



LAWS OF ALASKA

1972

Source

HB 789 am

Chapter No.

86

AN ACT

Relating to the Alaska Securities Act.

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

* Section 1. AS 45.55.010(2) is amended to read:

(2) make an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or

* Sec. 2. AS 45.55.040(a) is amended to read:

(a) A broker-dealer, agent, or investment adviser may obtain an initial or renewal registration by filing with the administrator an application together with a consent to service of process pursuant to sec. 260(g) of this chapter. The application shall be accompanied by the fingerprints and a photograph of the applicant and shall contain whatever information the administrator by rule requires concerning such matters as

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

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

(3) the qualifications and business history of the applicant; in the case of a broker-dealer or investment adviser, the qualifications and business history of a partner, officer, or director, a person occupying a similar status or performing similar functions, or a person directly or indirectly controlling the broker-dealer or investment adviser; and, in the case of an investment adviser, the

qualifications and business history of an employee;

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

(5) the applicant's financial condition and history.

* Sec. 3. AS 45.55.040(c) is repealed and re-enacted to read:

(c) Every broker-dealer applicant for initial registration shall pay a registration fee of \$125. Every agent applicant and investment adviser applicant for initial registration shall pay a registration fee of \$50. Every broker-dealer applicant for annual renewal of registration shall pay an annual renewal fee of \$75. Every agent applicant and investment adviser applicant for annual renewal of registration shall pay an annual renewal fee of \$30.

* Sec. 4. AS 45.55.040(d) is amended to read:

(d) A registered broker-dealer or investment adviser may file an application for registration of a successor, whether or not the successor is then in existence, for the unexpired portion of the year. A broker-dealer may file a request to transfer from a previous broker-dealer an agent's unexpired portion of the registration if the provisions of sec. 30(b) of this chapter have been met. There shall be a filing fee of \$10 for filing applications under this subsection.

* Sec. 5. AS 45.55.040(e) is amended to read:

(e) The administrator shall by regulation require of registered broker-dealers and investment advisers a minimum capital and a bond guaranteed by a corporate surety qualified to do business in this state.

* Sec. 6. AS 45.55.040(f) is amended to read:

(f) The administrator shall by regulation require registered broker-dealers, agents, and investment advisers to post surety bonds in amounts up to \$10,000, and shall by regulation determine their conditions. An appropriate deposit of cash or securities shall be accepted in place of a bond so required. Every bond shall provide for suit on it by any person who has a cause of action under sec. 220 of this chapter and, if the administrator by rule or order requires, by any person who has a cause of action not arising under this chapter. Every bond shall provide that no suit may be maintained to enforce a liability on the bond unless brought within three years after the sale or other act upon which it is based.

* Sec. 7. AS 45.55.090(a) is amended to read:

(a) A security for which a registration statement has been filed under the Securities Act of 1933 or any security for which filing has been made under Regulations A,

E, and F pursuant to subsection (b) of sec. 3 of the Securities Act of 1933 in connection with the same offering may be registered by coordination.

* Sec. 8. AS 45.55.110(b) is amended to read:

(b) Every person filing a registration statement shall pay a filing fee of \$50 and a registration fee of one-tenth of one per cent of the maximum aggregate offering price at which the registered securities are to be offered in this state, but the registration fee shall in no case be less than \$50 or more than \$1,500. When a registration statement is withdrawn before the effective date or a pre-effective stop order is entered under sec. 120 of this chapter, the administrator shall retain the \$50 filing fee.

* Sec. 9. AS 45.55.130(10) is amended to read:

(10) "sale" or "sell" includes every contract of sale of, contract to sell, or disposition of, a security or interest in a security for value; "offer" or "offer to sell" includes every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value; a security given or delivered with, or as a bonus on account of, a purchase of securities or any other thing is considered to constitute part of the subject of the purchase and to have been offered and sold for value; a purported gift of assessable stock is considered to involve an offer and sale; every sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer of a security which gives the holder a present or future right or privilege to convert into another security of the same or another issuer, is considered to include an offer of the other security.

* Sec. 10. AS 45.55.130(12) is amended to read:

(12) "security" means a note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; collateral-trust certificates; preorganization certificate or subscription; transferable share; investment contract; voting-trust certificate; certificate of deposit for a security; certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under the title or lease or in any sale of or indenture or bond or contract for the conveyance of land or any interest in land; or, in general, any interest or instrument commonly known as a "security," or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing; "security" does not include an insurance or endowment policy or annuity contract under which an insurance company promises to pay a fixed sum of money either in a lump sum or periodically for life or for some other specified period;

* Sec. 11. AS 45.55.140(a) is amended to read:

(a) The following securities are exempted from

sec. 70 of this chapter:

(1) a security, including a revenue obligation, issued or guaranteed by the United States, a state, a political subdivision of a state, or an agency or corporate or other instrumentality of one or more of the foregoing; or a certificate of deposit for any of the foregoing;

(2) a security issued or guaranteed by Canada, a Canadian province, a political subdivision of a Canadian province, an agency or corporate or other instrumentality of one or more of the foregoing, or a foreign government with which the United States currently maintains diplomatic relations, if the security is recognized as a valid obligation by the issuer or guarantor;

(3) a security issued by and representing an interest in or a debt of, or guaranteed by, a bank organized under the laws of the United States, or a bank, savings institution, savings and loan association, building and loan association, or trust company organized and supervised under the laws of a state or of the United States;

(4) a commercial paper which arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, and which evidences an obligation to pay cash within nine months of the date of issuance, exclusive of days of grace, or any renewal of the paper which is likewise limited, or a guarantee of the paper or of the renewal, if the commercial paper is of the type eligible for discount by a federal reserve bank;

(5) an investment contract issued in connection with an employee's stock purchase, savings, pension, profit-sharing, or similar benefit plan if the administrator is notified in writing 30 days before the inception of the plan or, with respect to plans which are in effect on May 9, 1959, within 60 days thereafter, or within 30 days before they are reopened if they are closed on May 9, 1959;

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

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

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

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

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

(B) a registered holding company under the Public Utility Holding Company Act of 1935 or a subsidiary of the company within the meaning of that Act;

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

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

(10) a security listed or approved for listing upon notice of issuance on the New York Stock Exchange, the American Stock Exchange, the Midwest Stock Exchange, or the Pacific Coast Stock Exchange, or any other security of the same issuer which is of senior or substantially equal rank; a security called for by subscription rights or warrants so listed or approved; or a warrant or right to purchase or subscribe to any of the foregoing;

(11) a security issued by a person organized and operated not for private profit but exclusively for religious, educational, benevolent, charitable, fraternal, social, athletic, or reformatory purposes, or as a chamber of commerce or trade or professional association.

* Sec. 12. AS 45.55.140(b) is amended to read:

(b) The following transactions are exempted from sec. 70 of this chapter:

(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 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 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) a transaction pursuant to an offer directed by the offeror to not more than 20 persons, other than those designated in (b)(4) of this section, in this state during a period of 12 consecutive months, whether or not the offeror or any of the offerees is then present in this state, if the seller reasonably believes that all the buyers in this state are purchasing for investment, and no commission or other remuneration is paid or given directly or indirectly for soliciting a prospective buyer in this state;

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

(A) no commission or other remuneration is paid or given directly or indirectly for soliciting a prospective subscriber,

(B) the number of subscribers does not exceed 10, and

(C) no payment is made by any subscriber;

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

(A) no commission or other remuneration, other than a standby commission, is paid or given directly or indirectly for soliciting a security holder in this state, or

(B) the issuer first files a notice specifying the terms of the offer and the administrator does by order disallow the exemption within the next five full business days;

(8) an offer (but not a sale) of a security for which registration statements have been filed under both this chapter and the Securities Act of 1933 if no stop order or refusal order is in effect and no public proceeding or examination looking toward an order is pending under either Act;

(9) an isolated nonissuer transaction, whether effected through a broker-dealer or not;

(10) a nonissuer distribution of an outstanding security if

(A) a recognized securities manual contains the names of the issuer's officers and directors, a balance sheet of the issuer as of a date within 18 months, and a profit and loss statement for either the fiscal year preceding that date or the most recent year of operations, or

(B) the security has a fixed maturity or a fixed interest or dividend provision and there has

been no default during the current fiscal year or within the three preceding fiscal years, or during the existence of the issuer and any predecessors if less than three years, in the payment of principal, interest, or dividends on the security;

(11) a nonissuer transaction effected by or through a registered broker-dealer under an unsolicited order or offer to buy; however, the administrator may by rule require that the customer acknowledge upon a specified form that the sale was unsolicited, and that a signed copy of each form be preserved by the broker-dealer for a specified period;

(12) a transaction executed by a bona fide pledgee without any purpose of evading this chapter;

(13) a transaction incident to a right of conversion or a statutory or judicially approved reclassification, recapitalization, reorganization, quasi-reorganization, stock split, reverse stock split, merger, consolidation or sale of assets, if

(A) no commission or other remuneration, other than a standby commission is paid or given directly or indirectly for soliciting a security holder in this state; and

(B) the issuer files a notice in the form specified by the administrator not less than 30 days before making the offer;

(14) a stock dividend, whether the corporation distributing the dividend is the issuer of the stock or not, if nothing of value is given by stockholders for the dividend other than the surrender of a right to a cash or property dividend when each stockholder may elect to take the dividend in cash or property or in stock;

(15) an act incident to a class vote by stockholders, under the certificate of incorporation or the applicable corporation statute, on a merger, consolidation, reclassification of securities or sale of securities of another corporation;

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

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

(B) the securities do not constitute the whole or a part of an unsold allotment to or subscription or participation by the broker-dealer as an underwriter of the securities or as a participant in the distribution of the securities by the issuer, by

an underwriter or by a person or group of persons in substantial control of the issuer or of the outstanding securities of the class being distributed; and

(C) the securities have been lawfully sold and distributed in this state or any other state of the United States under this or any Act regulating the sale of the securities.

* Sec. 13. AS 45.55.140 is amended by adding a new subsection to read:

(f) The administrator shall by regulation prescribe a schedule of fees for examination or investigation of claimed exemption.

* Sec. 14. AS 45.55.150 is amended to read:

Sec. 45.55.150. FILING OF SALES AND ADVERTISING LITERATURE. The administrator may by rule or order require the filing of a prospectus, pamphlet, circular, form letter, advertisement, or other sales literature, or advertising communication addressed or intended for distribution to prospective investors, including clients or prospective clients of an investment adviser.

* Sec. 15. AS 45.55.160 is repealed and re-enacted to read:

Sec. 45.55.160. MISLEADING FILINGS. It is unlawful for a person, in a document filed with the administrator or in a proceeding under this chapter, to make or cause to be made an untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading.

* Sec. 16. AS 45.55 is amended by adding a new section to read:

Sec. 45.55.195. REIMBURSEMENT OF EXPENSES INCIDENT TO EXAMINATION. (a) An issuer, broker-dealer, agent, or investment adviser shall reimburse the administrator for actual travel expenses and per diem incurred in connection with an examination incident to a registration under this chapter.

(b) The administrator may by rule or order adopt a schedule of charges for annual examination fees of issuers, broker-dealers, agents and investment advisers.

(c) If an issuer, broker-dealer, agent or investment adviser fails to pay the fees and expenses provided for in this section, the fees and expenses shall be paid out of the funds of the administrator in the same manner as other disbursements made by the administrator. The amounts paid from the funds of the administrator are a lien upon all of the assets and property in this state of the issuer, broker-dealer, agent or investment adviser and the amount may be recovered by the attorney general on behalf of the state.

(d) Failure of the issuer, broker-dealer, agent or investment adviser to pay fees and expenses under this

section is a wilful violation of this chapter and the violation falls within the provisions of secs. 60, 120, 200 and 210 of this chapter.

* Sec. 17. AS 45.55.210(a) is amended to read:

(a) A person who wilfully violates a provision of this chapter except sec. 160 of this chapter, or who wilfully violates a rule or order under this chapter, or who wilfully violates sec. 160 of this chapter knowing the statement made to be false or misleading in a material respect or the omission to be misleading by any material respect, upon conviction, is punishable by a fine of not more than \$5,000, or by imprisonment for not less than one year nor more than five years, or by both. Upon conviction of an individual for a felony under this chapter, imprisonment for not less than one year is mandatory. However, no individual may be imprisoned for the violation of a rule or order if he proves that he had no knowledge of the rule or order. No indictment or information may be returned under this chapter more than five years after the alleged violation.

* Sec. 18. AS 45.55.220(f) is amended to read:

(f) No person may sue under this section more than three years after the contract of sale. No person may sue under this section

(1) if the buyer received a written offer, before suit and at a time when he owned the security, to refund the consideration paid together with interest at six per cent a year from the date of payment, less the amount of income received on the security, and he failed to accept the offer within 30 days of its receipt, or

(2) if the buyer received the offer before suit and at a time when he did not own the security, unless he rejected the offer in writing within 30 days of its receipt.