15 AAC is amended by adding a new chapter to read:

Chapter 170.

Non-Routine Investments from Sole-Fiduciary Funds

Section

15 AAC 170.010. Purpose. The purpose of this chapter is to implement uniform due diligence procedures for assessing and documenting non-routine investment opportunities from covered funds. (Eff. ____/____/______, Register _____)

Authority: Art. IX, sec. 17, Ak Const. AS 37.10.071 AS 37.10.430

15 AAC 170.015. Initial documentation of non-routine investment opportunity. When presented with an opportunity to invest all or part of a covered fund in a non-routine investment, the fiduciary will

(1) document the investment opportunity, including

(A) identifying the date on which the non-routine investment was presented to the fiduciary;

(B) identifying the person or entity that presented the non-routine investment, if any; and

(C) identifying and describing the nature and detail of the non-routine investment;

(2) determine and document whether the non-routine investment is similar to existing investments historically utilized by the department for state funds and, if so, seek and document guidance from the chief investment officer of the treasury division of the department, and others, including investment consultants, with knowledge of the offered non-routine investment opportunity or similar investments; and

(3) document the determination of whether the non-routine investment merits further consideration based on the information presented or currently available. (Eff. ____/____/______, Register _____)

Authority: AS 37.10.071 AS 37.10.430

15 AAC 170.020. Non-routine investment opportunity review and documentation. If the fiduciary determines under 15 AAC 17.015 that a non-routine investment merits further consideration, the fiduciary will

(1) identify and engage

(A) external auditors to obtain and document guidance regarding financial disclosures related to the non-routine investment;

(B) an investment consultant to evaluate the non-routine investment, and document the results of that evaluation;

(3) request that the investment advisory council of the department's treasury division review the non-routine investment and document the council’s advice or recommendations; and

(4) for a non-routine investment from the constitutional budget reserve fund or subaccount, review the most recent 10-year plan or other official long-range published fiscal forecast of the office of management and budget showing anticipated future balances for the constitutional budget reserve fund. (Eff. ____/____/______, Register _____)

Authority: AS 37.10.071 AS 37.10.430

15 AAC 170.025. Preliminary decision. If, on completion of the review in 15 AAC 170.020, the fiduciary decides to proceed to a final investment decision regarding the non-routine investment, the fiduciary will

(1) determine and document the size of the non-routine investment;

(2) determine and document the date of funding the non-routine investment;

(3) determine and document the requirements of the department's custodial bank for conducting the financial transaction related to the non-routine investment;

(4) determine and document the basis for valuation of the non-routine investment;

(5) notify the investment compliance section of the treasury division of the final decision and document that notification;

(6) update investment guidelines, if necessary;

(7) determine and document the investment pool and asset class for the non-routine investment;

(8) ensure accounting in the state accounting system is accurate, if required; and

(9) update, as required, the department's policies, procedures, and other documents, including financial statement disclosures, to account for the non-routine investment. (Eff. ____/____/______, Register _____)

Authority: AS 37.10.071 AS 37.10.430

15 AAC 170.030. Notice. (a) No later than 90 days prior to making a final investment decision on a non-routine investment under 15 AAC 170.040, the fiduciary will give written notice of the fiduciary's intent to invest in the non-routine investment to

(1) the office of management and budget;

(2) the division of legislative audit; and

(3) the chairs of the senate and house finance committees.

(b) The fiduciary will document all notices required by this section and document any responses. (Eff. ____/____/______, Register _____)

Authority: AS 37.10.071 AS 37.10.430

15 AAC 170.035. Final review. (a) Prior to making a final investment decision regarding a non-routine investment from a covered fund, the fiduciary will

(1) present the terms of any proposed contract for a non-routine investment from the covered fund to the members of the investment advisory council of the department's treasury division and document the council's response; and

(2) request a certification from the attorney general that the fiduciary has complied with applicable fiduciary standards.

(b) The fiduciary will consider all guidance and advice received regarding the merit of the non-routine investment from the covered fund prior to reaching a final investment decision, including all guidance and advice the fiduciary is required to request under this chapter.

(c) The department shall bear all costs associated with the certification under (a)(2) of this section. The fiduciary may not proceed to a final investment decision unless the fiduciary receives the certification under (a)(2) of this section. (Eff. ____/____/______, Register _____)

Authority: AS 37.10.071 AS 37.10.430

15 AAC 170.040. Final investment decision. (a) On completion of final review under 15 AAC 170.035, including the certification of the attorney general, the fiduciary may make a final investment decision regarding the non-routine investment in writing, including the determination of the fiduciary that the non-routine investment is in the sole financial best interest of the fund.

(b) The fiduciary will append all documentation required by this chapter to the written decision under this section, including the certification of the attorney general required in 15 AAC 170.035. No monies from a covered fund may be committed to a non-routine investment except pursuant to a final investment decision in compliance with this chapter, including the certification of the attorney general under AS 15 AAC 170.035. (Eff. ____/____/______, Register _____)

Authority: AS 37.10.071 AS 37.10.430

15 AAC 170.045. Definitions. In this chapter, unless the context requires otherwise,

(1) "attorney general" means the attorney general or the attorney general's designee;

(2) "constitutional budget reserve fund" means the budget reserve fund established as a separate fund in the state treasury under art. IX, sec. 17, Constitution of the State of Alaska;

(3) "constitutional budget reserve fund subaccount" or "subaccount" means the subaccount established in the constitutional budget reserve fund under AS 37.10.430(c);

(4) "covered fund" means a fund over which the commissioner of revenue is the sole fiduciary, including

(A) the constitutional budget reserve fund;

(B) the constitutional budget reserve fund subaccount,

(C) the general fund and other non-segregated investments,

(D) the public school trust fund (AS 37.14.110); and

(E) the Alaska higher education investment fund (AS 37.14.750);

(5) "department" means the Department of Revenue;

(6) "document" or "documenting" means preserving or maintaining in writing contemporaneous and verifiable recording of actions, date, and processes in sufficient detail to demonstrate adherence to applicable legal and quality standards, and maintaining copies of written materials reviewed and relied upon by the fiduciary in making a final investment decision, including placing such documentation in the investment file related to the investment opportunity being considered;

(7) "fiduciary" means the commissioner of revenue when acting as the sole fiduciary of a fund, including when acting as the sole fiduciary of the constitutional budget reserve fund subaccount in accordance with AS 37.10.430(c);

(8) "final investment decision" means the decision of the fiduciary to commit some or all of a covered fund to a non-routine investment;

(9) "non-routine investment" means an unusual, infrequent, high-value, or illiquid transaction that falls outside the department's standard, recurring investment strategy or operating procedures; "non-routine investment" includes

(A) illiquid private market investments and any investments outside of diversified, daily liquid, publicly traded equities, publicly traded fixed income securities, and cash equivalents that have been the primary investments historically utilized by the department for state funds; and

(B) private equity, private debt, infrastructure, real estate, and project funding or investments that demonstrate materially elevated volatility. (Eff. ____/____/______, Register _____)

Authority: AS 37.10.071 AS 37.10.430