

CS FOR HOUSE BILL NO. 170(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTIETH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 4/13/17

Referred: Rules

Sponsor(s): HOUSE LABOR AND COMMERCE COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to securities, registration, exempt securities, exempt transactions,**
2 **broker-dealers, agents, investment advice, investment advisers, investment adviser**
3 **representatives, federal covered securities, federal covered investment advisers, viatical**
4 **settlement interests, small intrastate security offerings, Canadian broker-dealers, and**
5 **Canadian agents; relating to protecting older and vulnerable adults from financial**
6 **exploitation; relating to administrative, civil, and criminal enforcement provisions,**
7 **including restitution and civil penalties for violations; relating to an investor training**
8 **fund; establishing increased civil penalties for harming older persons and vulnerable**
9 **adults; relating to corporations organized under the Alaska Native Claims Settlement**
10 **Act; amending Rules 4, 5, 54, 65, and 90, Alaska Rules of Civil Procedure, and Rule 602,**
11 **Alaska Rules of Appellate Procedure; and providing for an effective date."**

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

1 * **Section 1.** AS 06.05.340 is amended to read:

2 **Sec. 06.05.340. Certain remuneration prohibited.** A bank may not pay
3 directly or indirectly a fee, commission, or bonus of any kind for its promotion and
4 organization or for securing a subscription to the original capital or to any increase in
5 capital. However, this section does not prohibit the payment of reasonable
6 compensation for legal, accounting, and econometric services, or payments to a
7 securities broker-dealer registered under **AS 45.56** [AS 45.55] for services that have
8 been performed in connection with the sale of bank securities.

9 * **Sec. 2.** AS 06.26.020(a) is amended to read:

10 (a) Notwithstanding any other provision of this chapter, a person does not act
11 as a fiduciary under this chapter if the person

12 (1) is licensed to practice law in this state, the person is acting within
13 the scope of the license, and the person and any law firm of the person are not trustees
14 of more trusts than the number established for the person and law firm by the
15 department by regulation or order; in this paragraph, "law firm" means a partnership, a
16 professional corporation organized under AS 10.45, or another association organized
17 for the practice of law and in which the person practices law;

18 (2) acts as trustee under a deed of trust delivered only as security for
19 the payment of money or for the performance of another act;

20 (3) receives and distributes on behalf of a principal rents and proceeds
21 of sales as a real estate broker or other licensee under AS 08.88;

22 (4) engages in securities business activity [OR INVESTMENT
23 ADVISORY BUSINESS ACTIVITY] as a registered broker-dealer, a broker-dealer
24 agent, **an** [A STATE] investment adviser, or an investment adviser representative, or
25 as a federal covered **investment** adviser who has made a notice filing under
26 **AS 45.56.445(c)** [AS 45.55.040(h)], the person is acting within the scope of the
27 person's registration or notice filing, and the activity is regulated by the department
28 under **AS 45.56** [AS 45.55] or by the United States Securities and Exchange
29 Commission; in this paragraph, "agent," "broker-dealer," "federal covered **investment**
30 adviser," **"investment adviser,"** "investment adviser representative," **and**
31 ["INVESTMENT ADVISORY BUSINESS,"] "securities business [,]" [AND "STATE

INVESTMENT ADVISER"] have the meanings given in AS 45.56.900
[AS 45.55.990];

(5) engages in the sale and administration of an insurance product as an insurance company licensed under AS 21 or an insurance producer licensed under AS 21 and is acting within the scope of that license;

(6) handles escrow transactions and is a title insurance company that has a certificate of authority issued under AS 21.09, a title insurance limited producer that is licensed as required by AS 21.66.270, or an employee of the title insurance company or title insurance producer when acting in the scope of the employee's employment; in this paragraph,

(A) "escrow transaction" has the meaning given in AS 34.80.090;

(B) "title insurance company" has the meaning given in AS 21.66.480;

(C) "title insurance limited producer" has the meaning given in AS 21.66.480;

(7) is a cemetery association organized and acting under AS 10.30;

(8) is a trustee for a voting trust under AS 10.06 and is acting in that capacity;

(9) has a certified public accountant license issued under AS 08.04.105 or 08.04.195, the person is acting within the scope of the license, and the person and any accounting firm of the person are not trustees of more trusts than the number established for the person and accounting firm by the department by regulation or order; in this paragraph, "accounting firm" means a partnership, a professional corporation organized under AS 10.45, or another association organized for the practice of public accounting and in which the person practices public accounting;

(10) holds real property in trust for the primary purpose of subdivision, development, or sale or to facilitate a business transaction with respect to the real property;

(11) serves as a trustee of a trust created by the person's family members;

(12) holds money or other assets as a homeowners' association or similar organization to pay maintenance and other related costs for commonly owned property; in this paragraph, "homeowners' association" includes an association of apartment owners under AS 34.07.450 and a unit owners' association or master association under AS 34.08.990;

(13) holds money or other assets in connection with the collection of debts or payments on loans by a person acting solely as the agent or representative at the sole direction of the person to whom the debt or payment is owed, including engaging in the business of an escrow agent;

(14) acts as a conservator if the person is appointed by a court of this or another state or is qualified to act as a conservator under AS 13.26.580;

(15) acts as a personal representative if the person is appointed a personal representative by a court of this or another state or is qualified to act as a personal representative under AS 13.21.035;

(16) acts as a guardian or receiver if the person is appointed as a guardian or receiver by a court of this or another state;

(17) is a business partner acting with regard to the business, or a co-owner of property acting with regard to the co-owned property;

(18) serves as a trustee of one or more trusts in which the settlor is not a family member of the person, except that the person may not at any one time serve as a trustee for trusts that cumulatively have more than 10 different settlors; however, the department may change by regulation or order the maximum number of settlors allowed for this exemption; in this paragraph, a husband and wife who create a joint trust are considered to be one settlor.

* **Sec. 3.** AS 06.26.990(a)(21) is amended to read:

(21) "issuer" has the meaning given in **AS 45.56.900** [AS 45.55.990];

* **Sec. 4.** AS 12.62.400(a)(18) is amended to read:

(18) registration as a broker-dealer, agent, investment adviser representative, or [STATE] investment adviser under **AS 45.56.405 - 45.56.440** [AS 45.55.030 - 45.55.060].

* **Sec. 5.** AS 14.43.148(h)(1) is amended to read:

1 (1) "license"

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

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

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

10 (iii) teacher certificate under AS 14.20;

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

13 (v) asbestos worker certification under AS 18.31;

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

15 (vii) certificate of fitness under AS 18.62;

16 (viii) hazardous painting certification under AS 18.63;

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

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

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

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

24 (xiii) registration as a broker-dealer, an agent, an [A
25 STATE] investment adviser, or an investment adviser representative
26 under AS 45.56.405 - 45.56.440 [AS 45.55.030];

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

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

31 (xvi) certification as a water and wastewater works

operator under AS 46.30; and

(B) does not include

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

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

(iii) [REPEALED

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

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

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

* **Sec. 6.** AS 21.96.110(a) is amended to read:

(a) The director shall regulate the transaction of viatical settlement contracts for the protection of viators, insureds, and insurers. The authority of the director under this subsection extends to the regulation of transactions between a viator and a viatical settlement provider and between a viator and a person acting as an agent in viaticating a life insurance policy, while the authority of the commissioner extends to the regulation of viatical settlement investments as provided under **AS 45.56** [AS 45.55.905(c)].

* **Sec. 7.** 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

1 emergency medical services;

2 (v) asbestos worker certification under AS 18.31;

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

4 (vii) certificate of fitness under AS 18.62;

5 (viii) hazardous painting certification under AS 18.63;

6 (ix) security guard license under AS 18.65.400 -
7 18.65.490;

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

9 (xi) employment agency permit under AS 23.15.330 -
10 23.15.520;

11 (xii) registration as a broker-dealer, an agent, an [A
12 STATE] investment adviser, or an investment adviser representative
13 under AS 45.56.405 - 45.56.440 [AS 45.55.030];

14 (xiii) certification as a pesticide applicator under
15 AS 46.03.320;

16 (xiv) certification as a storage tank worker or contractor
17 under AS 46.03.375;

18 (xv) certification as a water and wastewater works
19 operator under AS 46.30;

20 (xvi) commercial crewmember fishing license under
21 AS 16.05.480 other than an entry permit or interim-use permit under
22 AS 16.43;

23 (xvii) fish transporter permit under AS 16.05.671;

24 (xviii) salt water sport fishing operator license under
25 AS 16.40.261;

26 (xix) salt water sport fishing guide license under
27 AS 16.40.271;

28 (B) does not include

29 (i) a vessel license issued under AS 16.05.490 or
30 16.05.530;

31 (ii) a business license issued under AS 43.70;

- (iii) an entry permit or interim-use permit issued under AS 16.43; or
- (iv) a driver's license issued under AS 28.15;

* **Sec. 8.** AS 34.08.570 is amended to read:

Sec. 34.08.570. Common interest community securities. If an interest in a common interest community is currently registered with the Securities and Exchange Commission of the United States, a declarant satisfies each requirement relating to the preparation of a public offering statement of this chapter if the declarant delivers to the purchaser a copy of the public offering statement filed with the Securities and Exchange Commission. An interest in a common interest community is not subject to the registration requirements of AS 45.56 [AS 45.55].

* **Sec. 9.** AS 37.23.010(c) is amended to read:

(c) The registration requirements of AS 45.56 [AS 45.55] do not apply to an investment pool formed under this chapter or to participating public entities with respect to activities of the pool.

* **Sec. 10.** AS 37.23.050 is amended to read:

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

(1) a securities broker-dealer registered under AS 45.56.405 [AS 45.55.030] and under 15 U.S.C. 78o (Securities Exchange Act of 1934);

(2) an [A STATE] investment adviser registered under AS 45.56.435 [AS 45.55.030] or a federal covered investment adviser that has made a notice filing under AS 45.56.445(c) [AS 45.55.040(h)];

(3) the Department of Revenue; or

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

* **Sec. 11.** AS 40.25.120(a) is amended to read:

(a) Every person has a right to inspect a public record in the state, including

1 public records in recorders' offices, except

2 (1) records of vital statistics and adoption proceedings, which shall be
3 treated in the manner required by AS 18.50;

4 (2) records pertaining to juveniles unless disclosure is authorized by
5 law;

6 (3) medical and related public health records;

7 (4) records required to be kept confidential by a federal law or
8 regulation or by state law;

9 (5) to the extent the records are required to be kept confidential under
10 20 U.S.C. 1232g and the regulations adopted under 20 U.S.C. 1232g in order to secure
11 or retain federal assistance;

12 (6) records or information compiled for law enforcement purposes, but
13 only to the extent that the production of the law enforcement records or information

14 (A) could reasonably be expected to interfere with enforcement
15 proceedings;

16 (B) would deprive a person of a right to a fair trial or an
17 impartial adjudication;

18 (C) could reasonably be expected to constitute an unwarranted
19 invasion of the personal privacy of a suspect, defendant, victim, or witness;

20 (D) could reasonably be expected to disclose the identity of a
21 confidential source;

22 (E) would disclose confidential techniques and procedures for
23 law enforcement investigations or prosecutions;

24 (F) would disclose guidelines for law enforcement
25 investigations or prosecutions if the disclosure could reasonably be expected to
26 risk circumvention of the law; or

27 (G) could reasonably be expected to endanger the life or
28 physical safety of an individual;

29 (7) names, addresses, and other information identifying a person as a
30 participant in the Alaska Higher Education Savings Trust under AS 14.40.802 or the
31 advance college tuition savings program under AS 14.40.803 - 14.40.817;

(8) public records containing information that would disclose or might lead to the disclosure of a component in the process used to execute or adopt an electronic signature if the disclosure would or might cause the electronic signature to cease being under the sole control of the person using it;

(9) reports submitted under AS 05.25.030 concerning certain collisions, accidents, or other casualties involving boats;

(10) records or information pertaining to a plan, program, or procedures for establishing, maintaining, or restoring security in the state, or to a detailed description or evaluation of systems, facilities, or infrastructure in the state, but only to the extent that the production of the records or information

(A) could reasonably be expected to interfere with the implementation or enforcement of the security plan, program, or procedures;

(B) would disclose confidential guidelines for investigations or enforcement and the disclosure could reasonably be expected to risk circumvention of the law; or

(C) could reasonably be expected to endanger the life or physical safety of an individual or to present a real and substantial risk to the public health and welfare;

(11) the written notification regarding a proposed regulation provided under AS 24.20.105 to the Department of Law and the affected state agency and communications between the Legislative Affairs Agency, the Department of Law, and the affected state agency under AS 24.20.105;

(12) records that are

(A) proprietary, privileged, or a trade secret in accordance with AS 43.90.150 or 43.90.220(e);

(B) applications that are received under AS 43.90 until notice is published under AS 43.90.160;

(13) information of the Alaska Gasline Development Corporation created under AS 31.25.010 or a subsidiary of the Alaska Gasline Development Corporation that is confidential by law or under a valid confidentiality agreement;

(14) information under AS 38.05.020(b)(11) that is subject to a

1 confidentiality agreement under AS 38.05.020(b)(12);

2 (15) records relating to proceedings under AS 09.58 (Alaska Medical
3 Assistance False Claim and Reporting Act);

4 (16) names, addresses, and other information identifying a person as a
5 participant in the Alaska savings program for eligible individuals under AS 06.65;

6 **(17) records that are**

7 **(A) investigative files under AS 45.55.910; or**

8 **(B) confidential under AS 45.56.615.**

9 * **Sec. 12.** AS 43.70.105(a) is amended to read:

10 (a) This chapter does not apply to

11 (1) a fisheries business;

12 (2) the sale of liquor under a license issued under AS 04.11;

13 (3) an insurance business;

14 (4) a mining business;

15 (5) supplying services as an employee;

16 (6) furnishing goods or services by a person who does not represent to
17 be regularly engaged in furnishing goods or services;

18 (7) the activities of an investment club; in this paragraph,

19 (A) "investment club" means a group of individuals,
20 incorporated or otherwise organized, that engages primarily in investing in
21 securities, that does not sell investment services to another person, that does
22 not advertise, and the primary purpose of which is educational;

23 (B) "security" has the meaning given in **AS 45.56.900**
24 [AS 45.55.990].

25 * **Sec. 13.** AS 44.64.030(a)(39) is repealed and reenacted to read:

26 (39) AS 45.56 (Alaska Securities Act);

27 * **Sec. 14.** AS 44.64.030(a) is amended by adding a new paragraph to read:

28 (51) AS 45.55 (Alaska Native Claims Settlement Act Corporations
29 Proxy Solicitations and Initial Issuance of Stock).

30 * **Sec. 15.** AS 45.55.138 is amended to read:

31 **Sec. 45.55.138. Application to Alaska Native Claims Settlement Act**

1 **corporations.** The initial issue of stock of a corporation organized under Alaska law
 2 under [PURSUANT TO] 43 U.S.C. 1601 et seq. (Alaska Native Claims Settlement
 3 Act) is not a sale of a security under AS 45.56.105 [AS 45.55.070] and 45.56.900(29)
 4 [45.55.990(28)].

5 * **Sec. 16.** AS 45.55.139 is amended to read:

6 **Sec. 45.55.139. Reports of corporations.** A copy of all annual reports,
 7 proxies, consents or authorizations, proxy statements, and other materials relating to
 8 proxy solicitations distributed, published, or made available by any person to at least
 9 30 Alaska resident shareholders of a corporation organized under Alaska law under
 10 43 U.S.C. 1601 et. seq. (Alaska Native Claims Settlement Act) that has total assets
 11 exceeding \$1,000,000 and a class of equity security held of record by 500 or more
 12 persons [AND WHICH IS EXEMPTED FROM THE REGISTRATION
 13 REQUIREMENTS OF AS 45.55.070 BY AS 45.55.138,] shall be filed with the
 14 administrator concurrently with its distribution to shareholders.

15 * **Sec. 17.** AS 45.55.920(a) is amended to read:

16 (a) If it appears to the administrator that a person has engaged or is about to
 17 engage in an act or practice in violation of a provision of this chapter or regulation or
 18 order under this chapter, the administrator may

19 (1) in the public interest [OR FOR THE PROTECTION OF
 20 INVESTORS,] issue an order

21 (A) directing the person to cease and desist from continuing the
 22 act or practice;

23 (B) directing the person, for a period not to exceed three years,
 24 to file the annual reports, proxies, consents or authorizations, proxy statements,
 25 or other materials relating to proxy solicitations required under AS 45.55.139
 26 with the administrator for examination and review 10 working days before a
 27 distribution to shareholders; and

28 (C) voiding the proxies obtained by a person required to file
 29 under AS 45.55.139, including their future exercise or actions resulting from
 30 their past exercise, if the proxies were solicited by means of an untrue or
 31 misleading statement prohibited under AS 45.55.160; or

(2) bring an action in the superior court to enjoin the acts or practices and to enforce compliance with this chapter or regulation or order under this chapter, and upon a proper showing, the appropriate remedy must be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets; the court may not require the administrator to post a bond.

* **Sec. 18.** AS 45.55.920(b) is amended to read:

(b) The administrator may issue an order against a person [AN APPLICANT, REGISTERED PERSON, OR OTHER PERSON] who knowingly [OR INTENTIONALLY] violates this chapter or a regulation or order of the administrator under this chapter, imposing a civil penalty of not more than \$2,500 for a single violation, or not more than \$25,000 for multiple violations, in a single proceeding or a series of related proceedings.

* **Sec. 19.** AS 45.55.920(c) is amended to read:

(c) For violations not covered by (b) of this section, the administrator may issue an order against a person [AN APPLICANT, REGISTERED PERSON, OR OTHER PERSON] who violates this chapter or a regulation or order of the administrator under this chapter, imposing a civil penalty of not more than \$500 for a single violation, or not more than \$5,000 for multiple violations, in a single proceeding or a series of related proceedings.

* **Sec. 20.** AS 45.55.925(a) is amended to read:

(a) In addition to the civil penalties assessed under AS 45.55.920, a person who wilfully violates a provision of this chapter except AS 45.55.160 [AS 45.55.030(e), 45.55.040(h), 45.55.075, OR 45.55.160], or who wilfully violates a regulation or order under this chapter, or who wilfully violates AS 45.55.160 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 both. Upon conviction of an individual for a felony under this chapter, imprisonment for not less than one year is mandatory. However, an individual may not be imprisoned for the violation of a regulation or order if the individual proves that the individual had no knowledge of the regulation or order. An indictment or information

1 may not be returned under this chapter more than five years after the alleged violation.

2 * **Sec. 21.** AS 45.55.935(a) is repealed and reenacted to read:

3 (a) The administrator shall adopt regulations, consistent with the provisions of
4 this chapter and with regulations adopted under AS 44.64.060, governing
5 administrative hearings conducted by the office of administrative hearings
6 (AS 44.64.010) for orders issued under AS 45.55.920.

7 * **Sec. 22.** AS 45.55.950(a) is amended to read:

8 (a) The administrator may make, adopt, amend, and rescind the regulations,
9 forms, and orders that are necessary to carry out this chapter [, INCLUDING
10 REGULATIONS AND FORMS GOVERNING REGISTRATION STATEMENTS,
11 APPLICATIONS, AND REPORTS, AND DEFINING TERMS, WHETHER OR
12 NOT USED IN THIS CHAPTER INSOFAR AS THE DEFINITIONS ARE NOT
13 INCONSISTENT WITH THIS CHAPTER. FOR THE PURPOSE OF
14 REGULATIONS AND FORMS, THE ADMINISTRATOR MAY CLASSIFY
15 SECURITIES, PERSONS, AND MATTERS WITHIN THE JURISDICTION OF
16 THE ADMINISTRATOR, AND PRESCRIBE DIFFERENT REQUIREMENTS FOR
17 DIFFERENT CLASSES].

18 * **Sec. 23.** AS 45.55.950(b) is amended to read:

19 (b) A regulation, form, or order may not be made, adopted, amended, or
20 rescinded unless the administrator finds that the action is necessary or appropriate in
21 the public interest [OR FOR THE PROTECTION OF INVESTORS AND
22 CONSISTENT WITH THE PURPOSES FAIRLY INTENDED BY THE POLICY
23 AND PROVISIONS OF THIS CHAPTER. IN ADOPTING REGULATIONS AND
24 FORMS THE ADMINISTRATOR MAY COOPERATE WITH THE SECURITIES
25 ADMINISTRATORS OF THE OTHER STATES AND THE SECURITIES AND
26 EXCHANGE COMMISSION WITH A VIEW TO EFFECTUATING THE POLICY
27 OF THIS SECTION TO ACHIEVE MAXIMUM UNIFORMITY IN THE FORM
28 AND CONTENT OF REGISTRATION STATEMENTS, APPLICATIONS, AND
29 REPORTS WHEREVER PRACTICABLE].

30 * **Sec. 24.** AS 45.55 is amended by adding a new section to read:

31 **Sec. 45.55.985. Definition.** In this chapter, unless the context otherwise

requires, "administrator" means the commissioner of commerce, community, and economic development or a designee of the commissioner.

* **Sec. 25.** AS 45 is amended by adding a new chapter to read:

Chapter 56. Alaska Securities Act.

Article 1. General Provisions.

Sec. 45.56.105. Securities registration requirement. A person may not offer or sell a security in this state unless

- (1) the security is a federal covered security;
- (2) the security is registered under this chapter; or
- (3) the security or transaction is exempt from registration under AS 45.56.205 - 45.56.250.

Article 2. Exemptions from Registration of Securities.

Sec. 45.56.205. Exempt securities. The following securities are exempt from the requirements of AS 45.56.105, 45.56.305 - 45.56.360, and 45.56.550:

(1) a security, including a revenue obligation or a separate security as defined in 17 C.F.R. 230.131 adopted under 15 U.S.C. 77a - 77aa (Securities Act of 1933), issued, insured, or guaranteed by the United States; by a state; by a political subdivision of a state; by a public authority, agency, or instrumentality of one or more states; by a political subdivision of one or more states; or by a person controlled or supervised by and acting as an instrumentality of the United States under authority granted by the United States Congress; or a certificate of deposit for any of the foregoing;

(2) a security issued, insured, or guaranteed by a foreign government with which the United States maintains diplomatic relations, or by any of its political subdivisions, if the security is recognized as a valid obligation by the issuer, insurer, or guarantor;

(3) a security issued by and representing, or that will represent an interest in or a direct obligation of or be guaranteed by,

(A) an international banking institution;

(B) a banking institution organized under the laws of the United States; a member bank of the Federal Reserve System; or a depository

1 institution a substantial portion of the business of which consists or will consist
 2 of receiving deposits or share accounts that are insured to the maximum
 3 amount authorized by statute by the Federal Deposit Insurance Corporation,
 4 the National Credit Union Share Insurance Fund, or a successor authorized by
 5 federal law or exercising fiduciary powers that are similar to those permitted
 6 for national banks under the authority of the United States Comptroller of the
 7 Currency under 12 U.S.C. 92a; or

8 (C) any other depository institution, unless, by a regulation or
 9 order, the administrator proceeds under AS 45.56.250;

10 (4) a security issued by and representing an interest in, or a debt of, or
 11 insured or guaranteed by, an insurance company authorized to do business in this
 12 state;

13 (5) a security issued or guaranteed by a railroad, other common carrier,
 14 public utility, or public utility holding company that is

15 (A) regulated with respect to its rates and charges by the United
 16 States or a state;

17 (B) regulated with respect to the issuance or guarantee of the
 18 security by the United States, a state, Canada, or a Canadian province or
 19 territory; or

20 (C) a public utility holding company registered under 42
 21 U.S.C. 16451 - 16481 (Energy Policy Act of 2005) or a subsidiary of the
 22 registered holding company within the meaning of that Act;

23 (6) a federal covered security specified in 15 U.S.C. 77r(b)(1)
 24 (Securities Act of 1933) or adopted by rule under that provision or a security listed or
 25 approved for listing on another securities market specified by regulation under this
 26 chapter; a put or call option contract; a warrant; a subscription right on or with respect
 27 to the security; an option or similar derivative security on a security or an index of
 28 securities or foreign currencies issued by a clearing agency registered under 15 U.S.C.
 29 78a - 78pp (Securities Exchange Act of 1934) and listed or designated for trading on a
 30 national securities exchange, a facility of a national securities exchange, or a facility of
 31 a national securities association registered under 15 U.S.C. 78a - 78pp (Securities

Exchange Act of 1934) or an offer or sale of the underlying security in connection with the offer, sale, or exercise of an option or other security that was exempt when the option or other security was written or issued; or an option or a derivative security designated by the Securities and Exchange Commission under 15 U.S.C. 78i(b) (Securities Exchange Act of 1934);

(7) a security issued by a person organized and operated exclusively for religious, educational, benevolent, fraternal, charitable, social, athletic, or reformatory purposes, or as a chamber of commerce, and not for pecuniary profit, no part of the net earnings of which inures to the benefit of a private stockholder or other person, or a security of a company that is excluded from the definition of an investment company under 15 U.S.C. 80a-3(c)(10)(B) (Investment Company Act of 1940), except that, with respect to the offer or sale of a note, bond, debenture, or other evidence of indebtedness issued by the person, a regulation may be adopted under this chapter limiting the availability of this exemption by classifying securities, persons, and transactions, imposing different requirements for different classes, specifying, with respect to (B) of this paragraph, the scope of the exemption and the grounds for denial or suspension, and requiring an issuer to

(A) file a notice specifying the material terms of the proposed offer or sale and copies of any proposed sales and advertising literature to be used and provide that the exemption becomes effective if the administrator does not disallow the exemption within the period established by the regulation;

(B) file a request for exemption authorization for which a regulation adopted under this chapter may specify the

- (i) scope of the exemption;
- (ii) requirement of an offering statement;
- (iii) filing of sales and advertising literature;
- (iv) filing of consent to service of process complying with AS 45.56.630; and
- (v) grounds for denial or suspension of the exemption;

or

(C) register under AS 45.56.310;

(8) a member's or owner's interest in, or a retention certificate or like security given in lieu of a cash patronage dividend issued by, a cooperative organized and operated as a nonprofit membership cooperative under the cooperative laws of a state, but not a member's or owner's interest, retention certificate, or like security sold to persons other than bona fide members of the cooperative;

(9) an equipment trust certificate with respect to equipment leased or conditionally sold to a person if any security issued by the person would be exempt under this section or would be a federal covered security under 15 U.S.C. 77r(b)(1) (Securities Act of 1933); and

(10) shares of membership stock in the Alaska Commercial Fishing and Agriculture Bank issued under AS 44.81.010 and other securities issued by that bank to members or in connection with loans to members.

Sec. 45.56.210. Exempt transactions. The following transactions are exempt from the requirements of AS 45.56.105, 45.56.305 - 45.56.360, and 45.56.550:

(1) an isolated nonissuer transaction, whether effected by or through a broker-dealer, if the seller is not a promoter or controlling person; the administrator may define by regulation or order who is a promoter or a controlling person;

(2) a nonissuer transaction by or through a broker-dealer registered, or exempt from registration under this chapter, and a resale transaction by a sponsor of a unit investment trust registered under 15 U.S.C. 80a-1 - 80a-64 (Investment Company Act of 1940), in a security of a class that has been outstanding in the hands of the public for at least 90 days, if, at the date of the transaction,

(A) the issuer of the security is engaged in business, the issuer is not in the organizational stage or in bankruptcy or receivership, and the issuer is not a blank check, blind pool, or shell company that does not have a specific business plan or purpose or has indicated that its primary business plan is to engage in a merger or combination of the business with or an acquisition of an unidentified person;

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

1 (C) the security does not constitute the whole or part of an
2 unsold allotment to or a subscription or participation by the broker-dealer as an
3 underwriter of the security or a redistribution;

4 (D) a nationally recognized securities manual or its electronic
5 equivalent designated by a regulation adopted or order issued under this
6 chapter or a record filed with the Securities and Exchange Commission that is
7 publicly available contains

8 (i) a description of the business and operations of the
9 issuer;

10 (ii) the names of the issuer's executive officers and the
11 names of the issuer's directors, if any;

12 (iii) an audited balance sheet of the issuer as of a date
13 within 18 months before the date of the transaction or, in the case of a
14 reorganization or merger when the parties to the reorganization or
15 merger each had an audited balance sheet, a pro forma balance sheet for
16 the combined organization; and

17 (iv) an audited income statement for each of the issuer's
18 two immediately previous fiscal years or for the period of existence of
19 the issuer, whichever is shorter, or, in the case of a reorganization or
20 merger when each party to the reorganization or merger had audited
21 income statements, a pro forma income statement; and

22 (E) any one of the following requirements is met:

23 (i) the issuer of the security has a class of equity
24 securities listed on a national securities exchange registered under 15
25 U.S.C. 78f (Securities Exchange Act of 1934) or designated for trading
26 on the National Association of Securities Dealers Automated Quotation
27 System;

28 (ii) the issuer of the security is a unit investment trust
29 registered under 15 U.S.C. 80a-1 - 80a-64 (Investment Company Act of
30 1940);

31 (iii) the issuer of the security, including its

predecessors, has been engaged in continuous business for at least three years; or

(iv) the issuer of the security has total assets of at least \$2,000,000 based on an audited balance sheet as of a date within 18 months before the date of the transaction or, in the case of a reorganization or merger when the parties to the reorganization or merger each had an audited balance sheet, a pro forma balance sheet for the combined organization;

(3) a nonissuer transaction by or through a broker-dealer registered or exempt from registration under this chapter in a security of a foreign issuer that is a margin security defined in regulations or rules adopted by the Board of Governors of the Federal Reserve System;

(4) a nonissuer transaction by or through a broker-dealer registered or exempt from registration under this chapter in an outstanding security if the guarantor of the security files reports with the Securities and Exchange Commission under the reporting requirements of 15 U.S.C. 78m or 15 U.S.C. 78o (Securities Exchange Act of 1934);

(5) a nonissuer transaction by or through a broker-dealer registered or exempt from registration under this chapter in a security that

(A) is rated at the time of the transaction by a nationally recognized statistical rating organization as identified by regulations of the administrator in one of its four highest rating categories; or

(B) has a fixed maturity or a fixed interest or dividend, if

(i) a default has not occurred during the current fiscal year or within the three previous fiscal years or, if the issuer has been in business less than three fiscal years, during the existence of the issuer and any predecessor in the payment of principal, interest, or dividends on the security; and

(ii) the issuer is engaged in business, is not in the organizational stage or in bankruptcy or receivership, and is not and has not, within the previous 12 months, been a blank check, blind pool, or

1 shell company that does not have a specific business plan or purpose or
 2 has indicated that its primary business plan is to engage in a merger or
 3 combination of the business with, or an acquisition of, an unidentified
 4 person;

5 (6) a nonissuer transaction by or through a broker-dealer registered or
 6 exempt from registration under this chapter effecting an unsolicited order or offer to
 7 purchase;

8 (7) a nonissuer transaction executed by a bona fide pledgee without the
 9 purpose of evading this chapter;

10 (8) a nonissuer transaction by a federal covered investment adviser
 11 with investments under management in excess of \$100,000,000 acting in the exercise
 12 of discretionary authority in a signed record for the account of others;

13 (9) a transaction in a security, whether or not the security or
 14 transaction is otherwise exempt, in exchange for one or more bona fide outstanding
 15 securities, claims, or property interests, or partly in exchange for one or more bona
 16 fide outstanding securities, claims, or property interests and partly for cash if the terms
 17 and conditions of the issuance and exchange or the delivery and exchange and the
 18 fairness of the terms and conditions have been approved by the administrator after a
 19 hearing;

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

22 (11) a transaction in a bond or other evidence of indebtedness secured
 23 by a real or chattel mortgage or deed of trust or by an agreement for the sale of real
 24 estate or chattels, if

25 (A) the entire mortgage, deed of trust, or agreement, together
 26 with all the bonds or other evidence of indebtedness, secured under those
 27 documents, is offered and sold as a unit;

28 (B) a general solicitation or general advertisement of the
 29 transaction is not made; and

30 (C) a commission or other remuneration is not paid or given,
 31 directly or indirectly, to a person not registered under this chapter as a broker-

1 dealer or as an agent;

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

4 (13) a sale or offer to sell to

5 (A) an institutional investor;

6 (B) a federal covered investment adviser; or

7 (C) any other person exempted by a regulation adopted or order
8 issued under this chapter;

9 (14) a sale or offer to sell securities by or on behalf of an issuer if the
10 transaction is part of a single issue in which

11 (A) not more than 25 purchasers in this state during any 12
12 consecutive months, other than a person designated in (13) of this section,
13 regardless of whether the seller or any of the buyers is then present in this
14 state;

15 (B) a general solicitation or general advertising is not made in
16 connection with the sale of or offer to sell the securities;

17 (C) a commission or other remuneration is not paid or given,
18 directly or indirectly, to a person other than a broker-dealer registered under
19 this chapter or an agent registered under this chapter for soliciting a
20 prospective purchaser in this state;

21 (D) the issuer reasonably believes that all the purchasers in this
22 state, other than those designated in (13) of this section, are purchasing for
23 investment and not with a view to distribution;

24 (E) a legend is placed on the certificate or other document
25 evidencing ownership of the security, and the legend states that the security is
26 not registered under this chapter and cannot be resold without registration
27 under this chapter or exemption from this chapter; and

28 (F) before a sale, each prospective buyer is furnished with
29 information that is sufficient to make an informed investment decision; the
30 information shall be furnished to the administrator upon request; in this
31 subparagraph, "information that is sufficient to make an informed investment

1 decision" includes a business plan, an income and expense statement, a balance
 2 sheet, a statement of risks, and a disclosure of any significant negative factors
 3 that may affect the outcome of the investment;

4 (15) a transaction under an offer to existing security holders of the
 5 issuer, including persons that, at the date of the transaction, are holders of convertible
 6 securities, options, or warrants, if a commission or other remuneration, other than a
 7 standby commission, is not paid or given, directly or indirectly, for soliciting a
 8 security holder in this state;

9 (16) an offer to sell, but not a sale of, a security not exempt from
 10 registration under 15 U.S.C. 77a - 77aa (Securities Act of 1933) if

11 (A) a registration, offering statement, or similar record as
 12 required under 15 U.S.C. 77a - 77aa (Securities Act of 1933) has been filed but
 13 is not effective, or the offer is made in compliance with 17 C.F.R. 230.165,
 14 adopted under 15 U.S.C. 77a - 77aa (Securities Act of 1933); and

15 (B) a stop order of which the offeror is aware has not been
 16 issued against the offeror by the administrator or the Securities and Exchange
 17 Commission, and an audit, inspection, or proceeding that is public and that
 18 may culminate in a stop order is not known by the offeror to be pending;

19 (17) an offer to sell, but not a sale of, a security exempt from
 20 registration under 15 U.S.C. 77a - 77aa (Securities Act of 1933) if

21 (A) a registration statement has been filed under this chapter
 22 but is not effective;

23 (B) a solicitation of interest is provided in a record to offerees
 24 in compliance with a regulation adopted by the administrator under this
 25 chapter; and

26 (C) a stop order of which the offeror is aware has not been
 27 issued by the administrator under this chapter, and an audit, inspection, or
 28 proceeding that may culminate in a stop order is not known by the offeror to be
 29 pending;

30 (18) a transaction involving the distribution of the securities of an
 31 issuer to the security holders of another person in connection with a merger,

consolidation, exchange of securities, sale of assets, or other reorganization to which the issuer, or its parent or subsidiary, and the other person, or its parent or subsidiary, are parties;

(19) a rescission offer, sale, or purchase under AS 45.56.665;

(20) an offer to sell or sale of a security to a person not a resident of this state and not present in this state if the offer or sale does not constitute a violation of the laws of this state or foreign jurisdiction in which the offeree or purchaser is present and is not part of an unlawful plan or scheme to evade this chapter;

(21) employees' stock purchase, savings, option, profit-sharing, pension, or similar benefit plan, including any securities, plan interests, and guarantees issued under a compensatory benefit plan or compensation contract, contained in a record, established by the issuer, the issuer's parent, the issuer's majority-owned subsidiary, or the majority-owned subsidiary of the issuer's parent for the participation of their employees, including offers to sell or sales of the securities to

(A) directors; general partners; managers and members if the issuer is a limited liability company; trustees, if the issuer is a business trust; officers; consultants; and advisors;

(B) family members who acquire the securities from those persons through gifts or domestic relations orders;

(C) former employees, directors, general partners, trustees, officers, consultants, limited liability managers or members, and advisors if those individuals were employed by or providing services to the issuer when the securities were offered; and

(D) insurance agents who are exclusive insurance agents of the issuer or the issuer's subsidiary or parent or who derive more than 50 percent of their annual income from those organizations;

(22) a transaction involving

(A) a stock dividend or equivalent equity distribution, regardless of whether the corporation or other business organization distributing the dividend or equivalent equity distribution is the issuer, if nothing of value is given by stockholders or other equity holders for the

1 dividend or equivalent equity distribution other than the surrender of a right to
 2 a cash or property dividend if each stockholder or other equity holder may
 3 elect to take the dividend or equivalent equity distribution in cash, property, or
 4 stock;

5 (B) a transaction incident to a right of conversion or judicially
 6 approved reorganization in which a security is issued in exchange for one or
 7 more outstanding securities, claims, or property interests, or partly in exchange
 8 for one or more outstanding securities, claims, or property interests and partly
 9 for cash; or

10 (C) the solicitation of tenders of securities by an offeror in a
 11 tender offer in compliance with 17 C.F.R. 230.162, adopted under 15 U.S.C.
 12 77a - 77aa (Securities Act of 1933);

13 (23) a nonissuer transaction in an outstanding security by or through a
 14 broker-dealer registered or exempt from registration under this chapter, if the issuer is
 15 a reporting issuer in a foreign jurisdiction designated by this paragraph or by a
 16 regulation adopted or order issued under this chapter; the issuer has been subject to
 17 continuous reporting requirements in the foreign jurisdiction for not less than 180 days
 18 before the transaction; and the security is listed on the foreign jurisdiction's securities
 19 exchange that has been designated by this paragraph or by a regulation adopted or
 20 order issued under this chapter, or is a security of the same issuer that is of senior or
 21 substantially equal rank to the listed security or is a warrant or right to purchase or
 22 subscribe to any of the foregoing; for purposes of this paragraph, Canada, together
 23 with its provinces and territories, is a designated foreign jurisdiction, and TSX, Inc.,
 24 formerly known as the Toronto Stock Exchange, Inc., is a designated securities
 25 exchange; after an administrative hearing in compliance with AS 45.56.650(c), the
 26 administrator, by a regulation adopted or order issued under this chapter, may revoke
 27 the designation of a securities exchange under this paragraph if the administrator finds
 28 that revocation is necessary or appropriate in the public interest and for the protection
 29 of investors;

30 (24) sales by an issuer to the buyer of an enterprise or a business and
 31 the assets and liabilities of the enterprise or business if

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

3 (B) the seller provides the buyer with full access to the books
4 and records of the enterprise or business; and

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

9 (25) offers or sales of certificates of interest or participation in oil, gas,
10 or mining rights, titles, or leases, or in payments out of production under the rights,
11 titles, or leases, if the purchasers

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

15 (B) have been found by the administrator upon written
16 application to be substantially engaged in the business of exploring for,
17 mining, producing, or refining oil, gas, or minerals so as not to require the
18 protection provided by this chapter;

19 (26) a transaction involving only family members, or involving only
20 family members and the corporations, partnerships, limited liability companies,
21 limited partnerships, limited liability partnerships, associations, joint-stock companies,
22 or trusts that are organized, formed, or created by family members or at the direction
23 of family members; in this paragraph, "family members" means persons who are
24 related, including related by adoption, within the fourth degree of affinity or
25 consanguinity; or

26 (27) a transaction relating to a security that is not part of an initial issue
27 of stock covered by AS 45.55.138, but that is issued by a corporation organized under
28 Alaska law under 43 U.S.C. 1601 et seq. (Alaska Native Claims Settlement Act), if the
29 corporation qualifies for exempt status under 43 U.S.C. 1625(a).

30 **Sec. 45.56.220. Small intrastate securities offerings.** (a) An offer or sale of
31 securities conducted solely in this state to a person who has established residency in

1 this state, by an issuer in a transaction that meets the requirements of this section, is
2 exempt from the requirements of AS 45.56.105, 45.56.305 - 45.56.360, and 45.56.550
3 and is subject to the following limitations:

4 (1) the issuer of the security shall be a for-profit corporation, another
5 for-profit entity, or a business cooperative, have its principal place of business in this
6 state, and be licensed by the department;

7 (2) the transaction must meet the requirements of the federal
8 exemption for intrastate offerings in 15 U.S.C. 77c(a)(11) (Securities Act of 1933) and
9 17 C.F.R. 230.147; the securities must be offered to and sold only to persons who
10 have established residency in this state at the time of purchase; before any offer or sale
11 under this exemption, the seller shall obtain documentary evidence from each
12 prospective purchaser that provides the seller with a reasonable basis to believe the
13 investor has established residency in this state;

14 (3) the sum of all cash and other consideration to be received for all
15 sales of the security in reliance on this exemption may not exceed \$1,000,000, less the
16 aggregate amount received for all sales of securities by the issuer within the 12 months
17 before the first offer or sale made in reliance on this exemption;

18 (4) the issuer may not accept more than \$10,000 from any single
19 purchaser unless the purchaser is an accredited investor as defined by 17 C.F.R.
20 230.501;

21 (5) the issuer reasonably believes that all purchasers of securities are
22 purchasing for investment and not for sale in connection with a distribution of the
23 security;

24 (6) a commission or remuneration may not be paid or given, directly or
25 indirectly, for any person's participation in the offer or sale of securities for the issuer
26 unless the person is registered as a broker-dealer, agent, investment adviser
27 representative, or investment adviser under AS 45.56.405 - 45.56.440;

28 (7) the issuer of the security shall deposit in an escrow account in a
29 bank or other depository institution authorized to do business in this state all funds
30 received from investors until the minimum target dollar amount for the security
31 offering is met; the issuer shall file the escrow agreement with the administrator, and

1 the contents of the escrow agreement must include a statement that the proceeds of the
 2 sale under this section will not be released from the escrow account until the minimum
 3 target dollar amount for the security offering is met; all funds shall be used in
 4 accordance with representations made to investors;

5 (8) not less than 10 days before the use of any general solicitation or
 6 within 15 days after the first sale of the security under this exemption, if general
 7 solicitation has not been used before the sale, whichever occurs first, the issuer shall
 8 provide a notice to the administrator as prescribed in regulations for this section; the
 9 notice must specify that the issuer is conducting an offering in reliance on this
 10 exemption and must contain the names and addresses of

11 (A) the issuer;

12 (B) officers, directors, and any controlling person of the issuer;

13 (C) all persons who will be involved in the offer or sale of
 14 securities on behalf of the issuer; and

15 (D) the bank or other depository institution in which investor
 16 funds will be deposited;

17 (9) the issuer may not be, either before or as a result of the offering,

18 (A) an investment company as defined by 15 U.S.C. 80a-1 -
 19 80a-64 (Investment Company Act of 1940), or subject to the reporting
 20 requirements of 15 U.S.C. 78m or 78o (Securities Exchange Act of 1934); or

21 (B) a broker-dealer, agent, investment adviser representative, or
 22 investment adviser subject to AS 45.56.405 - 45.56.440;

23 (10) the issuer shall inform all purchasers that the securities have not
 24 been registered under AS 45.56.105, 45.56.305 - 45.56.360, and 45.56.550 and may
 25 not be resold unless the securities are registered or qualify for an exemption from
 26 registration under AS 45.56.205, 45.56.210, or 45.56.240; in addition, the issuer shall
 27 make the disclosures required by 17 C.F.R. 230.147(f);

28 (11) the issuer shall require all purchasers to sign the following
 29 statement at the time of sale: "I acknowledge that I am investing in a high-risk,
 30 speculative business venture, that I may lose all of my investment, and that I can
 31 afford the loss of my investment";

(12) this exemption may not be used in conjunction with any other exemption under this chapter, except the exemption to institutional investors under AS 45.56.405 and 45.56.435 and for offers and sales to controlling persons of the issuer; sales to controlling persons may not count toward the limitation in (3) of this subsection;

(13) this exemption may not be construed to remove any person from the anti-fraud provisions under AS 45.56.505 - 45.56.560, and the exemption may not be construed to provide relief from any other provision of this chapter other than as expressly stated.

(b) The administrator may by order deny or revoke the exemption specified in this section with respect to a specific security if the administrator finds that the sale of the security would work or tend to work a fraud on the purchasers of the security. An order under this subsection may not operate retroactively. A person may not be considered to have violated an order because of any offer or sale effected after the entry of an order under this subsection if the person sustains the burden of proof that the person did not know and, in the exercise of reasonable care, could not have known of the order.

(c) A person who makes application to the department for an exemption under this section shall be assessed a filing fee as prescribed in regulations for this section.

(d) In this section, "residency" has the meaning given in AS 01.10.055.

Sec. 45.56.230. Disqualifier. Exemption from registration under AS 45.56.205 - 45.56.250 is not available for a security or transaction if the issuer, or any of its officers, controlling persons, or promoters, is subject to a disqualifier described in the regulations adopted under 15 U.S.C. 78c(a)(39) (Dodd-Frank Wall Street Reform and Consumer Protection Act) as of the date of the transaction or offer.

Sec. 45.56.240. Waiver and modification. For any security or transaction or any type of security or transaction, the administrator may by order, waive, withdraw, or modify any of the requirements or conditions of AS 45.56.205 - 45.56.250.

Sec. 45.56.250. Denial, suspension, revocation, condition, or limitation of exemptions. (a) Except with respect to a federal covered security or a transaction involving a federal covered security, an order under this chapter may deny, suspend

1 application of, condition, limit, or revoke an exemption created under
 2 AS 45.56.205(3)(C), (7), or (8), 45.56.210, or 45.56.220, or an exemption or waiver
 3 created under AS 45.56.240 with respect to a specific security, transaction, or offer.
 4 An order under this subsection may be issued only under the procedures in
 5 AS 45.56.360(d) or 45.56.650 and only prospectively.

6 (b) A person does not violate AS 45.56.105, 45.56.305 - 45.56.320, 45.56.340,
 7 45.56.360, 45.56.550, or 45.56.665 by an offer to sell, offer to purchase, sale, or
 8 purchase effected after the entry of an order issued under this section if the person did
 9 not know and, in the exercise of reasonable care, could not have known, of the order.

10 **Article 3. Registration of Securities and Notice Filing of Federal Covered Securities.**

11 **Sec. 45.56.305. Securities registration by coordination.** (a) A security for
 12 which a registration statement has been filed under 15 U.S.C. 77a - 77aa (Securities
 13 Act of 1933) in connection with the same offering may be registered by coordination
 14 under this section.

15 (b) A registration statement and accompanying records under this section must
 16 contain or be accompanied by the following records, in addition to the information
 17 specified in AS 45.56.320, and a consent to service of process complying with
 18 AS 45.56.630:

19 (1) a copy of the latest form of prospectus filed under 15 U.S.C. 77a -
 20 77aa (Securities Act of 1933);

21 (2) if the administrator requires, a copy of the articles of incorporation
 22 and bylaws or their substantial equivalents currently in effect; a copy of any other
 23 information or any other records filed by the issuer under 15 U.S.C. 77a - 77aa
 24 (Securities Act of 1933) requested by the administrator; a copy of any agreement with
 25 or among underwriters; a copy of any indenture or other instrument governing the
 26 issuance of the security to be registered; and a specimen, copy, or description of the
 27 security that is required by a regulation adopted or order issued under this chapter; and

28 (3) an undertaking to forward each amendment to the federal
 29 prospectus, other than an amendment that delays the effective date of the registration
 30 statement, promptly after it is filed with the Securities and Exchange Commission.

31 (c) A registration statement under this section becomes effective

1 simultaneously with or subsequent to the federal registration statement when all the
2 following conditions are satisfied:

3 (1) a stop order under (d) of this section or AS 45.56.360 or issued by
4 the Securities and Exchange Commission is not in effect, and a proceeding is not
5 pending against the issuer under AS 45.56.485; and

6 (2) the registration statement has been on file for at least 20 days or a
7 shorter period provided by a regulation adopted or order issued under this chapter.

8 (d) The registrant shall promptly notify the administrator in a record of the
9 date when the federal registration statement becomes effective and the content of any
10 price amendment and shall promptly file a record containing the price amendment. If
11 the notice is not timely received, the administrator may issue a stop order, without
12 prior notice or hearing, retroactively denying effectiveness to the registration
13 statement or suspending its effectiveness until compliance with this section. The
14 administrator shall promptly notify the registrant of an order by telephone or
15 electronic means and promptly confirm this notice by a record. If the registrant later
16 complies with the notice requirements of this subsection, the stop order is void as of
17 the date of its issuance.

18 (e) If the federal registration statement becomes effective before each of the
19 conditions in this section is satisfied or is waived by the administrator, the registration
20 statement is automatically effective under this chapter when all the conditions are
21 satisfied or waived. If the registrant notifies the administrator of the date when the
22 federal registration statement is expected to become effective, the administrator shall
23 promptly notify the registrant by telephone or electronic means and promptly confirm
24 this notice by a record, indicating whether all the conditions are satisfied or waived
25 and whether the administrator intends the institution of a proceeding under
26 AS 45.56.360. The notice by the administrator does not preclude the institution of a
27 proceeding under AS 45.56.360.

28 **Sec. 45.56.310. Securities registration by qualification.** (a) A security may
29 be registered by qualification under this section.

30 (b) A registration statement under this section must contain the information or
31 records specified in AS 45.56.320, a consent to service of process complying with

1 AS 45.56.630, and the following information or records:

2 (1) with respect to the issuer and any significant subsidiary, the name,
3 address, and form of organization of the issuer and subsidiary; the state or foreign
4 jurisdiction and date of organization of the issuer and subsidiary; the general character
5 and location of the business of the issuer and subsidiary; a description of the physical
6 properties and equipment of the issuer and subsidiary; and a statement of the general
7 competitive conditions in the industry or business in which the issuer and subsidiary
8 are or will be engaged;

9 (2) with respect to each director and officer of the issuer and other
10 person having a similar status or performing similar functions, the person's name,
11 address, and principal occupation for the previous five years; the amount of securities
12 of the issuer held by the person as of the 30th day before the filing of the registration
13 statement; the amount of the securities covered by the registration statement to which
14 the person has indicated an intention to subscribe; and a description of any material
15 interest of the person in any material transaction with the issuer or a significant
16 subsidiary effected within the previous three years or proposed to be effected;

17 (3) with respect to persons covered by (2) of this subsection, the
18 aggregate sum of the remuneration paid to those persons during the previous 12
19 months and estimated to be paid during the next 12 months, directly or indirectly, by
20 the issuer and all predecessors, parents, subsidiaries, and affiliates of the issuer;

21 (4) with respect to a person owning of record or owning beneficially, if
22 known, 10 percent or more of the outstanding shares of any class of equity security of
23 the issuer, the information specified in (2) of this subsection, other than the person's
24 occupation;

25 (5) with respect to a promoter, if the issuer was organized within the
26 previous three years, the information or records specified in (2) of this subsection, any
27 amount paid to the promoter within that period or intended to be paid to the promoter,
28 and the consideration for the payment;

29 (6) with respect to a person on whose behalf any part of the offering is
30 to be made in a nonissuer distribution, the person's name and address; the amount of
31 securities of the issuer held by the person as of the date of the filing of the registration

1 statement; a description of any material interest of the person in any material
2 transaction with the issuer or any significant subsidiary effected within the previous
3 three years or proposed to be effected; and a statement of the reasons for making the
4 offering;

5 (7) the capitalization and long-term debt, on both a current and pro
6 forma basis, of the issuer and any significant subsidiary, including a description of
7 each security outstanding or being registered or otherwise offered, and a statement of
8 the amount and kind of consideration, whether in the form of cash, physical assets,
9 services, patents, goodwill, or anything else of value, for which the issuer or any
10 subsidiary has issued its securities within the previous two years or is obligated to
11 issue its securities;

12 (8) the kind and amount of securities to be offered; the proposed
13 offering price or the method by which the offering price is to be computed; any
14 variation at which a proportion of the offering is to be made to a person or class of
15 persons other than the underwriters, with a specification of the person or class; the
16 basis on which the offering is to be made if otherwise than for cash; the estimated
17 aggregate underwriting and selling discounts or commissions and finders' fees,
18 including separately cash, securities, contracts, or anything else of value to accrue to
19 the underwriters or finders in connection with the offering or, if the selling discounts
20 or commissions are variable, the basis of determining them and their maximum and
21 minimum amounts; the estimated amounts of other selling expenses, including legal,
22 engineering, and accounting charges; the name and address of each underwriter and
23 each recipient of a finder's fee; a copy of any underwriting or selling group agreement
24 under which the distribution is to be made, or the proposed form of an underwriting or
25 selling group agreement whose terms have not yet been determined; and a description
26 of the plan of distribution of any securities that are to be offered other than through an
27 underwriter;

28 (9) the estimated monetary proceeds to be received by the issuer from
29 the offering; the purposes for which the proceeds are to be used by the issuer; the
30 estimated amount to be used for each purpose; the order or priority in which the
31 proceeds will be used for the purposes stated; the amounts of any funds to be raised

1 from other sources to achieve the purposes stated; the sources of the funds; and, if a
2 part of the proceeds is to be used to acquire property, including goodwill, other than in
3 the ordinary course of business, the names and addresses of the vendors, the purchase
4 price, the names of any persons that have received commissions in connection with the
5 acquisition, and the amounts of the commissions and other expenses in connection
6 with the acquisition, including the cost of borrowing money to finance the acquisition;

7 (10) a description of any stock options or other security options
8 outstanding or to be created in connection with the offering, and the amount of those
9 options held or to be held by each person required to be named in (2), (4), (5), (6), or
10 (8) of this subsection and by any person that holds or will hold 10 percent or more in
11 the aggregate of those options;

12 (11) the dates of, parties to, and general effect, concisely stated, of
13 each managerial or other material contract made or to be made other than in the
14 ordinary course of business to be performed in whole or in part at or after the filing of
15 the registration statement or that was made within the previous two years, and a copy
16 of each contract;

17 (12) a description of any pending litigation, action, or proceeding to
18 which the issuer is a party and that materially affects the issuer's business or assets and
19 any litigation, action, or proceeding known to be contemplated;

20 (13) a copy of any prospectus, pamphlet, circular, form letter,
21 advertisement, or other sales literature intended as of the effective date of the
22 registration statement to be used in connection with the offering and any solicitation of
23 interest used in compliance with AS 45.56.210(17)(B);

24 (14) a specimen or copy of the security being registered, unless the
25 security is uncertificated; a copy of the issuer's articles of incorporation and bylaws or
26 their substantial equivalents, in effect; and a copy of any indenture or other instrument
27 covering the security to be registered;

28 (15) a signed or conformed copy of an opinion of counsel concerning
29 the legality of the security being registered, with an English translation if the opinion
30 is in a language other than English, that states whether the security when sold will be
31 validly issued, fully paid, nonassessable, and, if a debt security, a binding obligation of

1 the issuer;

2 (16) a signed or conformed copy of a consent of any accountant,
3 engineer, appraiser, or other person whose profession gives authority for a statement
4 made by the person if the person is named as having prepared or certified a report or
5 valuation, other than an official record, that is public, and that is used in connection
6 with the registration statement;

7 (17) a balance sheet of the issuer as of a date within four months
8 before the filing of the registration statement; a statement of income and a statement of
9 cash flows for each of the three fiscal years preceding the date of the balance sheet and
10 for any period between the close of the immediately previous fiscal year and the date
11 of the balance sheet, or for the period of the issuer's and any predecessor's existence if
12 less than three years; and, if any part of the proceeds of the offering is to be applied to
13 the purchase of a business, the financial statements that would be required if that
14 business were the registrant; and

15 (18) any additional information or records required by a regulation
16 adopted or order issued under this chapter.

17 (c) A registration statement under this section becomes effective when the
18 administrator orders that the registration is effective.

19 (d) A regulation adopted or order issued under this chapter may require as a
20 condition of registration under this section that a prospectus containing a specified part
21 of the information or record specified in (b) of this section be sent or given to each
22 person to which an offer is made before or concurrently with the earliest of

23 (1) the first offer made in a record to the person other than by means of
24 a public advertisement, by or for the account of the issuer or another person on whose
25 behalf the offering is being made or by an underwriter or broker-dealer that is offering
26 part of an unsold allotment or subscription taken by the person as a participant in the
27 distribution;

28 (2) the confirmation of a sale made by or for the account of the person;

29 (3) payment under the sale; or

30 (4) delivery of the security under the sale.

31 **Sec. 45.56.320. Securities registration filings.** (a) A registration statement

1 may be filed by the issuer, a person on whose behalf the offering is to be made, or a
2 broker-dealer registered under this chapter.

3 (b) A person filing a registration statement shall pay a filing fee established by
4 a regulation adopted under this chapter and consent to service of process as described
5 under AS 45.56.630.

6 (c) A registration statement filed under AS 45.56.305 or 45.56.310 must
7 specify

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

9 (2) the states in which a registration statement or similar record in
10 connection with the offering has been or is to be filed; and

11 (3) any adverse order, judgment, or decree issued in connection with
12 the offering by a state securities regulator, the Securities and Exchange Commission,
13 or a court.

14 (d) A record filed under this chapter or former AS 45.55 within five years
15 preceding the filing of a registration statement may be incorporated by reference in the
16 registration statement to the extent that the record is currently accurate.

17 (e) In the case of a nonissuer distribution, information or a record may not be
18 required under (i) of this section or AS 45.56.310 unless it is known to the person
19 filing the registration statement or to the person on whose behalf the distribution is to
20 be made or unless it can be furnished by those persons without unreasonable effort or
21 expense.

22 (f) A regulation adopted or order issued under this chapter may require as a
23 condition of registration that a security issued within the previous five years or to be
24 issued to a promoter for a consideration substantially less than the public offering
25 price or to a person for a consideration other than cash be deposited in escrow and that
26 the proceeds from the sale of the registered security in this state be impounded until
27 the issuer receives a specified amount from the sale of the security, either in this state
28 or elsewhere. The conditions of any escrow or impoundment required under this
29 subsection may be established by a regulation adopted or order issued under this
30 chapter, but the administrator may not reject a depository institution solely because of
31 its location in another state.

1 (g) A regulation adopted or order issued under this chapter may require as a
2 condition of registration that a security registered under this chapter be sold only on a
3 specified form of subscription or sale contract and that a signed or conformed copy of
4 each contract be filed under this chapter or preserved for a period specified by the
5 regulation or order, not to exceed five years.

6 (h) Except while a stop order is in effect under AS 45.56.360, a registration
7 statement is effective for one year after the effective date of the registration statement
8 or for any longer period designated in an order under this chapter during which the
9 security is being offered or distributed in a nonexempted transaction by or for the
10 account of the issuer or other person on whose behalf the offering is being made or by
11 an underwriter or broker-dealer that is still offering part of an unsold allotment or
12 subscription taken as a participant in the distribution. For the purposes of a nonissuer
13 transaction, all outstanding securities of the same class identified in the registration
14 statement as a security registered under this chapter are considered to be registered
15 while the registration statement is effective. If any securities of the same class are
16 outstanding, a registration statement may not be withdrawn until one year after the
17 effective date of the registration statement. A registration statement may be withdrawn
18 only with the approval of the administrator.

19 (i) While a registration statement is effective, a regulation adopted or order
20 issued under this chapter may require the person that filed the registration statement to
21 file reports, not more often than quarterly, to keep the information or other record in
22 the registration statement reasonably current and to disclose the progress of the
23 offering.

24 (j) A registration statement may be amended after the effective date of the
25 registration statement. The post-effective amendment becomes effective when the
26 administrator so orders. If a post-effective amendment is made to increase the number
27 of securities specified to be offered or sold, the person filing the amendment shall pay
28 a registration fee established by a regulation adopted under this chapter. A post-
29 effective amendment relates back to the date of the offering of the additional securities
30 being registered if, within one year after the date of the sale, the amendment is filed
31 and the additional registration fee is paid.

1 **Sec. 45.56.330. Notice filing of federal covered securities.** (a) With respect to
 2 a federal covered security, as defined in 15 U.S.C. 77r(b) (Securities Act of 1933), that
 3 is not otherwise exempt under AS 45.56.205 - 45.56.240, a regulation adopted or order
 4 issued under this chapter may require the filing of any or all of the following records:

5 (1) before the initial offer of a federal covered security in this state, all
 6 records that are part of a federal registration statement filed with the Securities and
 7 Exchange Commission under 15 U.S.C. 77a - 77aa (Securities Act of 1933), a consent
 8 to service of process complying with AS 45.56.630 signed by the issuer, and the
 9 payment of a fee established in a regulation adopted under this chapter;

10 (2) after the initial offer of the federal covered security in this state, all
 11 records that are part of an amendment to a federal registration statement filed with the
 12 Securities and Exchange Commission under 15 U.S.C. 77a - 77aa (Securities Act of
 13 1933); and

14 (3) to the extent necessary or appropriate to compute fees, a report of
 15 the value of the federal covered securities sold or offered to persons present in this
 16 state if the sales data are not included in records filed with the Securities and
 17 Exchange Commission and payment of a fee established in a regulation adopted under
 18 this chapter.

19 (b) A notice filing under (a) of this section is effective for one year
 20 commencing on the later of the notice filing or the effectiveness of the offering filed
 21 with the Securities and Exchange Commission. On or before expiration, the issuer
 22 may renew a notice filing by filing with the Securities and Exchange Commission a
 23 copy of those records filed by the issuer that are required by a regulation adopted or
 24 order issued under this chapter to be filed and by paying a renewal fee established in a
 25 regulation adopted under this chapter. A previously filed consent to service of process
 26 complying with AS 45.56.630 may be incorporated by reference in a renewal. A
 27 renewed notice filing becomes effective upon the expiration of the filing being
 28 renewed.

29 (c) With respect to a security that is a federal covered security under 15 U.S.C.
 30 77r(b)(4)(D) (Securities Act of 1933), a regulation adopted under this chapter may
 31 require a notice filing by or on behalf of an issuer to include a copy of Form D,

1 including the Appendix, as adopted by the Securities and Exchange Commission, and
 2 a consent to service of process complying with AS 45.56.630 signed by the issuer not
 3 later than 15 days after the first sale of the federal covered security in this state and the
 4 payment of a fee established in a regulation adopted under this chapter; and the
 5 payment of a fee established in a regulation adopted under this chapter for any late
 6 filing.

7 (d) Except with respect to a federal covered security under 15 U.S.C. 77r(b)(1)
 8 (Securities Act of 1933), if the administrator finds that there is a failure to comply
 9 with a notice or fee requirement of this section, the administrator may issue a stop
 10 order suspending the offer and sale of a federal covered security in this state. If the
 11 deficiency is corrected, the stop order is void as of the time of its issuance and a
 12 penalty may not be imposed by the administrator.

13 **Sec. 45.56.340. Viatical settlement interests.** (a) Before the sale of a viatical
 14 settlement interest, an issuer shall provide a prospective buyer with information that is
 15 sufficient to make an informed investment decision. The issuer shall also provide the
 16 information to the administrator upon request if the issuer is not otherwise required to
 17 file the information with the administrator. In this subsection, "information that is
 18 sufficient to make an informed investment decision" includes state-mandated
 19 disclosure forms and a disclosure of any significant factors that may affect the
 20 outcome of the investment.

21 (b) Except as may be required in the course of conduct of the responsibilities
 22 of the administrator, an issuer of a viatical settlement interest may not disclose to
 23 another person the identity of the viator or insured of the insurance policy that is the
 24 subject of the viatical settlement interest. The viator may waive this prohibition
 25 against disclosure if the waiver is in writing and signed by the viator.

26 (c) The administrator shall regulate transactions between a viatical settlement
 27 provider or person acting as an agent of a viatical settlement provider and a
 28 subsequent investor, while the authority of the director of the division of insurance
 29 extends to the regulation of viatical settlement contracts under AS 21.96.110.

30 (d) In this section,

31 (1) "viatical settlement contract" has the meaning given in

1 AS 21.96.110(h);

2 (2) "viatical settlement interest"

3 (A) means the entire interest or any fractional interest in a life
4 insurance policy or in the death benefit under a life insurance policy that is the
5 subject of a viatical settlement contract;

6 (B) does not include the initial purchase from the viator by a
7 viatical settlement provider;

8 (3) "viatical settlement provider" has the meaning given in
9 AS 21.96.110(h);

10 (4) "viator" has the meaning given in AS 21.96.110(h).

11 **Sec. 45.56.350. Waiver and modification.** The administrator may waive or
12 modify, in whole or in part, any or all of the requirements of AS 45.56.305 and
13 45.56.320 or the requirement of any information or record in a registration statement
14 or in a periodic report filed under AS 45.56.320(i).

15 **Sec. 45.56.360. Denial, suspension, and revocation of securities**
16 **registration.** (a) The administrator may issue a stop order denying effectiveness to, or
17 suspending or revoking the effectiveness of, a registration statement if the
18 administrator finds that the order is in the public interest and that

19 (1) the registration statement as of the effective date of the registration
20 statement or before the effective date in the case of an order denying effectiveness, an
21 amendment under AS 45.56.320(j) as of the effective date of the amendment, or a
22 report under AS 45.56.320(i) is incomplete in a material respect or contains a
23 statement that, in the light of the circumstances under which it was made, was false or
24 misleading with respect to a material fact;

25 (2) this chapter or a regulation adopted, order issued, or condition
26 imposed under this chapter has been wilfully violated in connection with the offering
27 by

28 (A) the person filing the registration statement;

29 (B) the issuer, a partner, officer, or director of the issuer or a
30 person having a similar status or performing a similar function;

31 (C) a promoter of the issuer;

(D) a person directly or indirectly controlling or controlled by the issuer, but only if the person filing the registration statement is directly or indirectly controlled by or acting for the issuer; or

(E) an underwriter;

(3) the security registered or sought to be registered is the subject of a permanent or temporary injunction of a court of competent jurisdiction or an administrative stop order or similar order issued under any federal, foreign, or state law other than this chapter applicable to the offering; the administrator may not institute a proceeding against an effective registration statement under this paragraph more than one year after the date of the order or injunction on which it is based, and the administrator may not issue an order under this paragraph based on an order or injunction issued under the securities act of another state unless the order or injunction was based on conduct that would constitute, as of the date of the order, a ground for a stop order under this section;

(4) the issuer's enterprise or method of business includes or would include activities that are unlawful where performed;

(5) with respect to a security sought to be registered under AS 45.56.305, there has been a failure to comply with the undertaking required by AS 45.56.305(b)(3);

(6) the applicant or registrant has not paid the filing fee; the administrator shall void the order if the deficiency is corrected and the order was based solely on the nonpayment of the filing fee; or

(7) the offering

(A) will work or tend to work a fraud on purchasers or would operate to work or tend to work a fraud on purchasers;

(B) has been or would be made with unreasonable amounts of underwriters' and sellers' discounts, commissions, or other compensation, or promoters' profits or participations, or unreasonable amounts or kinds of options; or

(C) is being made on terms that are unfair, unjust, or inequitable.

(b) To the extent practicable, the administrator shall, by a regulation adopted or order issued under this chapter, publish standards that provide notice of conduct that violates (a)(7) of this section.

(c) The administrator may not institute a stop order proceeding against an effective registration statement based on conduct or a transaction known to the administrator when the registration statement became effective unless the proceeding is instituted within 30 days after the registration statement became effective.

(d) The administrator may summarily revoke, deny, postpone, or suspend the effectiveness of a registration statement pending final determination of an administrative proceeding. Upon the issuance of the order, the administrator shall promptly notify each person specified in (e) of this section that the order has been issued, the reasons for the revocation, denial, postponement, or suspension, and that, within 15 days after the receipt of a request in a record from the person, the matter will be scheduled for a hearing. If, within 30 days after the date of service of the order, a hearing is not requested and none is ordered by the administrator, the order becomes final. If a hearing is requested or ordered, the administrator, after notice of and opportunity for hearing for each person subject to the order, may modify or vacate the order or extend the order until final determination.

(e) A stop order may not be issued under this section without

(1) appropriate notice to the applicant or registrant, the issuer, and the person on whose behalf the securities are to be or have been offered;

(2) an opportunity for hearing conducted in the manner provided in AS 45.56.650(c); and

(3) findings of fact and conclusions of law in a record.

(f) The administrator may modify or vacate a stop order issued under this section if the administrator finds that the conditions that caused its issuance have changed or that it is necessary or appropriate in the public interest or for the protection of investors.

Article 4. Broker-Dealers, Agents, Investment Advisers, Investment Adviser Representatives, and Federal Covered Investment Advisers.

Sec. 45.56.405. Broker-dealer registration requirement and exemptions.

1 (a) A person may not transact business in this state as a broker-dealer unless the
 2 person is registered under this chapter as a broker-dealer or is exempt from registration
 3 as a broker-dealer under (b) of this section.

4 (b) The following persons are exempt from the registration requirement of (a)
 5 of this section:

6 (1) a broker-dealer without a place of business in this state if the
 7 broker-dealer's only transactions effected in this state are with

8 (A) the issuer of the securities involved in the transactions;

9 (B) a broker-dealer registered as a broker-dealer under this
 10 chapter or not required to be registered as a broker-dealer under this chapter;

11 (C) an institutional investor;

12 (D) a nonaffiliated federal covered investment adviser with
 13 investments under management in excess of \$100,000,000 acting for the
 14 account of others under discretionary authority in a signed record;

15 (E) a bona fide preexisting customer whose principal place of
 16 residence is not in this state if the person is registered as a broker-dealer under
 17 15 U.S.C. 78a - 78pp (Securities Exchange Act of 1934) or not required to be
 18 registered under 15 U.S.C. 78a - 78pp (Securities Exchange Act of 1934) and
 19 is registered under the securities act of the state in which the customer
 20 maintains a principal place of residence;

21 (F) a bona fide preexisting customer whose principal place of
 22 residence is in this state but who was not present in this state when the
 23 customer relationship was established if

24 (i) the broker-dealer is registered under 15 U.S.C. 78a -
 25 78pp (Securities Exchange Act of 1934) or not required to be registered
 26 under 15 U.S.C. 78a - 78pp (Securities Exchange Act of 1934) and is
 27 registered under the securities act of the state in which the customer
 28 relationship was established and where the customer had maintained a
 29 principal place of residence; and

30 (ii) within 45 days after the customer's first transaction
 31 in this state, the person files an application for registration as a broker-

1 dealer in this state and a further transaction is not effected more than 75
 2 days after the date on which the application is filed, or, if earlier, the
 3 date on which the administrator notifies the person that the
 4 administrator has denied the application for registration or has stayed
 5 the pendency of the application for good cause;

6 (G) not more than three customers in this state during the
 7 previous 12 months, in addition to those customers specified in (A) - (F) of this
 8 paragraph and under (H) of this paragraph if the broker-dealer is registered
 9 under 15 U.S.C. 78a - 78pp (Securities Exchange Act of 1934) or not required
 10 to be registered under 15 U.S.C. 78a - 78pp (Securities Exchange Act of 1934)
 11 and is registered under the securities act of the state in which the broker-dealer
 12 has its principal place of business; and

13 (H) any other person exempted by a regulation adopted or order
 14 issued under this chapter; and

15 (2) a person that deals solely in United States government securities
 16 and is supervised as a dealer in government securities by the Board of Governors of
 17 the Federal Reserve System, the United States Comptroller of the Currency, or the
 18 Federal Deposit Insurance Corporation.

19 (c) A broker-dealer or an issuer engaged in offering, offering to purchase,
 20 purchasing, or selling securities in this state may not, directly or indirectly, employ or
 21 associate with an individual to engage in an activity related to securities transactions in
 22 this state if the registration of the individual is suspended or revoked or the individual
 23 is barred from employment or association with a broker-dealer, an issuer, an
 24 investment adviser, or a federal covered investment adviser by an order of the
 25 administrator under this chapter, the Securities and Exchange Commission, or a self-
 26 regulatory organization. A broker-dealer or issuer does not violate this subsection if
 27 the broker-dealer or issuer did not know and, in the exercise of reasonable care, could
 28 not have known of the suspension, revocation, or bar. Upon request from a broker-
 29 dealer or issuer and for good cause, an order under this chapter may modify or waive,
 30 in whole or in part, the application of the prohibitions of this subsection to the broker-
 31 dealer.

1 **Sec. 45.56.410. Limited registration of Canadian broker-dealers and**
 2 **agents.** (a) If a broker-dealer is registered under this section and its principal office is
 3 located in a province or territory of Canada that provides at least equivalent
 4 registration for a broker-dealer that is resident in the United States, a broker-dealer
 5 that is resident in Canada and does not have an office or other physical presence in this
 6 state may effect transactions in securities with or for or induce or attempt to induce the
 7 purchase or sale of a security by a person from Canada who is

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

11 (2) resident in this state and whose transactions are in a self-directed
 12 tax-advantaged retirement plan in Canada if the person is the holder of or contributor
 13 to the plan.

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

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

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

21 (2) files a written consent to service of process under AS 45.56.630;

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

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

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

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

1 (2) files a written consent to service of process under AS 45.56.630;
2 and

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

5 (e) Registration under this section becomes effective on the 30th day after an
6 application is filed unless it is made effective earlier by the administrator or a denial
7 order is in effect and a proceeding is pending under AS 45.56.485.

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

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

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

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

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

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

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

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

25 (h) A Canadian broker-dealer or agent registered under this section may renew
26 its registration by filing by midnight on December 31 of each year the most recent
27 renewal application, if any, filed in the jurisdiction in which the broker-dealer or agent
28 has its principal office or, if a renewal application is not required, the most recent
29 application filed under (c)(1) or (d)(1) of this section.

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

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

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

4 (2) with or through

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

6 (B) other broker-dealers; or

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

12 (3) as otherwise permitted by this chapter.

13 (k) A Canadian broker-dealer or agent registered under this section and acting
14 in accordance with the limitations in (j) of this section is exempt from all of the
15 requirements of this chapter except the anti-fraud provisions under AS 45.56.505 and
16 the requirements of this section. The registration of a Canadian broker-dealer or agent
17 under this section may not be denied, suspended, or revoked except in accordance with
18 the provisions of AS 45.56.485 for a breach of the anti-fraud provisions under
19 AS 45.56.505 or the requirements of this section.

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

22 **Sec. 45.56.420. Registration exemption for merger and acquisition broker.**

23 (a) Except as provided in (b) and (c) of this section, a merger and acquisition broker is
24 exempt from registration under AS 45.56.405.

25 (b) A merger and acquisition broker is not exempt from registration under
26 AS 45.56.405 if the broker

27 (1) directly or indirectly, in connection with the transfer of ownership
28 of an eligible privately held company, receives, holds, transmits, or has custody of the
29 funds or securities to be exchanged by the parties to the transaction;

30 (2) engages on behalf of an issuer in a public offering of any class of
31 securities that is registered, or is required to be registered, with the United States

1 Securities and Exchange Commission under 15 U.S.C. 78l(b) (Securities Exchange
 2 Act of 1934) or with respect to which the issuer files, or is required to file, periodic
 3 information, documents, and reports under 15 U.S.C. 78o(d) (Securities Exchange Act
 4 of 1934); or

5 (3) engages on behalf of any party in a transaction involving a public
 6 shell company.

7 (c) A merger and acquisition broker is not exempt from registration under
 8 AS 45.56.405 if the broker is subject to

9 (1) suspension or revocation of registration under 15 U.S.C. 78o(b)(4)
 10 (Securities Exchange Act of 1934);

11 (2) a statutory disqualification described in 15 U.S.C. 78c(a)(39)
 12 (Securities Exchange Act of 1934);

13 (3) a disqualification under the rules adopted by the United States
 14 Securities and Exchange Commission under 15 U.S.C. 77d note (Dodd-Frank Wall
 15 Street Reform and Consumer Protection Act); or

16 (4) a final order described in 15 U.S.C. 78o(b)(4)(H) (Securities
 17 Exchange Act of 1934).

18 (d) This section may not be construed to limit any other authority of the
 19 department to exempt any person, or any class of persons, from a provision of this
 20 chapter, or a provision of a rule or regulation adopted under this chapter.

21 (e) In this section,

22 (1) "control" means the power, directly or indirectly, to direct the
 23 management or policies of a company, whether through ownership of securities, by
 24 contract, or otherwise; there is a presumption of control for any person who

25 (A) is a director, general partner, limited liability company
 26 member, limited liability company manager, an officer who exercises
 27 executive responsibility, or an officer who has status or functions similar to an
 28 officer who exercises executive responsibility;

29 (B) has the right to vote 20 percent or more of a class of voting
 30 securities or the power to sell or direct the sale of 20 percent or more of a class
 31 of voting securities; or

1 (C) in the case of a partnership or limited liability company,
 2 has the right to receive upon dissolution, or has contributed, 20 percent or more
 3 of the capital;

4 (2) "eligible privately held company" means a company that

5 (A) does not have any class of securities registered, or required
 6 to be registered, with the United States Securities and Exchange Commission
 7 under 15 U.S.C. 78l(b) (Securities Exchange Act of 1934), or with respect to
 8 which the company files, or is required to file, periodic information,
 9 documents, and reports under 15 U.S.C. 78o(d) (Securities Exchange Act of
 10 1934); and

11 (B) in the fiscal year ending immediately before the fiscal year
 12 in which the services of the merger and acquisition broker are initially engaged
 13 with respect to the securities transaction, meets either or both of the following
 14 conditions, determined in accordance with the historical financial accounting
 15 records of the company:

16 (i) the earnings of the company before interest, taxes,
 17 depreciation, and amortization are less than \$25,000,000;

18 (ii) the gross revenue of the company is less than
 19 \$250,000,000;

20 (3) "merger and acquisition broker" means a broker, and a person
 21 associated with the broker, engaged in the business of effecting securities transactions
 22 solely in connection with the transfer of ownership of an eligible privately held
 23 company, regardless of whether that broker acts on behalf of a seller or buyer, through
 24 the purchase, sale, exchange, issuance, repurchase, or redemption of, or a business
 25 combination involving, securities or assets of the eligible privately held company, if
 26 the broker reasonably believes that

27 (A) upon consummation of the transaction, a person acquiring
 28 securities or assets of the eligible privately held company, acting alone or in
 29 concert, will control and, directly or indirectly, be active in the management of
 30 the eligible privately held company or the business conducted with the assets
 31 of the eligible privately held company; and

(B) if a person is offered securities in exchange for securities or assets of the eligible privately held company, the person will, before becoming legally bound to consummate the transaction, receive or have reasonable access to the most recent fiscal year-end financial statements of the issuer of the securities as customarily prepared by its management in the normal course of operations and, if the financial statements of the issuer are audited, reviewed, or compiled, any related statement by the independent accountant; a balance sheet dated not more than 120 days before the date of the exchange offer; and information pertaining to the management, business, results of operations for the period covered by the foregoing financial statements, and any material loss contingencies of the issuer;

(4) "public shell company" means a company that, at the time of a transaction with an eligible privately held company,

(A) has any class of securities registered, or required to be registered, with the United States Securities and Exchange Commission under 15 U.S.C. 78l(b), or with respect to which the company files, or is required to file, periodic information, documents, and reports under 15 U.S.C. 78o(d);

(B) has no assets or has nominal operations; and

(C) has

(i) no assets or has nominal assets;

(ii) assets consisting solely of cash and cash equivalents; or

(iii) assets consisting of any amount of cash and cash equivalents and nominal other assets.

Sec. 45.56.430. Agent registration requirement and exemptions. (a) An individual may not transact business in this state as an agent unless the individual is registered under this chapter as an agent or is exempt from registration as an agent under (b) of this section.

(b) The following individuals are exempt from the registration requirement of (a) of this section:

(1) an individual who represents a broker-dealer in effecting

1 transactions in this state limited to those described in 15 U.S.C. 78o(i);

2 (2) an individual who represents a broker-dealer that is exempt under
3 AS 45.56.405(b) or 45.56.410;

4 (3) an individual who represents an issuer with respect to an offer or
5 sale of the issuer's own securities or those of the issuer's parent or any of the issuer's
6 subsidiaries and who is not compensated in connection with the individual's
7 participation by the payment of commissions or other remuneration based, directly or
8 indirectly, on transactions in those securities;

9 (4) an individual who represents an issuer and who effects transactions
10 in the issuer's securities exempted by AS 45.56.210, other than AS 45.56.210(11) and
11 (14);

12 (5) an individual who represents an issuer that effects transactions
13 solely in federal covered securities of the issuer, but an individual who effects
14 transactions in a federal covered security under 15 U.S.C. 77r(b)(3) or (b)(4)(D)
15 (Securities Act of 1933) is not exempt if the individual is compensated in connection
16 with the agent's participation by the payment of commissions or other remuneration
17 based, directly or indirectly, on transactions in those securities;

18 (6) an individual who represents a broker-dealer registered in this state
19 under AS 45.56.405(a) or exempt from registration under AS 45.56.405(b) in the offer
20 and sale of securities for an account of a nonaffiliated federal covered investment
21 adviser with investments under management in excess of \$100,000,000 acting for the
22 account of others under discretionary authority in a signed record;

23 (7) an individual who represents an issuer in connection with the
24 purchase of the issuer's own securities;

25 (8) an individual who represents an issuer and who restricts
26 participation to performing clerical or ministerial acts; or

27 (9) any other individual exempted by a regulation adopted or order
28 issued under this chapter.

29 (c) The registration of an agent is effective only while the agent is employed
30 by or associated with a broker-dealer registered under this chapter or an issuer that is
31 offering, selling, or purchasing the issuer's securities in this state.

(d) A broker-dealer or an issuer engaged in offering, selling, or purchasing securities in this state may not employ or associate with an agent who transacts business in this state on behalf of broker-dealers or issuers unless the agent is registered under (a) of this section or exempt from registration under (b) of this section.

(e) An individual may not act as an agent for more than one broker-dealer or one issuer at a time, unless the broker-dealer or the issuer for which the agent acts is affiliated by direct or indirect common control or is authorized by a regulation or order issued under this chapter.

Sec. 45.56.435. Investment adviser registration requirement and exemptions. (a) A person may not transact business in this state as an investment adviser unless the person is registered under this chapter as an investment adviser or is exempt from registration as an investment adviser under (b) of this section.

(b) The following persons are exempt from the registration requirement in (a) of this section:

(1) a person without a place of business in this state that is registered under the securities act of the state in which the person has the person's principal place of business if the person's only clients in this state are

(A) federal covered investment advisers, investment advisers registered under this chapter, or broker-dealers registered under this chapter;

(B) institutional investors;

(C) bona fide preexisting clients whose principal places of residence are not in this state if the investment adviser is registered under the securities act of the state in which the clients maintain principal places of residence; or

(D) exempt by a regulation adopted or order issued under this chapter;

(2) a person without a place of business in this state if the person has had, during the preceding 12 months, not more than five clients that are resident in this state in addition to those specified under (1) of this subsection; or

(3) any other person exempted by a regulation adopted or order issued

1 under this chapter.

2 (c) An investment adviser may not, directly or indirectly, employ or associate
3 with an individual to engage in an activity related to investment advice in this state if
4 the registration of the individual is suspended or revoked or the individual is barred
5 from employment or association with an investment adviser, federal covered
6 investment adviser, or broker-dealer by an order under this chapter, the Securities and
7 Exchange Commission, or a self-regulatory organization, unless the investment
8 adviser did not know and, in the exercise of reasonable care, could not have known of
9 the suspension, revocation, or bar. Upon request from the investment adviser and for
10 good cause, the administrator may by order, waive, in whole or in part, the application
11 of the prohibitions of this subsection to the investment adviser.

12 (d) An investment adviser may not employ or associate with an individual
13 required to be registered under this chapter as an investment adviser representative
14 who transacts business in this state on behalf of the investment adviser unless the
15 individual is registered under AS 45.56.440(a) or is exempt from registration under
16 AS 45.56.440(b).

17 **Sec. 45.56.440. Investment adviser representative registration requirement**
18 **and exemptions.** (a) An individual may not transact business in this state as an
19 investment adviser representative unless the individual is registered under this chapter
20 as an investment adviser representative or is exempt from registration as an investment
21 adviser representative under (b) of this section.

22 (b) The following individuals are exempt from the registration requirement of
23 (a) of this section:

24 (1) an individual who is employed by or associated with an investment
25 adviser that is exempt from registration under AS 45.56.435(b) or a federal covered
26 investment adviser that is excluded from the notice filing requirements of
27 AS 45.56.445; and

28 (2) any other individual exempted by a regulation adopted or order
29 issued under this chapter.

30 (c) The registration of an investment adviser representative is not effective
31 while the investment adviser representative is not employed by or associated with an

1 investment adviser registered under this chapter or a federal covered investment
2 adviser that has made or is required to make a notice filing under AS 45.56.445.

3 (d) An individual may transact business as an investment adviser
4 representative for more than one investment adviser or federal covered investment
5 adviser unless a regulation adopted or order issued under this chapter prohibits or
6 limits an individual from acting as an investment adviser representative for more than
7 one investment adviser or federal covered investment adviser.

8 (e) An individual acting as an investment adviser representative may not,
9 directly or indirectly, conduct business in this state on behalf of an investment adviser
10 or a federal covered investment adviser if the registration of the individual as an
11 investment adviser representative is suspended or revoked or the individual is barred
12 from employment or association with an investment adviser or a federal covered
13 investment adviser by an order under this chapter, the Securities and Exchange
14 Commission, or a self-regulatory organization. Upon request from a federal covered
15 investment adviser and for good cause, the administrator may by order, waive, in
16 whole or in part, the application of the requirements of this subsection to the federal
17 covered investment adviser.

18 (f) An investment adviser registered under this chapter, a federal covered
19 investment adviser that has filed a notice under AS 45.56.445, or a broker-dealer
20 registered under this chapter is not required to employ or associate with an individual
21 as an investment adviser representative if the only compensation paid to the individual
22 for a referral of investment advisory clients is paid to an investment adviser registered
23 under this chapter, a federal covered investment adviser who has filed a notice under
24 AS 45.56.445, or a broker-dealer registered under this chapter with which the
25 individual is employed or associated as an investment adviser representative.

26 **Sec. 45.56.445. Federal covered investment adviser notice filing**
27 **requirement.** (a) Except with respect to a federal covered investment adviser
28 described in (b) of this section, a federal covered investment adviser may not transact
29 business in this state as a federal covered investment adviser unless the federal
30 covered investment adviser complies with (c) of this section.

31 (b) The following federal covered investment advisers are not required to

1 comply with (c) of this section:

2 (1) a federal covered investment adviser without a place of business in
3 this state if the only clients of the federal covered investment adviser in this state are

4 (A) federal covered investment advisers, investment advisers
5 registered under this chapter, and broker-dealers registered under this chapter;

6 (B) institutional investors;

7 (C) bona fide preexisting clients whose principal places of
8 residence are not in this state; or

9 (D) other clients specified by a regulation adopted or order
10 issued under this chapter;

11 (2) a federal covered investment adviser without a place of business in
12 this state if the person has had, during the preceding 12 months, not more than five
13 clients that are resident in this state in addition to those specified under (1) of this
14 subsection; and

15 (3) any other person excluded by a regulation adopted or order issued
16 under this chapter.

17 (c) A person acting as a federal covered investment adviser not excluded
18 under (b) of this section shall file a notice, a consent to service of process complying
19 with AS 45.56.630, and the records that have been filed with the Securities and
20 Exchange Commission under 15 U.S.C. 80b-1 - 80b-21 (Investment Advisers Act of
21 1940) as required by a regulation adopted or order issued under this chapter and shall
22 pay the fees specified by regulation adopted under AS 45.56.470.

23 (d) The notice under (c) of this section becomes effective upon filing.

24 **Sec. 45.56.450. Registration by broker-dealer, agent, investment adviser,**
25 **and investment adviser representative.** (a) A person shall register as a broker-dealer,
26 agent, investment adviser, or investment adviser representative by filing an application
27 and a consent to service of process complying with AS 45.56.630 and by paying the
28 fee specified in AS 45.56.470 and any reasonable fees charged by the designee of the
29 administrator for processing the filing. The application must contain

30 (1) the information or record required for the filing of a uniform
31 application; and

1 (2) upon request by the administrator, any other financial or other
2 information or record that the administrator determines is appropriate.

3 (b) If the information or record contained in an application filed under (a) of
4 this section is or becomes inaccurate or incomplete in a material respect, the registrant
5 shall promptly file a correcting amendment.

6 (c) If an order is not in effect, and a proceeding is not pending under
7 AS 45.56.485, and the administrator has not initiated an investigation, registration
8 becomes effective at noon on the 45th day after a completed application is filed, unless
9 the registration is denied. A regulation adopted or order issued under this chapter may
10 set an earlier effective date or may defer the effective date until noon on the 45th day
11 after the filing of any amendment completing the application.

12 (d) A registration is effective until midnight on December 31 of the year for
13 which the application for registration is filed. Unless an order is in effect under
14 AS 45.56.485, a registration may be automatically renewed each year by filing the
15 records required by a regulation adopted or order issued under this chapter, by paying
16 the fee specified in AS 45.56.470, and by paying costs charged by the designee of the
17 administrator for processing the filings.

18 (e) A regulation adopted or order issued under this chapter may impose other
19 conditions, not inconsistent with 15 U.S.C. 77b, 77c, 77e, 77f, 77r, 77z-3, 77ddd, 78b
20 - 78d, 78g, 78h, 78n, 78o, 78q, 78bb, 78ee, 78kk, 78mm, 80a-2, 80a-3, 80a-6, 80a-12,
21 80a-24, 80a-26, 80a-27, 80a-29, 80a-30, 80a-34, 80a-51, 80a-54, 80a-60, 80a-63, 80b-
22 2, 80b-3a, 80b-5, 80b-10, 80b-18a, and 80b-20, and 29 U.S.C. 1002 (National
23 Securities Markets Improvement Act of 1996). An order issued under this chapter may
24 waive, in whole or in part, specific requirements in connection with registration that
25 are in the public interest and for the protection of investors.

26 **Sec. 45.56.455. Succession and change in registration of broker-dealer or**
27 **investment adviser.** (a) A broker-dealer or investment adviser may succeed to the
28 current registration of another broker-dealer or investment adviser or a notice filing of
29 a federal covered investment adviser, and a federal covered investment adviser may
30 succeed to the current registration of an investment adviser or notice filing of another
31 federal covered investment adviser, by filing as a successor an application for

1 registration under AS 45.56.405 or 45.56.435 or a notice under AS 45.56.445 for the
2 unexpired portion of the current registration or notice filing.

3 (b) A broker-dealer or investment adviser that changes its form of
4 organization or state of incorporation or organization may continue its registration by
5 filing an amendment to its registration if the change does not involve a material
6 change in its financial condition or management. The amendment becomes effective
7 when filed or on a date designated by the registrant in its filing. The new organization
8 is a successor to the original registrant for the purposes of this chapter. If there is a
9 material change in financial condition or management, the broker-dealer or investment
10 adviser shall file a new application for registration. A predecessor registered under this
11 chapter shall stop conducting its securities business other than winding down
12 transactions and shall file for withdrawal of broker-dealer or investment adviser
13 registration within 45 days after filing its amendment to effect succession.

14 (c) A broker-dealer or investment adviser that changes its name may continue
15 its registration by filing an amendment to its registration. The amendment becomes
16 effective when filed or on a date designated by the registrant.

17 (d) A change of control of a broker-dealer or investment adviser may be made
18 in accordance with a regulation adopted or order issued under this chapter.

19 **Sec. 45.56.460. Termination of employment or association of agent and**
20 **investment adviser representative and transfer of employment or association. (a)**

21 If an agent registered under this chapter terminates employment by or association with
22 a broker-dealer or issuer, or if an investment adviser representative registered under
23 this chapter terminates employment by or association with an investment adviser or
24 federal covered investment adviser, or if either registrant terminates activities that
25 require registration as an agent or investment adviser representative, the broker-dealer,
26 issuer, investment adviser, or federal covered investment adviser shall promptly file a
27 notice of termination. The registrant may file the notice of termination if the registrant
28 learns that the broker-dealer, issuer, investment adviser, or federal covered investment
29 adviser has not filed the notice.

30 (b) If an agent registered under this chapter terminates employment by or
31 association with a broker-dealer registered under this chapter and begins employment

1 by or association with another broker-dealer registered under this chapter, or if an
 2 investment adviser representative registered under this chapter terminates employment
 3 by or association with an investment adviser registered under this chapter or a federal
 4 covered investment adviser that has filed a notice under AS 45.56.445 and begins
 5 employment by or association with another investment adviser registered under this
 6 chapter or a federal covered investment adviser that has filed a notice under
 7 AS 45.56.445, then, within 30 days after the termination, upon the filing by or on
 8 behalf of the registrant of an application for registration that complies with the
 9 requirement of AS 45.56.450(a) and payment of the filing fee required under
 10 AS 45.56.470, the registration of the agent or investment adviser representative is

11 (1) immediately effective as of the date of the completed filing, if the
 12 agent's record or successor record in the Central Registration Depository operated by
 13 the Financial Industry Regulatory Authority or the investment adviser representative's
 14 record or successor record in the Investment Adviser Registration Depository operated
 15 by the Financial Industry Regulatory Authority does not contain a new or amended
 16 disciplinary disclosure within the previous 12 months; or

17 (2) temporarily effective as of the date of the completed filing, if the
 18 agent's record or successor record in the Central Registration Depository operated by
 19 the Financial Industry Regulatory Authority or the investment adviser representative's
 20 record or successor record in the Investment Adviser Registration Depository operated
 21 by the Financial Industry Regulatory Authority contains a new or amended
 22 disciplinary disclosure within the preceding 12 months.

23 (c) The administrator may withdraw a temporary registration if there are or
 24 were grounds for discipline as specified in AS 45.56.485 and the administrator does so
 25 within 30 days after the filing of the application. If the administrator does not
 26 withdraw the temporary registration within the 30-day period, registration becomes
 27 automatically effective on the 31st day after filing.

28 (d) The administrator may prevent the effectiveness of a transfer of an agent
 29 or investment adviser representative under (b)(1) or (2) of this section based on the
 30 public interest and the protection of investors.

31 (e) If the administrator determines that a registrant or applicant for registration

1 is no longer in existence, has ceased to act as a broker-dealer, agent, investment
 2 adviser, or investment adviser representative, is the subject of an adjudication of
 3 incapacity, is subject to the control of a committee, conservator, or guardian, or cannot
 4 reasonably be located, a regulation adopted or order issued under this chapter may
 5 require that the registration be cancelled or terminated or the application be denied.
 6 The administrator may reinstate a cancelled or terminated registration, with or without
 7 hearing, and may make the registration retroactive.

8 **Sec. 45.56.465. Withdrawal of registration of broker-dealer, agent,**
 9 **investment adviser, and investment adviser representative.** Withdrawal of
 10 registration by a broker-dealer, agent, investment adviser, or investment adviser
 11 representative becomes effective 60 days after the filing of the application to withdraw
 12 or within any shorter period as provided by a regulation adopted or order issued under
 13 this chapter unless a revocation or suspension proceeding is pending when the
 14 application is filed. If a proceeding is pending, withdrawal becomes effective when
 15 and upon the conditions required by a regulation adopted or order issued under this
 16 chapter. The administrator may institute a revocation or suspension proceeding under
 17 AS 45.56.485 within one year after the withdrawal became effective automatically and
 18 issue a revocation or suspension order as of the last date on which registration was
 19 effective if a proceeding is not pending.

20 **Sec. 45.56.470. Fees.** (a) The administrator shall establish fees by regulation
 21 for

22 (1) an initial filing of an application as a broker-dealer and renewal of
 23 an application by a broker-dealer for registration;

24 (2) an application for registration as an agent and renewal of
 25 registration as an agent;

26 (3) an application for registration as an investment adviser and renewal
 27 of registration as an investment adviser;

28 (4) an application for registration as an investment adviser
 29 representative, a renewal of registration as an investment adviser representative, and a
 30 change of registration as an investment adviser representative; and

31 (5) an initial fee and annual notice fee for a federal covered investment

1 adviser required to file a notice under AS 45.56.445.

2 (b) A person required to pay a filing or notice fee under this section may
3 transmit the fee through or to a designee as provided by a regulation adopted or order
4 issued under this chapter.

5 (c) The administrator may establish other fees by regulation as necessary to
6 administer this chapter.

7 **Sec. 45.56.475. Post registration requirements.** (a) Subject to 15 U.S.C.
8 78o(i) or 80b-18a, a regulation adopted or order issued under this chapter may
9 establish minimum financial requirements for broker-dealers registered or required to
10 be registered under this chapter and investment advisers registered or required to be
11 registered under this chapter.

12 (b) Subject to 15 U.S.C. 78o(i) or 80b-18a, a broker-dealer registered or
13 required to be registered under this chapter and an investment adviser registered or
14 required to be registered under this chapter shall file the financial reports required by a
15 regulation adopted or order issued under this chapter. If the information contained in a
16 record filed under this subsection is or becomes inaccurate or incomplete in a material
17 respect, the registrant shall promptly file a correcting amendment.

18 (c) Subject to 15 U.S.C. 78o(i) or 80b-18a,

19 (1) a broker-dealer registered or required to be registered under this
20 chapter and an investment adviser registered or required to be registered under this
21 chapter shall make and maintain the accounts, correspondence, memoranda, papers,
22 books, and other records required by a regulation adopted or order issued under this
23 chapter;

24 (2) broker-dealer records required to be maintained under (1) of this
25 subsection may be maintained in any form of data storage acceptable under 15 U.S.C.
26 78q(a) if they are readily accessible to the administrator; and

27 (3) investment adviser records required to be maintained under (1) of
28 this subsection may be maintained in any form of data storage required by a regulation
29 adopted or order issued under this chapter.

30 (d) The records of a broker-dealer registered or required to be registered under
31 this chapter and of an investment adviser registered or required to be registered under

1 this chapter are subject to the reasonable periodic, special, or other audits or
 2 inspections by a representative of the administrator, in or outside this state, that the
 3 administrator considers necessary or appropriate in the public interest and for the
 4 protection of investors. An audit or inspection may be made at any time and without
 5 prior notice. The administrator may copy and remove for audit or inspection copies of
 6 all records the administrator reasonably considers necessary or appropriate to conduct
 7 the audit or inspection. The administrator may assess a reasonable charge for
 8 conducting an audit or inspection under this subsection.

9 (e) Subject to 15 U.S.C. 78o(i) or 80b-18a, a regulation adopted or order
 10 issued under this chapter may require a broker-dealer or investment adviser that has
 11 custody of or discretionary authority over funds or securities of a customer or client to
 12 obtain insurance or post a bond or other satisfactory form of security in an amount
 13 established by a regulation adopted under this chapter. The administrator may
 14 determine the requirements of the insurance, bond, or other satisfactory form of
 15 security. Insurance or a bond or other satisfactory form of security may not be required
 16 of a broker-dealer registered under this chapter whose net capital exceeds, or of an
 17 investment adviser registered under this chapter whose minimum financial
 18 requirements exceed, the amounts required by a regulation adopted or order issued
 19 under this chapter. The insurance, bond, or other satisfactory form of security must
 20 permit an action by a person to enforce any liability on the insurance, bond, or other
 21 satisfactory form of security if instituted within the time limitations in
 22 AS 45.56.660(j)(2).

23 (f) Subject to 15 U.S.C. 78o(i) or 80b-18a, an agent may not have custody of
 24 funds or securities of a customer except under the supervision of a broker-dealer, and
 25 an investment adviser representative may not have custody of funds or securities of a
 26 client except under the supervision of an investment adviser or a federal covered
 27 investment adviser. A regulation adopted or order issued under this chapter may
 28 prohibit, limit, or impose conditions on a broker-dealer regarding custody of funds or
 29 securities of a customer and on an investment adviser regarding custody of securities
 30 or funds of a client.

31 (g) With respect to an investment adviser registered or required to be

1 registered under this chapter, a regulation adopted or order issued under this chapter
 2 may require that information or other records be furnished or disseminated to clients
 3 or prospective clients in this state as necessary or appropriate in the public interest and
 4 for the protection of investors and advisory clients.

5 (h) A regulation adopted or order issued under this chapter may require an
 6 individual registered under AS 45.56.430 or 45.56.440 to participate in a continuing
 7 education program approved by the Securities and Exchange Commission and
 8 administered by a self-regulatory organization, or, in the absence of a continuing
 9 education program, a regulation adopted or order issued under this chapter may
 10 require continuing education for an individual registered under AS 45.56.440.

11 **Sec. 45.56.480. Protecting older and vulnerable adults from financial**
 12 **exploitation.** (a) If a broker-dealer, investment adviser, or qualified individual
 13 reasonably believes that the financial exploitation of a covered adult may have
 14 occurred, may have been attempted, or is being attempted, the broker-dealer,
 15 investment adviser, or qualified individual shall notify adult protective services and
 16 the administrator not later than five days after the broker-dealer, investment adviser, or
 17 qualified individual develops the reasonable belief that the financial exploitation or
 18 attempted financial exploitation has or may have occurred, or is being attempted,
 19 except that the broker-dealer, investment adviser, or qualified individual shall notify
 20 adult protective services and the administrator immediately upon confirmation of the
 21 financial exploitation or attempted financial exploitation of the covered adult.

22 (b) The requirements of (a) of this section may not be construed to require
 23 more than one notification for each occurrence of exploitation or attempted
 24 exploitation.

25 (c) If a broker-dealer, investment adviser, or qualified individual reasonably
 26 believes that financial exploitation of a covered adult may have occurred, may have
 27 been attempted, or is being attempted, a broker-dealer, investment adviser, or qualified
 28 individual may notify a person whom the covered adult previously designated to be
 29 notified about financial matters of the covered adult, as well as any other person
 30 allowed under state or federal law or regulation, or the rules of a self-regulatory
 31 organization, except that the broker-dealer, investment adviser, or qualified individual

1 may not notify a person that is suspected of engaging in financial exploitation or other
2 abuse of the covered adult.

3 (d) A broker-dealer or investment adviser may delay a disbursement from an
4 account of a covered adult or from an account on which a covered adult is a
5 beneficiary if

6 (1) the broker-dealer, investment adviser, or qualified individual
7 reasonably believes, after initiating an internal review of the requested disbursement
8 and the suspected financial exploitation of a covered adult, that the requested
9 disbursement may result in financial exploitation of the covered adult; and

10 (2) the broker-dealer or investment adviser

11 (A) within two business days after receiving the request for
12 disbursement, provides written notification of the delay and the reason for the
13 delay to all persons authorized to transact business on the account, except to a
14 person that the broker-dealer, investment adviser, or qualified individual
15 reasonably believes has engaged in suspected or attempted financial
16 exploitation of the covered adult;

17 (B) within two business days after receiving the request for
18 disbursement, notifies adult protective services and the administrator; and

19 (C) continues as necessary an internal review of the suspected
20 or attempted financial exploitation of the covered adult and, within seven
21 business days after receiving the request for disbursement, reports the status of
22 the investigation to adult protective services and the administrator, and
23 provides additional status updates to the administrator and adult protective
24 services upon request.

25 (e) A disbursement delay under (d) of this section expires when the earlier of
26 the following events occurs:

27 (1) the broker-dealer or investment adviser determines that the
28 disbursement will not result in financial exploitation of the covered adult;

29 (2) 15 business days after the date on which the broker-dealer or
30 investment adviser first delayed the disbursement, unless

31 (A) adult protective services or the administrator requests that

1 the broker-dealer or investment adviser extend the delay, in which case the
 2 delay expires 25 business days after the date on which the broker-dealer or
 3 investment adviser first delayed disbursement; or

4 (B) adult protective services, the administrator, or the superior
 5 court terminates the delay.

6 (f) Adult protective services, the administrator, the broker-dealer or
 7 investment adviser that initiated the delay under (d) or (e) of this section, or another
 8 interested person may petition the superior court for an order extending a
 9 disbursement delay or providing other relief to a covered adult, and the superior court
 10 may enter an order providing the requested relief.

11 (g) A broker-dealer or investment adviser shall provide access to or copies of
 12 records that are relevant to the suspected or attempted financial exploitation of a
 13 covered adult to adult protective services and to state law enforcement agencies as part
 14 of a referral to adult protective services or an investigation. The records that may be
 15 accessed or copied under this subsection include records relating to past transactions
 16 that may have involved financial exploitation of the covered adult as well as records
 17 relating to the most recent transaction that may involve financial exploitation of the
 18 covered adult. Records made available to agencies under this subsection are not public
 19 records as defined in AS 40.25.220. This subsection does not limit or impede the
 20 authority of the administrator to access or examine the books and records of broker-
 21 dealers and investment advisers as otherwise provided by law.

22 (h) A broker-dealer, investment adviser, or qualified individual acting in good
 23 faith and exercising reasonable care under (a) - (g) of this section is immune from
 24 administrative or civil liability for a notification, disclosure, disbursement delay, or
 25 record sharing under (a) - (g) of this section.

26 (i) The following constitute the financial exploitation of a covered adult under
 27 this section:

28 (1) the wrongful or unauthorized taking, withholding, appropriation, or
 29 use of the money, assets, or other property of a covered adult; or

30 (2) an act or omission of a person, including an act or omission made
 31 through the use of a power of attorney, guardianship, or conservatorship of a covered

adult, to

(A) obtain control, through deception, intimidation, or undue influence, over the covered adult's money, assets, or other property to deprive the covered adult of the ownership, use, benefit, or possession of the covered adult's money, assets, or other property; or

(B) convert the ownership, use, benefit, or possession of the covered adult's money, assets, or other property to another person.

(j) In this section,

(1) "adult protective services" means the agency that has the responsibility for providing protective services for adults; in this paragraph,

(A) "agency" has the meaning given in AS 44.64.200;

(B) "protective services" has the meaning given in AS 47.24.900;

(2) "broker-dealer" has the meaning given in AS 45.56.900;

(3) "covered adult" means a natural person who is

(A) 60 years of age or older; or

(B) a vulnerable adult;

(4) "investment adviser" has the meaning given in AS 45.56.900;

(5) "qualified individual" means an agent, investment adviser representative, or other person who is acting in a supervisory, compliance, or legal capacity for a broker-dealer or investment adviser.

Sec. 45.56.485. Denial, revocation, suspension, withdrawal, restriction, condition, or limitation of registration. (a) If the administrator finds that the order is in the public interest and (d) of this section authorizes the action, an order issued under this chapter may deny an application, or may condition or limit registration of an applicant to be a broker-dealer, agent, investment adviser, or investment adviser representative, and, if the applicant is a broker-dealer or investment adviser, of a partner, officer, director, or person having a similar status or performing similar functions, or a person directly or indirectly in control, of the broker-dealer or investment adviser.

(b) If the administrator finds that the order is in the public interest and (d) of

1 this section authorizes the action, an order issued under this chapter may revoke,
 2 suspend, condition, or limit the registration of a registrant, and, if the registrant is a
 3 broker-dealer or investment adviser, of a partner, officer, director, or person having a
 4 similar status or performing similar functions, or a person directly or indirectly in
 5 control, of the broker-dealer or investment adviser. However, the administrator may
 6 not

7 (1) institute a revocation or suspension proceeding under this
 8 subsection based on an order issued under a law of another state that is reported to the
 9 administrator or a designee of the administrator more than three years after the date of
 10 the order on which it is based; or

11 (2) under (d)(5)(A) and (B) of this section, issue an order based on an
 12 order issued under the securities act of another state unless the other order was based
 13 on conduct for which (d) of this section would authorize the action had the conduct
 14 occurred in this state.

15 (c) If the administrator finds that the order is in the public interest and (d)(1) -
 16 (6), (8) - (10), (12), or (13) of this section authorize the action, an order under this
 17 chapter may censure, impose a bar, or impose a civil penalty of not more than
 18 \$100,000 for a single violation on a registrant and, if the registrant is a broker-dealer
 19 or investment adviser, on a partner, officer, director, or person having a similar status
 20 or performing similar functions, or on a person directly or indirectly in control of the
 21 broker-dealer or investment adviser.

22 (d) A person may be disciplined under (a) - (c) of this section if the person

23 (1) has filed, within the previous 10 years under this chapter or former
 24 AS 45.55, an application for registration in this state that, as of the effective date of
 25 registration or as of any date after filing in the case of an order denying effectiveness,
 26 was incomplete in any material respect or contained a statement that, in light of the
 27 circumstances under which it was made, was false or misleading with respect to a
 28 material fact;

29 (2) wilfully violated or wilfully failed to comply with this chapter or
 30 former AS 45.55 or a regulation adopted or order issued under this chapter or former
 31 AS 45.55 within the previous 10 years;

1 (3) has been convicted of a felony or within the previous 10 years has
 2 been convicted of a misdemeanor involving a security, a commodity future or option
 3 contract, or an aspect of a business involving securities, commodities, investments,
 4 franchises, insurance, banking, or finance;

5 (4) is enjoined or restrained by a court of competent jurisdiction in an
 6 action instituted by the administrator under this chapter or former AS 45.55, by a state,
 7 by the Securities and Exchange Commission, or by the United States from engaging in
 8 or continuing an act, practice, or course of business involving an aspect of a business
 9 involving securities, commodities, investments, franchises, insurance, banking, or
 10 finance;

11 (5) is the subject of an order issued after notice and opportunity for
 12 hearing by

13 (A) the securities or other financial services regulator of a state
 14 or the Securities and Exchange Commission or other federal agency denying,
 15 revoking, barring, or suspending registration as a broker-dealer, agent,
 16 investment adviser, federal covered investment adviser, or investment adviser
 17 representative;

18 (B) the securities regulator of a state or the Securities and
 19 Exchange Commission against a broker-dealer, agent, investment adviser,
 20 investment adviser representative, or federal covered investment adviser;

21 (C) the Securities and Exchange Commission or a self-
 22 regulatory organization suspending or expelling the registrant from
 23 membership in the self-regulatory organization;

24 (D) a court adjudicating a United States Postal Service fraud
 25 order;

26 (E) the insurance regulator of a state denying, suspending, or
 27 revoking registration as an insurance agent; or

28 (F) a depository institution or financial services regulator
 29 suspending or barring the person from the depository institution or other
 30 financial services business;

31 (6) is the subject of an adjudication or determination, after notice and

1 opportunity for hearing, by the Securities and Exchange Commission, the Commodity
 2 Futures Trading Commission, the Federal Trade Commission, a federal depository
 3 institution regulator, or a depository institution, insurance, or other financial services
 4 regulator of a state that the person wilfully violated 15 U.S.C. 77a - 77aa (Securities
 5 Act of 1933), 15 U.S.C. 78a - 78pp (Securities Exchange Act of 1934), 15 U.S.C. 80b-
 6 1 - 80b-21 (Investment Advisers Act of 1940), 15 U.S.C. 80a-1 - 80a-64 (Investment
 7 Company Act of 1940), or 7 U.S.C. 1 - 27 (Commodity Exchange Act), the securities
 8 or commodities law of a state, or a federal or state law under which a business
 9 involving investments, franchises, insurance, banking, or finance is regulated;

10 (7) is insolvent, either because the person's liabilities exceed the
 11 person's assets or because the person cannot meet the person's obligations as they
 12 mature, but the administrator may not enter an order against an applicant or registrant
 13 under this paragraph without a finding of insolvency as to the applicant or registrant;

14 (8) refuses to allow or otherwise impedes the administrator from
 15 conducting an audit or inspection under AS 45.56.475(d) or refuses access to a
 16 registrant's office to conduct an audit or inspection under AS 45.56.475(d);

17 (9) has failed to reasonably supervise an agent, investment adviser
 18 representative, or other individual, if the agent, investment adviser representative, or
 19 other individual was subject to the person's supervision and committed a violation of
 20 this chapter or former AS 45.55 or a regulation adopted or order issued under this
 21 chapter or former AS 45.55;

22 (10) has not paid the proper filing fee within 30 days after having been
 23 notified by the administrator of a deficiency, but the administrator shall vacate an
 24 order under this paragraph when the deficiency is corrected;

25 (11) after notice and opportunity for a hearing, has been found

26 (A) by a court of competent jurisdiction to have wilfully
 27 violated the laws of a foreign jurisdiction under which the business of
 28 securities, commodities, investment, franchises, insurance, banking, or finance
 29 is regulated;

30 (B) to have been the subject of an order of a securities regulator
 31 of a foreign jurisdiction denying, revoking, or suspending the right to engage

1 in the business of securities as a broker-dealer, agent, investment adviser,
 2 investment adviser representative, or similar person; or

3 (C) to have been suspended or expelled from membership by or
 4 participation in a securities exchange or securities association operating under
 5 the securities laws of a foreign jurisdiction;

6 (12) is the subject of a cease and desist order issued by the Securities
 7 and Exchange Commission or issued under the securities, commodities, investment,
 8 franchise, banking, finance, or insurance laws of a state;

9 (13) has engaged in dishonest or unethical practices in the securities,
 10 commodities, investment, franchise, banking, finance, or insurance business;

11 (14) is not qualified based on factors that may include training,
 12 experience, and knowledge of the securities business; however, in the case of an
 13 application by an agent for a broker-dealer that is a member of a self-regulatory
 14 organization or by an individual for registration as an investment adviser
 15 representative, a denial order may not be based on this paragraph if the individual has
 16 successfully completed all examinations required by (e) of this section; the
 17 administrator may require an applicant for registration under AS 45.56.430 or
 18 45.56.440 who has not been registered in a state within the two years preceding the
 19 filing of an application in this state to complete successfully an examination; or

20 (15) is a person whose license renewal is denied under AS 14.43.148
 21 or whose license issuance or renewal is denied under AS 25.27.244.

22 (e) A regulation adopted or order issued under this chapter may require that an
 23 examination, including an examination developed or approved by an organization of
 24 securities regulators, be successfully completed by a class of individuals or all
 25 individuals. An order issued under this chapter may waive, in whole or in part, an
 26 examination as to an individual and a regulation adopted under this chapter may
 27 waive, in whole or in part, an examination as to a class of individuals if the
 28 administrator determines that the examination is not necessary or appropriate in the
 29 public interest and for the protection of investors.

30 (f) The administrator may suspend or deny an application summarily; restrict,
 31 condition, limit, or suspend a registration; or censure, bar, or impose a civil penalty on

1 a registrant before final determination of an administrative proceeding. Upon the
 2 issuance of an order, the administrator shall promptly notify each person subject to the
 3 order that the order has been issued, the reasons for the action, and that, within 15 days
 4 after the receipt of a request in a record from the person, the matter will be scheduled
 5 for a hearing. If a hearing is not requested and none is ordered by the administrator
 6 within 30 days after the date of service of the order, the order becomes final by
 7 operation of law. If a hearing is requested or ordered, the administrator, after notice of
 8 and opportunity for hearing to each person subject to the order, may modify or vacate
 9 the order or extend the order until final determination.

10 (g) An order may not be issued under this section, except under (f) of this
 11 section, without appropriate notice to the applicant or registrant, and an opportunity
 12 for hearing under AS 45.56.650(c).

13 (h) A person that controls, directly or indirectly, a person not in compliance
 14 with this section may be disciplined by order of the administrator under (a) - (c) of this
 15 section to the same extent as the noncomplying person, unless the controlling person
 16 did not know, and in the exercise of reasonable care could not have known, of the
 17 existence of conduct that is a ground for discipline under this section.

18 (i) The administrator may not institute a proceeding under (a) - (c) of this
 19 section based solely on material facts actually known by the administrator unless an
 20 investigation or the proceeding is instituted within one year after the administrator
 21 actually acquires knowledge of the material facts.

22 **Article 5. Fraud and Liabilities.**

23 **Sec. 45.56.505. General fraud.** A person may not, in connection with the
 24 offer, sale, or purchase of a security, directly or indirectly,

- 25 (1) employ a device, scheme, or artifice to defraud;
- 26 (2) make an untrue statement of a material fact or omit to state a
 27 material fact necessary to make the statements made, in light of the circumstances
 28 under which they were made, not misleading; or
- 29 (3) engage in an act, practice, or course of business that operates or
 30 would operate as a fraud or deceit on another person.

31 **Sec. 45.56.510. Prohibited conduct in providing investment advice.** (a) A

1 person that advises others for compensation, either directly or indirectly or through
 2 publications or writings, as to the value of securities or the advisability of investing in,
 3 purchasing, or selling securities or that, for compensation and as part of a regular
 4 business, issues or adopts analyses or reports relating to securities may not

5 (1) employ a device, scheme, or artifice to defraud another person; or

6 (2) engage in an act, practice, or course of business that operates or
 7 would operate as a fraud or deceit on another person.

8 (b) A regulation adopted under this chapter may define an act, practice, or
 9 course of business of an investment adviser or an investment adviser representative,
 10 other than a supervised person of a federal covered investment adviser, as fraudulent,
 11 deceptive, or manipulative and may prescribe means reasonably designed to prevent
 12 investment advisers and investment adviser representatives, other than supervised
 13 persons of a federal covered investment adviser, from engaging in acts, practices, and
 14 courses of business defined as fraudulent, deceptive, or manipulative.

15 (c) A regulation adopted under this chapter may specify the contents of an
 16 investment advisory contract entered into, extended, or renewed by an investment
 17 adviser.

18 **Sec. 45.56.520. Misleading filings.** A person may not, in a document filed
 19 with the administrator or in a proceeding under this chapter, make or cause to be made
 20 an untrue statement of a material fact or omit to state a material fact necessary in order
 21 to make the statements made, in the light of the circumstances under which they are
 22 made, not misleading.

23 **Sec. 45.56.530. Misrepresentations concerning registration or exemption.**
 24 The filing of an application for registration, a registration statement, a notice filing
 25 under this chapter, the registration of a person, the notice filing by a person, or the
 26 registration of a security under this chapter does not constitute a finding by the
 27 administrator that a record filed under this chapter is true, complete, and not
 28 misleading. The filing or registration or the availability of an exemption, exception,
 29 preemption, or exclusion for a security or a transaction does not mean that the
 30 administrator has passed on the merits or qualifications of, or recommended or given
 31 approval to, a person, security, or transaction. A person may not make, or cause to be

made, to a purchaser, customer, client, or prospective customer or client a representation inconsistent with this section.

Sec. 45.56.540. Evidentiary burden. (a) In a civil action or administrative proceeding under this chapter, a person claiming an exemption, exception, preemption, or exclusion has the burden to prove the applicability of the claim.

(b) In a criminal proceeding under this chapter, an exemption, exception, preemption, or exclusion claimed by the defendant is an affirmative defense. In this subsection, "affirmative defense" has the meaning given in AS 11.81.900.

Sec. 45.56.550. Filing of sales and advertising literature. (a) Except as otherwise provided in (b) of this section, a regulation adopted or order issued under this chapter may require the filing of a prospectus, pamphlet, circular, form letter, advertisement, sales literature, or other advertising record relating to a security or investment advice, addressed or intended for distribution to prospective investors, including clients or prospective clients of a person registered or required to be registered as an investment adviser under this chapter.

(b) This section does not apply to sales and advertising literature specified in (a) of this section that relates to a federal covered security, a federal covered investment adviser, or a security or transaction exempted by AS 45.56.205, 45.56.210, 45.56.220, or 45.56.240, except as required under AS 45.56.205(7).

(c) The administrator may by regulation or order prohibit the publication, circulation, or use of any advertising considered false or misleading.

Sec. 45.56.560. Qualified immunity. A broker-dealer, agent, investment adviser, federal covered investment adviser, or investment adviser representative is not liable to another broker-dealer, agent, investment adviser, federal covered investment adviser, or investment adviser representative for defamation relating to a statement that is contained in a record required by the administrator, a designee of the administrator, the Securities and Exchange Commission, or a self-regulatory organization, unless the person knew, or should have known at the time the statement was made, that it was false in a material respect or the person acted in reckless disregard of the statement's truth or falsity.

Article 6. Administration and Judicial Review.

1 **Sec. 45.56.605. Administration.** (a) The department shall administer this
2 chapter.

3 (b) The administrator or an officer, employee, or designee of the administrator
4 may not use for personal benefit or the benefit of others records or other information
5 obtained by or filed with the administrator that is not public under AS 45.56.615(b).
6 This chapter does not authorize the administrator or an officer, employee, or designee
7 of the administrator to disclose the record or information, except in accordance with
8 AS 45.56.615(c), 45.56.620, or 45.56.645.

9 (c) This chapter does not create or diminish a privilege or exemption that
10 exists at common law, by statute or regulation, or otherwise.

11 (d) The administrator may develop and implement investor education
12 initiatives to inform the public about investing in securities, with particular emphasis
13 on the prevention and detection of securities fraud. In developing and implementing
14 these initiatives, the administrator may collaborate with public and nonprofit
15 organizations with an interest in investor education. The administrator may accept a
16 grant or donation from a person that is not affiliated with the securities industry or
17 from a nonprofit organization, regardless of whether the organization is affiliated with
18 the securities industry, to develop and implement investor education initiatives. This
19 subsection does not authorize the administrator to require participation or monetary
20 contributions of a registrant in an investor education program.

21 **Sec. 45.56.610. Administrative files and opinions.** (a) The administrator shall
22 maintain, or designate a person to maintain, a register of applications for registration
23 of securities; registration statements; notice filings; applications for registration of
24 broker-dealers, agents, investment advisors, and investment adviser representatives;
25 notice filings by federal covered investment advisors that are or have been effective
26 under this chapter or former AS 45.55; notices of claims of exemption from
27 registration or notice filing requirements contained in a record; orders issued under
28 this chapter or former AS 45.55; and interpretative opinions or no-action
29 determinations issued under this chapter. The register must be kept according to the
30 existing retention schedule mandated by the department.

31 (b) The administrator shall make all regulations, forms, interpretative

1 opinions, and orders available to the public.

2 (c) The administrator shall furnish a copy of a record that is a public record or
3 a certification that the public record does not exist to a person upon request. A copy of
4 the record certified or a certificate by the administrator of a record's nonexistence is
5 prima facie evidence of a record or its nonexistence.

6 **Sec. 45.56.615. Public records; confidentiality.** (a) Except as otherwise
7 provided in (b) of this section, records obtained by the administrator or filed under this
8 chapter, including a record contained in or filed with a registration statement,
9 application, notice filing, or report are public records and are available for public
10 examination under AS 40.25.100 - 40.25.295 (Alaska Public Records Act).

11 (b) The following records are not public records under AS 40.25.100 -
12 40.25.295 (Alaska Public Records Act) and are not available for public examination
13 under (a) of this section:

14 (1) a record obtained by the administrator in connection with an audit,
15 examination or inspection under AS 45.56.475(d) or an investigation under
16 AS 45.56.645;

17 (2) a part of a record filed in connection with a registration statement
18 under AS 45.56.105 and 45.56.305 - 45.56.320 or a record under AS 45.56.475(d) that
19 contains trade secrets or confidential information if the person filing the registration
20 statement or report has asserted a claim of confidentiality or privilege that is
21 authorized by law;

22 (3) a record that is not required to be provided to the administrator or
23 filed under this chapter and is provided to the administrator only on the condition that
24 the record may not be subject to public examination or disclosure;

25 (4) a nonpublic record received from a person specified in
26 AS 45.56.620(a); and

27 (5) a social security number, residential address unless used as a
28 business address, and residential telephone number unless used as a business
29 telephone number, contained in a record that is filed.

30 (c) If disclosure is for the purpose of a civil, administrative, or criminal
31 investigation, action, or proceeding or to a person specified in AS 45.56.620(a), the

1 administrator may disclose a record obtained in connection with an audit or inspection
 2 under AS 45.56.475(d) or a record obtained in connection with an investigation under
 3 AS 45.56.645.

4 **Sec. 45.56.620. Uniformity and cooperation with other agencies.** (a) The
 5 administrator may cooperate, coordinate, consult, and, subject to AS 45.56.615, share
 6 records and information with the securities regulator of another state, Canada, a
 7 Canadian province or territory, a foreign jurisdiction, the Securities and Exchange
 8 Commission, the United States Department of Justice, the Commodity Futures
 9 Trading Commission, the Federal Trade Commission, the Securities Investor
 10 Protection Corporation, a self-regulatory organization, a national or international
 11 organization of securities regulators, a federal or state banking and insurance
 12 regulator, and a governmental law enforcement agency to bring about greater
 13 uniformity in securities matters among the federal government, self-regulatory
 14 organizations, states, and foreign governments.

15 (b) In cooperating, coordinating, consulting, and sharing records and
 16 information under this section and in acting by regulation, order, or waiver under this
 17 chapter, the administrator may take into consideration in carrying out the public
 18 interest the following general policies:

19 (1) maximizing effectiveness of regulation for the protection of
 20 investors;

21 (2) maximizing uniformity in federal and state regulatory standards;
 22 and

23 (3) minimizing burdens on the business of capital formation, without
 24 adversely affecting essentials of investor protection.

25 (c) The cooperation, coordination, consultation, and sharing of records and
 26 information authorized by this section includes

27 (1) establishing or employing one or more designees as a central
 28 depository for registration and notice filings under this chapter and for records
 29 required or allowed to be maintained under this chapter;

30 (2) developing and maintaining uniform forms;

31 (3) conducting a joint examination or investigation;

- 1 (4) holding a joint administrative hearing;
- 2 (5) instituting and prosecuting a joint civil or administrative
- 3 proceeding;
- 4 (6) sharing and exchanging personnel;
- 5 (7) coordinating registrations under AS 45.56.105 and 45.56.405 -
- 6 45.56.440 and exemptions under AS 45.56.240;
- 7 (8) sharing and exchanging records, subject to AS 45.56.615;
- 8 (9) formulating regulations, statements of policy, guidelines, forms,
- 9 and interpretative opinions and releases;
- 10 (10) formulating common systems and procedures;
- 11 (11) notifying the public of proposed regulations, forms, statements of
- 12 policy, and guidelines;
- 13 (12) attending conferences and other meetings among securities
- 14 regulators, that may include representatives of governmental and private sector
- 15 organizations involved in capital formation, considered necessary or appropriate to
- 16 promote or achieve uniformity; and
- 17 (13) developing and maintaining a uniform exemption from
- 18 registration for small issuers and taking other steps to reduce the burden of raising
- 19 investment capital by small businesses.

20 **Sec. 45.56.625. Securities investor education and training fund.** The

21 securities investor education and training fund is created as a special fund in the

22 general fund to provide funds for the purposes specified in 45.56.605(d). The

23 legislature may appropriate 33 percent of the money received by this state from civil

24 penalties under this chapter into the fund for securities investor education and training.

25 Nothing in this section exempts money deposited into the fund from the requirements

26 of AS 37.07 (Executive Budget Act) or dedicates money for a specific purpose.

27 **Sec. 45.56.630. Service of process.** (a) A consent to service of process

28 complying with this section required by this chapter shall be signed and filed in the

29 form required by a regulation adopted or order issued under this chapter. A consent

30 appointing the administrator the person's agent for service of process in a noncriminal

31 action or proceeding against the person or the person's successor or personal

1 representative under this chapter or a regulation adopted or order issued under this
 2 chapter after the consent is filed has the same force and validity as if the service were
 3 made personally on the person filing the consent. A person that has filed a consent
 4 under this subsection in connection with a previous application for registration or
 5 notice filing need not file an additional consent.

6 (b) If a person, including a nonresident of this state, engages in an act,
 7 practice, or course of business prohibited or made actionable by this chapter or a
 8 regulation adopted or order issued under this chapter and the person has not filed a
 9 consent to service of process under (a) of this section, the act, practice, or course of
 10 business constitutes the appointment of the administrator as the person's agent for
 11 service of process in a noncriminal action or proceeding against the person or the
 12 person's successor or personal representative.

13 (c) Service under (a) or (b) of this section may be made by providing a copy of
 14 the process to the office of the administrator, but the service is not effective unless

15 (1) the plaintiff, which may be the administrator, promptly sends
 16 notice of the service and a copy of the process, return receipt requested, to the
 17 defendant or respondent at the address set out in the consent to service of process or, if
 18 a consent to service of process has not been filed, at the last known address, or takes
 19 other reasonable steps to give notice; and

20 (2) the plaintiff files an affidavit of compliance with this subsection in
 21 the action or proceeding on or before the return day of the process, if any, or within
 22 the time that the court, or the administrator in a proceeding before the administrator,
 23 allows.

24 (d) Service under (c) of this section may be used in a proceeding before the
 25 administrator or by the administrator in a civil action in which the administrator is the
 26 moving party.

27 (e) If process is served under (c) of this section, the court, or the administrator
 28 in a proceeding before the administrator, shall order continuances as are necessary or
 29 appropriate to afford the defendant or respondent reasonable opportunity to defend.

30 **Sec. 45.56.635. Applicability of the chapter.** (a) Unless the persons are
 31 exempt elsewhere in this chapter, this chapter applies to persons who buy or offer to

1 buy when an offer to

2 (1) buy is made in this state; or

3 (2) sell is made and accepted in this state.

4 (b) Unless the person is exempt elsewhere in this chapter, this chapter applies
5 to a person who sells or offers to sell when an offer to

6 (1) sell is made in this state; or

7 (2) buy is made and accepted in this state.

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

10 (1) originates from this state;

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

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

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

19 (5) is for an interest or participation in real property located in this
20 state, or in a corporation, a partnership, a limited liability company, a limited
21 partnership, a limited liability partnership, an association, or a joint-stock company;
22 jurisdiction under this paragraph may be exercised only when the exercise is
23 consistent with the constitution of this state or of the United States.

24 (d) For the purpose of this section, an offer to buy or to sell is accepted in this
25 state when acceptance is communicated to the offeror in this state and has not
26 previously been communicated to the offeror, orally or in writing, outside this state.
27 Acceptance is communicated to the offeror in this state, whether or not either party is
28 then present in this state, when the offeree directs the acceptance to the offeror in this
29 state reasonably believing the offeror to be in this state and the acceptance is received
30 at the place to which it is directed or, in the case of a mailed acceptance, at a post
31 office in this state.

(e) This chapter applies to investment advisers, federal covered advisers, and investment adviser representatives when any act instrumental in effecting prohibited conduct is done in this state, regardless of whether either party is then present in this state.

Sec. 45.56.640. Regulations, forms, orders, interpretative opinions, and hearings. (a) The administrator may

(1) issue forms and orders; after notice and comment, adopt and amend regulations necessary or appropriate to carry out this chapter; and repeal regulations, including regulations and forms governing registration statements, applications, notice filings, reports, and other records;

(2) by regulation, define terms, whether or not used in this chapter, but those definitions may not be inconsistent with this chapter; and

(3) by regulation, classify securities, persons, and transactions and adopt different requirements for different classes.

(b) Under this chapter, a regulation or form may not be adopted or amended, or an order issued or amended, unless the administrator finds that the regulation, form, order, or amendment is necessary or appropriate in the public interest or for the protection of investors and is consistent with the purposes intended by this chapter. In adopting, amending, and repealing regulations and forms, AS 45.56.620 applies to achieve uniformity among the states and coordination with federal laws in the form and content of registration statements, applications, reports, and other records, including the adoption of uniform rules, forms, and procedures.

(c) Subject to 15 U.S.C. 78o(i) and 80b-18a, the administrator may require that a financial statement filed under this chapter be prepared in accordance with generally accepted accounting principles in the United States and comply with other requirements specified by regulation adopted or order issued under this chapter. A regulation adopted or order issued under this chapter may establish

(1) subject to 15 U.S.C. 78o(i) and 80b-18a, the form and content of financial statements required under this chapter;

(2) whether unconsolidated financial statements must be filed; and

(3) whether required financial statements must be audited by an

1 independent certified public accountant.

2 (d) The administrator may provide interpretative opinions or issue
3 determinations that the administrator will not institute a proceeding or an action under
4 this chapter against a specified person for engaging in a specified act, practice, or
5 course of business if the determination is consistent with this chapter. A regulation
6 adopted or order issued under this chapter may establish a reasonable charge for
7 interpretative opinions or determinations that the administrator will not institute an
8 action or a proceeding under this chapter.

9 (e) A hearing in an administrative proceeding under this chapter shall be
10 conducted in public unless the administrative law judge or the administrator for good
11 cause consistent with this chapter determines that the hearing may not be conducted in
12 public.

13 (f) AS 44.62 (Administrative Procedure Act) applies to all regulations adopted
14 or authorized under this chapter.

15 **Sec. 45.56.645. Investigations and subpoenas.** (a) The administrator may

16 (1) conduct public or private investigations in or outside of this state
17 that the administrator considers necessary or appropriate to determine whether a
18 person has violated, is violating, or is about to violate this chapter or a regulation
19 adopted or order issued under this chapter, or to aid in the enforcement of this chapter
20 or in the adoption of regulations and forms under this chapter;

21 (2) require or permit a person to testify, file a statement, or produce a
22 record, under oath or otherwise as the administrator determines, as to all the facts and
23 circumstances concerning a matter to be investigated or about which an action or
24 proceeding is to be instituted; and

25 (3) publish a record concerning an action, proceeding, or an
26 investigation under, or a violation of, this chapter or a regulation adopted or order
27 issued under this chapter if the administrator determines it is necessary or appropriate
28 in the public interest and for the protection of investors.

29 (b) For the purpose of an investigation under this chapter, the administrator or
30 the designated officer of the administrator may administer oaths and affirmations,
31 subpoena witnesses, seek compulsion of attendance, take evidence, require the filing

1 of statements, and require the production of any records that the administrator
2 considers relevant or material to the investigation.

3 (c) If a person does not appear or refuses to testify, file a statement, produce
4 records, or otherwise obey a subpoena as required by the administrator under this
5 chapter, the administrator may refer the matter to the attorney general, who may bring
6 an action in the superior court or a court of another state to enforce compliance. The
7 court may

8 (1) hold the person in contempt;

9 (2) order the person to appear before the administrator;

10 (3) order the person to testify about the matter under investigation or in
11 question;

12 (4) order the production of records;

13 (5) grant injunctive relief, including restricting or prohibiting the offer
14 or sale of securities or the providing of investment advice;

15 (6) impose a civil penalty of not more than \$100,000 for a single
16 violation; and

17 (7) grant any other necessary or appropriate relief.

18 (d) This section does not preclude a person from applying to the superior court
19 or a court of another state for relief from a request to appear, testify, file a statement,
20 produce records, or obey a subpoena.

21 (e) A person is not excused from attending, testifying, filing a statement,
22 producing a record or other evidence, or obeying a subpoena of the administrator
23 under this chapter or in an action or proceeding instituted by the administrator under
24 this chapter on the ground that the required testimony, statement, record, or other
25 evidence, directly or indirectly, may tend to incriminate the individual or subject the
26 individual to a criminal fine, penalty, or forfeiture. If the person refuses to testify, file
27 a statement, or produce a record or other evidence based on the individual's privilege
28 against self-incrimination, the administrator may apply to the superior court to compel
29 the testimony, the filing of the statement, the production of the record, or the giving of
30 other evidence. The testimony, record, or other evidence compelled under an order of
31 the superior court may not be used, directly or indirectly, against the individual in a

1 criminal case, except in a prosecution for perjury, contempt, or otherwise failing to
2 comply with the order.

3 (f) At the request of the securities regulator of another state or a foreign
4 jurisdiction, the administrator may provide assistance if the requesting regulator states
5 that it is conducting an investigation to determine whether a person has violated, is
6 violating, or is about to violate a law or regulation of the other state or foreign
7 jurisdiction relating to securities matters that the requesting regulator administers or
8 enforces. The administrator may provide the assistance by using the authority to
9 investigate and the powers conferred by this section as the administrator determines is
10 necessary or appropriate. The assistance may be provided without regard to whether
11 the conduct described in the request would also constitute a violation of this chapter or
12 other law of this state if occurring in this state. In deciding whether to provide the
13 assistance, the administrator may consider whether the requesting regulator is
14 permitted and has agreed to provide assistance reciprocally within its state or foreign
15 jurisdiction to the administrator on securities matters when requested, whether
16 compliance with the request would violate or prejudice the public policy of this state,
17 and the availability of resources and employees of the administrator to carry out the
18 request for assistance.

19 **Sec. 45.56.650. Administrative enforcement.** (a) If the administrator
20 determines that a person has engaged, is engaging, or is about to engage in an act,
21 practice, or course of business constituting a violation of this chapter or a regulation
22 adopted or order issued under this chapter or that a person has materially aided, is
23 materially aiding, or is about to aid materially an act, practice, or course of business
24 constituting a violation of this chapter or a regulation adopted or order issued under
25 this chapter, the administrator may issue an order

26 (1) directing the person to cease and desist from engaging in the act,
27 practice, or course of business or to take other action necessary or appropriate to
28 comply with this chapter;

29 (2) denying, suspending, revoking, or conditioning the exemptions for
30 a broker-dealer under AS 45.56.405(b)(1)(D) or (F) or an investment adviser under
31 AS 45.56.435(b)(1)(C); or

1 (3) denying, suspending, conditioning, or limiting an exemption as
2 provided under AS 45.56.250.

3 (b) An order under (a) of this section is effective on the date of issuance. Upon
4 issuance of the order, the administrator shall promptly serve each person subject to the
5 order with a copy of the order and a notice that the order has been entered. The order
6 must include a statement of any civil penalty, restitution, or costs of investigation the
7 administrator will seek, a statement of the reasons for the order, and notice that, within
8 15 days after receipt of a request in a record from the person, the matter will be
9 scheduled for a hearing. If a person subject to the order does not request a hearing and
10 none is ordered by the administrator within 30 days after the date of service of the
11 order, the order, including the imposition of a civil penalty, the imposition of
12 restitution, or requirement for payment of the costs of investigation sought in a
13 statement in the order, becomes final as to that person by operation of law. If a hearing
14 is requested or ordered, the administrator, after notice of and opportunity for hearing
15 provided to each person subject to the order, may modify or vacate the order or extend
16 it until final determination.

17 (c) If a hearing is requested or ordered under (b) of this section, a hearing shall
18 be conducted by the office of administrative hearings (AS 44.64.010), and
19 AS 44.64.040 - 44.64.200 apply to and govern the hearing.

20 (d) In a final order under (b) of this section, the administrator may impose a
21 civil penalty of not more than \$100,000 for a single violation, unless the violation of
22 this chapter is against an older person or a vulnerable adult. In addition to a civil
23 penalty imposed under this subsection, a person or entity who engages in conduct
24 prohibited under this chapter against an older person or a vulnerable adult may be
25 liable for an additional civil penalty of treble statutory damages. In determining
26 whether to impose a supplemental civil penalty under this subsection, the
27 administrator shall consider, in addition to other appropriate factors, the extent to
28 which the following factors are present:

29 (1) whether the respondent knew that the respondent's conduct was
30 directed to an older person or a vulnerable adult;

31 (2) whether the respondent's conduct caused an older person or a

1 vulnerable adult to suffer

2 (A) severe loss or encumbrance of a primary residence,
3 principal employment, or source of income; or

4 (B) substantial loss of property set aside for retirement or for
5 personal and family care and maintenance; or

6 (3) whether the respondent's conduct caused substantial loss of
7 payments received under a pension or retirement plan or a government benefits
8 program.

9 (e) In a final order under (b) of this section, the administrator may

10 (1) impose restitution to any person in interest for any money or
11 property, real or personal, that may have been acquired or transferred in violation of
12 this chapter;

13 (2) charge the actual cost of an investigation or proceeding for a
14 violation of this chapter or a regulation adopted or order issued under this chapter; and

15 (3) deny the violator of the use of any exemptions listed under this
16 chapter.

17 (f) The administrator may petition the superior court to enter a judgment
18 against a person who is a respondent in the order for the amount of the civil penalty
19 levied against the person. Subject to AS 44.62.570, the filing of the petition for a
20 judgment does not reopen the final order to further substantive review. A judgment
21 entered under this subsection may be executed on and levied under in the manner
22 provided in AS 09.35.

23 (g) If a person does not comply with an order under this section, the
24 administrator may petition a court of competent jurisdiction to enforce the order. The
25 court may not require the administrator to post a bond in an action or proceeding under
26 this section. If the court finds, after service and opportunity for hearing, that the person
27 was not in compliance with the order, the court may adjudge the person in civil
28 contempt of the order. The court may impose a further civil penalty against the person
29 for contempt in an amount not less than \$5,000 but not greater than \$100,000 for each
30 violation and may grant any other relief the court determines is just and proper in the
31 circumstances.

1 **Sec. 45.56.655. Civil enforcement.** (a) If the administrator believes that a
 2 person has engaged, is engaging, or is about to engage in an act, practice, or course of
 3 business constituting a violation of this chapter or a regulation adopted or order issued
 4 under this chapter, or that a person has engaged, is engaging, or is about to engage in
 5 an act, practice, or course of business that materially aids a violation of this chapter or
 6 a regulation adopted or order issued under this chapter, the administrator may maintain
 7 an action in the superior court to enjoin the act, practice, or course of business and to
 8 enforce compliance with this chapter or a regulation adopted or order issued under this
 9 chapter.

10 (b) In an action under this section and on a proper showing, the court may

11 (1) issue a permanent or temporary injunction, restraining order, or
 12 declaratory judgment;

13 (2) order other appropriate or ancillary relief, which may include

14 (A) an asset freeze, accounting, writ of attachment, writ of
 15 general or specific execution, and appointment of a receiver or conservator that
 16 may be the administrator for the defendant or the defendant's assets;

17 (B) ordering the administrator to take charge and control of a
 18 defendant's property, including investment accounts and accounts in a
 19 depository institution, rents, and profits; to collect debts; and to acquire and
 20 dispose of property;

21 (C) imposing a civil penalty of not more than \$100,000 for a
 22 single violation, unless the violation of this chapter is against an older person
 23 or a vulnerable adult; in determining whether to impose a supplemental civil
 24 penalty for a violation of this chapter against an older person or a vulnerable
 25 adult, the court shall consider, in addition to other appropriate factors, the
 26 extent to which the following factors are present:

27 (i) whether the respondent knew that the respondent's
 28 conduct was directed to an older person or a vulnerable adult;

29 (ii) whether the respondent's conduct caused an older
 30 person or a vulnerable adult to suffer severe loss or encumbrance of a
 31 primary residence, principal employment, or source of income; or

1 substantial loss of property set aside for retirement or for personal and
 2 family care and maintenance; or

3 (iii) whether the respondent's conduct caused
 4 substantial loss of payments received under a pension or retirement
 5 plan or a government benefits program;

6 (D) imposing an order of rescission, or disgorgement directed
 7 to a person that has engaged in an act, practice, or course of business
 8 constituting a violation of this chapter or former AS 45.55 or a regulation
 9 adopted or order issued under this chapter or former AS 45.55;

10 (E) imposing an order of restitution to any person in interest for
 11 any money or property, real or personal, that may have been acquired or
 12 transferred in violation of this chapter; and

13 (F) ordering the payment of prejudgment and post judgment
 14 interest; or

15 (3) order other relief that the court considers appropriate.

16 (c) The administrator may not be required to post a bond in an action or
 17 proceeding under this chapter.

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

25 **Sec. 45.56.660. Civil liability.** (a) Enforcement of civil liability under this
 26 section is subject to P.L. 105-353 (Securities Litigation Uniform Standards Act of
 27 1998).

28 (b) A person is liable to the purchaser if the person sells a security in violation
 29 of AS 45.56.105, or by means of an untrue statement of a material fact or an omission
 30 to state a material fact necessary to make the statement made, in light of the
 31 circumstances under which it is made, not misleading, the purchaser not knowing the

1 untruth or omission and the seller not sustaining the burden of proof that the seller did
 2 not know and, in the exercise of reasonable care, could not have known of the untruth
 3 or omission. An action under this subsection is governed by the following:

4 (1) the purchaser may maintain an action to recover the consideration
 5 paid for the security, less the amount of any income received on the security, and
 6 interest at the legal rate of interest under AS 09.30.070, or eight percent a year,
 7 whichever is greater, from the date of the purchase, costs, and attorney fees as
 8 determined by the court, upon the tender of the security, or for actual damages as
 9 provided in (3) of this subsection;

10 (2) the tender referred to in (1) of this subsection may be made any
 11 time before entry of judgment; tender requires only notice in a record of ownership of
 12 the security and willingness to exchange the security for the amount specified; a
 13 purchaser that no longer owns the security may recover actual damages as provided in
 14 (3) of this subsection;

15 (3) actual damages in an action arising under this subsection are the
 16 amount that would be recoverable upon a tender less the value of the security when the
 17 purchaser disposed of it, and interest at the legal rate of interest under AS 09.30.070,
 18 or eight percent a year, whichever is greater, from the date of the purchase, costs, and
 19 attorney fees as determined by the court.

20 (c) A person is liable to the seller if the person buys a security by means of an
 21 untrue statement of a material fact or omission to state a material fact necessary to
 22 make the statement made, in light of the circumstances under which it is made, not
 23 misleading, the seller not knowing of the untruth or omission, and the purchaser not
 24 sustaining the burden of proof that the purchaser did not know and, in the exercise of
 25 reasonable care, could not have known of the untruth or omission. An action under
 26 this subsection is governed by the following:

27 (1) the seller may maintain an action to recover the security and any
 28 income received on the security, costs, and attorney fees as determined by the court,
 29 upon the tender of the purchase price, or for actual damages as provided in (3) of this
 30 subsection;

31 (2) the tender referred to in (1) of this subsection may be made any

1 time before entry of judgment; tender requires only notice in a record of the present
 2 ability to pay the amount tendered and willingness to take delivery of the security for
 3 the amount specified; if the purchaser no longer owns the security, the seller may
 4 recover actual damages as provided in (3) of this subsection;

5 (3) actual damages in an action arising under this subsection are the
 6 difference between the price at which the security was sold and the value the security
 7 would have had at the time of the sale in the absence of the purchaser's conduct
 8 causing liability, and interest at the legal rate of interest under AS 09.30.070, or eight
 9 percent a year, whichever is greater, from the date of the sale of the security, costs,
 10 and attorney fees as determined by the court.

11 (d) A person acting as a broker-dealer or agent that sells or buys a security in
 12 violation of AS 45.56.405(a), 45.56.435(a), or 45.56.530 is liable to the customer. The
 13 customer, if a purchaser, may maintain an action for recovery of actual damages as
 14 specified in (b)(1) - (3) of this section or, if a seller, for a remedy as specified in (c)(1)
 15 - (3) of this section.

16 (e) A person acting as an investment adviser or investment adviser
 17 representative that provides investment advice for compensation in violation of
 18 AS 45.56.435(a), 45.56.440(a), or 45.56.530 is liable to the client. The client may
 19 maintain an action to recover the consideration paid for the advice, interest at the legal
 20 rate of interest under AS 09.30.070, or eight percent a year, whichever is greater, from
 21 the date of payment, costs, and attorney fees as determined by the court.

22 (f) A person that receives, directly or indirectly, any consideration for
 23 providing investment advice to another person and that employs a device, scheme, or
 24 artifice to defraud the other person or engages in an act, practice, or course of business
 25 that operates or would operate as a fraud or deceit on the other person is liable to the
 26 other person. An action under this subsection is governed by the following:

27 (1) the person defrauded may maintain an action to recover the
 28 consideration paid for the advice and the amount of any actual damages caused by the
 29 fraudulent conduct, interest at the legal rate of interest under AS 09.30.070, or eight
 30 percent a year, whichever is greater, from the date of the fraudulent conduct, costs,
 31 and reasonable attorney fees as determined by the court, less the amount of any

1 income received as a result of the fraudulent conduct;

2 (2) this subsection does not apply to a broker-dealer or its agents if the
3 investment advice provided is solely incidental to transacting business as a broker-
4 dealer and special compensation is not received for the investment advice.

5 (g) The following persons are liable jointly and severally with and to the same
6 extent as persons liable under (b) - (f) of this section:

7 (1) a person that directly or indirectly controls a person liable under (b)
8 - (f) of this section, unless the controlling person sustains the burden of proof that the
9 person did not know and, in the exercise of reasonable care, could not have known of
10 the existence of conduct because of which the liability is alleged to exist;

11 (2) an individual who is a managing partner, executive officer, or
12 director of a person liable under (b) - (f) of this section, including an individual having
13 a similar status or performing similar functions, unless the individual sustains the
14 burden of proof that the individual did not know and, in the exercise of reasonable
15 care, could not have known of the existence of conduct because of which the liability
16 is alleged to exist;

17 (3) an individual who is an employee of or associated with a person
18 liable under (b) - (f) of this section and who materially aids the conduct giving rise to
19 the liability, unless the individual sustains the burden of proof that the individual did
20 not know and, in the exercise of reasonable care, could not have known of the
21 existence of conduct because of which the liability is alleged to exist; and

22 (4) a person that is a broker-dealer, agent, investment adviser, or
23 investment adviser representative that materially aids the conduct giving rise to the
24 liability under (b) - (f) of this section, unless the person sustains the burden of proof
25 that the person did not know and, in the exercise of reasonable care, could not have
26 known of the existence of conduct because of which the liability is alleged to exist.

27 (h) A person liable under this section has a right of contribution as in cases of
28 contract against any other person liable under this section for the same conduct.

29 (i) A cause of action under this section survives the death of an individual who
30 might have been a plaintiff or defendant.

31 (j) A person may not obtain relief under (b) of this section

1 (1) for a violation of AS 45.56.105, or under (d) or (e) of this section,
2 unless the action is instituted within three years after the violation occurred; or

3 (2) other than for a violation of AS 45.56.105, or under (c) or (f) of this
4 section, unless the action is instituted within the earlier of two years after discovery of
5 the facts constituting the violation or five years after the violation.

6 (k) A person that has made, or has engaged in the performance of, a contract
7 in violation of this chapter or a regulation adopted or order issued under this chapter or
8 that has acquired a purported right under the contract with knowledge of conduct
9 because of which its making or performance was in violation of this chapter may not
10 base an action on the contract.

11 (l) A condition, stipulation, or provision binding a person purchasing or
12 selling a security or receiving investment advice to waive compliance with this chapter
13 or a regulation adopted or order issued under this chapter is void.

14 (m) The rights and remedies provided by this chapter are in addition to any
15 other rights or remedies that may exist, but this chapter does not create a cause of
16 action not specified in this section or AS 45.56.475(e).

17 **Sec. 45.56.665. Rescission offers.** (a) A purchaser, seller, or recipient of
18 investment advice may not maintain an action under AS 45.56.660 if

19 (1) the purchaser, seller, or recipient of investment advice receives, in
20 a record, before the action is instituted,

21 (A) an offer stating the respect in which liability under
22 AS 45.56.660 may have arisen and fairly advising the purchaser, seller, or
23 recipient of investment advice of that person's rights in connection with the
24 offer and any financial or other information necessary to correct all material
25 misrepresentations or omissions in the information that was required by this
26 chapter to be furnished to that person at the time of the purchase, sale, or
27 investment advice;

28 (B) if the basis for relief under this section may have been a
29 violation of AS 45.56.660(b), an offer to repurchase the security for cash,
30 payable on delivery of the security, equal to the consideration paid, and interest
31 at the legal rate of interest under AS 09.30.070, or eight percent a year,

1 whichever is greater, from the date of the purchase, less the amount of any
 2 income received on the security, or, if the purchaser no longer owns the
 3 security, an offer to pay the purchaser, upon acceptance of the offer, damages
 4 in an amount that would be recoverable upon a tender, less the value of the
 5 security when the purchaser disposed of it, and interest at the legal rate of
 6 interest under AS 09.30.070, or eight percent a year, whichever is greater, from
 7 the date of the purchase in cash equal to the damages computed in the manner
 8 provided in this subparagraph;

9 (C) if the basis for relief under this section may have been a
 10 violation of AS 45.56.660(c), an offer to tender the security, on payment by the
 11 seller of an amount equal to the purchase price paid, less income received on
 12 the security by the purchaser and interest at the legal rate of interest under
 13 AS 09.30.070, or eight percent a year, whichever is greater, from the date of
 14 the sale, or, if the purchaser no longer owns the security, an offer to pay the
 15 seller, upon acceptance of the offer, in cash, damages in the amount of the
 16 difference between the price at which the security was purchased and the value
 17 the security would have had at the time of the purchase in the absence of the
 18 purchaser's conduct that may have caused liability and interest at the legal rate
 19 of interest in AS 09.30.070, or eight percent a year, whichever is greater, from
 20 the date of the sale;

21 (D) if the basis for relief under this section may have been a
 22 violation of AS 45.56.660(d); and if the customer is a purchaser, an offer to
 23 pay as specified in (B) of this paragraph; or, if the customer is a seller, an offer
 24 to tender or to pay as specified in (C) of this paragraph;

25 (E) if the basis for relief under this section may have been a
 26 violation of AS 45.56.660(e), an offer to reimburse in cash the consideration
 27 paid for the advice and interest at the legal rate of interest under AS 09.30.070,
 28 or eight percent a year, whichever is greater, from the date of payment; or

29 (F) if the basis for relief under this section may have been a
 30 violation of AS 45.56.660(f), an offer to reimburse in cash the consideration
 31 paid for the advice, the amount of any actual damages that may have been

caused by the conduct, and interest at the legal rate of interest under AS 09.30.070, or eight percent a year, whichever is greater, from the date of the violation causing the loss;

(2) the offer under (1) of this subsection states that it must be accepted by the purchaser, seller, or recipient of investment advice within 30 days after the date of its receipt by the purchaser, seller, or recipient of investment advice or any shorter period of not less than three days that the administrator, by order, specifies;

(3) the offeror has the present ability to pay the amount offered or to tender the security under (1) of this subsection;

(4) the offer under (1) of this subsection is delivered to the purchaser, seller, or recipient of investment advice or sent in a manner that ensures receipt by the purchaser, seller, or recipient of investment advice; and

(5) the purchaser, seller, or recipient of investment advice that accepts the offer under (1) of this subsection, in a record, within the period specified under (2) of this subsection, is paid in accordance with the terms of the offer.

(b) The offer under this section shall be filed with the administrator 10 business days before the offering and conform in form and content with a regulation adopted under this chapter.

Sec. 45.56.670. Criminal enforcement. (a) A person who intentionally violates this chapter, except AS 45.56.550 or the notice filing requirements of AS 45.56.330 or 45.56.445, is guilty of a class C felony punishable by imprisonment under AS 12.55.125 or by a fine of not more than \$100,000, or by both.

(b) A person who intentionally alters, destroys, shreds, mutilates, or conceals a record, document, or other object, or attempts to do so, with the intent to alter or impair the record, document, or object for use in an official proceeding under this chapter, is guilty of a class C felony. A person convicted of violating this subsection is punishable by imprisonment as provided in AS 12.55.125, by a fine of not more than \$500,000, or by both.

(c) The attorney general, with or without a reference from the administrator, may institute criminal proceedings under this chapter.

(d) This chapter does not limit the power of this state to punish a person for

1 conduct that constitutes a crime under other laws of this state.

2 (e) In this section, "intentionally" has the meaning given in AS 11.81.900(a).

3 **Sec. 45.56.675. Judicial review.** (a) A person may obtain judicial review by
4 the superior court of a final order issued by the administrator under this chapter by
5 filing a notice of appeal in accordance with the applicable rules of court governing
6 appeals in civil matters. The notice of appeal shall be filed within 30 days after the
7 order becomes final under AS 44.64.060.

8 (b) A regulation adopted under this chapter is subject to judicial review under
9 AS 44.62.300.

10 **Article 7. Miscellaneous and Additional General Provisions.**

11 **Sec. 45.56.710. Reimbursement of expenses incident to examination or**
12 **investigation.** (a) The administrator may require an issuer, broker-dealer, agent,
13 investment adviser representative, federal covered adviser, or investment adviser to
14 reimburse the administrator for actual travel expenses and per diem incurred in
15 connection with an examination or investigation under this chapter.

16 (b) The administrator may by regulation or order adopt a schedule of charges
17 for examination and investigation of issuers, broker-dealers, agents, investment
18 adviser representatives, federal covered advisers, and investment advisers.

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

27 (d) Failure of the issuer, broker-dealer, agent, investment adviser
28 representative, federal covered adviser, or investment adviser to pay fees and expenses
29 under this section is a willful violation of this chapter, and the violation falls within
30 the provisions of AS 45.56.350, 45.56.440, and 45.56.615.

31 **Sec. 45.56.720. Electronic records and signatures.** This chapter modifies,

limits, and supersedes 15 U.S.C. 7001 - 7031 (Electronic Signatures in Global and National Commerce Act), but does not modify, limit, or supersede 15 U.S.C. 7001(c) or authorize electronic delivery of any of the notices described in 15 U.S.C. 7003(b). This chapter authorizes the filing of records and signatures, when specified by provisions of this chapter or by a regulation adopted or order issued under this chapter, in a manner consistent with 15 U.S.C. 7004(a).

Sec. 45.56.730. References to federal statutes. In this chapter, a reference to the following federal statutes, including a statute within a spanned reference, means those statutes and the rules and regulations adopted under those statutes, as in effect on the date of enactment of this chapter, or as later amended:

- (1) 7 U.S.C. 1 - 27 (Commodity Exchange Act);
- (2) 15 U.S.C. 77a - 77aa (Securities Act of 1933);
- (3) 15 U.S.C. 77b, 77k, 77m, 77p, 77r, 77v, 77z-1 - 77z-3, 77aa, 77ccc, 77ddd, 77mmm, 77sss, 78a, 78c, 78d, 78g, 78n, 78o, 78o-4, 78o-5, 78s, 78t, 78u, 78u-4, 78z, 78bb, 78ee, 78kk, 78ll, 80a-2, 80a-3, 80a-12, 80a-18, 80a-29, 80a-30, 80b-3, and 80b-18a (Securities Litigation Uniform Standards Act of 1998);
- (4) 15 U.S.C. 78a - 78pp (Securities Exchange Act of 1934);
- (5) 15 U.S.C. 80a-1 - 80a-64 (Investment Company Act of 1940);
- (6) 15 U.S.C. 80b-1 - 80b-21 (Investment Advisers Act of 1940);
- (7) 15 U.S.C. 661 - 697g (Small Business Investment Act of 1958);
- (8) 15 U.S.C. 7001 - 7031 (Electronic Signatures in Global and National Commerce Act);
- (9) 26 U.S.C. (Internal Revenue Code);
- (10) 29 U.S.C. 1001 - 1461 (Employee Retirement Income Security Act of 1974);
- (11) 42 U.S.C. 16451 - 16481 (Energy Policy Act of 2005).

Sec. 45.56.740. References to federal agencies. A reference in this chapter to an agency or department of the United States is also a reference to a successor agency or department.

Sec. 45.56.900. Definitions. In this chapter, unless the context otherwise requires,

1 (1) "administrator" means the commissioner of commerce, community,
2 and economic development or a designee of the commissioner;

3 (2) "agent" means an individual, other than a broker-dealer, who
4 represents a broker-dealer in effecting or attempting to effect purchases or sales of
5 securities or represents an issuer in effecting or attempting to effect purchases or sales
6 of the issuer's securities; however, a partner, officer, or director of a broker-dealer or
7 issuer, or an individual having a similar status or performing similar functions is an
8 agent only if the individual otherwise comes within the term; "agent" does not include
9 an individual excluded by a regulation adopted or order issued under this chapter;

10 (3) "bank" means

11 (A) a banking institution organized under the laws of the
12 United States;

13 (B) a member bank of the Federal Reserve System;

14 (C) any other banking institution, whether incorporated or not,
15 doing business under the laws of a state or of the United States, a substantial
16 portion of the business of which consists of receiving deposits or exercising
17 fiduciary powers similar to those permitted to be exercised by national banks
18 under the authority of the United States Comptroller of the Currency under 12
19 U.S.C. 92a, that is supervised and examined by a state or federal agency
20 having supervision over banks, and that is not operated for the purpose of
21 evading this chapter; and

22 (D) a receiver, conservator, or other liquidating agent of any
23 institution or firm included in (A), (B), or (C) of this paragraph;

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

27 (A) an agent;

28 (B) an issuer;

29 (C) a bank, trust company organized or chartered under the
30 laws of this state, or savings institution if its activities as a broker-dealer are
31 limited to those specified in 15 U.S.C. 78c(a)(4)(B)(i) - (vi), (viii) - (x), and

(xi) if limited to unsolicited transactions, or 15 U.S.C. 78c(a)(5)(B) and (C), or a bank that satisfies the conditions described in 15 U.S.C. 78c(a)(4);

(D) an international banking institution; or

(E) a person excluded by a regulation adopted or order issued under this chapter;

(5) "defraud" includes engaging in common law deceit;

(6) "department" means the Department of Commerce, Community, and Economic Development;

(7) "depository institution" means

(A) a bank; or

(B) a savings institution, trust company, credit union, or similar institution that is organized or chartered under the laws of a state or of the United States, authorized to receive deposits and supervised and examined by an official or agency of a state or the United States if its deposits or share accounts are insured to the maximum amount authorized by statute by the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund, or a successor authorized by federal law; "depository institution" does not include

(i) an insurance company or other organization primarily engaged in the business of insurance;

(ii) a Morris Plan bank; or

(iii) an industrial loan company that is not an "insured depository institution" as defined in 12 U.S.C. 1813(c)(2) (Federal Deposit Insurance Act), or any successor federal statute;

(8) "federal covered investment adviser" means a person registered under 15 U.S.C. 80b-1 - 80b-21 (Investment Advisers Act of 1940);

(9) "federal covered security" means a security that is, or upon completion of a transaction will be, a covered security under 15 U.S.C. 77r(b) (Securities Act of 1933) or rules or regulations adopted under that provision;

(10) "filing" means the receipt under this chapter of a record by the administrator or a designee of the administrator;

1 (11) "former AS 45.55" means AS 45.55 as it existed immediately
2 before July 1, 2017;

3 (12) "fraud" and "deceit" include common law deceit;

4 (13) "guaranteed" means guaranteed as to payment of all principal and
5 all interest;

6 (14) "institutional investor" means any of the following, whether
7 acting for itself or for others in a fiduciary capacity:

8 (A) a depository institution, a trust company organized or
9 chartered under the laws of this state, or an international banking institution;

10 (B) an insurance company;

11 (C) a separate account of an insurance company;

12 (D) an investment company as defined in 15 U.S.C. 80a-1 -
13 80a-64 (Investment Company Act of 1940);

14 (E) a broker-dealer registered under 15 U.S.C. 78a – 78pp
15 (Securities Exchange Act of 1934);

16 (F) an employee pension, profit-sharing, or benefit plan if the
17 plan has total assets in excess of \$10,000,000 or its investment decisions are
18 made by a named fiduciary, as defined in 29 U.S.C. 1102(a)(2) (Employee
19 Retirement Income Security Act of 1974), that is a broker-dealer registered
20 under 15 U.S.C. 78a - 78pp (Securities Exchange Act of 1934), an investment
21 adviser registered or exempt from registration under 15 U.S.C. 80b-1 - 80b-21
22 (Investment Advisers Act of 1940), an investment adviser registered under this
23 chapter, a depository institution, or an insurance company;

24 (G) a plan established and maintained by a state, a political
25 subdivision of a state, or an agency or instrumentality of a state or a political
26 subdivision of a state for the benefit of its employees if the plan has total assets
27 in excess of \$10,000,000 or its investment decisions are made by a legally
28 designated public official or by a named fiduciary, as defined in 29 U.S.C.
29 1102(a)(2) (Employee Retirement Income Security Act of 1974), that is a
30 broker-dealer registered under 15 U.S.C. 78a - 78pp (Securities Exchange Act
31 of 1934), an investment adviser registered or exempt from registration under

1 15 U.S.C. 80b-1 - 80b-21 (Investment Advisers Act of 1940), an investment
 2 adviser registered under this chapter, a depository institution, or an insurance
 3 company;

4 (H) a trust if that trust has total assets in excess of \$10,000,000,
 5 the trustee of the trust is a depository institution, and the participants in the
 6 trust are exclusively plans of the types identified in (F) or (G) of this
 7 paragraph, regardless of the size of their assets, except a trust that includes as
 8 participants self-directed individual retirement accounts or similar self-directed
 9 plans;

10 (I) an organization described in 26 U.S.C. 501(c)(3) (Internal
 11 Revenue Code), corporation, Massachusetts trust or similar business trust,
 12 limited liability company, or partnership, not formed for the specific purpose
 13 of acquiring the securities offered, with total assets in excess of \$10,000,000;

14 (J) a small business investment company licensed by the
 15 United States Small Business Administration under 15 U.S.C. 681(c) (Small
 16 Business Investment Act of 1958) with total assets in excess of \$10,000,000;

17 (K) a private business development company as defined in 15
 18 U.S.C. 80b-2(a)(22) (Investment Advisers Act of 1940) with total assets in
 19 excess of \$10,000,000;

20 (L) a federal covered investment adviser acting for its own
 21 account;

22 (M) a qualified institutional buyer, as defined in 17 C.F.R.
 23 230.144A, other than 17 C.F.R. 230.144A(a)(1)(i)(H), adopted under 15
 24 U.S.C. 77a - 77aa (Securities Act of 1933);

25 (N) a major United States institutional investor, as defined in
 26 17 C.F.R. 240.15a-6(b)(4)(i), adopted under 15 U.S.C. 78a - 78pp (Securities
 27 Exchange Act of 1934);

28 (O) any other person, other than an individual, of institutional
 29 character with total assets in excess of \$10,000,000 not organized for the
 30 specific purpose of evading this chapter; or

31 (P) any other person specified by regulation adopted or order

1 issued under this chapter;

2 (15) "insurance company" means a company organized as an insurance
3 company whose primary business is writing insurance or reinsuring risks underwritten
4 by insurance companies and that is subject to supervision by the insurance
5 commissioner or a similar official or agency of a state;

6 (16) "insured" means insured as to payment of all principal and all
7 interest;

8 (17) "international banking institution" means an international
9 financial institution of which the United States is a member and whose securities are
10 exempt from registration under 15 U.S.C. 77a - 77aa (Securities Act of 1933);

11 (18) "investment adviser" means a person that, for compensation,
12 engages in the business of advising others, either directly or through publications or
13 writings, as to the value of securities or the advisability of investing in, purchasing, or
14 selling securities or that, for compensation and as a part of a regular business, issues or
15 produces analyses or reports concerning securities; "investment adviser" includes a
16 financial planner or other person that, as an integral component of other financially
17 related services, provides investment advice to others for compensation as part of a
18 business or that holds itself out as providing investment advice to others for
19 compensation; "investment adviser" does not include

20 (A) an investment adviser representative;

21 (B) a lawyer, accountant, engineer, or teacher whose
22 performance of investment advice is solely incidental to the practice of the
23 person's profession;

24 (C) a broker-dealer or its agents whose performance of
25 investment advice is solely incidental to the conduct of business as a broker-
26 dealer and that does not receive special compensation for the investment
27 advice;

28 (D) a publisher of a bona fide newspaper, news magazine, or
29 business or financial publication of general and regular circulation;

30 (E) a federal covered investment adviser;

31 (F) a bank, a trust company organized or chartered under the

1 laws of this state, or a savings institution;

2 (G) any other person that is excluded by 15 U.S.C. 80b-1 - 80b-
3 21 (Investment Advisers Act of 1940) from the definition of investment
4 adviser; or

5 (H) any other person excluded by a regulation adopted or order
6 issued under this chapter;

7 (19) "investment adviser representative" means an individual
8 employed by or associated with an investment adviser or federal covered investment
9 adviser and who makes any recommendations or otherwise gives investment advice
10 regarding securities, manages accounts or portfolios of clients, determines which
11 recommendation or advice regarding securities should be given, provides investment
12 advice or offers to provide investment advice, receives compensation to solicit, offer,
13 or negotiate for the sale of or for selling investment advice, or supervises employees
14 who perform any of the foregoing; "investment adviser representative" does not
15 include an individual who

16 (A) performs only clerical or ministerial acts;

17 (B) is an agent whose performance of investment advice is
18 solely incidental to the individual's acting as an agent and who does not receive
19 special compensation for investment advisory services;

20 (C) is employed by or associated with a federal covered
21 investment adviser, unless the individual has a place of business in this state, as
22 that term is defined by rule adopted under 15 U.S.C. 80b-3a (Investment
23 Advisers Act of 1940) and is

24 (i) an investment adviser representative, as that term is
25 defined by rule adopted under 15 U.S.C. 80b-3a (Investment Advisers
26 Act of 1940); or

27 (ii) not a supervised person, as that term is defined in 15
28 U.S.C. 80b-2(a)(25) (Investment Advisers Act of 1940); or

29 (D) is excluded by a regulation adopted or order issued under
30 this chapter;

31 (20) "issuer" means a person that issues or proposes to issue a security,

1 subject to the following:

2 (A) the issuer of a voting trust certificate, collateral trust
3 certificate, certificate of deposit for a security, or share in an investment
4 company without a board of directors or individuals performing similar
5 functions is the person performing the acts and assuming the duties of
6 depositor or manager under the trust or other agreement or instrument under
7 which the security is issued;

8 (B) the issuer of an equipment trust certificate or similar
9 security serving the same purpose is the person by which the property is or will
10 be used or to which the property or equipment is or will be leased or
11 conditionally sold or that is otherwise contractually responsible for ensuring
12 payment of the certificate;

13 (C) the issuer of a fractional undivided interest in an oil, gas, or
14 other mineral lease or in payments out of production under a lease, right, or
15 royalty is the owner of an interest in the lease or in payments out of production
16 under a lease, right, or royalty, whether whole or fractional, that creates
17 fractional interests for the purpose of sale;

18 (21) "nonissuer transaction" or "nonissuer distribution" means a
19 transaction or distribution not directly or indirectly for the benefit of the issuer;

20 (22) "offer to purchase" includes an attempt or offer to obtain, or
21 solicitation of an offer to sell, a security or interest in a security for value; "offer to
22 purchase" does not include a tender offer that is subject to 15 U.S.C. 78n(d)
23 (Securities Exchange Act of 1934);

24 (23) "older person" means a natural person who is 60 years of age or
25 older;

26 (24) "person" means an individual, a corporation, a partnership, a
27 limited liability company, a limited partnership, a limited liability partnership, an
28 association, a joint-stock company, a trust in which the interests of the beneficiaries
29 are evidenced by a security, an unincorporated organization, a government, or a
30 political subdivision of a government;

31 (25) "place of business" of a broker-dealer, an investment adviser, or a

1 federal covered investment adviser means

2 (A) an office at which the broker-dealer, investment adviser, or
3 federal covered investment adviser regularly provides brokerage or investment
4 advice or solicits, meets with, or otherwise communicates with customers or
5 clients; or

6 (B) any other location that is held out to the general public as a
7 location at which the broker-dealer, investment adviser, or federal covered
8 investment adviser provides brokerage or investment advice or solicits, meets
9 with, or otherwise communicates with customers or clients;

10 (26) "price amendment" means the amendment to a registration
11 statement filed under 15 U.S.C. 77a - 77aa (Securities Act of 1933) or, if an
12 amendment is not filed, the prospectus or prospectus supplement filed under 15 U.S.C.
13 77a - 77aa (Securities Act of 1933) that includes a statement of the offering price,
14 underwriting and selling discounts or commissions, amount of proceeds, conversion
15 rates, call prices, and other matters dependent on the offering price;

16 (27) "principal place of business" of a broker-dealer or an investment
17 adviser means the executive office of the broker-dealer or investment adviser from
18 which the officers, partners, or managers of the broker-dealer or investment adviser
19 direct, control, and coordinate the activities of the broker-dealer or investment adviser;

20 (28) "record," except in the phrases "of record," "official record," and
21 "public record," means information that is inscribed on a tangible medium or that is
22 stored in an electronic or other medium and is retrievable in perceivable form;

23 (29) "sale" includes every contract of sale, contract to sell, or
24 disposition of a security or interest in a security for value, and "offer to sell" includes
25 every attempt or offer to dispose of, or solicitation of an offer to purchase, a security
26 or interest in a security for value; both terms include

27 (A) a security given or delivered with, or as a bonus because of,
28 a purchase of securities or any other thing constituting part of the subject of the
29 purchase and having been offered and sold for value;

30 (B) a gift of assessable stock involving an offer and sale; and

31 (C) a sale or offer of a warrant or right to purchase or subscribe

1 to another security of the same or another issuer and a sale or offer of a
 2 security that gives the holder a present or future right or privilege to convert
 3 the security into another security of the same or another issuer, including an
 4 offer of the other security;

5 (30) "Securities and Exchange Commission" means the United States
 6 Securities and Exchange Commission;

7 (31) "securities business" means a business that provides the services
 8 provided by

9 (A) investment advisers, federal covered investment advisers,
 10 or investment adviser representatives; or

11 (B) broker-dealers, issuers, or agents of broker-dealers or
 12 issuers;

13 (32) "security" means a note; stock; treasury stock; security future;
 14 bond; debenture; evidence of indebtedness; certificate of interest or participation in a
 15 profit-sharing agreement; collateral trust certificate; preorganization certificate or
 16 subscription; transferable share; investment contract; voting trust certificate; certificate
 17 of deposit for a security; viatical settlement; fractional undivided interest in oil, gas, or
 18 other mineral rights; put, call, straddle, option, or privilege on a security, certificate of
 19 deposit, or group or index of securities, including an interest in or based on the value
 20 of a put, call, straddle, option, or privilege on a security, certificate of deposit, or
 21 group or index of securities; put, call, straddle, option, or privilege entered into on a
 22 national securities exchange relating to foreign currency; or, in general, an interest or
 23 instrument commonly known as a "security"; or a certificate of interest or participation
 24 in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to
 25 subscribe to or purchase any of the foregoing; "security"

26 (A) includes

27 (i) both a certificated and an uncertificated security;

28 (ii) an investment in a common enterprise with the
 29 expectation of profits to be derived primarily from the efforts of a
 30 person other than the investor; in this sub-subparagraph, "common
 31 enterprise" means an enterprise in which the fortunes of the investor are

1 interwoven with those of the person offering the investment, a third
2 party, or other investors;

3 (iii) as an investment contract, among other contracts,
4 an interest in a limited partnership and a limited liability company, and
5 an investment in a viatical settlement or similar agreement; and

6 (iv) a viatical settlement interest;

7 (B) does not include

8 (i) a participation agreement entered under
9 AS 14.40.802 or an insurance or endowment policy subject to AS 21;

10 (ii) an interest in a contributory or noncontributory
11 pension or welfare plan subject to 29 U.S.C. 1001 - 1461 (Employee
12 Retirement Income Security Act of 1974);

13 (33) "self-regulatory organization" means a national securities
14 exchange registered under 15 U.S.C. 78a - 78pp (Securities Exchange Act of 1934), a
15 national securities association of broker-dealers registered under 15 U.S.C. 78a - 78pp
16 (Securities Exchange Act of 1934), a clearing agency registered under 15 U.S.C. 78a -
17 78pp (Securities Exchange Act of 1934), or the Municipal Securities Rulemaking
18 Board established under 15 U.S.C. 78o-4 (Securities Exchange Act of 1934);

19 (34) "sign" means, with present intent to authenticate or adopt a
20 record,

21 (A) to execute or adopt a tangible symbol; or

22 (B) to attach or logically associate with the record an electronic
23 symbol, sound, or process;

24 (35) "state" means a state of the United States, the District of
25 Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular
26 possession subject to the jurisdiction of the United States;

27 (36) "vulnerable adult" has the meaning given in AS 47.24.900.

28 **Sec. 45.56.995. Short title.** This chapter may be cited as the Alaska Securities
29 Act.

30 * **Sec. 26.** AS 45.63.080(a) is amended to read:

31 (a) AS 45.63.010, 45.63.015, 45.63.020, and AS 45.63.030(c) and (d) do not

1 apply to a sale or attempted sale

2 (1) of a security regulated under AS 45.56 [AS 45.55] or a security that
3 is exempted by AS 45.56.205 [AS 45.55.900] from regulation under AS 45.56
4 [AS 45.55];

5 (2) by a person registered with the United States Securities and
6 Exchange Commission when acting within the scope of the person's Securities and
7 Exchange Commission license;

8 (3) by an issuer, or a subsidiary of an issuer, of a class of securities that
9 is

10 (A) subject to 15 U.S.C. 78a - 78pp [15 U.S.C. 78a - 78lll]
11 (Securities Exchange Act of 1934); and

12 (B) either registered under 15 U.S.C. 78a - 78pp [15 U.S.C.
13 78a - 78lll] (Securities Exchange Act of 1934) or exempt from registration
14 under 15 U.S.C. 78l(g)(2)(A) - (C) or (E) - (H);

15 (4) by a real estate broker, associate real estate broker, or real estate
16 salesperson licensed under AS 08.88 and acting in a capacity covered by the license;

17 (5) by a person who has a certificate of registration under AS 08.18 to
18 operate as a contractor and is acting in a capacity covered by the certificate of
19 registration;

20 (6) by an embalmer or funeral director licensed under AS 08.42 and
21 acting in a capacity covered by the license;

22 (7) by an insurance agent, general agent, broker, solicitor, or adjuster
23 licensed under AS 21.27 and acting in a capacity covered by the license;

24 (8) by a person who is primarily soliciting the sale of a subscription to,
25 or advertising in, a newspaper of general circulation;

26 (9) by a charitable organization or paid solicitor if the organization or
27 solicitor is registered to make charitable solicitations under AS 45.68 and is acting in a
28 capacity that is covered by the registration;

29 (10) by a person who is primarily soliciting the sale of a sound
30 recording or book

31 (A) if the person

- 1 (i) has no minimum purchase requirements;
- 2 (ii) provides written notice of the buyer's right to cancel
- 3 at any time; and
- 4 (iii) allows the buyer to return the sound recording or
- 5 book and obtain a full refund; or
- 6 (B) through a membership in a book or record club
- 7 (i) where the club provides the buyer with a form that
- 8 the buyer may use to instruct the club not to ship the offered
- 9 merchandise; and
- 10 (ii) that is regulated by the Federal Trade Commission
- 11 as a negative option plan under 16 C.F.R. Part 425;
- 12 (11) by a publisher, or a publisher's agent operating under a written
- 13 agreement between a publisher and the agent, who is soliciting the sale of a publisher's
- 14 magazine if
- 15 (A) the buyer has the right to review the magazine and cancel
- 16 the subscription for the magazine within seven days after receipt of the
- 17 magazine or at the time the invoice is received by the buyer, whichever is later;
- 18 a cancellation request is timely if the request is mailed, properly addressed and
- 19 postmarked, postage prepaid, within seven days after receipt of the magazine;
- 20 (B) the right of cancellation and refund is fully disclosed in
- 21 writing to the buyer before or at the time the initial invoice is received by the
- 22 buyer;
- 23 (12) of services provided by a cable television system operating under
- 24 a franchise issued by a municipality;
- 25 (13) by a person who is soliciting for a business, or for an affiliate of a
- 26 business, that is regulated by the Regulatory Commission of Alaska;
- 27 (14) by a person whose solicitation is solely for telephone answering
- 28 services provided by the person or the person's employer;
- 29 (15) of property from a mail order catalog that is published on a
- 30 regular, periodic basis and that describes or pictures the items for sale and prominently
- 31 provides the specific price of each item;

(16) by a supervised financial institution or the parent, subsidiary, or affiliate of a supervised financial institution; in this paragraph, "supervised financial institution" means a commercial bank, savings bank, mutual savings bank, trust company, savings and loan association, credit union, industrial loan company, personal property broker, consumer finance lender, commercial finance lender, or other financial institution if the financial institution is subject to regulation by this state or the United States;

(17) by an insurer or the parent, subsidiary, or affiliate of an insurer;

(18) by a person who solicits a sale by a contact by telephonic means without intending to complete the sales presentation during the contact, who does not complete the sales presentation during the contact, and who only completes the sales presentation at a later meeting in person, unless at the later meeting the solicitor attempts to collect payment for property or services delivered before the later meeting;

(19) of an item of personal property, including a food product, that is made by hand by an individual, if the sale or attempted sale of the item is made by the individual who made the item; in this paragraph, "made by hand" includes the use of ordinary household devices if the majority of the value of the item is added by the labor of the individual.

* **Sec. 27.** AS 45.66.220 is amended to read:

Sec. 45.66.220. Exemptions. This chapter does not apply to a sale of or an offer to sell

(1) a business opportunity if the total amount of the payments to be made by the buyer under the contract is less than \$250;

(2) a franchise under **16 C.F.R. Part 436** [16 C.F.R. 436];

(3) an ongoing business operated by the seller that is to be sold in its entirety;

(4) a business opportunity to an ongoing business if the seller will provide products, equipment, supplies, or services that are to be sold by the buyer in connection with the buyer's ongoing business;

(5) sales demonstration equipment, materials, or samples for use in sales demonstrations and not for resale, or product inventory sold to the buyer at a

1 bona fide wholesale price;

2 (6) a business opportunity by an executor, an administrator, a marshal,
3 a receiver, a trustee in bankruptcy, or a guardian or conservator, or under a judicial
4 sale;

5 (7) a security registered under AS 45.56 [AS 45.55] or a security that
6 is exempted by AS 45.56.205 [AS 45.55.900] from registration under AS 45.56
7 [AS 45.55];

8 (8) a business opportunity if the sale or offer is made by a person
9 registered with the United States Securities and Exchange Commission when acting
10 within the scope of the person's Securities and Exchange Commission license or by a
11 person registered by the state under AS 45.56 [AS 45.55] when acting within the
12 scope of registration;

13 (9) a business opportunity by an issuer or a subsidiary of an issuer of a
14 class of securities that is

15 (A) subject to 15 U.S.C. 78a - 78pp [15 U.S.C. 78a - 78lll]
16 (Securities Exchange Act of 1934); and

17 (B) registered under 15 U.S.C. 78a - 78pp [15 U.S.C. 78a -
18 78lll] (Securities Exchange Act of 1934) unless exempt from registration under
19 15 U.S.C. 78l(g)(2)(A) - (C) or (E) - (H);

20 (10) a business opportunity in which the buyer is

21 (A) a bank, savings and loan association, trust company,
22 insurance company, credit union, or investment company under 15 U.S.C. 80a-
23 1 - 80a-64 (Investment Company Act of 1940), pension or profit sharing trust,
24 or other financial institution or institutional buyer; or

25 (B) a broker-dealer registered under AS 45.56.405 [AS 45.55];

26 (11) a business opportunity that involves a marketing plan made in
27 conjunction with the registration of a trademark or service mark under 15 U.S.C. 1051
28 - 1127 (Trademark Act of 1946) if the seller has a minimum net worth of \$1,000,000
29 as determined on the basis of the seller's most recent audited financial statement
30 prepared within 13 months of the first offer to sell in this state; net worth may be
31 determined on a consolidated basis if one person owns at least 80 percent of the seller

1 and that one person expressly guarantees the obligations of the seller that arise under
2 the sale or offer claimed to be exempt under this paragraph; or

3 (12) a business opportunity in which either the seller or the buyer is
4 licensed as a real estate broker, associate real estate broker, or real estate salesperson
5 under AS 08.88 and the sale or offer is regulated by AS 08.88.

6 * **Sec. 28.** AS 45.66.900(11) is amended to read:

7 (11) "securities or investment laws" means **AS 45.56** [AS 45.55]
8 (Alaska Securities Act) or a substantially similar statute of another jurisdiction, **15**
9 **U.S.C. 77a - 77aa** [15 U.S.C. 77a - 77bbbb] (Securities Exchange Act of 1933), **15**
10 **U.S.C. 78a - 78pp** [15 U.S.C. 78a - 78lll] (Securities Exchange Act of 1934), or 15
11 U.S.C. 80a-1 - 80b-21 (Investment Company Act of 1940/Investment Advisers Act of
12 1940);

13 * **Sec. 29.** AS 45.55.010, 45.55.020, 45.55.023, 45.55.025, 45.55.027, 45.55.028, 45.55.030,
14 45.55.035, 45.55.040, 45.55.050, 45.55.060, 45.55.070, 45.55.075, 45.55.080, 45.55.090,
15 45.55.100, 45.55.110, 45.55.120, 45.55.150, 45.55.155, 45.55.170, 45.55.175, 45.55.900,
16 45.55.905(c), 45.55.915, 45.55.930, 45.55.935(b), 45.55.970, 45.55.980, 45.55.990, and
17 45.55.995 are repealed.

18 * **Sec. 30.** The uncoded law of the State of Alaska is amended by adding a new section to
19 read:

20 **INDIRECT COURT RULE AMENDMENTS.** (a) The provisions of AS 45.56.630(c)
21 - (e), enacted by sec. 25 of this Act, have the effect of changing Rules 4 and 5, Alaska Rules
22 of Civil Procedure, by allowing service on the administrator in certain cases.

23 (b) The provisions of AS 45.56.650(f), enacted by sec. 25 of this Act, have the effect
24 of changing Rule 54, Alaska Rules of Civil Procedure, by expanding the definition of
25 judgments to include final judgments of the administrator issued under AS 45.56.650, enacted
26 by sec. 25 of this Act.

27 (c) The provisions of AS 45.56.650(g), enacted by sec. 25 of this Act, have the effect
28 of changing Rule 90, Alaska Rules of Civil Procedure, by changing the contempt procedure in
29 certain cases.

30 (d) The provisions of AS 45.56.655(c), enacted by sec. 25 of this Act, have the effect
31 of changing Rule 65, Alaska Rules of Civil Procedure, by changing the procedure for

1 injunctions in certain cases by prohibiting requiring the administrator to post a bond.

2 (e) The provisions of AS 45.56.675(a), enacted by sec. 25 of this Act, have the effect
3 of changing Rule 602, Alaska Rules of Appellate Procedure, by changing the time for filing a
4 notice of appeal.

5 * **Sec. 31.** The uncodified law of the State of Alaska is amended by adding a new section to
6 read:

7 TRANSITION: REGULATIONS. The Department of Commerce, Community, and
8 Economic Development may adopt regulations necessary to implement AS 45.56, enacted by
9 sec. 25 of this Act. The regulations take effect under AS 44.62 (Administrative Procedure
10 Act), but not before the effective date of this section.

11 * **Sec. 32.** The uncodified law of the State of Alaska is amended by adding a new section to
12 read:

13 TRANSITION: APPLICATION OF ACT TO EXISTING PROCEEDINGS AND
14 EXISTING RIGHTS AND DUTIES. (a) Former AS 45.55 exclusively governs all actions or
15 proceedings that are pending on the effective date of sec. 25 of this Act or that may be
16 instituted based on conduct occurring before the effective date of sec. 25 of this Act, but a
17 civil action may not be maintained to enforce any liability under former AS 45.55, unless
18 instituted within any period of limitation that applied when the cause of action accrued or
19 within five years after the effective date of sec. 25 of this Act, whichever is earlier.

20 (b) All effective registrations under former AS 45.55 and all administrative orders
21 relating to the registrations, regulations, statements of policy, interpretative opinions,
22 declaratory rulings, determinations to take no action, and conditions imposed on the
23 registrations under former AS 45.55 remain in effect while they would have remained in
24 effect if this Act had not been enacted. They are considered to have been filed, issued, or
25 imposed under this Act, but are exclusively governed by former AS 45.55, unless removed or
26 replaced by the administrator.

27 (c) Former AS 45.55 exclusively applies to an offer or sale made within one year after
28 the effective date of sec. 25 of this Act under an offering made in good faith before the
29 effective date of sec. 25 of this Act based on an exemption available under former AS 45.55.

30 (d) In this section, "former AS 45.55" means AS 45.55 as it existed immediately
31 before July 1, 2017.

1 * **Sec. 33.** The uncoded law of the State of Alaska is amended by adding a new section to
2 read:

3 REVISOR'S INSTRUCTION. The revisor of statutes is requested to change the
4 chapter heading of AS 45.55 from "Alaska Securities Act" to "Alaska Native Claims
5 Settlement Act Corporations Proxy Solicitations and Initial Issuance of Stock."

6 * **Sec. 34.** The uncoded law of the State of Alaska is amended by adding a new section to
7 read:

8 CONDITIONAL EFFECT. AS 45.56.630(c) - (e), 45.56.650(f) and (g), 45.56.655(c),
9 and 45.56.675(a), enacted by sec. 25 of this Act, take effect only if sec. 30 of this Act receives
10 the two-thirds majority vote of each house required by art. IV, sec. 15, Constitution of the
11 State of Alaska.

12 * **Sec. 35.** Section 31 of this Act takes effect immediately under AS 01.10.070(c).

13 * **Sec. 36.** Except as provided in sec. 35 of this Act, this Act takes effect January 1, 2018.