

Chapter 8. Securities.

(Words in **boldface and underlined** indicate language being added; words [CAPITALIZED AND BRACKETED] indicate language being deleted. Complete new sections are not in boldface or underlined.)

3 AAC 08.005 is amended to read:

3 AAC 08.005. Scope. (a) The applicable provisions of **3 AAC 08.005 - 3AAC 08.075** [3 AAC 08.005 - 3 AAC 08.070] set out the regulatory standards for registration, exemption to registration, renewal of registration, qualification and examination requirements, required fees, effective dates of registration, and related matters for the following occupations under **AS 45.56** [AS 45.55]:

- (1) broker-dealer;
- (2) agent;
- (3) [STATE] investment adviser;
- (4) investment adviser representatives.

(b) The applicable provisions of **3 AAC 08.010 - 3 AAC 08.075** [3 AAC 08.010 - 3 AAC 08.018] also set out the regulatory standards for the administrator's acceptance of filing of notice and renewal of notice, required fees, required filings, effective date of notice, renewal of notice on federal covered investment advisers, and related matters. (Eff. 10/1/99, Register 151; am ___/___/_____, Register _____)

Authority:	[AS 45.55.040]	[AS 45.55.950]	AS 45.56.360
	[AS 45.55.050]	AS 45.56.100	AS 45.56.670
	[AS 45.55.060]	AS 45.56.190	

3 AAC 08.007 is repealed.

3 AAC 08.007. Applicability of registration requirements to supervised persons of state investment advisers. Repealed. (Eff. 4/19/2000, Register 154; repealed ___/___/_____, Register _____)

3 AAC 08.010 is repealed and readopted to read:

3 AAC 08.010 Registration; renewal; withdrawal or termination of registration. (a)

An applicant for registration as a broker-dealer, a broker-dealer agent, or agent of the issuer must submit an application as provided in this section, on a form prescribed by the administrator, in addition to any documents required by this section and fees required by 3 AAC 08.071. The completed application, documents, and fees must be filed through the Central Registration Depository ("CRD") operated by the Financial Industry Regulatory Authority ("FINRA"). The CRD may request, and an applicant may provide, additional information or documentation not specifically listed here and necessary to complete a full review of the applicant's qualifications. The CRD will not issue a certificate of registration, but a registered individual may request proof of status from the CRD.

(b) In addition to any fees required by 3 AAC 08.071, an application for

(1) a broker-dealer registration must include

(A) a completed affidavit of no sales, to be filed with the administrator;

(B) proof of membership in FINRA; and

(C) the Securities and Exchange Commission ("SEC") Form BD (Uniform Application for Broker Dealer Registration);

(2) a broker-dealer agent registration must include

(A) a FINRA Form U-4 (Uniform Application for Securities Industry Registration or Transfer);

(B) if exams are required by the SEC or FINRA, proof that applicant passed the exam;

(C) if applicable, any additional information required by the SEC, FINRA, or the CRD;

(D) if the applicant is based out-of-state, evidence that the applicant is registered or exempt from registration in the applicant's home state; and

(E) for a dual registration,

(i) a written request from the applicant to the administrator identifying all broker-dealers with which the applicant will associate and the reasons for dual registration;

(ii) a written representation from each broker-dealer with which the applicant intends to associate assuming full responsibility for applicant at all times for activities covered under or implicated by AS 45.56; and

(iii) a signed statement that the applicant will disclose dual registration to each of the applicant's clients.

(3) an agent of the issuer, filed by the applicant or sponsoring issuer, must include a FINRA Form U-4 with original signatures and

(A) if required by the administrator, proof of passage of applicable securities examinations; and

(B) if registering with two or more issuers in a given 12-month period and requested by the division, an application and any fees required under 3 AAC 05.071 to be a broker-dealer.

(c) Post-registration, registrants must

(1) if a broker-dealer

(A) file with CRD any corrective amendments to SEC Form BD within 30 days after the date the material change occurred or was discovered, whichever is later; and

(B) file with FINRA any SEC Form X-17A-5 FOCUS reports, and provide a copy to the administrator if requested;

(2) if a broker-dealer agent, file with the CRD any corrective amendments to FINRA Form U-4; and

(3) if an agent of the issuer, file with the administrator any corrective amendments to FINRA Form U-4 within 30 days after the date the material change occurred or was discovered, whichever is later.

(d) Registration of a broker dealer agent under this section expires annually at the end of the calendar year and may be renewed by filing the applicable renewal fee required by 3 AAC 03.071 along with any updates to the registrant's filed forms before December 31.

(e) If an applicant's most recent registration in the state terminated two or more years before the date the administrator receives a new application, the applicant must submit a complete registration package and show proof that the applicant has taken and passed any applicable FINRA and SEC examination. The administrator may waive the requirement to take the exams upon written request of the applicant under this subsection.

(f) A registrant may withdraw or terminate registration under this subsection. Withdrawal or termination is effective 30 days after the administrator receives the required withdrawal form, unless the administrator notifies the registrant otherwise. A withdrawal of a broker-dealer registration automatically terminates the registration of the broker-dealer agent for the withdrawing broker-dealer. Required withdrawal forms are

(1) if a broker-dealer, SEC Form BDW (Uniform Request for Withdrawal from Registration as a Broker-Dealer);

(2) if a broker-dealer agent, FINRA Form U-5 (Uniform Termination Notice for Securities Industry Registration);

(3) if an agent of the issuer, FINRA Form U-5.

(g) Every broker-dealer office must designate a registered broker-dealer agent to act in a supervisory capacity. The designated supervisor must successfully complete the FINRA supervisor examination requirements. A supervisor of an office which is neither a principal office location nor an office of supervisory jurisdiction ("OSJ") may be located out-of-state so long as the person is registered in the state and meets the examination requirements of this subsection. Offices may not operate without a designated supervisor for longer than 30 days. Failure to designate a new supervisor within this time may result in the revocation or suspension of the broker-dealer registration pending compliance with this section.

(h) A registrant may transfer a registration to another individual through payment of any applicable fees under 3 AAC 08.071 and either

(1) following the procedures specified by the CRD if the registration is for a broker-dealer or a broker-dealer agent; or

(2) filing a FINRA Form U-4 if the registration is for an agent of the issuer.

(i) A application for registration will be considered abandoned if an applicant

(1) has not presented proof of passage of an examination required under this section within 180 days of the application being received;

(2) is based out-of-state and has not presented proof of registration or exemption in the applicant's home state within 90 days of the application being received

(3) has been requested to submit additional information under (a) of this section and has failed to respond within 60 days; or

(4) has received a request under AS 45.56.680 and has failed to respond within 30 days.

(j) In addition to complying with AS 45.56 and this section, a foreign corporation doing business in this state as a broker-dealer, an agent, an investment adviser must register under AS 10.06 before doing business in this state, unless exempted under AS 10.06.718. (Eff. 2/20/72, Register 41; am 10/1/99, Register 151; am ___/___/___, Register ___)

Authority: AS 45.56.300 AS 45.56.330 AS 45.56.670

3 AAC 08.012 is repealed:

3 AAC 08.012. Exemptions from qualifying examination. Repealed. (Eff. 10/1/99.

Register 151; repealed ___/___/___, Register ___)

Editor's note. As of Register ___ (_____ 2019), the substance of former 3 AAC 08.012 appears in 3 AAC 08.073.

3 AAC 08.013 is repealed:

3 AAC 08.013. Qualification requirements for registration of investment adviser representatives. Repealed. (Eff. 10/1/99, Register 151; am 4/19/2000, Register 154; repealed ___/___/___, Register ___)

Editor's note. As of Register ___ (_____ 2019), following statutory amendments made in ch. 65, SLA 2018, the substance of 3 AAC 08.013 appears in 3 AAC 08.056.

3 AAC 08.014 is repealed:

3 AAC 08.014. Renewal of registration or notice; effective date of renewal or notice.

Repealed. (Eff. 10/1/99, Register 151; am 4/19/2000, Register 154, repealed ___/___/___,

Register ___)

Editor's note. As of Register ___ (_____ 2019), following statutory amendments made in ch. 65, SLA 2018, the substance of 3 AAC 08.014 appears in 3 AAC 08.010.

3 AAC 08.015 is repealed:

3 AAC 08.015. Fees and assessments. Repealed. (Eff. 9/8/91, Register 119; am 10/1/99,

Register 151; am 1/17/2016, Register 217; repealed ___/___/___, Register ___)

Editor's note. As of Register ___ (_____ 2019), following statutory amendments made in ch. 65, SLA 2018, the substance of 3 AAC 08.015 appears in 3 AAC 08.071.

3 AAC 08.016 is repealed:

3 AAC 08.016. Transferred or successor registration or notice. Repealed. (Eff.

10/1/99, Register 151; repealed ___/___/___, Register ___).

Editor's note. As of Register ___ (_____ 2019), following statutory amendments made in ch. 65, SLA 2018, the substance of 3 AAC 08.016 appears in 3 AAC 08.010.

3 AAC 08.017 is repealed:

3 AAC 08.017. Central registration depository system. Repealed. (Eff. 10/1/99,

Register 151; repealed ___/___/___, Register ___).

Editor's note. As of Register ___ (_____ 2019), following statutory amendments made in ch. 65, SLA 2018, the substance of 3 AAC 08.017 appears in 3 AAC 08.010.

3 AAC 08 is amended by adding a new section to read:

3 AAC 08.019. Notice of name change or transfer of control. Unless a shorter time is permitted by the administrator, a broker-dealer shall file with the CRD a notice of name change or transfer of control not less than 30 days before the date on which the transfer of control or change of name is to become effective. (Eff. ___/___/_____, Register _____)

Authority: AS 45.56.380 AS 45.56.420 AS 45.56.670

3 AAC 08.021(a) is amended to read:

(a) A broker-dealer registered or required to be registered under **AS 45.56** [AS 45.55] shall comply with the net capital requirements for brokers and dealers set out in 17 C.F.R. 240.15c3-1, the rules on use of customer free-credit balances set out in 17 C.F.R. 240.15c3-2, and the customer-protection reserves and custody of securities requirements set out in 17 C.F.R. 240.15c3-3.

3 AAC 08.021(b) is amended to read:

(b) A broker-dealer registered or required to be registered under **AS 45.56** [AS 45.55] shall comply with 17 C.F.R. 240.17a-11, and shall file with the administrator upon request copies of all reports and notices required under 17 C.F.R. 240.17a-5, 17 C.F.R. 240.17a-10, and 17 C.F.R. 240.17a-11. The administrator will, in the administrator's discretion, by order restrict or condition the broker-dealer's right to transact business in this state as the administrator finds appropriate for the protection of investors.

3 AAC 08.021(d) is repealed:

(d) Repealed. [A BROKER-DEALER REGISTERED OR REQUIRED TO BE

REGISTERED UNDER AS 45.55 WHOSE BUSINESS IS EXCLUSIVELY WITHIN THIS STATE, WHO DOES NOT MAKE USE OF A FACILITY OF A NATIONAL SECURITIES EXCHANGE, AND WHO IS NOT REGISTERED UNDER 15 U.S.C. 78O (SEC. 15 OF THE SECURITIES EXCHANGE ACT OF 1934), SHALL POST A SURETY BOND ON THE FORM PRESCRIBED BY THE ADMINISTRATOR IN AN AMOUNT NOT LESS THAN \$35,000. A DEPOSIT OF CASH OR LIQUID SECURITIES ACCEPTABLE TO THE ADMINISTRATOR MAY BE POSTED WITH THE ADMINISTRATOR IN PLACE OF THE BOND.]

3 AAC 08.0 21 is amended by adding new subsections to read:

(e) A broker-dealer does not need to file a broker-dealer financial report with the division unless requested by the administrator.

(f) A broker-dealer registered or required to be registered under AS 45.56 shall have and maintain an adjusted net capital in compliance with Rule 15c3-1 (17 C.F.R. § 240.15c3-1) under the Securities Exchange Act of 1934.

(g) A broker-dealer shall file with the administrator an immediate notice whenever the net capital of the broker-dealer is less than is required in 3 AAC 08.021. (Eff. 4/19/00, Register 154; am ___/___/_____, Register _____)

Authority:	[AS 45.55.040]	[AS 45.55.950]	<u>AS 45.56.670</u>
	[AS 45.55.050]		<u>AS 45.56.300</u>
	[AS 45.55.060]		<u>AS 45.56.420</u>

3 AAC 08.025 is repealed.

3 AAC 08.025. Bonding requirements for certain investment advisers. Repealed.

(Eff. 3/24/76, Register 57; am 10/1/99, Register 151; am 4/19/2000, Register 154; repealed ___/___/___, Register ___)

Editor's note. Effective ___/___/___, Register ___, ___ 2019, following statutory amendments made in ch. 65, SLA 2018 bonding requirements for certain investment advisers appears in 3 AAC 08.058.

3 AAC 08 is amended by adding a new section to read:

3 AAC 08.026. Broker-dealer conduct on the premises of financial institutions. (a) A broker-dealer may not conduct broker-dealer services on the premises of a financial institution where retail deposits are taken unless the broker-dealer complies initially and continuously with the requirements set forth in FINRA Rule 3160.

(b) This section does not alter or abrogate a broker-dealer's obligations to comply with other applicable laws, rules, or regulations that may govern the operations of broker-dealers and their agents, including but not limited to, supervisory obligations. These rules do not apply to broker-dealer services provided to nonretail customers.

(c) In this section,

(1) "financial institution" means federal and state-chartered banks, savings and loan associations, savings banks, credit unions, and the service corporations of such institutions located in Alaska.

(2) "broker-dealer services" means the investment banking or securities business as defined in paragraph (u) of Article I of FINRA By-Laws. (Eff. ___/___/___, Register ___)

Authority: AS 45.56.500 AS 45.56.510 AS 45.56.670

3 AAC 08.027 is repealed.

3 AAC 08.027. Minimum financial requirements for state investment officers.

Repealed. (Eff. 3/24/76, Register 57; am 4/19/2000, Register 154; repealed ___/___/___, Register ___)

Editor’s note. As of Register ___ (_____ 2019), following statutory amendments made in ch. 65, SLA 2018, the substance of former 3 AAC 08.027, appears in 3 AAC 08.057.

3 AAC 08.029 is repealed.

3 AAC 08.029. Custody of client funds or securities by state investment advisers.

Repealed. (Eff. 3/24/76, Register 57; am 4/19/2000, Register 154; repealed ___/___/___, Register ___)

Editor’s note. As of Register ___ (_____ 2019), following statutory amendments made in ch. 65, SLA 2018, the substance of former 3 AAC 08.029, appears in 3 AAC 08.059.

3 AAC 08.030(a) is repealed and readopted to read:

(a) Unless otherwise provided by order of the SEC, every registered broker-dealer subject to the Securities Exchange Act of 1934 (“the 1934 Act”) and which is a member of FINRA shall prepare and keep current the records required by the 1934 Act and FINRA.

(Eff. 2/20/72, Register 41; am 4/19/00, Register 154; am ___/___/___, Register ___)

Authority: [AS 45.55.050] [AS 45.55.950] **AS 45.56.670**
[AS 45.55.060] **AS 45.56.420**

3 AAC 08.040 is repealed.

3 AAC 08.040. Books and records of state investment advisers. Repealed. (Eff.

2/20/72, Register 41; am 4/19/2000, Register 154, repealed ___/___/___, Register ___)

Editor’s note. Effective ___/___/___, Register ___, 2019, the substance of former 3 AAC 08.040 appears in 3 AAC 08.064.

The introductory language of 3 AAC 08.042 is amended to read:

3 AAC 08.042. Books and records of agents of issuers. An agent of an issuer registered or required to be registered under AS 45.56.330 [AS 45.55.030] shall make, maintain, and preserve for a period of not less than three years records containing the following information:

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(Eff. 4/19/00, Register 154; am ___/___/___, Register ___)

Authority: [AS 45.55.950] AS 45.56.420 AS 45.56.670

3 AAC 08 is amended to add a new section to read:

3 AAC 08.045. Disclosure to clients for agent of issuers. Upon or before completing each purchase or sale of a security or completing a debit or credit for securities, cash, and other items for account of others, an agent of an issuer registered or required to be registered under AS 45.56 shall notify a customer in writing of

- (1) the identity and price of the security;
- (2) the account for which the transaction was entered;
- (3) the date of execution;
- (4) the name of the person handling the transaction; and
- (5) whether the transaction was unsolicited.

(Eff. ___/___/___, Register ___)

Authority: AS 45.56.300 AS 45.56.350 AS 45.56.670
AS 45.56.330 AS 45.56.420
AS 45.56.340 AS 45.56.430

3 AAC 08 is amended by adding a new section to read:

3 AAC 08.046. Use of internet for advertising for broker-dealers and agents. (a) A broker-dealer or an agent who uses the internet to distribute information on available products and services through communications made on the internet directed generally to anyone having access to the internet and transmitted through internet communications shall not be considered to be transacting business in this state for purposes of AS 45.56 provided that:

(1) the internet communication contains a legend clearly stating that the broker-dealer or agent in question:

(A) may only transact business in this state if first registered or exempted from state broker-dealer or agent registration requirements; and

(B) may not make a follow-up, individualized response to a person in this state by the broker-dealer or agent that involve either effecting or attempting to effect transactions in securities, or rendering of personalized investment advice for compensation, unless the broker-dealer or agent complies with applicable registration requirements, or an applicable exemption applies;

(2) the internet communication contains a mechanism, including technical “firewalls” or other implemented policies and procedures, reasonably designed to ensure that before any subsequent, direct communication with a prospective customer or client in this state, the broker-dealer and agent are first registered in this state or qualify for an exemption from the registration requirement;

(3) the internet communication is limited to the dissemination of general information on products and services and does not involve either affecting or attempting to effect transactions in securities, or rendering personalized investment advice for compensation in this state; and

(4) with respect to broker-dealer or agent internet communications:

(A) the broker-dealer affiliation of the agent is prominently disclosed

within the internet communication;

(B) the broker-dealer with whom the agent is associated retains responsibility for reviewing and approving the content of any internet communication by agent;

(C) the broker-dealer with whom the agent is associated first authorizes the distribution of information on the particular products and services through the internet communication; and

(D) when disseminating information through the internet communication, the agent acts within the scope of the authority granted by the broker-dealer.

(b) This section extends to state broker-dealer and agent registration requirements only, and does not excuse compliance with applicable securities registration, antifraud or related provisions.

(c) Nothing in this section shall be construed to affect the activities of any broker-dealer or agent engaged in business in this state that is not subject to the jurisdiction of the director as provided in the National Securities Markets Improvements Act of 1996, as amended. (Eff.

____ / ____ / _____, Register _____)

Authority: AS 45.56.420 AS 45.56.670

3 AAC 08 is amended by adding a new section to read:

3 AAC 08.047. Dishonest and unethical practices by broker-dealers and agents.

(a) A broker-dealer that engages in one or more dishonest or unethical practice under AS 45.56.440 may be subject to denial, suspension, or revocation of registration or other action authorized by law. Actions by a broker-dealer that may constitute grounds for denial, suspension, or revocation of registration or other action by the administrator include

(1) engaging in a pattern of unreasonable and unjustifiable delays in the delivery

of securities purchased by any of the broker-dealer's customers or in the payment upon request of free credit balances reflecting completed transactions of any of its customers;

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

(3) recommending to a customer the purchase, sale, or exchange of any security without reasonable grounds to believe that such transaction or recommendation is in the best interest for the customer as defined in 3 AAC 08.050.

(4) executing a transaction on behalf of a customer without authorization to do so;

(5) exercising any discretionary power in effecting a transaction for a customer's account without first obtaining written discretionary authority from the customer, unless the discretionary power relates solely to the time and/or price for the executing of orders;

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

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

(8) hypothecating a customer's securities without having a lien thereon unless the broker-dealer secures from the customer a properly executed written consent promptly after the initial transaction, except as permitted by Rules of the Securities and Exchange Commission;

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

(10) failing to furnish to a customer purchasing securities in an offering, no later than the due date of confirmation of the transaction, either a final prospectus or a preliminary prospectus and an additional document, which together include all information set forth in the final prospectus;

(11) charging unreasonable and inequitable fees for services performed, including miscellaneous services such as collection of monies due for principal, dividends or interest, exchange or transfer of securities, appraisals, safekeeping, or custody of securities and other services related to its securities business;

(12) offering to buy from or sell to any person any security at a stated price unless the broker-dealer is prepared to purchase or sell, as the case may be, at a price and under the condition as stated at the time of such offer to buy or sell;

(13) representing that a security is being offered to a customer "at the market" or a price relevant to the market price unless the broker-dealer knows or has reasonable grounds to believe that a market for the security exists other than that made, created, or controlled by the broker-dealer, or by any such person for whom the broker-dealer is acting or with whom the broker-dealer is associated in the distribution, or any person controlled by, controlling, or under common control with the broker-dealer;

(14) effecting any transaction in, or inducing the purchase or sale of, any security by means of any manipulative, deceptive, or fraudulent device, practice, plan, program, design, or contrivance, which may include:

(A) effecting any transaction in a security which involves no change in the beneficial ownerships thereof;

(B) entering an order or orders for the purchase or sale of any security with the knowledge that an order or orders of substantially the same size, at substantially the same time and substantially the same price, for the sale of any such security, has been or will be entered by or for the same or different parties for the purpose of creating a false or misleading appearance of active trading in the security or a false or misleading appearance with respect to the market for the security; however, nothing in this subparagraph prohibits a broker-dealer from entering bona fide agency cross transactions for customers;

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

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

(16) publishing or circulating, or causing to be published or circulated, any notice, circular, advertisement, newspaper article, investment service, or communication of any kind which purports to report any transaction as a purchase or sale of any security unless the broker-dealer believes that such transaction was a bona fide purchase or sale of the security; or which purports to quote the bid price or asked price for any security, unless the broker-dealer believes that such quotation represents a bona fide bid for, or offer of, the security;

(17) using any advertising or sales presentation in a deceptive or misleading manner, including:

(A) distributing of any nonfactual data, material, or presentation based on conjecture; unfounded or unrealistic claims or assertions in any brochure, flyer, or display by words, pictures, or graphs; or any advertising or sales presentation otherwise designed to supplement, detract from, supersede, or defeat the purpose or effect of any prospectus or disclosure;

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

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

supplementary material is not authorized;

(18) failing to disclose that the broker-dealer is controlled by, controlling, affiliated with, or under common control with the issuer of any security before entering into any contract with or for a customer for the purchase or sale of the security; failing to disclose the existence of the control to such customer, and if a disclosure is not made in writing, it shall be supplemented by the giving or sending of written disclosure at or before the completion of the transaction;

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

(20) failure or refusal to furnish a customer, upon reasonable request, information to which the customer is entitled, or to respond to a formal written request or complaint;

(21) engaging in other conduct such as forgery, embezzlement, nondisclosure, incomplete disclosure or misstatement of material facts, or manipulative or deceptive practices may also be grounds for denial, suspension or revocation of registration.

(b) An agent that engages in one or more dishonest or unethical practice under AS 45.56.440 may be subject to denial, suspension, or revocation of registration or other action authorized by law. Actions by an agent that may constitute grounds for denial, suspension, or revocation of registration or other action by the administrator include

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

(2) effecting securities transactions not recorded on the regular books or records of the broker-dealer which the agent represents, unless the transactions are authorized in writing by the broker-dealer prior to execution of the transaction;

(3) establishing or maintaining an account containing fictitious information in

order to execute transactions which would otherwise be prohibited;

(4) sharing directly or indirectly in profits or losses in the account of any customer without the written authorization of the customer and the broker-dealer which the agent represents;

(5) dividing or otherwise splitting the agent's commissions, profits, or other compensation from the purchase or sale of securities with any person not also registered as an agent for the same broker-dealer, or for a broker-dealer under direct or indirect common control;

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

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

(8) engaging in conduct specified in subsection (a)(2), (3), (4), (5), (6), (9), (10), (14), (15), (16), or (17).

(c) notwithstanding the provisions of (b)(5) of this section, a broker-dealer or agent may

(1) share a commission, discount, or other remuneration from the purchase or sale of a security with:

(A) a depository institution as defined in AS 45.56.900(7);

(B) a bank holding company approved by the board of governors of the federal reserve bank pursuant to, 12 U.S.C. 1841 (Bank Holding Company Act of 1956);
or

(C) a financial holding company approved by the board of governors of the federal reserve bank pursuant to the Bank Holding Company Act of 1956, 70 Stat. 133, 12 U.S.C. 1841, as amended;

(2) provide to an employee of a depository institution compensation for the referral of a customer if the compensation is a nominal one-time cash fee of a fixed dollar

amount and the payment of the fee is not contingent on whether the referral results in a purchase or sale of a security.

(d) In addition to the prohibitions in (a) and (b) of this section, a broker-dealer or agent may not

(1) in connection with the solicitation of a sale or purchase of an over the counter (OTC) unlisted non-NASDAQ security, fail to promptly provide the most current prospectus or the most recently filed periodic report filed under Section 13 of the Securities Exchange Act when requested to do so by a customer;

(2) mark order tickets or confirmations as unsolicited when in fact the transaction was solicited;

(3) for any month in which activity has occurred in a customer's account, but in no event less than every three months, fail to provide each customer with a statement of account which with respect to all OTC non-NASDAQ equity securities in the account, contains a value for each such security based on the closing market bid on a date certain; however, this subsection applies only if the firm has been a market maker in such security at any time during the month in which the monthly or quarterly statement is issued.

(4) have been found by a court or an administrative proceeding of competent jurisdiction to have violated the anti-fraud or registration provisions of federal securities law or of the securities law of a state;

(5) fail to maintain lists of persons who have informed the broker-dealer or agent that they do want to be solicited;

(6) conduct business by telephone at unreasonable times;

(7) fail to disclose to a person purchasing securities on the premises of an insured depository institution that the investment is not covered by the Federal Deposit Insurance Corporation (FDIC) under SEC Rule 2350;

(8) fail to comply with any applicable provision of the Conduct Rules and any

other Rules of Fair Practice of FINRA or any applicable fair practice, ethical standard, or any regulation established by the SEC or fiduciary standard established by the SEC or by a self-regulatory organization approved by the SEC;

(d) In addition to the prohibitions in (a) - (c) of this section, in connection with the sale of investment company shares by broker-dealers or agents, a broker-dealer or agent who engages in one or more dishonest or unethical practices as used in AS 45.56 may be subject to denial, suspension, or revocation of registration or other action authorized by statute. Actions by a broker-dealer or agent that may constitute grounds for denial, suspension, or revocation of registration or other action by the administrator include

(1) in connection with the offer or sale of investment company shares, failure to adequately disclose to a customer all sales charges, including asset based and contingent deferred sales charges, which may be imposed with respect to the purchase, retention or redemption of such shares;

(2) in connection with the solicitation of investment company shares, stating or implying to a customer, either orally or in writing, that the shares are sold without a commission, are "no load" or have "no sales charge" if there is associated with the purchase of the shares

(A) a front-end load;

(B) a contingent deferred sales load;

(C) an SEC Rule 12b-1 fee or a service fee which exceeds .25 percent of average net fund assets per year; or

(D) in the case of closed-end investment company shares, underwriting fees, commissions, or other offering expenses.

(3) in connection with the solicitation of investment company shares, failing to disclose to a customer any relevant:

(A) sales charge discount on the purchase of shares in dollar amounts at or above a breakpoint; or

(B) letter of intent feature, if available, which will reduce the sales charges.

(4) in connection with the solicitation of investment company shares, recommending to a customer the purchase of a specific class of investment company shares in connection with a multi-class sales charge or fee arrangement without reasonable grounds to believe that the sales charge or fee arrangement associated with such class of shares is in the best interest of the customer as defined in 3 AAC 08.050.

(e) In addition to the prohibitions in (a) - (d) of this section, in connection with recommendations by broker-dealers or agents, a broker-dealer or agent who engages in one or more dishonest or unethical practices as used in AS 45.56 may be subject to denial, suspension, or revocation of registration or other action authorized by statute. Actions by a broker-dealer or agent with respect to recommendations that may constitute grounds for denial, suspension, or revocation of registration or other action by the administrator in connection with the solicitation of investment company shares include

(1) recommending to a customer the purchase of investment company shares which results in the customer simultaneously holding shares in different investment company portfolios having similar investment objectives and policies, without reasonable grounds to believe that such recommendation is in the best interest of the customer as defined in 3 AAC 08.050.

(2) recommending to a customer the liquidation or redemption of investment company shares for the purpose of purchasing shares in a different investment company portfolio having similar investment objectives and policies, without reasonable grounds to believe that such recommendation is in the best interest of the customer as defined in 3 AAC 08.050.

(f) In addition to the prohibitions in (a) - (e) of this section, in connection with disclosure statements by broker-dealers or agents, a broker-dealer or agent who engages in one or more dishonest or unethical practices as used in AS 45.56 may be subject to denial, suspension, or

revocation of registration or other action authorized by statute. Actions by a broker-dealer or agent with respect to disclosure statements that may constitute grounds for denial, suspension, or revocation of registration or other action by the administrator in connection with the solicitation of investment company shares include

(1) stating or implying to a customer the fund's current yield or income without disclosing the fund's most recent average annual total return, calculated in a manner prescribed in SEC Form N-1A, for one, five and ten year periods and fully explaining the difference between current yield and total return. However, if the fund's registration statement under the Securities Act of 1933 has been in effect for less than one, five, or ten years, the time during which the registration statement was in effect shall be substituted for the periods otherwise prescribed;

(2) stating or implying to a customer that the investment performance of an investment company portfolio is comparable to that of a savings account, certificate of deposit or other bank deposit account without disclosing to the customer that the shares are not insured or otherwise guaranteed by the FDIC or any other government agency and the relevant differences regarding risk, guarantees, fluctuation of principal or return, and any other factors which are necessary to ensure that such comparisons are fair, complete, and not misleading;

(3) stating or implying to a customer the existence of insurance, credit quality, guarantees or similar features regarding securities held, or proposed to be held, in the investment company's portfolio without disclosing to the customer other kinds of relevant investment risks, including interest rate, market, political, liquidity, or currency exchange risks, which may adversely affect investment performance and result in loss and/or fluctuation of principal notwithstanding the creditworthiness of such portfolio securities

(4) in connection with the offer or sale of investment company shares

(A) stating or implying to a customer

(i) that the purchase of such shares shortly before an ex-dividend date is advantageous to such customer unless there are specific, clearly described

tax or other advantages to the customer; or

(ii) that a distribution of long-term capital gains by an investment company is part of the income yield from an investment in such shares;

(B) making:

(i) projections of future performance;

(ii) statements not warranted under existing circumstances; or

(iii) statements based upon nonpublic information.

(g) In connection with the solicitation of investment company shares, the delivery of a prospectus is not dispositive that the broker-dealer or agent has fulfilled the duties set forth in this section.

(h) For purposes of this section,

(1) “recommend” means an affirmative act or statement that endorses, solicits, requests, or commends a securities transaction to a customer or any affirmative act or statement that solicits, requests, commands, harasses, or intentionally aids such person to engage in such conduct;

(2) “solicitation” means an oral, written, or other communication used to offer or sell investment company shares, excluding any proxy statement, report to shareholders, or other disclosure document relating to a security covered under Section 18(b)(2) of the Securities Act of 1933 that is required to be and is filed with the Securities and Exchange Commission or any national securities organization registered under Section 15A of the Securities Exchange Act of 1934. (Eff. ____ / ____ / _____, Register _____)

Authority: AS 45.56.500 AS 45.56.520 AS 45.56.670
AS 45.56.510 AS 45.56.530

3 AAC 08 is amended by adding a new section to read:

3 AAC 08.048. Fraudulent practices of broker-dealers and agents. (a) An act,

practice, or course of business by a broker-dealer or an agent that operates or would operate as a fraud or deceit under AS 45.56.500 includes

(1) entering into a transaction with a customer in any security at an unreasonable price or at a price not reasonably related to the current market price of the security or receiving an unreasonable commission or profit;

(2) contradicting or negating the importance of any information contained in a prospectus or other offering materials with intent to deceive or mislead or using any advertising or sales presentation in a deceptive or misleading manner;

(3) in connection with the offer, sale, or purchase of a security, falsely leading a customer to believe that the broker-dealer or agent is in possession of material, non-public information which would impact on the value of the security;

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

(5) failing to make a bona fide public offering of all the securities allotted to a broker-dealer for distribution by, among other things,

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

(B) parking or withholding securities;

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

reluctance to make an investment, including

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

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

(C) repeated phone calls;

(D) phone calls designed to entrap the customer;

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

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

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

(A) the security will be resold or repurchased;

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

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

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

(8) failing to disclose to a customer that the broker-dealer or agent is acting as an agent for both the customer and another person materially involved in or benefitted by the proposed transaction; or

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

(b) Nothing in this section precludes application of the general anti-fraud provisions against a broker-dealer or agent who engages in practices similar to those in this subsection; however paragraphs (1) - (9) of this subsection specifically apply to conduct of a broker-dealer or agent only in connection with the solicitation of a purchase or sale of OTC unlisted non-NASDAQ equity securities. A broker-dealer or agent may not

(1) fail to advise the customer, both at the time of solicitation and on the confirmation, of any and all compensation related to a specific securities transaction to be paid to the agent including commissions, sales charges, or concessions;

(2) in connection with a principal transaction, fail to disclose, at the time of solicitation and on the confirmation, a short inventory position in the firm's account of more than 3 percent of the issued and outstanding shares of that class of securities of the issuer; this paragraph shall apply only if the firm is a market-maker at the time of the solicitation;

(3) conduct sales contests in a particular security;

(4) after a solicited purchase by a customer, fail or refuse, in connection with a principal transaction, to promptly execute sell orders;

(5) solicit a secondary market transaction when there has not been a bona fide distribution in the primary market;

(6) engage in a pattern of compensating an agent in different amounts for effecting sales and purchases in the same security;

(7) effectuate any transaction in, or inducing the purchase or sale of, any security by means of any manipulative, deceptive or other fraudulent device or contrivance including but not limited to the use of boiler-room tactics or use of fictitious or nominee accounts;

(8) fail to comply with any prospectus delivery requirement promulgated under federal law;

(9) effect any transaction in, or to induce or attempt to induce the purchase or sale of, any penny stock by any customer except in accordance with the requirements as set forth in

the 1934 Securities Exchange Act Sec. 15(g) and the rules and regulations prescribed thereunder.

(c) The administrator will consider an issuer responsible under AS 45.56 for the fraudulent actions of a person acting on the issuer’s behalf, regardless of whether the person acting on the issuer’s behalf is registered or required to be registered under AS 45.56 or is excluded from the definition of “agent” under AS 45.56.

(d) For purposes of this section, “boiler-room tactics” means salespeople applying high-pressure sales tactics to persuade investors to purchase securities, including speculative and fraudulent securities. (Eff. ___/___/___, Register ___)

Authority: AS 45.56.500 AS 45.56.520 AS 45.56.670
AS 45.56.510 AS 45.56.530

3 AAC 08 is amended by adding a new section to read:

3 AAC 08.049. Certifications and professional designations. (a) The use of a senior-specific certification or designation by any person in connection with the offer, sale, or purchase of securities, or the provision of advice as to the value of or the advisability of investing in, purchasing, or selling securities, either directly or indirectly or through publications or writings, or by issuing or promulgating analyses or reports relating to securities, that indicates or implies that the user has special certification or training in advising or servicing senior citizens or retirees, in such a way as to mislead any person shall be deemed to be a dishonest and unethical practice in the securities business within the meaning of AS 45.56. The prohibited use of such certifications or professional designation includes the following

- (1) use of a certification or professional designation by a person who has not actually earned or is otherwise ineligible to use such certification or designation;
- (2) use of nonexistent or self-conferred certification or professional designation;
- (3) use of a certification or professional designation that indicates or implies a level of occupational qualifications obtained through education, training, or experience that the

person using the certification or professional designation does not have; and

(4) use of a certification or professional designation that was obtained from a designating or certifying organization that is primarily engaged in the business of instruction in sales and/or marketing and

(A) does not have reasonable standards or procedures for assuring the competency of its designees or certificants;

(B) does not have reasonable standards or procedures for monitoring and disciplining its designees or certificants for improper or unethical conduct; or

(C) does not have reasonable continuing education requirements for its designees or certificants in order to maintain the designation or certificate.

(b) There is a rebuttable presumption that a designating or certifying organization is not disqualified solely for purposes of (a)(1)(C) of this section when the organization has been accredited by:

(1) the American National Standards Institute;

(2) the National Commission for Certifying Agencies; or

(3) an organization that is on the United States Department of Education's list entitled "Accrediting Agencies Recognized for Title IV Purposes" and the designation or credential issued therefrom does not primarily apply to sales and/or marketing.

(c) In determining whether a combination of words or an acronym standing for a combination of words constitutes a certification or professional designation indicating or implying that a person has special certification or training in advising or servicing senior citizens or retirees, factors to be considered include:

(1) use of one or more words such as "senior," "retirement," "elder," or like words, combined with one or more words such as "certified," "registered," "chartered," "adviser," "specialist," "consultant," "planner," or like words, in the name of the certification or professional designation; and

(2) the manner in which those words are combined.

(d) For purposes of this section, a certification or professional designation does not include a job title within an organization that is licensed or registered by a state or federal financial services regulatory agency, if that job title:

(1) indicates seniority or standing within the organization; or

(2) specifies an individual's area of specialization within the organization.

(e) For purposes of this section, "financial services regulatory agency" includes an agency that regulates broker-dealers, investment advisers, or investment companies as defined under the Investment Company Act of 1940. Nothing in this rule limits the administrator's authority to enforce existing provisions of law. (Eff. ____/____/____, Register ____)

Authority: AS 45.56.500 AS 45.56.520 AS 45.56.670
AS 45.56.510 AS 45.56.530

3 AAC 08 is amended by adding a new section to read:

3 AAC 08.050. Best Interest Obligations in the Brokerage Business. (a) A broker-dealer or agent failing to comply with the following requirements when recommending a customer purchase, sell, or exchange a security engages in an act, practice, or course of business which operates or would operate as a fraud or deceit under AS 45.56 and a manipulative, deceptive or other fraudulent scheme, device, or contrivance under 3AAC 08.047 and 3AAC 08.048:

(1) A broker-dealer or agent shall have a reasonable basis to believe that a recommendation of any securities transaction or investment strategy involving securities (including account recommendations) to a retail investor is in the best interest of the retail investor at the time the recommendation is made;

(2) A broker-dealer or agent shall have a reasonable basis to believe that a recommendation of any securities transaction or investment strategy involving securities

(including account recommendations) to a retail investor does not place the financial or other interest of the broker-dealer or agent making the recommendation ahead of the interest of the retail investor;

- a. A broker-dealer shall establish, maintain or enforce policies and procedures reasonably designed to:
 1. Identify all conflicts of interest associated with recommendations of any securities transaction or investment strategy involving securities (including account recommendations) to a retail investor;
 2. Eliminate or, at a minimum disclose, , all conflicts of interest associated with recommendations of any securities transaction or investment strategy involving securities (including account recommendations) to a retail investor;
 3. Mitigate any conflicts of interest associated with recommendations of any securities transaction or investment strategy involving securities (including account recommendations) to a retail investor that create an incentive for an agent to place the interest of the broker-dealer or agent ahead of the interest of the retail investor;
 4. Identify and disclose any material limitations placed on the securities or investment strategies involving securities that may be recommended to a retail investor and any conflicts of interest associated with such limitations, in accordance with this section , and prevent such limitations and associated conflicts of interest from causing the broker-dealer or agent to make recommendations that place the interest of the broker-dealer or agent ahead of the interest of the retail investor; and

5. Identify and eliminate any sales contests, sales quotas, bonuses, and non-cash compensation that are based on the sales of specific securities or specific types of securities within a limited period of time; and
6. A broker-dealer shall establish, maintain, or enforce policies and procedures reasonably designed to achieve compliance with the obligations in this rule.

(c) The best interest obligation in this section shall be satisfied if the broker-dealer or agent satisfies the following care and disclosure obligations:

1. *Care obligation.* The broker-dealer or agent, in making a recommendation, exercises reasonable diligence, care, and skill to:

- (a) Know and understand the retail investor's investment profile, including the retail investor's age, other investments, financial situation and needs, tax status, investment objectives, investment experience, investment time horizon, liquidity needs, risk tolerance, and any other information the retail investor may disclose to the broker-dealer or agent in connection with a recommendation;

- (b) Know and understand the potential risks, rewards, and costs associated with the recommendation;

- (c) Have a reasonable basis to believe the recommendation, including its potential risks, rewards, and costs, effectively addresses the retail investor's investment profile, including the retail investor's age, other investments, financial situation and needs, tax status, investment objectives, investment experience, investment time horizon, liquidity needs, risk tolerance and other known information, and does not place the financial or other interest of the broker-dealer or agent ahead of the interest of the retail investor;

- (d) Have a reasonable basis to believe that a series of recommendations, even

if in the retail investor's best interest when viewed in isolation, is not excessive and effectively addresses the retail investor's investment profile, including the retail investor's age, other investments, financial situation and needs, tax status, investment objectives, investment experience, investment time horizon, liquidity needs, risk tolerance and other known information when taken together in light of the retail investor's investment profile and does not place the financial or other interest of the broker-dealer or agent making the series of recommendations ahead of the interest of the retail investor; and

(e) Have a reasonable basis to believe that prior to or at the time of the recommendation the retail investor has been reasonably informed of the basis of the recommendation and the potential risks, rewards, and costs associated with the recommendation.

2. *Disclosure obligation.* The broker-dealer or agent, prior to or at the time of the recommendation, provides the retail investor full and fair disclosure of:

- a. All material facts relating to the scope and terms of the relationship with the retail investor, including:
 1. That the broker-dealer or agent is acting as a broker-dealer or agent with respect to the recommendation;
 2. The material fees and costs that apply to the retail investor's transactions, holdings, and accounts; and
 3. The type and scope of services provided to the retail investor, including any material limitations on the securities or investment strategies involving securities that may be recommended to the retail investor; and

4. All material facts relating to conflicts of interest that are associated with the recommendation.

(d) In addition to the definitions in AS 45.56, the following definitions apply to this section.

(1) “*Retail investor*” means a natural person, or the legal representative of such natural person, who receives a recommendation of any securities transaction or investment strategy involving securities from a broker-dealer or agent primarily for personal, family, or household purposes.

(2) “*Investment profile*” means the following information, but is not limited to, the retail investor’s age, other investments, financial situation and needs, tax status, investment objectives, investment experience, investment time horizon, liquidity needs, risk tolerance, and any other information the retail investor may disclose to the broker, dealer, or a natural person who is an associated person of a broker or dealer in connection with a recommendation.

(3) “*Conflict of interest*” means an interest that might incline a broker-dealer or agent —consciously or unconsciously—to make a recommendation that is not disinterested.

(4) “*Securities transaction*” means an offer, sale, or purchase of securities involving a retail investor.

3 AAC 08 is amended by adding a new section to read:

3 AAC 08.051. Electronic filing with designated entity. (a) The Internet-based Investment Adviser Registration Depository (IARD) and the CRD are designated by the administrator to receive and store filings and collect related fees from investment advisers and investment adviser representatives on behalf of the director.

(b) Unless otherwise provided, all investment adviser and investment adviser representative applications, amendments, reports, notices, related filings, and fees required to be filed with the administrator pursuant to the rules promulgated under AS 45.56 shall be filed electronically with the IARD or the CRD and transmitted to the other entity. When filing electronically,

(1) if a signature is required by the instructions, the applicant or a duly authorized officer of the applicant shall affix an electronic signature to the filing by typing his or her name in the appropriate field and submitting the filing electronically to IARD or CRD. Submission of a filing in this manner shall constitute irrefutable evidence of legal signature by any individuals whose names are typed on the filing;

(2) a document is considered filed with the administrator when all fees are received and the filing is accepted by IARD or CRD on behalf of the state.

(c) Electronic filing is required as provided in (b) of this section and

(3) when an investment adviser completes the IARD Part 2B of Form ADV brochure supplements for each supervised person doing business in this state and when updating materially inaccurate information in brochure supplements;

(4) for all amendments to Part 1A of Form ADV and Part 2A of Form ADV, unless the person has received a continuing hardship exemption under Paragraph (c)(4).

(d) Notwithstanding the requirements of subsection (b) of this section, the administrator may not require electronic filing until the IARD or CRD has the means to receive the filing and fees. The administrator must provide all applicants and registrants 30-day's notice before requiring compliance with electronic filing. Any documents or fees required to be filed with the administrator that are not permitted to be filed with or cannot be accepted electronically by IARD or CRD shall be filed directly with the administrator.

(e) The administrator may exempt an applicant or registrant from the electronic requirements in this section if it finds that the requirement would be a hardship for an individual.

The department may find a temporary or continuing hardship.

(1) a person may seek a temporary hardship exemption

(A) if the person is an investment adviser registered or required to be registered under AS 45.56 who experiences an unanticipated technical difficulty that prevents submission of an electronic filing to IARD or CRD

(B) by submitting

(i) an Application for a Temporary or Continuing Hardship Exemption, Form ADV-H, in paper format with the administrator where the investment adviser's principal place of business is located, no later than one business day after filing (that is the subject of the Form ADV-H) was due; and

(ii) the filing that is the subject of the Form ADV-H in electronic format to IARD no later than seven business days after the filing was due.

(2) a person may seek a continuing hardship exemption

(i) if the investment adviser is able to demonstrate that the electronic filing requirements of this section are prohibitively burdensome;

(ii) by submitting an Application for a Temporary or Continuing Hardship Exemption, Form ADV-H, in paper format with the director at least twenty business days before a filing is due; if a filing is due to more than one administrator, the Form ADV-H must be filed with the administrator where the investment adviser's principal place of business is located. The administrator who receives the application will grant or deny the application within 10 business days after the filing of Form ADV-H.

(f) The decision to grant or deny a request for a hardship exemption will be made by the administrator where the investment adviser's principal place of business is located, which decision will be followed by the administrator in the other state(s) where the investment adviser is registered.

(1) If the administrator is reviewing a temporary hardship application, a

temporary hardship exemption will be deemed effective upon receipt by the administrator of the complete Form ADV-H. An administrator may deny a temporary hardship exemption application if the person submits multiple temporary hardship applications within the same calendar year.

(2) The administrator will grant or deny a continuing hardship exemption within 10 business days after a person files Form ADV-H. The exemption is effective upon approval by the administrator. The time period of the exemption may be no longer than one year after the date on which the Form ADV-H is filed. If the administrator approves the application, the investment adviser must, no later than 5 business days after the exemption approval date, submit filings to IARD or CRD in paper format (along with the appropriate processing fees) for the period of time for which the exemption is granted. (Eff. ____ / ____ / _____, Register ____)

Authority: AS 45.56.420 AS 45.56.610 AS 45.56.670

3 AAC 08 is amended by adding a new section to read:

3 AAC 08.052. Application for investment adviser and investment adviser representative registration. (a) A person may file an initial application for registration as an investment adviser pursuant to AS 45.56.340 by submitting the following in compliance with electronic filing requirements under 3 AAC 08.051:

- (1) Form ADV (Uniform Application for Investment Adviser Registration)
- (2) proof of compliance by the investment adviser with the examination requirements of 3 AAC 08.056;
- (3) a copy of the surety bond on a State of Alaska Form 08-100 or its successor, if required by 3 AAC 08.058;
- (4) the fee required by 3 AAC 08.071;
- (5) Form ADV Part 2; and
- (6) Any other item requested by the administrator.

(b) A person may file for annual renewal registration as an investment adviser by submitting the following in compliance with electronic filing requirements under 3 AAC 08.051:

- (1) the fee required under 3 AAC 08.071;
- (2) a copy of the surety bond required by 3 AAC 08.058, if requested;
- (3) any amendments to the investment adviser's Form ADV.

(c) An investment adviser must promptly file any amendments to the investment adviser's Form ADV in accordance with the instructions in the Form ADV and in compliance with 3 AAC 08.051. An amendment will be considered to be filed promptly if the amendment is filed within 30 days of the event that requires the filing of the amendment.

(d) Within 90 days of the end of the investment adviser's fiscal year, an investment adviser must file an Annual Updating Amendment to the Form ADV in compliance with 3 AAC 08.051.

(e) An application for initial or renewal registration is not considered filed for purposes of AS 45.56.340 until the administrator receives the required fee and all required submissions.

(f) A person may file to withdraw that person's registration as an investment adviser pursuant to AS 45.56.400 by completing Form ADV-W (Notice of Withdrawal from Registration as Investment Adviser) and submitting the form in compliance with 3 AAC 08.051.

(h) An investment adviser that meets the exemption requirements set forth in Sections 203(b), 203(l), or 203(m) of the Investment Advisers Act of 1940 as amended, is exempt from the registration requirements set forth in AS 45.56.340(a).

(i) A person may file an initial application for registration as an investment adviser representative pursuant to AS 45.56.350 by submitting the following in compliance with electronic filing requirements under 3 AAC 08.051:

- (1) Form U4 (Uniform Application for Securities Industry Registration or Transfer);
- (2) proof of compliance by the investment adviser representative with the

examination requirements of 3 AAC 08.056;

(3) the fee required under 3 AAC 08.071; and

(4) any additional information requested by the administrator relevant to the applicant's qualifications

(j) A person may file an application for annual renewal registration as an investment adviser representative. The application for annual renewal registration shall be filed in accordance with 3 AAC 08.051 and include the fee required under 3 AAC 08.071.

(k) An investment adviser representative must promptly update information required by Form U4 in compliance with electronic filing requirements under 3 AAC 08.051. An amendment will be considered to be filed promptly if the amendment is filed within 30 days of the event that requires the filing of the amendment.

(l) An application for initial or renewal registration is not considered filed for purposes of AS 45.56.350 until the required fee and all required submissions have been received by the administrator.

(m) Under AS 45.56.400, the withdrawal of registration of an investment adviser representative shall be made by application for withdrawal of registration by following the instructions on Form U5 (Uniform Termination Notice for Securities Industry Registration) and filed electronically with IARD within 30 days of the date of termination and in accordance with AS 45.56.400.

(n) The administrator may determine an application abandoned if the applicant

(1) has not passed each required qualifying examination, if any, within 180 days after application;

(2) has failed to receive registration approval within 90 days after the application from the state of primary jurisdiction;

(3) has failed to respond within 60 days after receipt of the administrator's request for information; or

(4) has failed to respond within 30 days after receipt of an administrator's request under AS 45.56.680.

(o) An investment adviser or investment adviser representative may transfer a registration by following IARD procedures and paying the fee required under 3 AAC 08.071. (Eff.

___/___/_____, Register _____)

Authority:	AS 45.56.300	AS 45.56.350	AS 45.56.420
	AS 45.56.330	AS 45.56.360	AS 45.56.670
	AS 45.56.340	AS 45.56.370	

3 AAC 08.053 is repealed:

3 AAC 08.053. Disclosures to clients. Repealed. (Eff. 4/19/2000, Register 154; repealed ___/___/___, Register ___)

Editor's note: As of Register ___, ___ 2019, following statutory amendments made in ch. 65, SLA 2018, the substance of 3 AAC 08.053 appears in 3 AAC 08.045.

3 AAC 08 is amended by adding a new section to read:

3 AAC 08.054. Notice filing requirements for federal covered investment advisers. (a) The notice filing for a federal covered investment adviser under AS 45.56.360 must be filed electronically with IARD on an executed Form ADV, 17 C.F.R. 279.1 (Uniform Application for Investment Adviser Registration) or its successor. A notice filing of a federal covered investment adviser shall be deemed filed when the fee required by 3 AAC 08.071 and the Form ADV are filed electronically with and accepted by IARD on behalf of the state.

(b) The administrator may accept a copy of Form ADV Part 2 (Uniform Requirements for the Investment Adviser Brochure and Brochure Supplements) as filed electronically with IARD.

(c) The annual renewal of the notice filing for a federal covered investment adviser pursuant to AS 45.56.360 shall be filed electronically with IARD. The renewal of the notice

filing for a federal covered investment adviser shall be deemed filed when the fee required by 3 AAC 08.071 is filed with and accepted by IARD on behalf of the state.

(d) A federal covered investment adviser must file electronically with IARD, in accordance with the instructions in the Form ADV, any amendments to the federal covered investment adviser's Form ADV. (Eff. ___/___/_____, Register _____)

Authority: AS 45.56.460 AS 45.56.670

3 AAC 08.055 is repealed.

3 AAC 08.055. Advertising on the internet by issuers, broker dealers, state investment advisors, broker dealer agents, and investment adviser representatives.

Repealed. (Eff. 4/19/2000, Register 154; am 6/8/2001, Register 158, repealed ___/___/___, Register ___)

Editor's note: As of Register ___, ___ 2019, following statutory amendments made in ch. 65, SLA 2018, the substance of 3 AAC 08.055 appears in 3 AAC 08.046.

3 AAC 08 is amended by adding a new section to read:

3 AAC 08.056. Qualification requirements for registration of investment adviser representatives. (a) Except as provided in (b) of this section, a person applying for registration as an investment adviser representative must provide the administrator with proof that the applicant has successfully passed

(1) for an application filed on or before December 31, 1999,

(A) the FINRA Series 63 and Series 65 examinations; or

(B) the FINRA Series 66 examination;

(2) for an application filed after December 31, 1999, and on or before September

30, 2018 the following:

(A) the FINRA Series 65 examination (Uniform Investment Adviser Law

Examination); or

(B) the FINRA Series 7 examination (General Securities Representative Examination) and the FINRA Series 66 examination (Uniform Combined State Law Examination);

(3) for an application filed on or after October 1, 2018, the Securities Industry Essentials examination and a revised representative-level qualification examination, such as the revised Series 7, appropriate to the applicant's job functions at the firm with which they are associating before their registration can become effective.

(b) The administrator may waive the examination requirements of (a) of this section if, at the time that the application is filed with the administrator, the applicant

(1) has earned and currently holds in good standing the professional designation of

(A) chartered financial analyst (CFA) of the Institute of Chartered Financial Analysts of the Association for Investment Management and Research;

(B) chartered financial consultant (ChFC) of the American College of Bryn Mawr;

(C) certified financial planner (CFP) of the Certified Financial Planner Board of Standards;

(D) chartered investment counselor (CIC) of the Investment Counsel Association of America;

(E) certified investment management analyst (CIMA) of the Investment Management Consultants Association;

(F) personal financial specialist (PFS) of the American Institute of Certified Public Accountants;

(G) another professional organization accepted by the administrator upon the written request of the investment adviser or federal covered adviser employing the

applicant; or

(H) another professional organization accepted by the administrator that was adopted by a membership vote of NASAA;

(2) is filing for renewal of a current registration of an investment adviser representative issued by this state, unless the current registration was issued based on the waiver under this subsection and the applicant desires to register without being limited to the solicitation of business;

(3) is employed by the investment adviser or federal covered adviser only to solicit business, if the applicant does not provide any other services as an investment adviser representative other than to solicit business.

(c) A person who is registered as an investment adviser or an investment adviser representative or is noticed as a federal covered adviser in any jurisdiction in the United States on December 31, 1999, is not required to satisfy the examination requirements of (a) of this section for continued registration, except that the administrator may require additional examinations for any person found to have violated any state or federal securities law. If the person's current registration was issued based on the waiver granted by (b)(3) of this section or a similar waiver in this or any other jurisdiction and the person intends to offer services of an investment adviser representative in addition to soliciting business, the person must meet the examination requirements of (a) of this section before offering those services.

(d) Notwithstanding (c) of this section, on or after January 1, 2000, a person applying for registration as an investment adviser representative, who has not been registered as an investment adviser or investment adviser representative or has not been noticed as a federal covered adviser in any jurisdiction in the United States for a period of 24 consecutive months immediately before applying for a license in this state, is required to satisfy the examination requirements of (a)(2) of this section notwithstanding having previously passed the examination requirements of (a)(1) or (2) of this section unless the applicant

(1) files a written request for waiver of the examination requirement and the administrator grants the request in writing; or

(2) is exempt from the examination requirement through a waiver granted under (b) of this section.

(e) In this section, "solicit business" means to offer or negotiate for the sale of investment advisory services of the investment adviser or federal covered adviser.

(Eff. __/___/__, Register __)

Authority: AS 45.56.300 AS 45.56.420 AS 45.56.670
AS 45.56.350

3 AAC 08 is amended by adding a new section to read:

3 AAC 08.057. Minimum financial requirements for investment advisers. (a) An investment adviser registered or required to be registered under AS 45.56 that is not required to be bonded under 3 AAC 08.058 must maintain a positive net worth at all times.

(b) An investment adviser registered or required to be registered under AS 45.56 that does not otherwise have custody of or discretionary authority over client funds or securities requiring a bond under 3 AAC 08.058, but that accepts prepayment of more than \$500 per client and six or more months in advance, must maintain a positive net worth at all times.

(c) As a condition of the right to transact business in this state, an investment adviser registered or required to be registered under AS 45.56 must notify the administrator if the investment adviser's net worth becomes less than the minimum required by the close of business on the next business day. After transmitting a notice required by this subsection, the investment adviser must file with the administrator by the close of business on the next business day a report of the investment adviser's financial condition, including the following:

- (1) a trial balance of all ledger accounts;
- (2) a statement of all client funds or securities which are not segregated;

(3) a computation of the aggregate amount of client ledger debit balances; and

(4) a statement as to the number of client accounts. (Eff. __/__/__ Register __)

Authority: AS 45.56.300 AS 45.56.340 AS 45.56.420
AS 45.56.330 AS 45.56.350 AS 45.56.670

3 AAC 08 is amended by adding a new section to read:

3 AAC 08.058. Bonding requirements for certain investment advisers. (a) An investment adviser registered or required to be registered under AS 45.56 that has custody of client funds or securities shall be bonded in the amount of \$35,000. An investment adviser having custody solely due to direct fee deduction and complying with the terms described under 3 AAC 08.059 and related books and records, as described in 3 AAC 08.064, is not required to comply with the bonding requirements of this section.

(b) An investment adviser registered or required to be registered under AS 45.56 that has discretionary authority over, but does not have custody of, client funds or securities shall be bonded in the amount of \$10,000.

(c) An investment adviser that has its principal place of business in a state other than this state is exempt from the requirements of this section, if the investment adviser is registered as an investment adviser in the state where it has its principal place of business and is in compliance with that state's bonding requirements.

(d) The administrator will only accept a bond as meeting the requirements of this section if the bond is

(1) issued by a company qualified to do business in this state, or a certificate of deposit issued by a depository institution insured by the FDIC or NCUA and licensed to do business in this state, naming the State of Alaska as the owner of the certificate;

(2) issued on State of Alaska Form 08-100, or other form acceptable to the administrator; and

(3) subject to the claims of all clients of the investment adviser regardless of the client's state of residence.

(e) The administrator may waive all or part of the requirements of this section if

(1) the investment adviser submits a written application showing good cause for the waiver; and

(2) the administrator determines that the waiver is consistent with AS 45.56 and its purposes and is in the public interest. (Eff. ____/____/____, Register ____)

Authority: AS 45.56.340 AS 45.56.610 AS 45.56.670

3 AAC 08 is amended by adding a new section to read:

3 AAC 08.059. Custody of client funds or securities by investment advisers. (a) An investment adviser may not take custody of client funds or securities unless

(1) the investment adviser notifies the administrator in writing that the investment adviser has or may have custody; notification may be given on SEC Form ADV;

(2) the securities of each client are segregated, marked to identify the particular client having the beneficial interest in the security, and held in safekeeping in a place reasonably free from risk of destruction or other loss;

(3) all client funds are deposited in one or more bank accounts that contain only client funds, and

(A) each account is maintained in the name of the investment adviser as agent or trustee for the clients; and

(B) the investment adviser maintains a separate record for each account that shows the name and address of the bank where the account is maintained, the dates and amounts of deposits to and withdrawals from the account, and the exact amount of each client's beneficial interest in the account;

(4) the investment adviser, immediately after accepting custody of funds or securities from a client, notifies the client in writing of the place and the manner in which the funds and securities will be maintained, and thereafter immediately notifies the client in writing of any changes in the place or the manner in which the funds or securities are maintained;

(5) the investment adviser, at the end of every three months, sends each client an itemized statement showing the funds and securities in the investment adviser's custody and each debit, credit, and transaction in the client's account during the period; and

(6) at least once every calendar year,

(b) a surprise audit conducted by an independent certified public accountant as defined in Rule 206(4)-2 under the Investment Advisers Act of 1940.

(i) verifies all client funds and securities by actual examination at a time chosen by the accountant without prior notice to the investment adviser; and

(ii) issues a report stating that the accountant has made an examination of all client funds and securities and describing the nature and extent of the examination; and

(B) the report prepared under (A)(ii) of this paragraph is filed with the administrator promptly after each examination.

(b) This section does not apply to an investment adviser also registered as a broker-dealer under 15 U.S.C. 78o (sec. 15 of the Securities Exchange Act of 1934) if the broker-dealer is

(1) subject to and in compliance with 17 C.F.R. 240.15c3-1 (Net Capital Requirements for Brokers or Dealers); or

(2) a member of an exchange whose members are exempt from 17 C.F.R. 240.15c3-1, as provided in 17 C.F.R. 240.15c3-1(b), and the broker-dealer is in compliance with all rules and settled practices of the exchange imposing requirements with respect to financial responsibility

and the segregation of funds or securities carried for the account of customers. (Eff. 3/24/76,

Register 57; am 4/19/2000, Register 154; Eff. __/__/__ Register __)

Authority: AS 46.56.300 AS 45.56.510 AS 45.56.530
AS 45.56.420 AS 45.56.520 AS 45.56.670
AS 45.56.500

3 AAC 08 is amended to add a new section to read:

3 AAC 08.064. Books and records of investment advisers. (a) An investment adviser registered or required to be registered under AS 45.56 shall make the following books and records and keep them true, accurate, and current:

(1) journals, including cash receipts and disbursements records, and any other records of original entry forming the basis of entries in any ledger;

(2) general and auxiliary ledgers, or other comparable records, reflecting asset, liability, reserve, capital, income, and expense accounts;

(3) a memorandum of each order given by the investment adviser for the purchase or sale of a security, of any instruction received by the investment adviser from the client concerning the purchase, sale, receipt, or delivery of a particular security, and of any modification or cancellation of an order or instruction; the memorandum must

(A) show the terms and conditions of the order, instruction, modification, or cancellation;

(B) identify the person connected with the investment adviser who recommended the transaction to the client and the person who placed the order;

(C) show the account for which the order was entered, the date of entry, and the bank, broker, or dealer by or through whom the order was executed, if applicable; and

(D) designate that the order was entered under the exercise of discretionary power, if discretionary power was exercised;

(4) all check books, bank statements, cancelled checks, and cash reconciliations of the investment adviser;

(5) all bills or statements, or copies of them, paid or unpaid, relating to the investment adviser's business as an investment adviser;

(6) all trial balances, financial statements, and internal audit working papers relating to the investment adviser's business as an investment adviser;

(7) the original of each written communication received and a copy of each written communication sent by the investment adviser,

(A) and relating to

(i) a recommendation made or proposed to be made or advice given or proposed to be given;

(ii) the receipt, disbursement, or delivery of funds or securities; or

(iii) the placing or execution of any order to purchase or sell any security; and

(B) except that

(i) the investment adviser is not required to keep unsolicited market letters or other similar communications of general public distribution not prepared by or for the investment adviser; and

(ii) if the investment adviser sends a notice, circular, or other advertisement offering a report, analysis, publication, or other advisory service to more than 10 persons, the investment adviser is not required to keep a record of the names and addresses of the persons to whom the notice, circular, or advertisement was sent; however, if the notice, circular, or advertisement is distributed to persons named on a list, the investment adviser shall retain with the

copy of the notice, circular, or advertisement a memorandum describing the list and all its source;

(8) a list or other record of each client account, identifying those accounts in which the investment adviser is vested with discretionary power with respect to the funds, securities, or transactions of a client;

(9) a copy of a power of attorney and other evidence of the granting of any discretionary authority by a client to the investment adviser;

(10) a copy in writing of each agreement entered into by the investment adviser with a client, and any other written agreements otherwise relating to the business of the investment adviser;

(11) a copy of each notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication, including a communication by electronic media, that the investment adviser circulates or distributes, directly or indirectly, to two or more persons, other than persons connected with the investment adviser; if a communication listed in this paragraph recommends the purchase or sale of a specific security and does not state the reasons for the recommendation, the investment adviser shall include a memorandum indicating the reasons for the recommendation;

(12) a record of every transaction in a security in which the investment adviser or any advisory representative of the investment adviser has, or by reason of any transaction acquires, any direct or indirect beneficial ownership. The record of transactions required by this subsection does not include:

(A) transactions effected in any account over which neither the investment adviser nor any advisory representative of the investment adviser has any direct or indirect influence or control; and

(B) transactions in securities which are direct obligations of the United States. The record shall state the title and amount of the security involved; the date and

nature of the transaction (i.e. purchase, sale or other acquisition or disposition); the price at which it was effected; and the name of the broker-dealer or bank with or through whom the transaction was effected. The record may also contain a statement declaring that the reporting or recording of any transaction may not be construed as an admission that the investment adviser or advisory representative has any direct or indirect beneficial ownership in the security. A transaction shall be recorded not later than ten days after the end of the calendar quarter in which the transaction was effected.

(13) Notwithstanding the provisions of 3 AAC 08.064(12) above, where the investment adviser is primarily engaged in a business or businesses other than advising investment advisory clients, a record must be maintained of every transaction in a security in which the investment adviser or any advisory representative of the investment adviser has, or by reason of any transaction acquires, any direct or indirect beneficial ownership. An investment adviser is "primarily engaged in a business or businesses other than advising investment advisory clients" when, for each of its most recent three fiscal years or for the period of time since organization, whichever is lesser, the investment adviser derived, on an unconsolidated basis, more than 50 percent of its total sales and revenues and its income (or loss) before income taxes and extraordinary items, from such other business or businesses. The record of transactions required by this subsection does not include:

(A) Transactions effected in any account over which neither the investment adviser nor any advisory representative of the investment adviser has any direct or indirect influence or control; and

(B) Transactions in securities which are direct obligations of the United States. The record shall state the title and amount of the security involved; the date and nature of the transaction (i.e. purchase, sale, or other acquisition or disposition); the price at which it was effected; and the name of the broker-dealer or bank with or through whom the transaction was effected. The record may also contain a statement declaring

that the reporting or recording of any transaction shall not be construed as an admission that the investment adviser or advisory representative has any direct or indirect beneficial ownership in the security. A transaction shall be recorded not later than ten days after the end of the calendar quarter in which the transaction was effected.

(14) a copy of each written disclosure statement and each amendment or revision to that statement given or sent to a client or prospective client of the investment adviser in accordance with the provisions of 17 C.F.R. 275.204-3 and a record of the dates that each written disclosure statement, and each amendment or revision, was given, or offered to be given, to any client or prospective client who subsequently becomes a client;

(15) for each client that the investment adviser obtained by means of a solicitor to whom a cash fee was paid by the investment adviser

(A) evidence of a written agreement to which the investment adviser is a party related to the payment of the fee; a written agreement that satisfies the requirements of 17 C.F.R. 275.206(4)-3(a) also satisfies the requirements of this subparagraph;

(B) a signed and dated acknowledgment of receipt from the client evidencing the client's receipt of the

(i) investment adviser's written disclosure statement given or sent in accordance with 17 C.F.R. 275.204-3; and

(ii) solicitor's written disclosure statement given or sent in accordance with 17 C.F.R. 275.206(4)-3; and

(C) a copy of the solicitor's written disclosure statement given or sent in accordance with 17 C.F.R. 275.206(4)-3;

(16) all accounts, books, internal working papers, and other records or documents that are necessary to form the basis for or demonstrate the calculation of the performance or rate of return of all managed accounts or securities recommendations in any notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication, including a

communication by electronic media, that the investment adviser circulates or distributes, directly or indirectly, to two or more persons, other than persons connected with the investment adviser; however, with respect to the performance of a managed account, the retention of the following items satisfies the requirements of this paragraph:

(A) each account statement, if it reflects all debits, credits, and other transactions in a client's account for the period of the statement; and

(B) each worksheet necessary to demonstrate the calculation of the performance or rate of return of the managed accounts;

(17) a copy of all communications received or sent regarding any litigation related to a written customer or client complaint involving the investment adviser, an investment adviser representative, or an employee of the investment adviser or investment adviser representative;

(18) written information about each advisory client that is the basis for making a recommendation or providing investment advice to that client;

(19) written procedures for the supervision of the activities of employees and investment adviser representatives that are reasonably designed to achieve compliance with applicable securities laws and regulations;

(20) written procedures for business continuity and succession planning in accordance with 3 AAC 08.066; and

(21) a copy of each document, other than a notice of general dissemination, that was filed with or received from a state or federal agency or self-regulatory organization and that pertains to the investment adviser or to an advisory representative within the meaning set out in this section; documents to be kept under this paragraph include applications, amendments, renewal filings, and correspondence.

(22) An investment adviser may not be deemed to have violated the provisions of 3 AAC 08.064 because of the failure to record securities transactions of any advisory representative if the investment adviser establishes that it instituted adequate procedures and

used reasonable diligence to obtain promptly reports of all transactions required to be recorded.

(b) Where the adviser inadvertently held or obtained a client's securities or funds and returned them to the client within three business days or has forwarded third party checks within 24 hours the adviser will be considered as not having custody but shall keep a ledger or other listing of all securities or funds held or obtained, including the following information:

- (1) issuer;
- (2) type of security and series;
- (3) date of issue;
- (4) for debt instruments, the denomination, interest rate, and maturity date;
- (5) certificate number, including alphabetical prefix or suffix;
- (6) name in which registered;
- (7) date given to the adviser;
- (8) date sent to client or sender;
- (9) form of delivery to client or sender, or copy of the form of delivery to client

or sender; and

(10) mail confirmation number, if applicable, or confirmation by client or sender of the fund's or security's return.

(c) If an investment adviser obtains possession of securities that are acquired from the issuer in a transaction or chain of transactions not involving any public offering, the adviser shall keep the following records:

(1) a record showing the issuer or current transfer agent's name, address, phone number, and other applicable contract information pertaining to the party responsible for recording client interests in the securities; and

(2) a copy of any legend, shareholder agreement, or other agreement showing that those securities that are transferable only with prior consent of the issuer or holders of the outstanding securities of the issuer.

(d) If an investment adviser has custody of client funds or securities, the investment adviser shall, in addition to the books and records required under (a) of this section, make the following books and records and keep them true, accurate, and current:

(1) a copy of any documents executed by the client (including a limited power of attorney) under which the adviser is authorized or permitted to withdraw a client's funds or securities maintained with a custodian upon the adviser's instruction to the custodian;

(2) a journal or other record showing all purchases, sales, receipts, and deliveries of securities for all accounts and all other debits and credits to the accounts;

(3) a separate ledger account for each client showing all purchases, sales, receipts, and deliveries of securities, the date and price of each purchase and sale, and all debits and credits;

(4) copies of confirmations of all transactions effected by or for the account of each client;

(5) a record for each security in which a client has a position showing the name of each client having an interest in the security, the amount invested or interest of each client in the security, and the location of the security;

(6) a copy of each of the client's quarterly account statements, as generated and delivered by the qualified custodian. If the adviser also generates a statement that is delivered to the client, the adviser shall also maintain copies of such statements along with the date such statements were sent to the clients;

(7) if applicable to the adviser's situation, a copy of the special examination report verifying the completion of the examination by an independent certified public accountant and describing the nature and extent of the examination;

(8) a record of any finding by the independent certified public accountant of any material discrepancies found during the examination; and

(9) if applicable, evidence of the client's designation of an independent

representative.

(e) If an investment adviser has custody because it advises a pooled investment vehicle, the adviser shall also keep the following records:

(1) true, accurate, and current account statements;

(2) where the adviser complies with 3 AAC 08.059(a)(6) the records required to be made and kept shall include:

(A) the date(s) of the audit;

(B) a copy of the audited financial statements; and

(C) evidence of the mailing of the audited financial to all limited partners, members, or other beneficial owners within 120 days of the end of its fiscal year.

(f) An investment adviser who renders an investment supervisory or management service to a client shall, with respect to the portfolio being supervised or managed and to the extent that the information is reasonably available to or obtainable by the investment adviser, make and keep true, accurate, and current

(1) records showing separately for each client the securities purchased and sold, and the date, amount, and price of each purchase and sale; and

(2) for each security in which a client has a current position, information from which the investment adviser can promptly furnish the name of the client, and the current amount or interest of the client.

(g) If an investment adviser provides advisory services at a place of business other than the investment adviser's principal place of business, the investment adviser shall maintain records or copies of those records required under 3 AAC 08.064 at the principal place of business of the investment adviser.

(h) An investment adviser, before ceasing to conduct or discontinuing business as an investment adviser, shall arrange for and be responsible for the preservation of the books and records required to be maintained and preserved under this section for the remainder of the

applicable period specified in this section, and shall notify the administrator in writing of the exact address where those books and records will be maintained during the remainder of that period.

(i) Records required to be maintained and preserved may be immediately produced or reproduced, and maintained and preserved for the required time, by an investment adviser on:

- (1) paper or hard copy form as those records are kept in their original form; or
- (2) micrographic media, including microfilm, microfiche, or any similar medium;

or

(3) electronic storage media, including any digital storage medium or system that meets the terms of this section.

(j) The investment adviser must:

(1) Arrange and index the records in a way that permits easy location, access, and retrieval of any particular record;

(2) promptly provide any of the following at the request of the administrator:

(A) a legible, true, and complete copy of the record in the medium and format in which it is stored;

(B) a legible, true, and complete printout of the record;

(C) means to access, view, and print the records; and

(3) separately store, for the time required for preservation of the original record, a duplicate copy of the record on any medium allowed by this section.

(k) In the case of records created or maintained on electronic storage media, the investment adviser must establish and maintain procedures to:

(1) maintain and preserve the records, so as to reasonably safeguard them from loss, alteration, or destruction;

(2) limit access to the records to properly authorized personnel and the administrator (including its examiners and other representatives); and

(3) reasonably ensure that any reproduction of a non-electronic original record on electronic storage media is complete, true, and legible when retrieved.

(l) If an investment adviser is engaged in more than one enterprise or activity, the investment adviser shall maintain a separate book of accounts and records for the investment advisory business and any other business. Any book or record must clearly identify the division among the businesses' income, expenses, and assets.

(m) The bond maintained by the investment adviser under 3 AAC 08.058 shall be maintained for three years after the final investment transaction.

(n) An investment adviser registered or required to be registered in this state and that has its principal place of business in another state is exempt from the requirements of this section, if the investment adviser

(1) is registered or licensed as an investment adviser in the state in which it maintains its principal place of business;

(2) is in compliance with the applicable books and records requirements of the state in which it maintains its principal place of business; and

(3) maintains the net worth or bonding requirements of the state in which it maintains its principal place of business.

(o) An investment adviser may maintain books or records required by this section so that the identity of a client to whom the investment adviser renders investment supervisory services is indicated by a numerical or alphabetical code or a similar designation.

(p) An investment adviser shall develop and maintain physical security and cybersecurity policies and procedures reasonably designed to ensure the confidentiality, integrity, and availability of physical and electronic records and information. The policies and procedures must be tailored to the investment adviser's business model, taking into account the size of the firm, type(s) of services provided, and the number of locations of the investment adviser.

(q) The physical security and cybersecurity policies and procedures must

(1) Protect against reasonably anticipated threats or hazards to the security or integrity of client records and information;

(2) Ensure that the investment adviser safeguards confidential client records and information; and

(3) Protect any records and information the release of which could result in harm or inconvenience to any client.

(r) The physical security and cybersecurity policies and procedures must develop and implement

(1) the organizational understanding to manage information security risk to systems, assets, data, and capabilities;

(2) the appropriate safeguards to ensure delivery of critical infrastructure services;

(3) the appropriate activities to identify the occurrence of an information security event;

(4) activities to take action regarding a detected information security event; and

(5) the appropriate activities to maintain plans for resilience and to restore any capabilities or services that were impaired due to an information security event.

(s) The investment adviser must review the physical and cybersecurity policies at least annually, and update to ensure the adequacy of the security measures and the effectiveness of their implementation.

(t) An investment adviser shall maintain and preserve books and records required to be made under the provisions of 3 AAC 08.064 in an easily accessible place for a period of not less than five years, the first two years in the principal office of the investment adviser, starting from the end of the fiscal year during which the investment adviser last published or otherwise disseminated, directly or indirectly, the notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication and three years offsite.

(u) An investment adviser shall reasonably protect all paper and electronic records from

loss, alteration, or destruction.

(v) The investment adviser must deliver upon the investment adviser's engagement by a client, and on an annual basis thereafter, a privacy policy to each client that is reasonably designed to aid in the client's understanding of how the investment adviser collects and shares, to the extent permitted by state and federal law, non-public personal information. The investment adviser must promptly update and deliver to each client an amended privacy policy if any of the information in the policy becomes inaccurate.

(w) The investment adviser must maintain partnership articles and any amendments to them, articles of incorporation, articles of organization, charters, minute books, and stock certificate books of the investment adviser and of any predecessor shall be maintained in investment adviser's principal place of business and shall be preserved until at least three years after termination of the enterprise.

(x) In this section,

(1) "advisory representative," means an investment adviser who is primarily engaged in a business;

(2) "providing services to advisory clients", means making a recommendation or taking part in determining which recommendation is to be made relating to activities regulated by AS 45.56.

(3) "control" means the power to exercise a controlling influence over the management or policies of a company, unless that power is solely the result of an official position with that company; a person who owns beneficially, either directly or through one or more controlled companies, more than 25 percent of the voting securities of a company is presumed to control that company;

(5) "discretionary power" does not include discretion as to the price at which or the time when a transaction is or is to be effected, if, before the order is given by the investment adviser, the client has directed or approved the purchase or sale of a definite amount of the

particular security;

(6) “financial statements“ means a balance sheet prepared in accordance with generally accepted accounting principles, an income statement, and a cash flow statement;

(7) “investment supervisory services“ means the giving of continuous advice as to the investment of funds on the basis of the individual needs of each client;

(8) “solicitor“ means a person who, for compensation, acts as an agent of an investment adviser in referring potential clients. (Eff. __/__/__, Register __)

Authority: AS 45.56.420 AS 45.56.670

3 AAC 08.065 is repealed.

3 AAC 08.065. Sales of securities at financial institutions. Repealed. (Eff. 4/19/2000, Register 154; am 3/4/2015; Register 213; repealed __/__/__, Register __)

Editor’s note. Effective __/__/__, Register __, 2019, following statutory amendments made in ch. 65, SLA 2018, the substance of former 3 AAC 08.065 appears in 3 AAC 08.026.

3 AAC 08 is amended by adding a new section to read:

3 AAC 08.066. Business Continuity and Succession Planning. An investment adviser shall establish, implement, and maintain written procedures relating to a Business Continuity and Succession Plan. The plan shall be based upon the facts and circumstances of the investment adviser's business model including the size of the firm, type of service provided, and the number of locations of the investment adviser. The plan shall provide for at least the following:

(1) the protection, backup, and recovery of books and records;

(2) alternate means of communications with customers, key personnel, employees, vendors, service providers (including third-party custodians), and regulators, including, but not limited to, providing notice of a significant business interruption or the death or unavailability of key personnel or other disruptions or cessation of business activities;

(3) office relocation in the event of temporary or permanent loss of a principal place of

business;

(4) assignment of duties to qualified responsible persons in the event of the death or unavailability of key personnel;

(5) otherwise minimizing service disruptions and client harm that could result from a sudden significant business interruption. (Eff. ____/____/_____, Register ____)

Authority: AS 45.56.380 AS 45.56.670

3 AAC 08 is amended by adding a new section to read:

3 AAC 08.067. Investment adviser brochure. (a) An investment adviser registered or required to be registered under AS 45.56 shall furnish each advisory client and prospective advisory client with a written disclosure statement that complies with Part 2A and 2B of Form ADV under 17 C.F.R. sec. 279.1 or such other information as the administrator may require.

(b) An investment adviser shall deliver the written disclosure statement to an advisory client or prospective advisory client not less than 48 hours prior to entering into any investment advisory contract with such client or prospective client; or at the time of entering into any such contract, if the advisory client has a right to terminate the contract without penalty within five business days after entering into the contract.

(c) An investment adviser is not required to deliver the written disclosure statement in connection with entering into

(1) an investment company contract; or

(2) a contract for impersonal advisory services requiring a payment of less than \$500.

(d) An investment adviser, except as provided in subsection (c) above, shall without charge, annually deliver or offer in writing to deliver upon written request to each of its advisory clients the statement required by this section. The delivery or offer required by subsection (a) need not be made to advisory clients receiving advisory services solely pursuant to

(1) an investment company contract; or

(2) a contract for impersonal advisory services requiring a payment of less than \$500.

(e) With respect to an advisory client entering into a contract or receiving advisory services pursuant to a contract for impersonal advisory services which requires a payment of \$500 or more, an offer of the type specified in subsection (a) shall also be made at the time of entering into an advisory contract.

(f) Any statement requested in writing by an advisory client pursuant to an offer required by (d)(1) of this section must be mailed or delivered within seven days of the receipt of the request.

(g) If an investment adviser renders substantially different types of investment advisory services to different advisory clients, any information required by Part 2 of Form ADV may be omitted from the statement furnished to an advisory client or prospective advisory client if such information is applicable only to a type of investment advisory service or fee which is not rendered or charged, or proposed to be rendered or charged, to that client or prospective client.

(h) Nothing in this section shall relieve any investment adviser from any obligation pursuant to any provision of AS 45.56, other regulations, or other federal or state law to disclose any information to its advisory clients or prospective advisory clients not specifically required by this section.

(i) Delivery of brochures and brochure supplements made in compliance with 17 C.F.R. Part 275.204-3 are considered to be in compliance with this section.

(j) For the purposes of this section, an investment advisory contract is not considered entered into if it is being extended or renewed with no material change.

(k) For the purposes of this section:

(1) "Contract for impersonal advisory services" means any contract relating solely to the provision of investment advisory services

(A) by means of written material or oral statements which do not purport to meet the objectives or needs of specific individuals or accounts;

(B) through the issuance of statistical information containing no expression of opinion as to the investment merits of a particular security; or

(C) any combination of the foregoing services.

(2) "Investment company contract" means a contract with an investment company registered under the Investment Company Act of 1940 which meets the requirements of Section 15(c) of that Act. (Eff. ___/___/_____, Register _____)

Authority: AS 45.56.420 AS 45.56.670

3 AAC 08 is amended by adding a new section to read:

3 AAC 08.068. Contents of an investment advisory contract. (a) It is unlawful for any investment adviser or investment adviser representative to enter into, extend, or renew any investment advisory contract unless it provides in writing

(1) the services to be provided, the term of the contract, the investment advisory fee, whether the fee is negotiable, the formula for computing the fee, the amount of prepaid fee to be returned in the event of termination or non-performance of the contract, and any grant of discretionary power to the investment adviser or investment adviser representative;

(2) that no direct or indirect assignment or transfer of the contract may be made by the investment adviser or investment adviser representative, without the consent of the client or other party to the contract;

(3) that the investment adviser or investment adviser representative, may not be compensated on the basis of a share of capital gains upon or capital appreciation of the funds or any portion of the funds of the client;

(4) that the investment adviser or investment adviser representative, if a partnership, shall notify the client or other party to the investment contract of any change in the

membership of the partnership within a reasonable time after the change.

(5) that any changes to the terms of the investment advisory contract must be approved in writing by the client and signed and dated by both the client and the investment adviser.

(b) It is unlawful for any investment adviser or investment adviser representative to

(1) include in an advisory contract, any condition, stipulation, or provision binding any person to waive compliance with any provision of AS 45.56 or of the Investment Advisers Act of 1940, or any other practice contrary to the provisions of Section 215 of the Investment Advisers Act of 1940; or

(2) enter into, extend, or renew any advisory contract contrary to the provisions of Section 205 of the Investment Advisers Act of 1940.

(c) Except as provided in (a)(3) of this section, an investment adviser may enter into, extend, or renew an investment advisory contract which provides for compensation to the investment adviser on the basis of a share of capital gains upon or capital appreciation of the funds, or any portion of the funds, of the client if the following conditions are met:

(1) the client entering into the contract must be

(A) a natural person or a company who, immediately after entering into the contract, has at least \$ 1,000,000 under the management of the investment adviser; or

(B) a person who the investment adviser and its investment adviser representatives reasonably believe, immediately before entering into the contract, is a natural person or a company whose net worth, at the time the contract is entered into, exceeds \$2,000,000. The net worth of a natural person may include assets held jointly with that person's spouse. For purposes of calculating a natural person's net worth

(i) the person's primary residence may not be included as an asset;

(ii) indebtedness secured by the person's primary residence, up to the estimated fair market value of the primary residence at the time the investment

advisory contract is entered into may not be included as a liability; and

(iii) indebtedness that is secured by the person's primary residence in excess of the estimated fair market value of the residence must be included as a liability;

(2) the compensation paid to the investment adviser with respect to the performance of any securities over a given period must be based on a formula with the following characteristics:

(A) in the case of securities for which market quotations are readily available within the meaning of Rule 2a-4(a)(1) under the Investment Company Act of 1940 (Definition of "Current Net Asset Value" for Use in Computing Periodically the Current Price of Redeemable Security), the formula must include the realized capital losses and unrealized capital depreciation of the securities over the period;

(B) in the case of securities for which market quotations are not readily available within the meaning of Rule 2a-4(a)(1) under the Investment Company Act of 1940, the formula must include

(i) the realized capital losses of securities over the period;

(ii) if the unrealized capital appreciation of the securities over the period is included, the unrealized capital depreciation of the securities over the period; and

(C) the formula must provide that any compensation paid to the investment adviser under this section is based on the gains less the losses computed in accordance with (c)(2)(A) and (c)(2)(B) of this section in the client's account for a period of not less than one year;

(3) before entering into the advisory contract and in addition to the requirements of Form ADV, the investment adviser must disclose in writing to the client or the client's independent agent all material information concerning the proposed advisory arrangement,

including the following:

(A) that the fee arrangement may cause an incentive for the investment adviser to make investments that are riskier or more speculative than would be the case in the absence of a performance fee;

(B) if relevant, that the investment adviser may receive increased compensation with regard to unrealized appreciation as well as realized gains in the client's account;

(C) the periods which will be used to measure investment performance throughout the contract and their significance in the computation of the fee;

(D) the nature of any index which will be used as a comparative measure of investment performance, the significance of the index, and the reason the investment adviser believes that the index is appropriate; and

(E) if the investment adviser's compensation is based in part on the unrealized appreciation of securities for which market quotations are not readily available within the meaning of Rule 2a-4(a)(1) under the Investment Company Act of 1940, how the securities will be valued and the extent to which the valuation will be independently determined;

(4) The investment adviser and any investment adviser representative who enters into the contract must reasonably believe, immediately before entering into the contract, that the contract represents an arm's length arrangement between the parties and that the client, or in the case of a client which is a company as defined in subsection (f)(4), the person representing the company, alone or together with the client's independent agent, understands the proposed method of compensation and its risks. The representative of a company may be a partner, director, officer, or an employee of the company or the trustee, where the company is a trust, or any other person designated by the company or trustee, but must satisfy the definition of client's independent agent set forth in subsection (f)(3).

(d) Any person entering into or performing an investment advisory contract under this section is not relieved of any obligations under 3 AAC 08.072 or any other applicable provision of AS 45.56 or any rule or order thereunder.

(e) Nothing in this section relieves a client's independent agent from any obligation to the client under applicable law.

(f) For purposes of this section:

(1) "affiliate" is as defined in Section 2(a)(3) of 15 U.S.C. 80a-1 – 80a-64 (Investment Company Act of 1940).

(2) "assignment" includes any transaction or event that results in any change to the individual or entity with the power, directly or indirectly, to direct the management or policies of, or to vote more than 50 percent of any class of voting securities of, the investment adviser or federal covered investment adviser as compared to the individuals or entities who had such power as of the date when the contract was first entered into, extended, or renewed.

(3) "client's independent agent" means any person who agrees to act as an investment advisory client's agent in connection with the contract, but does not include:

(A) The investment adviser relying on this section;

(B) An affiliated person of the investment adviser or an affiliated person of an affiliated person of the investment adviser, including an investment adviser representative;

(C) An interested person of the investment adviser;

(D) A person who receives, directly or indirectly, any compensation in connection with the contract from the investment adviser, an affiliated person of the investment adviser, an affiliated person of an affiliated person of the investment adviser or an interested person of the investment adviser; or

(E) A person with any material relationship between himself, or an affiliated person of that person, and the investment adviser, or an affiliated person of the

investment adviser, that exists, or has existed at any time during the past two years;

(4) "company" means a corporation, partnership, association, joint stock company, trust, or any organized group of persons, whether incorporated or not; or any receiver, trustee in a case under Title 11 of the United States Code, or similar official or any liquidating agent for any of the foregoing, in such persons official capacity. "Company" does not include

(A) a company required to be registered under the Investment Company Act of 1940, but which is not so registered

(B) a company which would be defined as an investment company under Section 3(a) of the Investment Company Act of 1940 but for the exception from that definition provided by Section 3(c)(1) of that act;

(C) an investment company registered under the Investment Company Act of 1940; or

(D) a business development company as defined in Section 202(a)(22) of the Investment Advisers Act of 1940, unless each of the equity owners of any such company, other than the investment adviser entering into the contract, is a natural person or a company;

(5) "interested person" means:

(A) any member of the immediate family of any natural person who is an affiliated person of the investment adviser;

(B) any person who knowingly has any direct or indirect beneficial interest in, or who is designated as trustee, executor, or guardian of any legal interest in, any security issued by the investment adviser or by a controlling person of the investment adviser if that beneficial or legal interest exceeds:

(i) One tenth of one percent of any class of outstanding securities of the investment adviser or a controlling person of the investment adviser;

(ii) Five percent of the total assets of the person seeking to act as

the client's independent agent; or

(iii) Any person or partner or employee of any person who, at any time since the beginning of the last two years, has acted as legal counsel for the investment adviser. (Eff. ____ / ____ / _____, Register ____)

Authority: AS 45.56.610 AS 45.56.670

3 AAC 08 is amended by adding a new section to read:

3 AAC 08.069. Use of the internet for advertising for investment advisers and investment adviser representatives: (a) Investment advisers and investment adviser representatives who use the internet to distribute information on available products and services through communications made on the internet directed generally to anyone having access to the internet and transmitted through internet communications shall not be considered to be “transacting business” in this state for purposes of AS 45.56 based solely on that fact, provided that:

(1) the internet communication clearly states that

(A) the investment adviser or investment adviser representative in question may only transact business in this state if first registered, excluded, or exempted from investment adviser or investment adviser representative registration requirements; and

(B) follow-up, individualized responses to persons in this state by the investment adviser or investment adviser representative that involve either effecting or attempting to effect transactions in securities, or rendering of personalized investment advice for compensation, will not be made without compliance with investment adviser or investment adviser representative registration requirements or an applicable exemption or exclusion;

(2) the internet communication contains a mechanism, which includes but is not

limited to, technical firewalls or other implemented policies and procedures, reasonably designed to ensure that before any subsequent, direct communication with prospective customers or clients in this state, the investment adviser and investment adviser representative are first registered in this state or qualify for an exemption or exclusion from the registration requirement; nothing in this paragraph shall be construed to relieve an investment adviser or investment adviser representative from any applicable securities registration requirement in this state;

(3) the internet communication is limited to the dissemination of general information on products and services and does not involve either effecting or attempting to effect transactions in securities or rendering personalized investment advice for compensation in this state over the internet; and

(4) in the case of an investment adviser representative,

(A) the affiliation of the investment adviser representative with the investment adviser is prominently disclosed within the internet communication;

(B) the investment adviser with whom the investment adviser representative is associated retains responsibility for reviewing and approving the content of any internet communication by an investment adviser representative;

(C) the investment adviser with whom the investment adviser representative is associated first authorizes the distribution of information on the particular products and services through the internet communication; and

(D) in disseminating information through the internet communication, the investment adviser representative acts within the scope of the authority granted by the investment adviser.

(b) This section extends to investment adviser and investment adviser representative registration requirements only, and does not excuse compliance with applicable securities registration, antifraud or related provisions.

(c) Nothing in this section shall be construed to affect the activities of any investment

adviser or investment adviser representative engaged in business in this state that is not subject to the jurisdiction of the administrator as a result of the National Securities Markets Improvements Act of 1996, as amended. (Eff. ____/____/_____, Register ____)

Authority: AS 45.56.420 AS 45.56.670

3 AAC 08.015 is amended to add a new section to read:

3 AAC 08.071. Fees and Assessments. (a) The following fees are established for registration of broker-dealers, agents, investment adviser representatives, and investment advisers, and for filing of notices of federal covered advisers:

(1) application fee for an initial or annual renewal registration or notice, for

- (A) a broker-dealer, \$250;
- (B) an agent of a broker-dealer or issuer, \$75;
- (C) an investment adviser representative, \$75;
- (D) an investment adviser, \$250;
- (E) a federal covered adviser, \$250;
- (F) a broker-dealer branch office, \$75;

(2) application fee for registration or notice of a successor, for a

- (A) registered broker-dealer, \$125;
- (B) registered investment adviser, \$125;
- (C) noticed federal covered adviser, \$125;

(3) application fee for a broker-dealer or issuer to transfer the unexpired portion of registration of an agent, \$75;

(4) application fee for a successor investment adviser or successor federal covered adviser to transfer the unexpired portion of registration of an investment adviser, \$75.

(b) For an initial or annual examination, or for an investigation conducted under AS 45.56.680, the administrator will assess to the issuer, broker-dealer, agent, investment adviser

representative, federal covered adviser, or investment adviser who is the subject of the examination or investigation, a fee of \$150 plus the proportionate part of actual travel expenses and per diem incurred by each examiner while away from the examiner's duty station. The assessment shall be made as soon as possible after the examination or investigation has been completed, and payment of the assessment must be received by the department within 30 days after the assessment is mailed to the subject of the examination or investigation.

(c) Fees paid or assessed under this section are nonrefundable. The fees must be paid by check, money order, or another payment form approved by the administrator and made payable to the State of Alaska. (Eff. ____/____/____, Register ____)

Authority: AS 45.56.310 AS 45.56.390 AS 45.56.420
AS 45.56.370 AS 45.56.410 AS 45.56.680
AS 45.56.380

3 AAC 08 is amended by adding a new section to read:

3 AAC 08.072 Prohibited conduct in providing investment advice (a) A person who is an investment adviser, investment adviser representative, or federal covered adviser is a fiduciary and has a duty to act primarily for the benefit of the client. The provisions of this section apply to federal covered advisers only to the extent that the conduct alleged is fraudulent or deceptive under AS 45.56.500(1) or 45.56.510(1) or to the extent otherwise provided by P.L. 104 - 290, 101 Stat. 3416 - 3440 (National Securities Markets Improvement Act of 1996). While the extent and nature of the duty to act primarily for the benefit of the client varies according to the nature of the relationship between an investment adviser and its clients and the circumstances of each case, an investment adviser, an investment adviser representative, or a federal covered adviser may not engage in prohibited, fraudulent, deceptive, or manipulative conduct, including the following:

(1) recommending to a client to whom investment advisory services are provided the purchase, sale, or exchange of a security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation and needs, and other information known by the investment adviser, investment adviser representative, or federal covered adviser;

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

(3) inducing trading in a client's account that is excessive in size or frequency in view of the financial resources, investment objectives, and character of the account;

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

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

(6) borrowing money or securities from a client unless the client is a broker-dealer, an affiliate of the investment adviser or a financial institution engaged in the business of loaning funds;

(7) loaning money or securities to a client unless the investment adviser is a financial institution engaged in the business of loaning funds or the client is an affiliate of the investment adviser;

(8) misrepresenting to any client, or prospective client, the qualifications of the investment adviser, investment adviser representative, federal covered investment adviser, or any

employee, or person affiliated with the investment adviser, investment adviser representative, or federal covered investment adviser, or misrepresenting the nature of the advisory services being offered or fees to be charged for such service, or to omit to state a material fact necessary to make the statements made regarding qualifications, services or fees, in light of the circumstances under which they are made, not misleading;

(9) providing a report or recommendation to any client prepared by someone other than the investment adviser, investment adviser representative, or federal covered investment adviser without disclosing that fact. This prohibition does not apply to a situation in which the investment adviser, investment adviser representative, or federal covered investment adviser uses published research reports or statistical analyses to render advice or where an investment adviser, investment adviser representative, or federal covered investment adviser orders such a report in the normal course of providing service;

(10) charging a client an unreasonable fee;

(11) failing to disclose to clients in writing before advice is rendered any material conflict of interest relating to the investment adviser, investment adviser representative, or federal covered investment adviser, or any of its employees, or affiliated persons which could reasonably be expected to impair the rendering of unbiased and objective advice, including

(A) compensation arrangements connected with investment advisory services to clients which are in addition to compensation from such clients for such services, and

(B) charging a client an investment advisory fee for rendering investment advice when compensation for effecting securities transactions pursuant to such advice will be received by the investment adviser, investment adviser representative, or federal covered investment adviser or its employees or affiliated persons;

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

(13) publishing, circulating, or distributing any advertisement which does not comply with Part 275.206(4)-1 under the Investment Advisers Act of 1940;

(14) disclosing the identity, investments, or other financial information of any client or former client unless required by law to do so, or unless consented to by the client;

(15) taking any action, directly or indirectly, with respect to those securities or funds in which any client has any beneficial interest, where the investment adviser has custody or possession of such securities or funds when the action of the investment adviser or investment adviser representative is subject to and does not comply with the requirements of 17 C.F.R. 275.206(4) – 2 under the Investment Advisers Act of 1940;

(16) making, in the solicitation of clients, any untrue statement of a material fact, or omitting to state a material fact necessary in order to make the statement made, in light of the circumstances under which they are made, not misleading;

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

(18) taking any action, directly or indirectly, with respect to those securities or funds in which any client has any beneficial interest, where the investment adviser has custody or possession of such securities or funds when the action of the investment adviser or investment adviser representative is subject to and does not comply with the requirements of 3 AAC 08.059;

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

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

adopted under this chapter;

(21) while acting as principal for its own advisory account, to knowingly sell any security to or purchase any security from a client, or while acting as broker-dealer for a person other than the client, to knowingly effect any sale or purchase of any security for the account of the client, without disclosing to the client in writing before the completion of the transaction the capacity in which it is acting and obtaining the consent of the client to the transaction.

(b) The federal statutory and regulatory provisions referred to in this section apply to an investment adviser and a registered investment adviser representative of either a registered investment adviser or a federal covered adviser, regardless of whether the federal provisions limits their application to investment advisers or federal covered advisors subject to federal registration. With respect to a federal covered adviser, the provisions of this section apply only to the extent permitted under P.L. 104 - 290, 101 Stat. 3416 - 3440 (National Securities Markets Improvement Act of 1996) and only when the conduct proscribed involves fraud or deceit within the meaning of AS 45.56.500(a) and 45.56.510(a).

(c) The prohibitions of this section do not apply to any transaction with a customer of a broker-dealer if the broker-dealer is not acting as an investment adviser in relation to the transaction.

(d) The prohibitions of this section do not apply to any transaction with a customer or a broker-dealer if the broker-dealer acts as an investment adviser solely

(1) by means of publicly distributed written materials or publicly made oral statements;

(2) by means of written materials or oral statements not purporting to meet the objectives or needs of specific individuals or accounts;

(3) through the issuance of statistical information containing no expressions of opinion as to the investment merits of a particular security; or

(4) through any combination of the foregoing services.

(e) Publicly distributed written materials or publicly made oral statements shall disclose that, if the purchaser of the advisory communication uses the investment adviser's services in connection with the sale or purchase of a security which is a subject of the communication, the investment adviser may act as principal for its own account or as agent for another person. Compliance by the investment adviser with the foregoing disclosure requirement does not relieve it of any other disclosure obligations under AS 45.56.

(f) For the purposes of this section,

(1) "agency cross transaction for an advisory client" means a transaction in which a person acts as an investment adviser in relation to a transaction in which the investment adviser, or any person controlling, controlled by, or under common control with such investment adviser, including an investment adviser representative, acts as a broker-dealer for both the advisory client and another person on the other side of the transaction.;

(2) "publicly distributed written materials" means written materials which are distributed to 35 or more persons who pay for those materials;

(3) "publicly made oral statements" means oral statements made simultaneously to 35 or more persons who pay for access to those statements;

(g) The prohibitions of this section do not apply to an investment adviser effecting an agency cross transaction for an advisory client provided the following conditions are met:

(1) the advisory client executes a written consent prospectively authorizing the investment adviser to effect agency cross transactions for such client;

(2) before obtaining such written consent from the client, the investment adviser makes full written disclosure to the client that, with respect to agency cross transactions, the investment adviser will act as broker-dealer for, receive commissions from, and have a potentially conflicting division of loyalties and responsibilities regarding both parties to the transactions;

(3) at or before the completion of each agency cross transaction, the investment

adviser or any other person relying on this section sends the client a written confirmation that must include:

(A) a statement of the nature of the transaction;

(B) the date the transaction took place;

(C) an offer to furnish, upon request, the time when the transaction took place; and

(D) the source and amount of any other remuneration the investment adviser received or will receive in connection with the transaction. In the case of a purchase, if the investment adviser was not participating in a distribution, or, in the case of a sale, if the investment adviser was not participating in a tender offer, the written confirmation may state whether the investment adviser has been receiving or will receive any other remuneration and that the investment adviser will furnish the source and amount of such remuneration to the client upon the client's written request; and

(4) at least annually, with or as part of any written statement or summary of the account from the investment adviser, the investment adviser or any other person relying on this section sends each client a written disclosure statement identifying:

(A) the total number of agency cross transactions during the period for the client since the date of the last such statement or summary; and

(B) the total amount of all commissions or other remuneration the investment adviser received or will receive in connection with agency cross transactions for the client during the period;

(h) Each written disclosure and confirmation required by this section includes a conspicuous statement that the client may revoke the written consent required at any time by providing written notice to the investment adviser.

(i) No agency cross transaction is effected in which the same investment adviser recommended the transaction to both any seller and any purchaser.

(j) Nothing in this section may be construed to relieve an investment adviser or investment adviser representative from acting in the best interests of the client, including fulfilling the adviser's or representative's duty with respect to the best price and execution for the particular transaction for the client nor does it relive any investment adviser or investment adviser representative of any other disclosure obligations imposed by AS 45.56.

Authority: AS 45.56.420 AS 45.56.510 AS 45.56.530
AS 45.56.500 AS 45.56.520 AS 45.56.670

3 AAC 08 is amended by adding a new section to read:

3 AAC 08.073 Exemptions from qualifying examination. The administrator may exempt an applicant or a class of applicants from passing a qualifying examination required by AS 45.56 or this chapter, if granting the exemption is consistent with the purposes intended by policy and AS 45.56. (Eff. ____ / ____ / ____, Register ____)

Authority: AS 45.56.370 AS 45.56.420 AS 45.56.670
AS 45.56.400 AS 45.56.440

3 AAC 08.075(a) is amended to read:

(a) A registered person shall cooperate in any inquiry, investigation, or inspection conducted by, or on behalf of, the administrator, for the purposes of determining whether a person has violated or is about to violate a provision of **AS 45.56** [AS 45.55] or this chapter or an order issued under **AS 45.56** [AS 45.55] or this chapter.

3 AAC 08.075(b) is amended to read:

(b) A registered person's **willful** [WILFUL] failure to cooperate, absent good cause or

bona fide claim of privilege, may be determined by the administrator a violation of AS 45.56 [AS 45.55] within the meaning of AS 45.56.440 [AS 45.55.060] and therefore subject the registered person to denial, suspension, or revocation of registration. The administrator may determine failure to cooperate to include

(1) the failure to timely respond by way of appearance or production of documents to a subpoena or order issued by the administrator under AS 45.56.680 [AS 45.55.910] or as may otherwise be provided by law;

(2) the failure to answer any question pertinent to an inquiry or request for information made under AS 45.56 [AS 45.55] or this chapter unless the response to said question is subject to a bona fide claim of privilege;

(3) the failure to grant the administrator access to the business premises of a registered person or to the records and documents that the registered person is required under AS 45.56.680 [AS 45.55.910] or this chapter to make available for inspection;

(4) the failure to attend any scheduled proceeding at which the registered person's appearance is directed; or

(5) aiding or abetting another registered person's failure to cooperate.

(Eff. 1/17/2016, Register 217, am ____/____/____, Register __)

Authority: [AS 45.55.060] [AS 45.55.910] [AS 45.55.950]
AS 45.56.400 AS 45.56.670 AS 45.56.680
AS 45.56.440

3 AAC 08.085 is repealed and readopted to read:

3 AAC 08.085. Notice filings for offerings of investment company securities; face-

amount certificate companies; unit investment trusts. (a) Before any offer or sale of securities that are covered securities pursuant to section 18(b)(2) of the Securities Act of 1933, the following notice and fee must be submitted to the division:

- (1) a signed NASAA Form NF, Uniform Notice Filing Form, or its successor;
- (2) a signed NASAA Form U-2, Uniform Consent to Service of Process. An issuer who has filed a Form U-2 in connection with a previous notice filing need not file another;
- (3) the initial or renewal fee as set forth in 3 AAC 08.920; and
- (4) evidence the filing is effective with the SEC.

(b) A separate form NF, accompanied by appropriate fee, must be filed for each portfolio or class of securities and shall be deemed to cover an indefinite amount of securities.

(c) A person does not need to file any document which is part of a federal registration statement filed with the Securities and Exchange Commission or part of an amendment to such federal registration statement to complete a notice filings either prior to the initial offer or after the initial offer in this state unless requested by the administrator. The division will not require filing of annual or periodic reports of the value of investment company securities sold or offered in this state, unless the fund or trust is specifically requested to submit such reports.

(d) Notice filings are effective upon receipt by the administrator of the filing and payment of fees and expire one year from the date of receipt. The term of the notice filing will be based on the SEC effectiveness date.

(e) A notice filing under this section is valid for one year from the effective date established under (d) of this section. To renew a notice, the issuer must submit the items required by (a) of this section, as if the issuer were making an initial filing. The administrator will not accept a renewal earlier than 60 days before the expiration date of the filing. The division may suspend fund or trust sales for failure to pay fees and may assess penalties or impose other available remedies for late or underpaid fees. The renewal is effective for one year from the date of the expiration of the previous notice filing.

(f) Amendments to notice filings may be made by filing form NF marked “amendment” in the appropriate box. The change may be explained under item 3, “other”. Amendments to the name of the fund, trust, portfolio, or class must include the former name under item 3 of form NF in the line reserved for that purpose and must be accompanied by a fee pursuant to 3 AAC 08.920. A change in the name of the trust or fund must be accompanied by an amended form U-2. Withdrawal or termination of a notice filing may be made by filing form NF or providing the administrator with other notice of the withdrawal or termination and shall be effective upon receipt by the administrator of such notice.

(g) Amendments to the name and address of the contact person must be submitted on an amended form NF. (Eff. 4/19/2000, Register 154; am 1/17/2019, Register 217; am __/___/__, Register __)

Authority: [AS 45.55.075] **AS 45.56.100** **AS 45.56.670**
 [AS 45.55.110] **AS 45.56.190**
 [AS 45.55.950] **AS 45.56.200**

The authority citation for 3 AAC 08.086 is amended to read:

Authority: [AS 45.55.950] **AS 45.56.130** **AS 45.56.670**

Editor's note: Effective _____, 20__, the Division of Banking and Securities made a change to the authority citation for 3 AAC 08.086. The division did not amend the regulation itself.

3 AAC 08.087(a)(4) is amended to read:

(4) the offeror intends to register the security in this state under **AS 45.56** [AS 45.55] and to conduct its offering under either 17 C.F.R. 230.251 -- 230.263 (Regulation A) or 17 C.F.R. 230.501 -- 230.504 and 17 C.F.R. 230.507 (Rule 504 of Regulation D);

3 AAC 08.087(a)(5) is amended to read:

(5) only a person who is registered under AS 45.56 [AS 45.55] as a broker-dealer or an agent, or who is exempted from registration makes a sale of the security; and

...

3 AAC 08.087(g) is amended to read:

(g) An offeror may not make a sale of the security until seven calendar days after delivery to the purchaser of a final prospectus that is part of a registration statement that is effective under [AS 45.55.190, AS 45.55.090] AS 45.56.170 or [AS 45.55.100] AS 45.56.180.

3 AAC 08.087(h) is amended to read:

(h) Failure of an offeror to comply with the requirements of this section is a violation of AS 45.56 [AS 45.55], and the administrator will, in the administrator's discretion, take action under AS 45.56.670 [AS 45.55.920] or deny registration under AS 45.56 [AS 45.55].

3 AAC 08.087(m) is amended to read:

(m) An offer made in reliance on this section is not a violation of AS 45.56.100 [AS 45.55.070] by virtue of being integrated with a subsequent offer or sale of securities unless that subsequent offer or sale would be integrated under federal securities laws.

3 AAC 08.087(n) is amended to read:

(n) An issuer on whose behalf an indication of interest is solicited under this section may not make an offer or sale in reliance on AS 45.56.120(14) [AS 45.55.900(b)(5)(A) - (C)] until six months after the last communication with a prospective investor is made under this section.

3 AAC 08.087(p) is amended to read:

(p) An offeror may begin to conduct solicitations of interest under this section if the requirements of this section have been satisfied, unless notified otherwise by the administrator. The administrator will, in the administrator's discretion, at any time notify the offeror not to distribute a solicitation of interest form submitted under (c) of this section, script, advertisement, or other material that the administrator considers to be in violation of AS 45.56.500 [AS 45.55.010]. (Eff. 4/19/200, Register __; am ___/___/___, Register _)

Authority:	[AS 45.55.070]	<u>AS 45.56.100</u>	<u>AS 45.56.200</u>
	[AS 45.55.100]	<u>AS 45.56.170</u>	<u>AS 45.56.670</u>
	[AS 45.55.110]	<u>AS 45.56.180</u>	
	[AS 45.55.950]	<u>AS 45.56.190</u>	

The authority citation for 3 AAC 08.100 is changed to read:

[AS 45.55.100]	<u>AS 45.56.100</u>	<u>AS 45.56.670</u>
[AS 45.55.950]	<u>AS 45.56.180</u>	

Editor's note: Effective _____, 20__, the Division of Banking and Securities made a change to the authority citation for 3 AAC 08.086. The division did not amend the regulation itself.

The authority citation for 3 AAC 08.110 is changed to read:

Authority:	[AS 45.55.100]	<u>AS 45.56.100</u>	<u>AS 45.56.670</u>
	[AS 45.55.950]	<u>AS 45.56.180</u>	

Editor's note: As of Register 232 (January 2020), a change was made to the authority citation that follows 3 AAC 08.110, to reflect amendments AS 45.55 made under ch. 65, SLA 2018. The text of 3 AAC 08.110 was unchanged.

The authority citation of 3AAC 08.120 is changed to read:

Authority: [AS 45.55.100] **AS 45.56.100** **AS 45.56.670**
[AS 45.55.950] **AS 45.56.180**

Editor's note: As of Register 232 (January 2020), a change was made to the authority citation that follows 3 AAC 08.120, to reflect amendments AS 45.55 made under ch. 65, SLA 2018. The text of 3 AAC 08.110 was unchanged.

3 AAC 08.125 is amended to read:

3 AAC 08.125. Unsound financial condition. (a) The administrator **may** [WILL] consider an issuer to be in unsound financial condition if

(1) the issuer's financial statements contain a footnote to those statements or an explanatory paragraph in the independent auditor's report regarding the issuer's ability to continue as a going concern; **or** [and]

(2) one or more of the following is identified from the financial statements described in (1) of this subsection or, if the application for registration contains audited financial statements that were issued more than 90 days before the date of the application, from accompanying interim unaudited financial statements:

- (A) an accumulated deficit;
- (B) negative shareholder equity;
- (C) an inability to satisfy current obligations as they come due;
- (D) negative cash flow; for purposes of this subparagraph, an issuer has negative cash flow if revenues are not being generated by operations in excess of cash outflow;
- (E) other indicators of financial difficulties.

(b) The administrator **may** [WILL], in the administrator's discretion, deny an application for registration by an issuer in unsound financial condition.

(c) The administrator **may** [WILL], in the administrator's discretion, register an application for registration by an issuer in unsound financial condition if the chief financial officer of the issuer provides pro forma financial data acceptable to the administrator that

(1) demonstrate that the issuer's financial condition will improve either as a direct result of the offering proceeds, or through the use of the offering proceeds as part of a long-term business plan;

(2) demonstrate when profitability is expected to occur; and

(3) are supported with documentation of and the bases for any assumptions.

(d) An issuer registered under the provisions of (c) of this section must disclose in its prospectus

(1) that the issuer is considered to be in unsound financial condition, and that persons should not invest unless they can afford to lose their entire investment; and

(2) any of the following risk factors, if applicable:

(A) the presence of an explanatory paragraph in the independent auditor's report;

(B) the means by which the issuer has been financing its operations, if the issuer has not been generating revenues from operations;

(C) the amount of any accumulated deficit;

(D) the presence and amount of any negative shareholder equity;

(E) the need for future financing.

(e) The administrator **may** [WILL], in the administrator's discretion, require an issuer registered under (c) of this section to apply the net worth standards set out in (1) - (2) of this subsection or limit the sales of securities to accredited investors. The imposition of minimal net worth standards under this subsection does not relieve a broker-dealer of the responsibility of making an independent determination of suitability required under industry standards. Unless the administrator determines that the risks associated with the offering require different standards, the

issuer may sell securities only to accredited investors or to investors that have the following:

(1) a minimum annual gross income of **\$70,000** and a minimum net worth of **\$70,000**, exclusive of the investor's principal automobile, principal residence, and home furnishings; or

(2) a minimum net worth of **\$250,000**, exclusive of the investor's principal automobile, principal residence, and home furnishings; **and**

(3) no more than five percent of the non-accredited investor's net worth may be invested in the issue determined by the administrator to be unsound.

(f) If the issuer's latest audited financial statements contain an auditor's report or footnote that contains an opinion or statement regarding the ability of the issuer to continue as a going concern, the administrator will, in the administrator's discretion, require that all promotional shares be deposited in escrow in accordance with 3 AAC 08.180 -- 3 AAC 08.186. (Eff. ___/___/___, Register ___)

Authority: [AS 45.55.120] **AS 45.56.230** **AS 45.56.670**
[AS 45.55.950]

The authority citation for 3 AAC 08.130 is changed to read:

Authority: [AS 45.55.120] **AS 45.56.230** **AS 45.56.670**
[AS 45.55.950]

Editor's note: As of Register 232 (January 2020), a change was made to the authority citation that follows 3 AAC 08.130, to reflect amendments AS 45.55 made under ch. 65, SLA 2018. The text of 3 AAC 08.130 was unchanged.

The authority citation for 3 AAC 08.135 is changed to read:

Authority: [AS 45.55.120] **AS 45.56.230** **AS 45.56.670**

[AS 45.55.950]

Editor's note: As of Register 232 (January 2020), a change was made to the authority citation that follows 3 AAC 08.135, to reflect amendments AS 45.55 made under ch. 65, SLA 2018. The text of 3 AAC 08.135 was unchanged.

The authority citation for 3 AAC 08.140 is changed to read:

Authority: [AS 45.55.120] **AS 45.56.230** **AS 45.56.670**
[AS 45.55.950]

Editor's note: As of Register 232 (January 2020), a change was made to the authority citation that follows 3 AAC 08.140, to reflect amendments AS 45.55 made under ch. 65, SLA 2018. The text of 3 AAC 08.130 was unchanged.

The authority citation for 3 AAC 08.150 is changed to read:

Authority: [AS 45.55.120] **AS 45.56.230** **AS 45.56.670**
[AS 45.55.950]

Editor's note: As of Register 232 (January 2020), a change was made to the authority citation that follows 3 AAC 08.150, to reflect amendments AS 45.55 made under ch. 65, SLA 2018. The text of 3 AAC 08.150 was unchanged.

The authority citation for 3 AAC 08.160 is changed to read:

Authority: [AS 45.55.110] **AS 45.56.170** **AS 45.56.230**
[AS 45.55.120] **AS 45.56.180** **AS 45.56.670**
[AS 45.55.950] **AS 45.56.190**

Editor's note: As of Register 232 (January 2020), a change was made to the authority citation that follows 3 AAC 08.160, to reflect amendments AS 45.55 made under ch. 65, SLA 2018. The text of 3 AAC 08.160 was unchanged.

The authority citation for 3 AAC 08.170 is changed to read:

Authority: [AS 45.55.120] AS 45.56.230 AS 45.56.670
[AS 45.55.950]

Editor's note: As of Register 232 (January 2020), a change was made to the authority citation that follows 3 AAC 08.170, to reflect amendments AS 45.55 made under ch. 65, SLA 2018. The text of 3 AAC 08.170 was unchanged.

The authority citation of 3 AAC 08.180 is changed to read:

Authority: [AS 45.55.110] AS 45.56.190 AS 45.56.670
[AS 45.55.950]

Editor's note: As of Register 232 (January 2020), a change was made to the authority citation that follows 3 AAC 08.180, to reflect amendments AS 45.55 made under ch. 65, SLA 2018. The text of 3 AAC 08.180 was unchanged.

The authority citation to 3 AAC 08.182 is changed to read:

Authority: [AS 45.55.110] AS 45.56.190 AS 45.56.670
[AS 45.55.950]

Editor's note: As of Register 232 (January 2020), a change was made to the authority citation that follows 3 AAC 08.182, to reflect amendments AS 45.55 made under ch. 65, SLA 2018. The text of 3 AAC 08.182 was unchanged.

The authority citation to 3 AAC 08.184 is changed to read:

Authority: [AS 45.55.110] AS 45.56.190 AS 45.56.670
[AS 45.55.950]

Editor's note: As of Register 232 (January 2020), a change was made to the authority citation that follows 3 AAC 08.184, to reflect amendments AS 45.55 made under ch. 65, SLA 2018. The text of 3 AAC 08.184 was unchanged.

The authority citation for 3 AAC 08.186 is changed to read:

Authority: [AS 45.55.110] AS 45.56.190 AS 45.56.670
[AS 45.55.950]

Editor's note: As of Register 232 (January 2020), a change was made to the authority citation that follows 3 AAC 08.186, to reflect amendments AS 45.55 made under ch. 65, SLA 2018. The text of 3 AAC 08.186 was unchanged.

The authority citation for 3 AAC 08.190 is changed to read:

Authority: [AS 45.55.110] AS 45.56.190 AS 45.56.670
[AS 45.55.950]

Editor's note: As of Register 232 (January 2020), a change was made to the authority citation that follows 3 AAC 08.190, to reflect amendments AS 45.55 made under ch. 65, SLA 2018. The text of 3 AAC 08.190 was unchanged.

The authority citation for 3 AAC 08.200 is changed to read:

Authority: [AS 45.55.120] AS 45.56.230 AS 45.56.670
[AS 45.55.950]

Editor's note: As of Register 232 (January 2020), a change was made to the authority citation that follows 3 AAC 08.200, to reflect amendments AS 45.55 made under ch. 65, SLA 2018. The text of 3 AAC 08.200 was unchanged.

The statutory citation authority to 3 AAC 08.210 is changed to read:

Authority: [AS 45.55.120] AS 45.56.230 AS 45.56.670
[AS 45.55.950]

Editor's note: As of Register 232 (January 2020), a change was made to the authority citation that follows 3 AAC 08.210, to reflect amendments AS 45.55 made under ch. 65, SLA 2018. The text of 3 AAC 08.210 was unchanged.

The authority citation to 3 AAC 08.215 is changed to read:

Authority: [AS 45.55.120] AS 45.56.230 AS 45.56.670
[AS 45.55.950]

Editor's note: As of Register 232 (January 2020), a change was made to the authority citation that follows 3 AAC 08.215, to reflect amendments AS 45.55 made under ch. 65, SLA 2018. The text of 3 AAC 08.215 was unchanged.

3 AAC 08.222 is repealed, and readopted to read:

3 AAC 08.222. Suitability Standards. In reviewing the registration application of an investment considered by the administrator to be above average in terms of risk of loss or volatility, the administrator will, in the administrator's discretion, require that the issuer offer the security only to accredited investors, or to non-accredited investors with a minimum annual gross income of \$70,000 and a minimum net worth of \$70,000 (exclusive of principal automobile, principal residence, and home furnishings), or a minimum net worth of \$250,000 (exclusive of principal automobile, principal residence, and home furnishings). No more than 5% of a non-accredited investor's net worth may be invested in a combination of the securities enumerated above. (Eff. ____/____/_____, Register ____)

Authority: [AS 45.55.120] AS 45.56.230 AS 45.56.670

[AS 45.55.950]

3 AAC 08.225 (c) is amended to read:

(c) The requirements of (a) and (b) of this section apply to a public offering of convertible preferred stock that is superior in right to payment of dividends, interest, and liquidation proceeds to any preferred stock and convertible debt that is or may be legally or beneficially, directly or indirectly, owned by promoters. The risks of failure to declare or pay dividends and the equity characteristics of the convertible preferred stock must be disclosed in the prospectus. The administrator will, in the administrator's discretion, review an offering of these securities using the requirements in AS 45.56 [AS 45.55] and this chapter for equity offerings.

(Eff. 4/19/200, Register 154; __/__/__, Register __)

Authority: [AS 45.55.120] AS 45.56.230 AS 45.56.670
[AS 45.55.950]

The authority citation to 3 AAC 08.227 is changed to read:

Authority: [AS 45.55.950] AS 45.56.670

3 AAC 08.230 (a) is amended to read:

(a) After an application for registration of securities or a notice filing for federal covered securities becomes effective the offering may be commenced in accordance with AS 45.56 [AS 45.55] and the terms and conditions of the certificate of registration, the administrator may request that the applicant submit additional information relating to an applicant's filing. Within 30 days after receipt of the request, the applicant shall furnish and properly identify the

additional information that the administrator requested. The administrator may delay issuance of a certificate of registration of securities, but not a certificate of notice pending an applicant's completion of arrangements satisfactory to the administrator for the sale and distribution of the securities.

3 AAC 08.230(b)(4) is amended to read:

(b) The administrator may determine an application for registration or exemption is terminated, abandoned, or withdrawn if one of the following has occurred:

• • •(((Publisher: 3 AAC 08.230 (b)(1) - (3) is unchanged)))

(4) the administrator determines an application for registration or exemption to be terminated if the applicant has failed to respond within 30 days after receipt of a request made under AS 45.56.680 [AS 45.55.910].

3 AAC 08.230(c) is amended to read:

(c) If an application is withdrawn or terminated under (b) of this section, the administrator will record that action in the register of applications maintained under AS 45.56.610 [AS 45.55.970(b)]. [THE ADMINISTRATOR WILL NOTIFY THE APPLICANT BY REGULAR MAIL THAT THE APPLICATION HAS BEEN TERMINATED.] The applicant may submit a new application, which will be treated as a new application by the administrator.

3 AAC 08.230(d) is amended to read:

(d) The administrator will notify an applicant by deficiency letter of an omission or noncompliance with any requirement for registration. An applicant's failure to comply with the requirements of a deficiency letter is grounds for entry of a entry of a stop order under **AS 45.56.230** [AS 45.55.120].

3 AAC 08.230(f) is amended to read:

(f) The administrator will terminate a notice filing for federal covered securities by recording that action in the register of notice filings maintained under **AS 45.56.610** [AS 45.55.970(b)]. The notice filer may submit a new notice, which will be treated as a new notice by the administrator.

3 AAC 08.230(n) is amended to read:

(n) Termination, abandonment, or withdrawal under (b) of this section does not preclude commencement of proceedings for denial, suspension, or revocation of registration as provided in **AS 45.56.230** [AS 45.55.120]. (Eff. 2/20/72, Register 41; am 4/19/2000, Register 154; am 10/26/2000, Register 156; am 1/17/2016, Register 217; am __/__/__, Register __)

Authority: [AS 45.55.075] [AS 45.55.950] **AS 45.56.200**
[AS 45.55.110] **AS 45.56.190** **AS 45.56.670**

3 AAC 08.501(a) is amended to read:

(a) As used in **3 AAC 08.501—3 AAC 08.510** [3 AAC 08.500 -- 3 AAC 08.540], the definitions of the following terms are contained in 17 C.F.R. 230.501, [AS REVISED AS OF OCTOBER 1, 1999,] and are adopted by reference:

- (1) “accredited investor;“
- (2) “affiliate;“
- (3) “aggregate offering price;“
- (4) “business combination;“
- (5) “calculation of number of purchasers;“
- (6) “executive officer;“
- (7) “issuer;”
- (8) “purchaser representative;“
- (9) “final order.”**

3 AAC 08.501 (c) is amended to read:

(c) A person who is not a registered agent, a registered [STATE] investment adviser, or a federal covered adviser in compliance with **AS 45.56** [AS 45.55.040(h)] and who acts as a purchaser representative, is not considered an agent, [STATE] investment adviser, or federal covered adviser if the activity as purchaser representative is merely an incidental part of the person’s usual activities or occupation. (Eff. 5/24/84, Register 90; am 4/19/2000, Register 154; am ____/____/____, Register ____)

Authority: [AS 45.55.110] **AS 45.56.190** **AS 45.56.670**
 [AS 45.55.950]

3 AAC 08.503(a) is repealed and readopted to read:

(a) Pursuant to 3 AAC 08.506, an issuer or sponsor of an issuer to be formed may register up to five salespersons as agents who are exempt from the examination requirement of 3 AAC 08.010. To register an agent, the issuer or sponsor of an issuer must file an application for registration in accordance with 3 AAC 08.010 and pay the required fee under 3 AAC 08.015(a)(1)(B). A salesperson may not be registered to more than one person at a time without

complying with the dual registration provisions of 3 AAC 08.010.

3 AAC 08.503(b) is repealed and readopted to read:

(b) The registrant shall, for five years after the closing of the offering, maintain and keep open for inspection by the administrator or his designee inside or outside of this state

(1) all offering materials;

(2) records relating to purchaser representatives used, and materials and data relied upon to determine the qualifications of the purchaser representatives;

(3) records relating to purchasers, and materials and data relied upon to determine the qualifications of the purchasers; and

(4) records relating to securities sales after the closing of the offering, that are considered as part of the offering.

3 AAC 08.503(c) is repealed:

(c) Repealed __/__/____.

3 AAC 08.503(d) is amended to read:

(d) The registrant shall, for **five** [THREE] years after the closing of the offering, maintain and keep open for inspection by the administrator or his designee inside or outside of this state

(1) all offering materials;

(2) records relating to purchaser representatives used, and materials and data relied upon to determine the qualifications of the purchaser representatives;

(3) records relating to purchasers, and materials and data relied upon to determine the qualifications of the purchasers; **and**

(4) records relating to securities sales after the closing of the offering, that are considered as part of the offering[; AND

(5) ALL OFFERING MATERIALS USED IN CONNECTION WITH THE OFFERINGS REINSTAERED UNDER 3 AAC 08.500 - 3 AAC 08.505]. (Eff. 5/24/84, Register 90; am 9/8/91, Register 119; am 10/1/99, Register 151; am 4/19/2000, Register 154; am __/__/__, Register __)

Authority: [AS 45.55.110] **AS 45.56.190** **AS 45.56.670**
[AS 45.55.950]

3 AAC 08.504 is repealed.

3 AAC 08.504. Registration of Rule 504 offerings. Repealed. (Eff. 5/24/84, Register 90; am 4/19/200, Register 154; repealed __/__/__, Register __)

3 AAC 08.505 is repealed

3 AAC 08.505. Registration of Rule 505 offerings. Repealed. (Eff 5/24/84, Register 90; am 4/19/2000, Register 154; repealed __/__/__, Register __)

3 AAC 08.506 is repealed and readopted to read:

Notice filing procedures for transactions of federal covered securities not involving public offerings. (a) An issuer offering a security pursuant to 17 C.F.R. § 230.506 must file with the division through the EFD system, no later than 15 days after the first sale of such security in this state, the following:

- (1) a Form D, including Part E and the Appendix;
- (2) the filing fee required under 3 AAC 08.920(a)(3); and

(b) Payment of the late fee required under 3 AAC 08.920(a)(15) does not prevent any civil liability or regulatory action from being taken based on a violation of AS 45.56.

(c) A notice filing under this section is valid for one year from the effective date pursuant to AS 45.56.200(b). To renew a notice, the issuer must submit the items required by (a) of this section to the administrator through the EFD system, as if the issuer were making an initial filing. The administrator will not accept a renewal earlier than 60 days before the expiration date of the filing.

(d) A notice filing under this section does not relieve a person from compliance with the statutory requirements of AS 45.56 for full and adequate disclosures of material items.

(e) Notwithstanding (a) of this section, an issuer may choose to claim an available exemption under AS 45.56.110 and AS 45.56.120 even if the issuer has filed an SEC Form D with the SEC. However, securities offered under an available exemption under AS 45.56.110 will not be considered federal covered securities.

(f) During the period of the offering, the issuer shall take steps necessary to insure that all material information contained in the notice filing remains current and accurate for filings made pursuant to this section.

Authority: [AS 45.55.075] **AS 45.56.200** **AS 45.56.670**
[AS 45.55.950]

3 AAC 08 is amended by adding a new section to read:

3 AAC 08.507 Notice filing requirement for Regulation A - Tier 2 offering. (a) An issuer planning to offer and sell securities in this state in an offering exempt under Tier 2 of federal Regulation A shall submit the following at least thirty calendar days prior to the initial sale in this state:

- (1) a completed Regulation A - Tier 2 notice filing form or copies of all documents filed with the Securities and Exchange Commission;
- (2) a consent to service of process on Form U-2 if not filing on the Regulation A - Tier 2 notice filing form; and

(3) the filing fee prescribed by 3 AAC 08.920;

(b) The initial notice filing is effective for twelve months from the date of the filing with this state.

(c) For each additional twelve-month period in which the same offering is continued, an issuer conducting a Tier 2 offering under federal Regulation A must renew its notice filing by filing the following on or before the expiration of the notice filing:

(1) the Regulation A - Tier 2 notice filing form marked "renewal";

(2) a cover letter requesting renewal; and

(3) the filing fee required under 3 AAC 08.920. (Eff. __/__/__, Register __)

Authority: AS 45.56.200 AS 45.56.670

3 AAC 08.510(a) is amended to read:

(a) All separate sales of securities by an issuer that are a part of the same offering registered under AS 45.56.190 [3 AAC 08.501 - 3 AAC 08.505] or noticed under AS 45.56.200 [3 AAC 08.506] are included as securities sold under the same offering, except as otherwise provided in this section.

3 AAC 08.510(c) is amended to read:

(c) A sale of securities made more than six months before the effective date of registration under AS 45.56.190 [3 AAC 08.501- 3 AAC 08.505], or of notice under AS 45.56.200 [3 AAC 08.506], or more than six months after the termination of the offering, is not included as a sale made as part of the same offering under this section if sales of securities of the same or similar class by the issuer do not occur during either six-month period. For purposes of this subsection,

[(1) THE EFFECTIVE DATE OF A REGISTRATION UNDER 3 AAC 08.504 OR 3 AAC 08.505 IS THE DATE A REGISTRANT IS AUTHORIZED TO SELL SECURITIES UNDER A CERTIFICATE OF REGISTRATION ISSUED BY THE ADMINISTRATOR;]

(1) the effective date of a notice under 3 AAC 08.506 is the date established under AS 45.56.200(b) [3 AAC 08.506(b)].

(2) the termination date of the offering under 3 AAC 08.506 is the earlier of the

(A) expiration date of a certificate of notice in the case of an offering under 3 AAC 08.506; or

(B) date of last sale of securities.

3 AAC 08.510(e) is repealed and readopted to read:

(e) A person may request an interpretative opinion from the administrator as to whether a transaction is exempt by filing a request under AS 45.56.670(d) and paying the fee prescribed in 3 AAC 08.920.

3 AAC 510(f) is repealed.

(f) Repealed __/__/__.

(Eff. 4/19/2000, Register 154; am ____/____/____, Register ____)

Authority. [AS 45.55.110] AS 45.56.200 AS 45.56.670
[AS 45.55.950]

3 AAC 08.600 is repealed

3 AAC 08.600. General Provisions relating to small corporate offerings. Repealed.

(Eff 9/18/91, Register 119; am 4/19/2000, Register 154; repealed __/__/__, Register __)

3 AAC 08.610 is repealed

3 AAC 08.610. Qualifications for small corporate offerings. Repealed. (Eff 9/18/91, Register 119; am 4/19/2000, Register 154; repealed __/__/__, Register __)

3 AAC 08.620 is repealed

3 AAC 08.620. Disqualification of small corporate offerings. Repealed. (Eff 9/18/91, Register 119; am 4/19/2000, Register 154; repealed __/__/__, Register __)

3 AAC 08.630 is repealed

3 AAC 08.630. Filing requirements for small corporate offerings. Repealed. (Eff 9/18/91, Register 119; am 4/19/2000, Register 154; repealed __/__/__, Register __)

3 AAC 08.640 is repealed

3 AAC 08.640. Registration and reporting for small corporate offerings. Repealed. (Eff 9/18/91, Register 119; am 10/0/99, Register 151; am 4/19/2000, Register 154; repealed __/__/__, Register __)

3 AAC 08.650 is repealed

3 AAC 08.650. Escrow, lock-in, and impound provisions for small corporate offerings. Repealed. (Eff 9/18/91, Register 119; am 4/19/2000, Register 154; repealed __/__/__, Register __)

3 AAC 08.705 is repealed and readopted to read:

3 AAC 08.705. Scope of viatical settlement requirements. Under AS 45.56.210, sales of viatical settlements shall comply with all applicable requirements in AS 45.56; and

(1) can only be sold through a registered agent of a registered broker-dealer or by an agent of the issuer in compliance with 3 AAC 08.010. An agent of the issuer must show proof that the applicant has passed the required state and federal examinations; and

(2) does not provide an exemption from the fraud provisions of AS 45.56 (Eff.4/20/2000, Register 154; am ___/___/___, Register ___)

Authority: AS 45.56.100 AS 45.56.510 AS 45.56.550
AS 45.56.210 AS 45.56.520 AS 45.56.670
AS 45.56.500 AS 45.56.530

The introductory language of 3 AAC 08.710(a) is amended to read:

(a) Under **3 AAC 08.705 - 3 AAC 08.730** [3 AAC 08.700-- 3 AAC 08.740], an offer or sale of a viatical settlement interest, or of a security that represents or is secured by a viatical settlement interest, may be registered if

...

The introductory language of 3 AAC 08.710(a)(2) is amended to read:

(2) a registration statement on State of Alaska Form 08-102, the fee established in 3 AAC 08.920(a)(10), and the consent to service of process required by **AS 45.56.650** [AS 45.55.980(g)] are filed with the administrator; the registration statement must include

...

3 AAC 08.710(a)(4) is amended to read:

(4) the offer or sale is made by, and commissions or other remuneration in connection with making the sale are made only to, persons registered or required to be registered under **AS 45.56** [AS 45.55.030(a) AND AS 45.55.040].

3 AAC 08.710(b) is amended to read:

(b) Registration under **3 AAC 08.705 – 3 AAC 08.730** [3 AAC 08.700 -- 3 AAC 08.740] is not available to an issuer if the issuer, a predecessor of the issuer, an affiliate of the issuer, a director of the issuer, an officer of the issuer, a general partner of the issuer, a beneficial owner of 10 percent or more of a class of the issuer's equity securities, a promoter of the issuer presently connected with the issuer in any capacity, an underwriter of the securities to be offered, a partner of an underwriter of the securities to be offered, a director of an underwriter of the securities to be offered, or an officer of the underwriter of the securities to be offered

(1) has filed within the last **ten** [FIVE] years a registration statement that is the subject of a currently effective registration stop order entered by a state securities administrator or the SEC;

(2) within the last **ten** [FIVE] years has been convicted of

(A) a felony;

(B) a criminal offense involving fraud or deceit; or

(C) a criminal offense in connection with the offer, purchase, or sale of a security;

(3) is currently subject to a state or federal administrative enforcement order or judgment entered within the last **ten** [FIVE] years finding fraud or deceit in connection with the

purchase or sale of a security; or

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

3 AAC 08.710 is amended by adding a new subsection to read:

(c) The filing required in this section is effective one year from the date of approval by the administrator. The administrator must be notified in writing of an occurrence of any material change in the information on file with the administrator within 30 days after the occurrence of the material change. (Eff. 4/20/2000, Register 154; am __/___/__, Register __)

The authority citation to 3 AAC 08.710 is changed to read:

Authority:	[AS 45.55.070]	[AS 45.55.950]	<u>AS 45.55.210</u>
	[AS 45.55.110]	<u>AS 45.56.100</u>	<u>AS 45.56.670</u>
	[AS 45.55.150]	<u>AS 45.56.200</u>	

The authority citation to 3 AAC 08.720 is changed to read:

Authority:	[AS 45.55.070]	<u>AS 45.56.100</u>	<u>AS 45.56.670</u>
	[AS 45.55.120]	<u>AS 45.56.210</u>	
	[AS 45.55.950]	<u>AS 45.56.230</u>	

Editor's note: As of Register 232 (January 2020), a change was made to the authority citation that follows 3 AAC 08.720, to reflect amendments AS 45.55 made under ch. 65, SLA

2018. The text of 3 AAC 08.720 was unchanged.

The introductory language of 3 AAC 08.725 is amended to read:

3 AAC 08.725. Sales agents. In addition to meeting other requirements for agents under AS 45.56 [AS 45.55] and this chapter, a sales agent who is registered to sell viatical settlement interests shall

...

(Eff. 4/20/2000, Register 154; am __/___/___, Register ___)

Authority:	[AS 45.55.030]	<u>AS 45.56.210</u>	<u>AS 45.56.670</u>
	[AS 45.55.040]	<u>AS 45.56.330</u>	
	[AS 45.55.950]	<u>AS 45.56.370</u>	

The authority citation for 3 AAC 08.730 is changed to read:

Authority:	[AS 45.55.110]	<u>AS 45.56.190</u>	<u>AS 45.56.220</u>
	[AS 45.55.950]	<u>AS 45.56.210</u>	<u>AS 45.56.670</u>

3 AAC 08.740 is repealed.

3 AAC 08.740. Privacy. Repealed. (Eff. 4/20/2000, Register 154; repealed __/___/___, Register ___)

3 AAC 08.810(a) is amended to read:

(a) In an offering conducted in reliance upon the crowdfunding exemption in AS 45.56.130 [AS 45.55.175], the issuer shall file with the administrator, not later than 10 days

before the use of a general solicitation or not later than 15 days after the first sale of a security,

...

3 AAC 08.810(d) is amended to read:

(d) To claim an exemption under **AS 45.56.130** [AS 45.55.175], an issuer must have an active business license issued under AS 43.70. (Eff.11/26/2016, Register 220; am __/__/__, Register __)

Authority: [AS 45.55.175] **AS 45.56.130** **AS 45.56.670**
[AS 45.55.950]

3 AAC 08.820 (a) is amended to read:

(a) Before any offer or sale of a security under **AS 45.56.130** [AS 45.55.175], the issuer shall contemporaneously provide to each prospective purchaser the following disclosures:

...

3 AAC 08.820(a)(7) is amended to read:

(7) the terms and conditions of the securities being offered, the total amount of securities that are outstanding before the offering, and the total amount of securities being offered or sold in reliance on the exemption in **AS 45.56.130** [AS 45.55.175]; and

3 AAC 08.820(b) is amended to read

(b) The issuer shall inform all investors that the securities exempted under 3 AAC 08.810 - 3 AAC 08.895 are not registered with the state, that they are subject to a limitation on resale and investors may not be able to sell their securities promptly or may only be able to sell them at a substantial discount from the offering price. On the cover page of the offering document, the disclosure must contain in all capital letters in 12-point font or larger the following language: “THESE SECURITIES ARE BEING SOLD IN RELIANCE ON AN EXEMPTION TO THE FEDERAL SECURITIES REGISTRATION REQUIREMENTS UNDER SECTION 3(a)(11) OF THE SECURITIES ACT OF 1933 AND UNDER AS 45.56.130 [AS 45.55.175] OF THE ALASKA SECURITIES ACT. THESE SECURITIES CAN ONLY BE SOLD TO RESIDENTS OF ALASKA AND ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE. INVESTORS SHOULD BE AWARE THAT THEY WILL BE REQUIRED TO BEAR THE FINANCIAL RISKS OF THIS INVESTMENT FOR AN INDEFINITE PERIOD OF TIME.

IN MAKING AN INVESTMENT DECISION, INVESTORS SHOULD RELY ON THEIR OWN EXAMINATION OF THE ISSUER AND THE TERMS REVEALED IN THESE OFFERING DOCUMENTS, INCLUDING THE MERITS AND RISKS INVOLVED. THESE SECURITIES HAVE NOT BEEN RECOMMENDED BY ANY FEDERAL OR STATE AUTHORITY OR REGULATORY COMMISSION NOR HAVE THEY CONFIRMED THE ACCURACY OR DETERMINED THE ADEQUACY OF THIS DOCUMENT. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.”

(Eff. 11/26/2016, Register 220, am ____/____/____, Register ____)

Authority: [AS 45.55.175] AS 45.56.130 AS 45.56.670
[AS 45.55.950]

The introductory language to 3 AAC 08.830(a) is amended to read:

(a) An issuer conducting an offering under AS 45.56.130 [AS 45.55.175] shall enter into an escrow agreement with an escrow agent located in this state that includes the following terms

• • •

Authority: [AS 45.55.175] AS 45.56.130 AS 45.56.670
[AS 45.55.950]

3 AAC 08.840(a) is amended to read:

(a) An issuer may engage in public advertising or general solicitation of securities in an offering relying on the exemption in AS 45.56.130 [AS 45.55.175] if

...

(Eff. 11/26/2016, Register 220; am ___/___/___, Register ___)

Authority: [AS 45.55.175] AS 45.56.130 AS 45.56.670
[AS 45.55.950]

3 AAC 08.850 (a) is amended to read:

(a) At or before the time an issuer accepts any funds or an irrevocable commitment to invest by a person in an offering conducted in reliance on the exemption in AS 45.56.130 [AS 45.55.175], the issuer shall obtain evidence that the person is a resident of this state.

(Eff. 11/26/2016, Register 220; am ___/___/___ Register ___)

Authority: [AS 45.55.175] AS 45.56.130 AS 45.56.670

[AS 45.55.950]

3 AAC 08.860(a) is amended to read:

(a) An issuer that has filed or is required to file under the exemption in AS 45.56.130 [AS 45.55.175] shall keep and maintain written or electronic records relating to offers and sales of securities made in reliance on the exemption for at least five years following the termination of the offering. These records must include

...(Eff. 11/26/2016, Register 220; am ___/___/___, Register ___)

Authority:	[AS 45.55.175]	[AS 45.55.950]	<u>AS 45.56.680</u>
	[AS 45.55.910]	<u>AS 45.56.130</u>	<u>AS 45.56.800</u>
	[AS 45.55.915]	<u>AS 45.56.670</u>	

3 AAC 08.870(a) is amended to read:

(a) An issuer relying on the exemption in AS 45.56.130 [AS 45.55.175] may use a website operated by the issuer to advertise, offer, and sell securities if the issuer

...

(Eff. 11/26/2016, Register 220; am ___/___/___, Register ___)

Authority:	[AS 45.55.175]	<u>AS 45.56.130</u>	<u>AS 45.56.670</u>
	[AS 45.55.950]		

The introductory language to 3 AAC 08.880(a) is amended to read.

(a) An issuer relying on the exemption in AS 45.56.130 [AS 45.55.175] may use a website operated by a third party to advertise securities. A third-party website shall

• • •

3 AAC 08.880(b)(1) is amended to read:

(1) solicit, sell, or effect transactions in securities unless it is a registered broker-dealer under **AS 45.55.300** [AS 45.55.030] or a funding portal as defined by 17 C.F.R. 227.300(c)(2), as revised as of May 16, 2016 and adopted by reference;

• • •

3 AAC 08.880(c) is amended to read:

(c) Records of a third-party website under this section are subject to reasonable periodic, special, or other examination by the administrator, as the administrator considers necessary or appropriate in the public interest or for the protection of investors. An audit or examination may be made at any time and without prior notice and the administrator may charge a fee associated with the examination as described in **3 AAC 08.071(b)** [3 AAC 08.015(b)].

(Eff. 11/26/216, Register 220; am ___/___/___ Register ___)

Authority:	[AS 45.55.175]	[AS 45.55.910]	[AS 45.55.915]
	[AS 45.55.950]	<u>AS 45.56.130</u>	<u>AS 45.56.670</u>
	<u>AS 45.56.680</u>	<u>AS 45.56.800</u>	

3 AAC 08.895(2) is amended to read:

(2) “third-party website” means a website operated by anyone other than the issuer to advertise securities offered under **AS 45.56.130** [AS 45.55.175]. (Eff. 11/26/2016, Register 220; am ___/___/___, Register ___)

Authority: [AS 45.55.175] [AS 45.55.950] **AS 45.56.670**
[AS 45.55.910] **AS 45.56.130** **AS 45.56.680**

The authority citation to 3 AAC 08.900 is changed to read:

Authority: [AS 45.55.150] **AS 45.56.500** **AS 45.56.530**
[AS 45.55.170] **AS 45.56.510** **AS 45.56.550**
[AS 45.55.950] **AS 45.56.520** **AS 45.56.670**

The introductory language to 3 AAC 08.910 is amended to read:

The following governs exemptions under [AS 45.55] **AS 45.56** relating to securities and transactions as indicated:

...

The introductory language to 3 AAC 08.910(1)(A) is amended to read:

(A) for the purpose of the “manual exemption“ under **AS 45.56.120(2)(D)** [AS 45.55.900(b)(17)], the following publications that contain information prescribed at **AS 45.56.120(2)(D)** [AS 45.55.900(b)(17)] are “nationally recognized securities manuals“:

...

3 AAC 08.910(3)(B) is amended to read.

(B) in **AS 45.56.120(14)(A)** [AS 45.55.900(b)(5)(A) AND (B)], “in this state“ has the same meaning as “in this state“ in **AS 45.56.660(b)** [AS 45.55.980(c)];

3 AAC 08.910(3)(C) is repealed:

(C) repealed __/__/__;

3 AAC 08.910(3)(D) is repealed:

(D) repealed __/__/__;

3 AAC 08.910 (3)(E) is repealed:

(3)(E) repealed __/__/__;

The introductory language of 3 AAC 08.910(3)(F) is amended to read:

(F) unless waived by the administrator at the written request of the issuer, the exemption provided by **AS 45.56.120(14)** [AS 45.55.900(b)(5)(B)] may not be relied upon unless the issuer has reason to believe, in the case of

...

The introductory language of 3 AAC 08.910(4) is amended to read:

(4) for the purposes of [(3)(E) AND] (3)(F) of this section, the administrator will consider the following to be a single owner of a security:

...

3 AAC 08.910(6) is amended to read:

(6) an application for exemption under **AS 45.56.120(15)** [AS 45.55.900(b)(7)] when a commission or other remuneration other than a standby commission is paid, shall be filed with the administrator on State of Alaska Form 08-109 along with the fees as required by

08.920(a)(6); the application must be in the administrator’s possession **ten** [five] full business days before the proposed transaction, unless the administrator waives the **ten-day** [five-day] time requirement. **For the purposes of this section, a “standby commission” means payment to an underwriter for risk and services in connection with the commitment to take down any portion of the offering which is not taken down by the security holders. No other commissions or remuneration may be paid. If a commission is paid, the issuer must file a notice specifying the terms of the offer to the administrator prior to making the offer to security holders;**

3 AAC 08.910(7) is repealed and readopted to read:

(7) the exemption granted in as 45.56.110(7) for non-profit organizations also includes community development organizations, economic development organizations, and agricultural trade associations;

3 AAC 08.910(8) is repealed and readopted to read:

(8) the exemption under AS 45.56.120(11) does not include any transaction which involves a security that is an investment contract or a profit-sharing agreement.

3 AAC 08.910(9) is amended to read:

(9) an application for exemption under **AS 45.56.120(19)** [AS 45.55.900(b)(19)] shall be filed with the administrator on State of Alaska Form 08-111 along with the fees as required by 3 AAC 08.920(a)(6), and must be in the administrator’s possession at least 10 business days before the offer is made, unless the administrator waives the 10-day time requirement;

The introductory language to 3 AAC 08.910(10) is amended to read:

(10) in AS 45.56.120(26) [AS 45.55.900(b)(20)]

...

3 AAC 08.910(11) is amended to read:

(11) each application for exemption filed under AS 45.56.110 and AS 45.56.120 [AS 45.55.900] must be accompanied by the fee as provided in 3 AAC 08.920(a)(6); the administrator will not consider the application for exemption complete until both the application, containing the required information, and the required fee are received by the administrator;

3 AAC 08.910(13) is repealed:

(13) repealed __/__/____.

3 AAC 08.910(14) is amended to read:

(14) in AS 45.56.120(1) [AS 45.55.900(b)(9)], “controlling person“ means a person who owns or controls more than 50 percent of the outstanding shares of the securities of a person. (Eff. 2/20/72, Register 41; am 3/24/76, Register 57; am 2/9/78, Register 65; am 11/18/90, Register 116; am 9/8/91, Register 119; am 10/1/99, Register 151; am 6/8/2001, Register 158; am 3/4/2015, Register 213; am 11/26/2016, Register 220; am ____/____/____, Register ____)

Authority: [AS 45.55.900] AS 45.56.110 AS 45.56.670

[AS 45.55.950] AS 45.56.120

The introductory language of 3 AAC 08.920(a) is amended to read:

(a) All applications, notices, petitions, amendments, reports, and complaints required to be filed under **AS 45.56** [AS 45.55] and this chapter, except for proxy solicitation materials filed under AS 45.55.139, are governed by the following:

...

3 AAC 08.920(a)(2) is amended to read:

(2) all fees shall accompany the application or supplemental amendment to which they pertain and are payable by check or money order to the State of Alaska; the administrator will, in the administrator's discretion, approve another payment form if it furthers the purposes of **AS 45.56** [AS 45.55] and this chapter;

3 AAC 08.920(a)(6) is amended to read:

(6) a person filing or required to file a notice under **AS 45.56.110 and AS 45.56.120**, except under **AS 45.56.120(19)** [AS 45.55.900], shall pay a nonrefundable fee of \$50;

3 AAC 08.920(a)(7) is amended to read:

(7) a person filing a request for interpretative opinions under **AS 45.56.670(d)** [AS 45.55.970(e)], including requests for "No Action Letters," shall pay a nonrefundable fee of \$250;

3 AAC 08.920(a)(8) is amended to read:

(8) a person filing a notice of a name change of an issue, adding or deleting classes to an issue, or increasing the number of securities specified to be offered or sold to an issue registered or noticed under AS 45.56 [AS 45.55] shall pay a \$25 nonrefundable notice fee for each change, addition, or deletion filed;

3 AAC 08.920(a)(11) is amended to read:

(11) a person filing or required to file a notice under AS 45.56.120(19) [AS 45.55.900(b)(19)] shall pay a nonrefundable fee of \$250;

3 AAC 08.920(a)(12) is amended to read:

(12) a person filing a notice under AS 45.56.130 [AS 45.55.175] shall pay a nonrefundable fee of \$150;

3 AAC 08.920(a) is amended by adding new paragraphs to read:

(15) a person filing a notice under 3 AAC 08.506 shall pay a nonrefundable fee of \$25.00 per day for every day the filing is in violation of as 45.56.200;

(16) a person filing a notice under 3 AAC 08.507 the nonrefundable notice fee for offerings of securities covered under 17 CFR 230.251 is \$600 for one year.

3 AAC 08.920(b) is amended to read:

(b) To comply with a provision for a consent to service of process required to be filed with the administrator under AS 45.56 [AS 45.55] and this chapter, a broker-dealer, an agent, a federal covered adviser, an investment adviser, an investment adviser representative, or an issuer

may incorporate by reference any consent to service of process previously filed with the administrator by that person or entity.

3 AAC 08.920(c) is repealed:

(c) Repealed __/__/__. (Eff. 2/20/72, Register 41; am 10/1/99, Register 151; am 4/19/2000, Register 154; am 4/20/2000, Register 154; am 1/4/2013, Register 205; am 3/4/2015, Register 213; am 1/17/2016, Register 216; am 3/20/2016, Register 217; am 11/26/2016, Register 220; am ___/___/_____, Register _____)

Authority:	[AS 45.55.110]	[AS 45.55.950]	<u>AS 45.56.190</u>
	[AS 45.55.139]	[AS 45.55.980]	<u>AS 45.56.660</u>
	[AS 45.55.175]	<u>AS 45.56.130</u>	<u>AS 45.56.670</u>

3 AAC 08.945 is repealed and readopted to read.

3 AAC 08.945. Electronic records and signatures. The administrator may accept electronic records and signatures pursuant to AS 45.56.810 and in compliance with federal law. The administrator may allow for an issuer of securities or agent acting on behalf of the issuer to utilize electronic offering documents and signatures if they comply with NASAA’s statement of policy regarding use of electronic offering documents and electronic signatures adopted on May 8, 2017. (Eff. 4/19/2000, Register 154; am __/___/__, Register __)

Authority:	[AS 09.25.510]	[AS 09.25.950]	<u>AS 45.56.810</u>
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3 AAC 08 is amended by adding a new section to read:

3 AAC 08.948 Foreign Corporations Doing Business in this State. In addition to

complying with AS 45.56 and this chapter, a foreign corporation with offices in this state that does business as a broker-dealer, an agent, a federal covered adviser, or an investment adviser, must register under AS 10.06 before doing business in this state, unless exempted under AS 10.06.718. (Eff. ___ / ___ / _____, Register _____)

Authority: AS 45.56.300 AS 45.56.340 AS 45.56.370
AS 45.56.310 AS 45.56.350 AS 45.56.670
AS 45.56.330 AS 45.56.360

3 AAC 08.950 is repealed and readopted to read:

3 AAC 08.950. Definitions. Unless the context requires otherwise, in AS 45.56 and this chapter, and in the forms, instructions, and orders of the administrator,

(1) “accredited investor“ has the meaning given in 17 C.F.R. 230.501(a), as revised as of October 1, 2013, and adopted by reference;

(2) “adjusted net earnings“ means the issuer’s net earnings, after charges for interest and dividends, and adjusted on a pro forma basis to reflect

(A) the elimination of any required charges for debt, debt securities, or preferred stock that are to be redeemed or retired from the proceeds derived from the public offering of preferred stock;

(B) the effect of any acquisitions or capital expenditures that materially affect the issuer’s net earnings, and that

(i) were made by the issuer after its last fiscal year; or

(ii) are proposed or required to be made by the issuer during its current fiscal

year;

(C) the effect of charges or dividends on debt, debt securities, or preferred stock

issued after the issuer's last fiscal year;

(D) the effect of any charges or dividends on debt, debt securities, or preferred stock that were issued during the issuer's last fiscal year, but that were outstanding for only a portion of that fiscal year, as if charges or dividends on the debt, debt securities, or preferred stock had been outstanding for the entire fiscal year; and

(E) the effect of any other material changes to an issuer's future net earnings;

(3) "affiliate" means a person who directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, another person;

(4) "aggregate public offering" means the dollar amount of the whole public offering;

(5) "aggregate revenues" means the aggregate amount of revenues a promotional or development stage company has received within the last three consecutive fiscal years immediately preceding the public offering plus revenues received during the period covered by any interim period for financial information included in the prospectus, excluding revenues from interest and extraordinary items;

(6) "applicant" means the person executing an application for the registration of securities, or registration as a broker-dealer, agent, investment adviser representative, or investment adviser, or any person who will be engaged for all or part of the person's time in selling of securities, either as an executive officer, a dealer, an issuer, or as a salesman for a dealer or an issuer a person executing an application to file a notice in connection with a federal covered adviser or federal covered securities;

(7) "application" means the form prescribed by the administrator for filing in connection with the registration of securities, or as a broker-dealer, agent, investment adviser representative, or investment adviser, or in connection with notice filings of federal covered securities or federal covered adviser, including all amendments, papers, documents and exhibits incidental thereto;

(8) "associate" means if used to indicate a relationship with a person,

(A) any corporation or legal entity, other than the issuer or majority-owned

subsidiary of the issuer, of which a person is an officer, director, partner, or a direct or indirect legal or beneficial owner of five percent or more of any class of equity securities;

(B) a trust or other estate in which a person has a substantial beneficial interest or for which a person serves as a trustee or in a similar capacity; and

(C) a person's spouse and relatives, by blood or by marriage, if the person is a promoter of the issuer, its subsidiaries, its affiliates, or its parent;

(9) "average promotional price" means the average per share price paid for promotional shares and other shares issued before the public offering that are of the same class of shares being offered in the public offering; "average promotional price" is determined by reference to the audited financial statements of the issuer included in the prospectus;

(10) "cash analysis" means a calculation of the issuer's net cash provided by operating activities, as reflected on the statement of cash flows and presented in conformity with generally accepted accounting principles; if debt securities are to be redeemed or retired from the proceeds from the public offering, a pro forma adjustment for the elimination of the related interest charges, net of applicable income taxes, must be made;

(11) "certified" means certified by an independent certified public accountant in accordance with generally accepted accounting practices when used in connection with financial statements;

(12) "control" means the power to direct or influence the direction of the management or policies of a person directly or indirectly, through the ownership of voting securities, by contract or otherwise;

(13) "controlling person" means an officer, a director, a partner, a trustee, or an individual occupying similar status or performing similar functions, or a person owning at least 10 percent of the outstanding shares of securities of a person;

(14) "CRD" means the Central Registration Depository;

(15) "custody" means holding directly or indirectly, client funds or securities, or having

any authority to obtain possession of them or has the ability to appropriate them;

(A) custody includes:

(i) possession of client funds or securities unless received inadvertently and returned to the sender promptly, but in any case within three business days of receiving them;

(ii) any arrangement, including a general power of attorney, under which the investment adviser is authorized or permitted to withdraw client funds or securities maintained with a custodian upon the investment adviser's instruction to the custodian; and

(iii) any capacity, including a general partner of a limited partnership, managing member of a limited liability company, or a comparable position for another type of pooled investment vehicle, or trustee of a trust, that gives the investment adviser or its supervised person legal ownership of or access to client funds or securities;

(B) receipt of checks drawn by clients and made payable to unrelated third parties will not meet the definition of custody if forwarded to the third party within 24 hours of receipt and the adviser maintains a ledger or other listing of all securities or funds held or obtained, including the following information:

(i) issuer;

(ii) type of security and series;

(iii) date of issue;

(iv) for debt instruments, the denomination, interest rate, and maturity

date;

(v) certificate number, including alphabetical prefix or suffix;

(vi) name in which registered;

(vii) date given to the adviser;

(viii) date sent to client or sender;

(ix) form of delivery to client or sender, or copy of the form of delivery to client or sender; and

(x) mail confirmation number, if applicable, or confirmation by client or sender of the fund's or security's return;

(16) “depositor” means a promoter who is required to deposit promotional shares into escrow in accordance with 3 AAC 08.180 - 3 AAC 08.186;

(17) “division” means the division assigned securities functions in the Alaska Department of Commerce, Community, and Economic Development;

(18) “domestic corporation” means a corporation organized under AS 10.05;

(19) “EFD system” means the Electronic Filing Depository system provided by the North American Securities Administrators Association;

(20) “equity securities” means shares of common stock or similar securities and convertible securities, warrants, options, or rights that may be converted into or exercised to purchase shares of common stock or similar securities;

(21) “escrow agent” means

(A) a depository institution

(i) whose principal place of business and domicile is in the United States;

and

(ii) that is not affiliated with the issuer, promoters of the issuer, or associates of the issuer, except that the issuer, promoters of the issuer, or associates of the issuer may be customers of the financial institution; or

(B) an attorney or certified public accountant, if the attorney or certified public accountant is not affiliated with the issuer, its promoters, or associates, is licensed to do business in the state in which the attorney or certified public accountant practices, and can demonstrate that the attorney or certified public accountant is adequately insured or can provide a fidelity bond;

(22) “face-amount certificate company” has the meaning given in 15 U.S.C. 80a -4(1) (sec.

4(l) of the Investment Company Act of 1940);

(23) “FINRA” means the Financial Industry Regulatory Authority, formerly the NASD.

(24) “firmly underwritten offering” means an offering that is purchased by the broker-dealer, who assumes the risk of distribution;

(25) “foreign corporation” means a corporation organized under laws other than the laws of this state;

(26) “impoundment agent” means a depository institution that is domiciled and whose principal place of business is located in the United States and whose deposits are insured by the FDIC;

(27) “independent director” means a member of the issuer’s board of directors who

(A) is not an officer of the issuer, its subsidiaries, or their affiliates, and has not been an officer, or employee of the issuer, its subsidiaries, or their affiliates or associates within the last two years;

(B) is not a promoter; and

(C) does not have a material business or professional relationship with the issuer or any of its affiliates or associates; for purposes of determining whether a business or professional relationship is material, the gross revenue derived by the independent director from the issuer, its affiliates, and associates is considered material per se if it exceeds five percent of the independent director’s

(i) annual gross revenue, derived from all sources, during either of the last two years; or

(ii) net worth, on a fair market value basis;

(28) “independent representative” means a person who

(A) acts as agent for an advisory client, including in the case of a pooled investment vehicle, for limited partners of a limited partnership, members of a limited liability company, or other beneficial owners of another type of pooled investment vehicle and by law or

contract is obliged to act in the best interest of the advisory client or the limited partners, members, or other beneficial owners;

(B) does not control, is not controlled by, and is not under common control with investment adviser; and

(C) does not have, and has not had within the past two years, a material business relationship with the investment adviser;

(29) “issuer,” as defined in AS 45.56.900,

(A) includes a viatical settlement provider or other person that purchases or otherwise acquires a viatical settlement contract for the purpose of selling a viatical settlement interest in the contract; and

(B) for purposes of (A) of this paragraph, does not include a broker-dealer, agent, viator, or insured;

(30) “life insurance policy” includes a certificate of life insurance under a group insurance policy;

(31) “lock-in agreement” means an agreement between an issuer and persons who hold promotional shares in which the issuer and those persons agree, as a condition of registration and for the period specified in the lock-in agreement, not to sell, pledge, hypothecate, assign, grant any option for the sale of, or otherwise transfer or dispose of, whether or not for consideration, directly or indirectly, promotional shares and all certificates representing stock dividends, stock splits, recapitalizations, or similar transactions, that are granted to or received by the security holder;

(32) “minimum-maximum offering” means an offering in which the risk of distribution stays with the issuer, the broker-dealer agrees to use best efforts to sell the securities, and a minimum and maximum amount of proceeds is set to determine when the offering closes;

(33) “NASAA” means the North American Securities Administrators Association, Inc.;

(34) “national securities exchange” means an exchange that has been registered as a national securities exchange as required by 15 U.S.C. 78e - 78f (secs. 5-6 of the Securities Act of

1934);

(35) “net earnings” means the issuer’s after-tax earnings that are derived from its normal operations, exclusive of extraordinary and nonrecurring items, determined according to generally accepted accounting principles, consistently applied;

(36) "OSJ" means office of supervisory jurisdiction as referenced in the FINRA manual im-1000-4 under rule 3010 and defined in rule 3010(g)(1);

(37) “owner of a life insurance policy” means the person that is the original owner or subsequent assignee or transferee, and that has had a bona fide insurable interest in a life insurance policy, if that policy insures the life of an individual who has the right to assign, transfer, sell, devise, or bequeath the benefits of the life insurance policy and who enters or seeks to enter into a viatical settlement contract; “owner of a life insurance policy” does not include

(A) a viatical settlement purchaser;

(B) a viatical settlement provider;

(C) a person acquiring the policy or interest in a policy from a viatical settlement provider; or

(D) an independent third party trustee or escrow agent;

(38) “parent” means an affiliate controlling another person;

(39) “predecessor” means a person, a major portion of whose business assets or control has been acquired by another;

(40) “professional corporation” means a corporation organized under AS 10.45 to render a professional service;

(41) “promoter”

(A) means a person who

(i) alone or in conjunction with one or more persons, directly or indirectly, takes the initiative in founding or organizing the issuer or controls the issuer;

(ii) directly or indirectly receives, as consideration for services, property, or

both, rendered five percent or more of any class of the issuer's equity securities or five percent or more of the proceeds from the sale of any class of the issuer's equity securities;

(iii) is an officer or director of the issuer;

(iv) legally or beneficially owns, directly or indirectly, five percent or more of the issuer's equity securities; or

(v) is an affiliate or an associate of a person specified in (i)-(iv) of this subparagraph;

(B) does not include

(i) a person who receives securities or proceeds solely as underwriting compensation if that person is not included in (A) of this paragraph; or

(ii) an unaffiliated institutional investor, who purchased the issuer's equity securities more than one year before the filing date of the issuer's registration statement; the administrator will, in the administrator's discretion, exclude an unaffiliated institutional investor, who purchased the issuer's equity securities on an arm's-length basis within one year before the filing date of the issuer's registration statement as a promoter, if the exclusion is consistent with the purposes of AS 45.56 and this chapter;

(42) "professional geologist" means a geologist certified under AS 08.02.011, or under the applicable occupational licensing statutes and regulations of another state;

(43) "promotional or development stage company" means an issuer who is not listed on the New York Stock Exchange, the American Stock Exchange or the NASDAQ National Market System, or whose annual net earnings for each of the last two consecutive fiscal years or whose average, annual net earnings for the last five fiscal years before the public offering have been less than five percent of the aggregate public offering;

(44) "promotional shares" means equity securities that are to be issued or were issued

(A) by an issuer, which is a promotional or development stage company, to promoters for cash or other consideration, including services rendered, patents, copyrights, and

other intangibles; or

(B) within three years before the filing of the registration statement by an issuer, which is not a promotional or development stage company, to promoters for cash or other consideration, including services rendered, patents, copyrights, and other intangibles;

(45) “public offering price” means the per share price at which a promotional or development stage company proposes to offer equity securities to the public;

(46) "qualified custodian" means the following independent institutions or entities that are not affiliated with the investment adviser by any direct or indirect common control and have not had a material business relationship with the investment adviser in the previous two years:

(A) a bank or savings association that has deposits insured by the federal deposit insurance corporation under the federal deposit insurance act or other entity pursuant to 15 U.S.C. § 80b-2(a)(2), as of January 1, 2018;

(B) a registered broker-dealer holding the client assets in customer accounts;

(C) a registered futures commission merchant registered under section 4f(a) of the Commodity Exchange Act, ch. 545, 49 Stat. 1491, holding the client assets in customer accounts, but only with respect to clients' funds and security futures, or other securities incidental to transactions in contracts for the purchase or sale of a commodity for future delivery and options thereon; and

(D) a foreign financial institution that customarily holds financial assets for its customers, if the foreign financial institution keeps the advisory clients' assets in customer accounts segregated from its proprietary assets;

(47) “qualified mining engineer” means an engineer registered under AS 08.48 and 12 AAC 36, or under the applicable occupational licensing statutes and regulations of another state, who has specialized knowledge and skills in the field of mining;

(48) “registered engineer” means an engineer registered under AS 08.48 and 12 AAC 36, or under the applicable occupational licensing statutes and regulations of another state;

(49) “registered land surveyor” means a land surveyor registered under AS 08.48 and 12 AAC 36, or under the applicable occupational licensing statutes and regulations of another state;

(50) “registrant” means an applicant for whom a registration has been declared effective;

(51) “SEC” means the United States Securities and Exchange Commission;

(52) “unaffiliated institutional investor” means an unaffiliated

(A) bank or savings and loan company;

(B) investment company registered under 15 U.S.C. 80a (Investment Company Act of 1940);

(C) business development company as defined in 15 U.S.C. 80a (Section 2(a)(48) of the Investment Company Act of 1940);

(D) small business investment company licensed by the United States Small Business Administration under 15 U.S.C. 681 (Section 301 of the Small Business Investment Act of 1958);

(E) employee benefit plan, within the meaning of 29 U.S.C. 1002 (Title I of the Employee Retirement Income Security Act of 1974), and state and local government employees retirement and pension plans;

(F) insurance company;

(G) trust company;

(H) private business development company, as defined in 15 U.S.C. 80b-2 (Section 202(a)(22) of the Investment Advisors Act of 1940), or a comparable business entity, that is engaged as a substantial part of its business in the purchase and sale of securities, and that will own less than twenty percent of the issuer’s securities upon completion of the public offering; or

(I) qualified purchaser as defined under 15 U.S.C. 80a-2(a)(51)(sec. 209(b) of the (National Securities Markets Improvement Act of 1996);

(53) “underwriter” means any person who has agreed with the issuer or other person on whose behalf a distribution is to be made to:

(A) purchase securities for distribution;

(B) distribute securities for or on behalf of the issuer or other person; or

(C) manage or supervise a distribution of securities for or on behalf of the issuer or other person;

(54) “unit investment trust” has the meaning given at 15 U.S.C. 80a-4(2) (sec. 4(2) of the Investment Company Act of 1940);

(55) “viatical settlement financing entity” means an underwriter, placement agent, lender, purchaser of securities, purchaser of a life insurance policy from a viatical settlement provider, credit enhancer, reinsurer, or person that is a party to a viatical settlement contract and that has a direct ownership in a life insurance policy that is the subject of a viatical settlement contract but whose sole activity related to the transaction is providing funds to effect the viatical settlement contract and that has an agreement in writing with a viatical settlement provider to act as a participant in a viatical settlement financing transaction;

(56) “viatical settlement financing transaction” means a transaction in which a viatical settlement provider or a viatical settlement financing entity obtains financing for viatical settlement contracts, viaticated policies, or interests in those contracts or policies; “viatical settlement financing transaction” includes secured or unsecured financing, a securitization transaction or securities offering either registered or exempt from registration under federal and state securities law, or a direct purchase of interests in that policy, if that financing transaction complies with federal and state securities law;

(57) “viatical settlement purchase agreement” means a contract or agreement, entered into by a viatical settlement purchaser for the purpose of deriving an economic benefit and to which the owner of a life insurance policy is not a party, to purchase that life insurance policy or an interest in that life insurance policy for an amount that is less than the death benefit payable under the policy;

(58) “viatical settlement purchaser” means a person that, for the purpose of deriving an

economic benefit, gives money or other consideration for a life insurance policy or an interest in the death benefits of a life insurance policy that is the subject of a viatical settlement contract; “viatical settlement purchaser“ does not include an issuer, a viatical settlement financing entity, or a special purpose entity that is created solely to act as a financing source for the viatical settlement provider;

(59) “viaticated policy” means a life insurance policy that has been acquired by a viatical settlement provider under a viatical settlement contract. (Eff. 2/20/72, Register 41; am 10/1/99, Register 151; am 4/19/2000, Register 154; am 4/20/2000, Register 154; am 12/7/2006, Register 180; am 3/4/2015, Register 213; am 1/17/2016, Register 217; am 11/26/2016, Register 220; am ___/___/_____, Register _____)

Authority: AS 45.56.670 AS 45.56.900