchange, or another [ANY OTHER]
26 securities exchange designated by order of the administrator, or any security designated
27 or approved for designation upon notice of issuance as a national market system
28 security on the National Association of Securities Dealers Automated Quotation
29 National Market System or on any other quotation system designated by order of the
30 administrator, or any other security of the same issuer that is of senior or substantially
31 equal rank; a security called for by subscription rights or warrants so listed or

1 approved; or a warrant or right to purchase or subscribe to an entity described in this
2 paragraph [ANY OF THE FOREGOING];

3 (11) a security issued by a person organized and operated not for
4 pecuniary [PRIVATE] profit but exclusively for religious, educational, benevolent,
5 charitable, fraternal, social, athletic, or reformatory purposes [,] or as a chamber of
6 commerce or trade or professional association, or a security of a fund that is
7 excluded from the definition of an investment company under 15 U.S.C. 80a-
8 3(c)(10)(B) (Investment Company Act of 1940);

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

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

18 (A) the acquisition occurs solely as part of a reorganization
19 in which security holders exchange their shares of a bank or savings
20 association for shares of a newly formed holding company with no
21 significant assets other than securities of the bank or savings association
22 and the existing subsidiaries of the bank or savings association;

23 (B) the security holders receive after the reorganization
24 substantially the same proportional interests in the holding company as
25 they held in the bank or savings association except for nominal changes in
26 shareholders' interests resulting from lawful elimination of fractional
27 interests and the exercise of dissenting shareholders' rights under state or
28 federal law;

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

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

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

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

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

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

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

(4) an offer or sale to a bank, savings institution, trust company, insurance company, investment company as defined in 15 U.S.C. 80a-1 - 80a-64 ([THE] Investment Company Act of 1940), pension or profit-sharing trust, or other financial institution or institutional buyer, or to a broker-dealer, whether the purchaser is acting for itself or in some fiduciary capacity;

(5) sales by an issuer

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

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

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

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

5 (iii)(iv) offers are made without public solicitation or
6 advertisement; and

7 (iv)(v) the issuer files with the administrator a notice
8 specifying the issuer, the security to be sold, and the terms of the offer
9 at least two days before any sales are made;

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

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

15 (ii) before a [ANY] sale, each prospective buyer is
16 furnished [ACCESS TO THE] information sufficient to make an
17 informed investment decision [THAT WOULD BE PROVIDED TO
18 A PROSPECTIVE BUYER IN A REGISTRATION UNDER
19 AS 45.55.100], which information shall be furnished to the
20 administrator upon request;

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

24 (iv) commissions or other remuneration meet the
25 requirements of this chapter and are made only to persons registered
26 under AS 45.55.040;

27 (iv) (v) a legend is placed on the certificate or other
28 document evidencing ownership of the security, stating that the security
29 is not registered under this chapter and cannot be resold without
30 registration under this chapter or exemption from it;

31 (v) (vi) the issuer obtains a signed agreement from the

1 buyer acknowledging that the buyer is buying for investment purposes
2 and that the securities will not be resold without registration under this
3 chapter;

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

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

9 (C) to 10 or fewer persons who are to receive the initial
10 issue of shares of a nonpublicly traded corporation, limited liability
11 company, limited partnership, or limited liability partnership if the
12 requirements of (B)(ii), (iii), (iv), and (vi) of this paragraph are met;

13 (D) to the buyer of an enterprise or a business and the
14 assets and liabilities of the enterprise or business if

15 (i) the transfer of stock to the buyer is solely
16 incidental to the sale of the enterprise or business and its assets and
17 liabilities;

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

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

24 (E) the administrator may by order, as to any security or
25 transaction or any type of security or transaction, waive, withdraw
26 or modify any of the requirements or conditions of this section,
27 increase or decrease the number of offerees permitted, with or
28 without the substitution of a limitation on remuneration;

29 (F) for purposes of this section, information sufficient to
30 make an informed investment decision includes, but is not limited
31 to, a business plan, income and expense statement, balance sheet,

1 statement of risks, and disclosure of any significant negative factors
2 which may affect the outcome of the investment:

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

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

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

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

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

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

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

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

23 (9) an isolated nonissuer transaction, regardless of whether effected
24 through a broker-dealer, if the seller is [OR] not a promoter or controlling person
25 as the administrator may define by regulation or order or if the administrator at
26 the request of the seller waives the requirement that the seller not be a promoter
27 or controlling person:

28 (10) [A NONISSUER DISTRIBUTION OF AN OUTSTANDING
29 SECURITY IF

30 (A) A RECOGNIZED SECURITIES MANUAL CONTAINS
31 THE NAMES OF THE ISSUER'S OFFICERS AND DIRECTORS, A

1 BALANCE SHEET OF THE ISSUER AS OF A DATE WITHIN 18
2 MONTHS, AND A PROFIT AND LOSS STATEMENT FOR EITHER THE
3 FISCAL YEAR PRECEDING THAT DATE OR THE MOST RECENT YEAR
4 OF OPERATIONS, OR

5 (B) THE SECURITY HAS A FIXED MATURITY OR A
6 FIXED INTEREST OR DIVIDEND PROVISION AND THERE HAS BEEN
7 NO DEFAULT DURING THE CURRENT FISCAL YEAR OR WITHIN THE
8 THREE PRECEDING FISCAL YEARS, OR DURING THE EXISTENCE OF
9 THE ISSUER AND ANY PREDECESSORS IF LESS THAN THREE YEARS,
10 IN THE PAYMENT OF PRINCIPAL, INTEREST, OR DIVIDENDS ON THE
11 SECURITY;

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

17 (11) [(12)] a transaction executed by a bona fide pledgee without
18 intending to evade [ANY PURPOSE OF EVADING] this chapter;

19 (12) [(13)] a transaction incident to a right of conversion or a statutory
20 or judicially approved reclassification, recapitalization, reorganization, quasi-
21 reorganization, stock split, reverse stock split, merger, consolidation, or sale of assets
22 [, IF

23 (A) NO COMMISSION OR OTHER REMUNERATION,
24 OTHER THAN A STANDBY COMMISSION IS PAID OR GIVEN
25 DIRECTLY OR INDIRECTLY FOR SOLICITING A SECURITY HOLDER
26 IN THIS STATE; AND

27 (B) THE ISSUER FILES A NOTICE IN THE FORM
28 SPECIFIED BY THE ADMINISTRATOR NOT LESS THAN 30 DAYS
29 BEFORE MAKING THE OFFER];

30 (13) [(14)] a stock dividend, regardless of whether the corporation
31 distributing the dividend is the issuer of the stock [OR NOT], if nothing of value is

1 given by stockholders for the dividend other than the surrender of a right to a cash or
2 property dividend when each stockholder may elect to take the dividend in cash or
3 property or in stock;

4 (14) [(15)] an act incident to a statutory [CLASS] vote by security
5 holders [STOCKHOLDERS, UNDER THE CERTIFICATE OF INCORPORATION
6 OR THE APPLICABLE CORPORATION STATUTE,] on a merger, consolidation,
7 reclassification of securities, or sale of assets in consideration of the issuance of
8 securities of another issuer [CORPORATION];

9 (15) [(16)] the offer or sale by a registered broker-dealer, acting either
10 as principal or agent, of securities previously sold and distributed to the public if the
11 securities

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

17 (B) [THE SECURITIES] do not constitute the whole or a part
18 of an unsold allotment to or subscription or participation by the broker-dealer
19 as an underwriter of the securities or as a participant in the distribution of the
20 securities by the issuer, by an underwriter, or by a person or group of persons
21 in substantial control of the issuer or of the outstanding securities of the class
22 being distributed; and

23 (C) [THE SECURITIES] have been lawfully sold and
24 distributed in this state under this chapter;

25 (16) [(17)] offers or sales of certificates of interest or participation in
26 oil, gas, or mining rights, titles, or leases, or in payments out of production under such
27 rights, titles, or leases, if the purchasers

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

31 (B) have been found by the administrator upon written

1 application to be substantially engaged in the business of exploring for, mining,
2 producing, or refining oil, gas, or minerals so as not to require the protection
3 provided by AS 45.55.070;

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

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

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

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

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

24 (i) a description of the business and operations of the
25 issuer;

26 (ii) the names of the issuer's officers and directors,
27 if any, or, in the case of an issuer not domiciled in the United
28 States, the corporate equivalents of such persons in the issuer's
29 country of domicile;

30 (iii) an audited balance sheet of the issuer as of a
31 date within 18 months or, in the case of a reorganization or merger

1 where parties to the reorganization or merger had that audited
2 balance sheet, a pro forma balance sheet; and

3 (iv) an audited income statement for each of the
4 issuer's immediately preceding two fiscal years or for the period of
5 existence of the issuer if the issuer has been in existence for less
6 than two years or, in the case of a reorganization or merger where
7 the parties to the reorganization or merger had that audited income
8 statement, a pro forma income statement; and

9 (E) the issuer of the security has a class of equity securities
10 listed on a national securities exchange registered under 15 U.S.C. 78a -
11 78III (Securities Exchange Act of 1934) or designated for trading on the
12 National Association of Securities Dealers Automated Quotation System,
13 unless the issuer of the security

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

16 (ii) including predecessors, has been engaged in
17 continuous business for a least three years; or

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

22 (18) an offer or a sale of a security by an issuer, that has a specific
23 business plan or purpose, is not in the development stage, and has not indicated
24 that its business plan is to engage in a merger or acquisition with an unidentified
25 company or other entity or person, under the following conditions:

26 (A) sales of securities are made only to persons who are or
27 the issuer reasonably believes are accredited investors as defined in
28 17 C.F.R. 230.501(a);

29 (B) the issuer reasonably believes that all purchasers are
30 purchasing for investment and not with the view to or for sale in
31 connection with a distribution of the security; a resale of a security sold in

1 reliance on this exemption within 12 months of sale is presumed to be with
2 a view to distribution and not for investment, except a resale under a
3 registration statement under AS 45.55.070 - 45.55.120 or to an accredited
4 investor under an exemption available under this chapter;

5 (C) the exemption in this paragraph is not available to an
6 issuer if the issuer, a predecessor of the issuer, an affiliated issuer, a
7 director, an officer, or a general partner of the issuer, a beneficial owner
8 of 10 percent or more of a class of the issuer's equity securities, a
9 promoter of the issuer presently connected with the issuer in any capacity,
10 an underwriter of the securities to be offered, or a partner, a director, or
11 an officer of the underwriter

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

16 (ii) within the last five years has been convicted of a
17 criminal offense in connection with the offer, purchase, or sale of
18 a security, of a criminal offense involving fraud or deceit, or of a
19 felony;

20 (iii) is currently subject to a state or federal
21 administrative enforcement order or judgment entered within the
22 last five years finding fraud or deceit in connection with the
23 purchase or sale of a security; or

24 (iv) is currently subject to an order, judgment, or
25 decree of a court of competent jurisdiction entered within the last
26 five years, temporarily, preliminarily, or permanently restraining
27 or enjoining the party from engaging in or continuing to engage in
28 conduct or a practice involving fraud or deceit in connection with
29 the purchase or sale of a security;

30 (D) the nonavailability of the exemption under (C) of this
31 paragraph does not apply if

1 (i) the party subject to the disqualification is licensed
2 or registered to conduct securities related business in the state in
3 which the order, judgment, or decree creating the disqualification
4 was entered against the party;

5 (ii) before the first offer under this exemption, the
6 state securities administrator or the court or regulatory authority
7 that entered the order, judgment, or decree waives the
8 disqualification; or

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

13 (E) a general announcement of the proposed offering may
14 be made by any means and may include only the following information
15 unless additional information is specifically permitted by the
16 administrator:

17 (i) the name, address, and telephone number of the
18 issuer of the security;

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

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

23 (iv) the type, number, and aggregate amount of
24 securities being offered;

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

27 (vi) a statement that sales will be made only to
28 accredited investors;

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

1 (viii) a statement that the securities have not been
2 registered with or approved by a state securities agency or the
3 United States Securities and Exchange Commission, and are being
4 offered and sold under an exemption from registration:

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

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

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

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

15 (H) dissemination of the general announcement of the
16 proposed offering to persons who are not accredited investors will not
17 disqualify the issuer from claiming this exemption;

18 (I) the issuer must file a notice of the transaction with the
19 administrator, a copy of the general announcement, and the fee for
20 exemption filings established by regulation within 15 days after the first
21 sale in this state;

22 (19) an offer to repay, under AS 45.55.930, the buyer of a security
23 if the offeror first files with the administrator a notice specifying the terms of the
24 offer at least two days before the offer is made;

25 (20) a transaction involving only family members who are related,
26 including related by adoption, within the fourth degree of affinity or
27 consanguinity.

28 * Sec. 47. AS 45.55.900 is amended by adding a new subsection to read:

29 (g) An offer on the Internet by an issuer is exempt from the registration
30 provisions of AS 45.55.070 and the advertising regulations adopted under this chapter
31 and does not preclude the issuer from relying on other available exemptions for offers

1 provided under this chapter if

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

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

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

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

10 (e) All investigative files are confidential, except that they must be disclosed
11 by the administrator as required for discovery in an administrative or a judicial
12 proceeding.

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

14 **Sec. 45.55.915. Reimbursement of expenses incident to examination or**
15 **investigation.** (a) **The administrator may require an [AN] issuer, broker-dealer,**
16 **agent, investment adviser representative, federal covered adviser, or state**
17 **investment adviser to [SHALL] reimburse the administrator for actual travel expenses**
18 **and per diem incurred in connection with an examination or investigation [INCIDENT**
19 **TO A REGISTRATION] under this chapter.**

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

24 (c) If an issuer, broker-dealer, agent, **investment adviser representative,**
25 **federal covered adviser, or state** investment adviser fails to pay the fees and expenses
26 provided for in this section, the fees and expenses shall be paid out of the funds of the
27 administrator in the same manner as other disbursements made by the administrator.
28 The amounts paid from the funds of the administrator are a lien **on** [UPON] all of the
29 assets and property in this state of the issuer, broker-dealer, agent, **investment adviser**
30 **representative, federal covered adviser, or state** investment adviser, and the amount
31 may be recovered by the attorney general on behalf of the state.

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

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

6 (e) After an order is issued by the administrator under (b) or (c) of this section
7 has become final and all rights of appeal exhausted, the administrator may petition the
8 superior court to enter a judgment against any person who is a respondent in the order
9 for the amount of the civil penalty levied against the person. The filing of that petition
10 for a judgment does not reopen the final order to further contest. A judgment entered
11 under this subsection may be executed against and levied under in the manner provided
12 in AS 09.35.

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

14 (a) In addition to the civil penalties assessed under AS 45.55.920, a person
15 who wilfully violates a provision of this chapter except AS 45.55.030(e), 45.55.040(h),
16 45.55.075, or 45.55.160 [AS 45.55.160], or who wilfully violates a regulation or order
17 under this chapter, or who wilfully violates AS 45.55.160 knowing the statement made
18 to be false or misleading in a material respect or the omission to be misleading by any
19 material respect, upon conviction, is punishable by a fine of not more than \$5,000, or
20 by imprisonment for not less than one year nor more than five years, or both. Upon
21 conviction of an individual for a felony under this chapter, imprisonment for not less
22 than one year is mandatory. However, an individual may not be imprisoned for the
23 violation of a regulation or order if the individual proves that the individual had no
24 knowledge of the regulation or order. An indictment or information may not be
25 returned under this chapter more than five years after the alleged violation.

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

27 (a) A person is liable to the person buying the security from the person for the
28 consideration paid for the security, together with interest at eight percent [SIX PER
29 CENT] a year or the stated rate of the security if the security has a stated, fixed
30 rate less than eight percent, from the date of payment, costs, and reasonable attorney
31 [ATTORNEYS'] fees, less the amount of income received on the security, on [UPON]

1 the tender of the security, or for damages if the buyer [SELLER] no longer owns the
2 security, if the seller offers or sells a security

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

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

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

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

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

17 (f) A person may not sue under this section more than three years after the
18 contract of sale, except as otherwise provided in this subsection. For a violation
19 of (a)(2) of this section or AS 45.55.010, an action under this section may be
20 started within three years after the sale or two years after the person bringing the
21 action discovered or should have discovered the facts on which the action is based,
22 whichever is later. Failure to start an action on a timely basis is an affirmative
23 defense. A person may not sue under this section if the buyer received

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

30 (2) [IF THE BUYER RECEIVED] the offer before suit and at a time
31 when buyer did not own the security [,] unless the buyer rejected the offer in writing

1 within 30 days of its receipt.

2 * Sec. 55. AS 45.55.930(g) is amended to read:

3 (g) A person who makes or engages in the performance of a contract in
4 violation of a provision of this chapter or a regulation or an order under this chapter,
5 or who acquires a purported right under the contract with knowledge of the facts by
6 reason of which its making or performance is in violation of this chapter, may not
7 base a suit on the contract.

8 * Sec. 56. AS 45.55.930 is amended by adding new subsections to read:

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

13 (k) An offer to repay the buyer under this section involves the offer or sale of
14 a security, and the transaction must be registered under this chapter or exempt from
15 registration under AS 45.55.900.

16 * Sec. 57. AS 45.55.935(a) is amended to read:

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

20 (1) orders issued under AS 45.55.120, 45.55.900(d), or 45.55.920; in
21 these instances, the administrator shall promptly send a notice of opportunity for
22 hearing to the issuer of the securities and to all persons who have filed with the
23 department a notice of intention to sell the securities; and

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

30 * Sec. 58. AS 45.55.970(b) is amended to read:

31 (b) The administrator shall keep a register of all applications for registration

1 and registration statements that [WHICH] are or have ever been effective under this
2 chapter, **all notice filings under this chapter**, and all denial, suspension, or revocation
3 orders that [WHICH] have been entered under this chapter. The register **must**
4 [SHALL] be open for public inspection.

5 * Sec. 59. AS 45.55.970(c) is amended to read:

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

9 * Sec. 60. AS 45.55.970(e) is amended to read:

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

12 * Sec. 61. AS 45.55.980(a) is amended to read:

13 (a) **Unless the persons are exempt elsewhere in this chapter**, AS 45.55.010,
14 **45.55.025, 45.55.027, 45.55.028, 45.55.030(a), 45.55.035, 45.55.070, 45.55.075,**
15 **45.55.170, and 45.55.930** apply to persons who sell or offer to sell when **an offer to**

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

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

18 * Sec. 62. AS 45.55.980(b) is amended to read:

19 (b) **Unless the persons are exempt elsewhere in this chapter**, AS 45.55.010,
20 **45.55.025, 45.55.027, 45.55.028, 45.55.030(a), 45.55.035,** and 45.55.170 apply to
21 persons who buy or offer to buy when **an offer to**

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

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

24 * Sec. 63. AS 45.55.980(c) is amended to read:

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

27 (1) originates from this state;

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

30 (3) is for an interest or participation in an oil, gas, or mining right, title,
31 or lease on land in the state, including submerged land, regardless of where the offer

1 is made;

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

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

10 * Sec. 64. AS 45.55.980(f) is amended to read:

11 (f) AS 45.55.020, 45.55.023, 45.55.030(c), 45.55.030(e), 45.55.040(h), and
12 45.55.170, so far as state investment advisers, federal covered advisers, and
13 investment adviser representatives are concerned, apply when any act instrumental
14 in effecting prohibited conduct is done in this state, regardless of whether [OR NOT]
15 either party is then present in this state.

16 * Sec. 65. AS 45.55.980(g) is amended to read:

17 (g) An [EVERY] applicant for registration under this chapter, an [AND
18 EVERY] issuer that proposes to offer a security in this state through a person acting
19 on an agency basis in the common law sense, and a person making a notice filing
20 under this chapter shall file with the administrator, in the form that the administrator
21 prescribes by regulation, an irrevocable consent appointing the administrator or a
22 successor in office to be the applicant's or issuer's attorney to receive service of lawful
23 process in a civil suit, an action, or a proceeding against the applicant or issuer or a
24 successor executor or administrator that [WHICH] arises under this chapter or a
25 regulation or order under this chapter after the consent has been filed [,] with the same
26 force and validity as if served personally on the person filing the consent. A person
27 who has filed a [FILES THE] consent in connection with a previous registration or
28 notice filing need not file another. Service may be made by leaving a copy of the
29 process in the office of the administrator, but it is not effective unless

30 (1) the plaintiff, who may be the administrator in a suit, action, or
31 proceeding instituted by the administrator, immediately sends notice of the service and

1 a copy of the process by registered mail to the defendant or respondent at the last
2 address on file with the administrator; and

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

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

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

13 (A) an issuer in effecting transactions

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

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

17 (iii) in a covered security as described in 15 U.S.C.
18 78r(b)(3) and (4)(D) (Securities Act of 1933); or

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

22 (B) a broker-dealer in effecting transactions in this state
23 described in 15 U.S.C. 78o(h)(2) and (3) (Securities Exchange Act of 1934);

24 * Sec. 67. AS 45.55.990(3) is amended to read:

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

28 (A) an agent;

29 (B) an issuer;

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

31 (D) a person who has no place of business in this state if the

1 person effects transactions in this state exclusively with or through

2 (i) the issuers of the securities involved in the
3 transactions;

4 (ii) other broker-dealers; or

5 (iii) banks, savings institutions, trust companies,
6 insurance companies, investment companies as defined in 15 U.S.C.
7 80a-1 - 80a-64 ([THE] Investment Company Act of 1940), pension or
8 profit-sharing trusts, or other financial institutions or institutional
9 buyers, whether acting for themselves or as trustees; or

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

18 * Sec. 68. AS 45.55.990(9) is amended to read:

19 (9) "person" means an individual, a corporation, a partnership, a
20 limited liability company, a limited partnership, a limited liability partnership, an
21 association, a joint-stock company, a trust in which [WHERE] the interests of the
22 beneficiaries are evidenced by a security, an unincorporated organization, a
23 government, or a political subdivision of a government;

24 * Sec. 69. AS 45.55.990(11) is repealed and reenacted to read:

25 (11) "Securities Act of 1933" means 15 U.S.C. 77a - 77bbbb;

26 * Sec. 70. AS 45.55.990(12) is amended to read:

27 (12) "security" means a note; stock; treasury stock; bond; debenture;
28 evidence of indebtedness; certificate of interest or participation in any profit-sharing
29 agreement; a limited liability company interest under AS 10.50, notwithstanding the
30 limitations of AS 45.08.103(c); collateral-trust certificate [CERTIFICATES];
31 preorganization certificate or subscription; transferable share; investment contract;

1 voting-trust certificate; certificate of deposit for a security; fractional or pooled
2 interests in a viatical settlement contract; [A] certificate of interest or participation
3 in an oil, gas, or mining title or lease or in payments out of production under the title
4 or lease or in any sale of or indenture or bond or contract for the conveyance of land
5 or any interest in land; [AN] option on a contract for the future delivery of agricultural
6 or mineral commodities or any other commodity offered or sold to the public and not
7 regulated by the Commodity Futures Trading Commission; however, the contract or
8 option is not subject to the provisions of AS 45.55.010 if it is sold or purchased on the
9 floor of a bona fide exchange or board of trade and offered or sold to the public by
10 a broker-dealer or agent registered under this chapter; investment of money or money's
11 worth including goods furnished or services performed in the risk capital of a venture
12 with the expectation of some benefit to the investor where the investor has no direct
13 control over the investment or policy decision of the venture; or, in general, any
14 interest or instrument commonly known as a "security," or any certificate of interest
15 or participation in, temporary or interim certificate for, receipt for, guarantee of, or
16 warrant or right to subscribe to or purchase, any of the foregoing; "security" does not
17 include an insurance or endowment policy or annuity contract under which an
18 insurance company promises to pay a fixed or variable sum of money either in a lump
19 sum or periodically for life or for some other specified period;

20 * Sec. 71. AS 45.55.990 is amended by adding new paragraphs to read:

21 (14) "advisory client" means a person to whom services are provided
22 under an investment advisory contract;

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

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

28 (17) "Bank Holding Company Act of 1956" means 12 U.S.C. 1841 -
29 1850;

30 (18) "clients who are natural persons" means natural persons who are
31 clients of a state investment adviser or federal covered adviser, except that natural

1 persons with at least \$750,000 under management with the state investment adviser or
2 federal covered adviser or with a net worth of at least \$1,500,000 at the time they
3 initially contract for services described in (23)(A)(i) of this section and other persons
4 who may be designated by regulation or order of the administrator are not considered
5 natural persons for the purpose of determining under (19)(A)(ii) if a supervised person
6 provides the services described under (23)(A)(i) of this section to natural persons;

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

12 (20) "federal covered security" means a security that is a covered
13 security under 15 U.S.C. 77r(b), as amended (Securities Act of 1933), or regulations
14 adopted under that Act;

15 (21) "Federal Deposit Insurance Act" means 12 U.S.C. 1811 - 1835a;

16 (22) "Home Owners' Loan Act" means 12 U.S.C. 1461 - 1470;

17 (23) "investment adviser representative"

18 (A) means a natural person who

19 (i) makes a recommendation or otherwise renders advice
20 regarding securities; manages accounts or portfolios of clients;
21 determines which recommendation or advice regarding securities should
22 be given; solicits, offers, or negotiates for the sale of or sells advisory
23 services; or supervises employees who perform an activity described in
24 this sub-subparagraph; and

25 (ii) is a supervised person of a state investment adviser
26 that is registered or required to be registered under this chapter if a
27 substantial portion of the business of the supervised person is providing
28 to clients who are natural persons the service described in (i) of this
29 subparagraph, or who has a place of business located in this state and
30 is a supervised person of a federal covered adviser and has six or more
31 clients who are natural persons if a substantial portion of the business

1 of the supervised person is providing to clients who are natural persons
2 the services described in (i) of this subparagraph;

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

5 (C) except persons covered by (37)(A)(ii) of this section, does
6 not include a person that would not be defined as an investment adviser
7 representative under 17 C.F.R. 275.203A-3 adopted under 15 U.S.C. 80b-3a
8 (Investment Advisers Act of 1940);

9 (24) "Investment Advisers Act of 1940" means 15 U.S.C. 80b-1 - 80b-
10 21;

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

13 (26) "investment advisory contract" means a contract in which one
14 person receives consideration from another person primarily for providing advisory
15 services;

16 (27) "Investment Company Act of 1940" means 15 U.S.C. 80a-1 - 80a-
17 64;

18 (28) "NASDAQ" means National Association of Securities Dealers
19 Automatic Quotation System;

20 (29) "National Securities Markets Improvement Act of 1996" means
21 P.L. 104 - 290, 101 Stat. 3416 - 3440;

22 (30) "notice filing" means a filing made under AS 45.55.040(h) or
23 45.55.075 unless the context indicates otherwise;

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

26 (A) an office at which the state investment adviser, federal
27 covered adviser, or investment adviser representative regularly provides
28 advisory services, solicits, meets with, or otherwise communicates with clients;
29 and

30 (B) another location that is held out to the general public as a
31 location at which the state investment adviser, federal covered adviser, or

1 investment adviser representative provides advisory services, solicits, meets
2 with, or otherwise communicates with clients;

3 (32) "principal place of business" of a state investment adviser,
4 investment adviser representative, or federal covered adviser means the executive
5 office of the state investment adviser, investment adviser representative, or federal
6 covered adviser from which the officers, partners, or managers of the state investment
7 adviser, investment adviser representative, or federal covered adviser direct, control,
8 and coordinate the activities of the state investment adviser, investment adviser
9 representative, or federal covered adviser;

10 (33) "Securities Exchange Act of 1934" means 15 U.S.C. 78a - 78lll;

11 (34) "securities business" means a business that provides the services
12 provided by

13 (A) state investment advisers, federal covered advisers, or
14 investment adviser representatives; or

15 (B) broker-dealers, issuers, or agents of broker-dealers or
16 issuers;

17 (35) "state investment adviser"

18 (A) means

19 (i) a person who, for compensation, engages in the
20 business of advising others, either directly or through publications or
21 writings, as to the value of securities or as to the advisability of
22 investing in, purchasing, or selling securities, or who, for compensation
23 and as a part of a regular business, issues or promulgates analyses or
24 reports concerning securities, or who, for compensation, engages in this
25 state in the business of managing an investment or trading account in
26 securities for other persons;

27 (ii) a financial planner or other person who, as an
28 integral component of other financially related services, provides the
29 services described in (i) of this subparagraph to others for compensation
30 and as part of a business or who holds out to provide the services
31 described in (i) of this subparagraph to others for compensation;

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(B) does not include

(i) an investment adviser representative;

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

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

(iv) a broker-dealer or its agent whose performance of the services described in (A)(i) of this paragraph is incidental to the conduct of business as a broker-dealer or an agent and who receives no special compensation for the services;

(v) a publisher of a bona fide newspaper, news column, newsletter, news magazine, or business or financial publication or service, whether communicated in hard copy form, by electronic means, or otherwise, that does not consist of the rendering of advice on the basis of the specific investment situation of each client;

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

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

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

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

(37) "supervised person"

(A) means

(i) a partner, an officer, a director, or another person

1 occupying a similar status or performing similar functions, an employee
2 of a state investment adviser or federal covered adviser, or another
3 person who provides services described in (23)(A)(i) of this section to
4 clients on behalf of the state investment adviser or federal covered
5 adviser if the person is subject to the supervision and control of the
6 state investment adviser or federal covered adviser;

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

12 (B) does not include a person who

13 (i) does not on a regular basis solicit, meet with, or
14 otherwise communicate with clients of a state investment adviser or
15 federal covered adviser as a normal and ordinary part of the duties of
16 the person; or

17 (ii) provides the services described in (23)(A)(i) of this
18 section only by means of written material or oral statements that do not
19 claim to meet the objectives or needs of specific individuals or
20 accounts.

21 * **Sec. 72.** AS 45.55.995 is amended to read:

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

24 * **Sec. 73.** AS 45.55.020(d) and 45.55.990(6) are repealed.

25 * **Sec. 74. TRANSITION: REGULATIONS.** Notwithstanding sec. 78 of this Act, the
26 Department of Commerce and Economic Development may immediately proceed to adopt
27 regulations necessary to implement the changes made by this Act. The regulations take effect
28 under AS 44.62 (Administrative Procedure Act), but not before October 1, 1999.

29 * **Sec. 75.** Section 3 of this Act takes effect only if AS 25.27.244(s)(2) is repealed and
30 reenacted under sec. 148(c), ch. 87, SLA 1997.

31 * **Sec. 76.** Section 74 of this Act takes effect immediately under AS 01.10.070(c).

1 * **Sec. 77.** If sec. 3 of this Act takes effect, it takes effect on the effective date of the
2 repeal and reenactment of AS 25.27.244(s)(2) under sec. 148(c), ch. 87, SLA 1997.

3 * **Sec. 78.** Except as provided in secs. 76 and 77 of this Act, this Act takes effect
4 October 1, 1999.

WORK ORDER REQUEST FORM

W.O. [21] LS-0253

KEYWORDS: INVESTMENTS ASSIGNED: Bannister
SECURITIES

REQUEST FOR: New Bill TAKEN BY: Ripley

SUBJECT: Amend Alaska Securities Act

REQUESTED FOR: REP ROKEBERG BY: Janet PHONE: 269-0117

DELIVER TO: Rep. Rokeberg

INSTRUCTIONS: Redo of last session's HB 486 (Alaska Securities Act)

DEC 28 1998

OBTAIN	SPECIAL DRAFTING INSTRUCTIONS ATTACHED [] AUTHORIZED TO CONFER WITH _____ _____ RETURN _____ _____ TO REQUESTOR APPROVED: <u> X </u> DIRECTOR, LEGAL SERVICES
REVIEWED _____ IN <u>12/22/98</u> DUE _____ TYPED: Draft _____ Date _____ Final _____ Date _____ PROOFED _____ DELIVERED _____	SPECIAL INSTRUCTIONS to TYPING/PROOFING _____ <u>Sponsor Blank (until committees</u> <u>officially named)</u> Request for DRAFT