

Register \_\_\_\_, \_\_\_\_\_ 2017 COMMERCE, COMMUNITY, AND EC. DEV.

**Title 3. Commerce, Community, and Economic Development.**

**Part 1. Banking, Securities, Small Loans and Corporations.**

**Chapter 08. Securities.**

**Article**

1. Registration, Notice, and Regulation of Broker-Dealers, Agents, State Investment Advisers, and Federal Covered Advisers, and Investment Adviser Representatives (3 AAC 08.005 – 3 AAC 08.075)
2. Registration and Notice of Securities (3 AAC 08.080 – 3 AAC 08.230)
3. Alaska Native Claims Act Corporations: Solicitation of Proxies (3 AAC 08.300 – 3 AAC 08.365)
4. “Regulation D” Registration and Notice Procedure (3 AAC 08.500 – 3 AAC 08.540)
5. Small Corporate Offering Registration SCOR Procedure (3 AAC 08.600 – 3 AAC 08.650)
6. Viatical Settlement Interests (3 AAC 08.700 – 3 AAC 08.740)
7. [GENERAL PROVISIONS (3 AAC 08.900 – 3 AAC 08.950)] **Small Intrastate Securities Offerings (3 AAC 08.810 – 3 AAC 08.895)**
- 8. General Provisions (3 AAC 08.900 – 3 AAC 08.950)**

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

**3 AAC 08.086. Notice filing requirement for federal crowdfunding offerings.** (a) An issuer that offers and sells securities in this state in an offering exempt under 15 U.S.C. 77r(b)(4) (sec. 18(b)(4) of the Securities Act of 1933) and 17 C.F.R. Part 227 (Regulation Crowdfunding)

Register \_\_\_\_, \_\_\_\_\_ 2017 COMMERCE, COMMUNITY, AND EC. DEV.

and that has its principal place of business in this state or sells 50 percent or greater of the aggregate amount of the offering to residents of this state shall file with the administrator

(1) a completed NASAA Uniform Notice of Federal Crowdfunding Offering form; and

(2) the filing fee required by 3 AAC 08.920(a)(13).

(b) If the issuer has its principal place of business in this state, the filing required under (a) of this section shall be filed with the administrator when the issuer makes its initial Form C filing concerning the offering with the SEC. If the issuer does not have its principal place of business in this state but state residents have purchased 50 percent or greater of the aggregate amount of the offering, the filing required under (a) of this section shall be filed when the issuer becomes aware that those purchases have met this threshold and in no event later than 15 days from the date of completion of the offering.

(c) The initial notice is effective for one year following the effective date of the filing.

(d) For each additional one-year period in which the same offering is continued, an issuer conducting an offering under 17 C.F.R. Part 227 (Regulation Crowdfunding) may renew its notice filing by filing, on or before the expiration of the notice filing,

(1) a completed NASAA Uniform Notice of Federal Crowdfunding Offering form marked “renewal”; and

(2) the filing fee required by 3 AAC 08.920(a)(13). (Eff. \_\_\_/\_\_\_/\_\_\_, Register \_\_\_)

**Authority:** AS 45.55.950

Register \_\_\_\_, \_\_\_\_\_ 2017 COMMERCE, COMMUNITY, AND EC. DEV.

The introductory language of 3 AAC 08.506(a) is amended to read:

(a) An issuer offering a federal covered security in a transaction that is not a public offering for the purposes of 15 U.S.C. 77d(2) and 15 U.S.C. 77r(b)(4)(D) (secs. 4(a)(2) and 18(b)(4)(D) of the Securities Act of 1933) shall file with the administrator **through the EFD system** no later than 15 days after the first sale of that federal covered security in this state

...

3 AAC 08.506(b) is amended to read:

(b) A notice filing under this section is effective

(1) only if the administrator receives **through the EFD system** each item required by (a) of this section; and

(2) on the date that the administrator receives **through the EFD system** the last of the items required by (a) of this section.

3 AAC 08.506(c) is amended to read:

(c) After receipt of the items required **by** (a) of this section, the administrator will issue **through the EFD system** a certificate of notice as of the date of receipt of those items. Sales may occur before the effective date of the notice filing under this section.

3 AAC 08.506(d) is amended to read:

(d) A notice filing under this section is valid for one year from the effective date established under (b) of this section. To renew a notice, the issuer must submit the items required

Register \_\_, \_\_\_\_ 2017 COMMERCE, COMMUNITY, AND EC. DEV.

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.

(Eff. 5/24/84, Register 90; am 4/19/2000, Register 154; am 1/17/2016, Register 217; am \_\_\_/\_\_\_/\_\_\_, Register \_\_\_)

**Authority:** AS 45.55.075 AS 45.55.950

3 AAC 08.520(a)(1) is amended to read:

(1) an advertisement, article, notice, or other communication published in a newspaper, magazine, or similar medium, [OR] broadcast over television or radio, **or available on an unrestricted, publicly accessible website**; and

(Eff. 4/19/2000, Register 154; am \_\_\_/\_\_\_/\_\_\_, Register \_\_\_)

**Authority:** AS 45.55.110 AS 45.55.950

3 AAC 08 is amended by adding new sections to read:

### **Article 7. Small Intrastate Securities Offerings.**

#### **Section**

810. Notice filing requirements

820. Required disclosures

830. Escrow agreement

840. Advertising and solicitation

850. Evidence of residency

Register \_\_\_\_, \_\_\_\_\_ 2017 COMMERCE, COMMUNITY, AND EC. DEV.

860. Recordkeeping requirements

870. Website operated by issuer

880. Website operated by third party

895. Definitions relating to small intrastate securities offerings

**3 AAC 08.810. Notice filing requirements.** (a) In an offering conducted in reliance upon the crowdfundering exemption in 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,

- (1) a completed notice filing form as prescribed by the administrator;
- (2) the nonrefundable notice filing fee required by 3 AAC 08.920(a)(12);
- (3) a copy of all advertising and other materials directed to or to be supplied to prospective purchasers in the offering;
- (4) a copy of the offering document and disclosures to be provided to prospective purchasers;
- (5) a copy of the escrow agreement between the issuer and an escrow agent in which the offering proceeds will be deposited; and
- (6) a copy of any agreement between the issuer and a third-party website operator, if applicable.

(b) A notice filing under this section is effective for one year from the date the administrator receives all the items required by (a) of this section. To renew a notice in which the same offering is continued, the issuer shall submit the items required by (a) of this section, as if

Register \_\_, \_\_\_\_ 2017 COMMERCE, COMMUNITY, AND EC. DEV.

the issuer were making an initial filing.

(c) An issuer who has filed a notice filing under this section shall update any material change on the notice filing form and file it with the administrator not later than 30 days from the date of the change.

(d) To claim an exemption under AS 45.55.175, an issuer must have an active business license issued under AS 43.70. (Eff. \_\_\_/\_\_\_/\_\_\_, Register \_\_\_)

**Authority:** AS 45.55.175 AS 45.55.950

**3 AAC 08.820. Required disclosures.** (a) Before any offer or sale of a security under AS 45.55.175, the issuer shall contemporaneously provide to each prospective purchaser the following disclosures:

(1) the name and physical address of the issuer, officers, directors, and controlling persons;

(2) a description of the experience and qualifications of the issuer, officers, directors, and controlling persons;

(3) a description of the business, including how long it has been in operation and the specific reason for the offering;

(4) a discussion in plain language of the significant factors material to the offering, including those that make the offering speculative or risky;

(5) the total offering amount and how the issuer expects to use the proceeds of the offering, including compensation and expenses related to the offering;

Register \_\_, \_\_\_\_ 2017 COMMERCE, COMMUNITY, AND EC. DEV.

(6) the minimum target offering amount the issuer is seeking to raise through the offering and the deadline to raise the minimum target offering amount;

(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 45.55.175; and

(8) a description of any litigation or legal proceedings within the past five years, if any, involving the issuer or any persons associated with the issuer.

(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 45.55.175 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**

Register \_\_, \_\_\_\_ 2017 COMMERCE, COMMUNITY, AND EC. DEV.

OFFENSE.”

(c) At the time of sale the issuer shall require all investors to sign the following acknowledgement: “I acknowledge that I am investing in a high-risk, speculative business venture, that I may lose all of my investment, and that I can afford the loss of my investment.”

(Eff. \_\_/\_\_/\_\_, Register \_\_)

**Authority:** AS 45.55.175 AS 45.55.950

**3 AAC 08.830. Escrow agreement.** (a) An issuer conducting an offering under AS 45.55.175 shall enter into an escrow agreement with an escrow agent located in this state that includes the following terms

(1) all offering proceeds shall be maintained in an account controlled by the escrow agent;

(2) all offering proceeds will be released to the issuer only when the aggregate capital raised from all investors is equal to or greater than the minimum target offering amount; and

(3) if the issuer does not raise the minimum target offering amount by the offering deadline, the escrow agent shall release and return all proceeds directly to investors.

(b) The escrow agent may not be affiliated with the issuer, any third-party website operator assisting with the offering, or any officers, directors, controlling persons, or affiliates of the issuer or of any third-party website operator assisting with the offering. (Eff. \_\_/\_\_/\_\_, Register \_\_)

**Authority:** AS 45.55.175 AS 45.55.950

**3 AAC 08.840. Advertising and solicitation.** (a) An issuer may engage in public advertising or general solicitation of securities in an offering relying on the exemption in AS 45.55.175 if

(1) the issuer files a copy of the advertising or solicitation materials with the administrator at least 10 days before the use of those materials;

(2) the advertisement or solicitation is directed only to residents of this state; and

(3) before advertising or solicitation materials are viewed, each person viewing the materials affirmatively certifies that they are a resident of this state.

(b) Advertising or solicitation materials may contain only the following information:

(1) the name and contact information of the issuer;

(2) a brief description of the general type of business of the issuer;

(3) the type of security offered;

(4) the minimum target offering amount and total offering amount;

(5) a description of how the issuer will use the funds;

(6) the deadline for raising funds through the offering;

(7) the issuer's logo; and

(8) a link to the issuer's website in which the securities are offered or sold or to a third-party website in which the securities are advertised.

(c) The advertisement, including any advertisement through a website, must clearly state that the advertisement does not constitute an offer to sell a security and must include contact or

Register \_\_, \_\_\_\_ 2017 COMMERCE, COMMUNITY, AND EC. DEV.

other relevant information notifying an interested person how the person can obtain the required disclosure information.

(d) Advertising to the general public without regard to residency, or advertising information outside the scope of this section is prohibited. (Eff. \_\_/\_\_/\_\_, Register \_\_)

**Authority:** AS 45.55.175 AS 45.55.950

**3 AAC 08.850. Evidence of residency.** (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 45.55.175, the issuer shall obtain evidence that the person is a resident of this state.

(b) For purposes of (a) of this section, the following is a nonexclusive list of evidence that the person is a resident of this state, unless the issuer has knowledge that the person is not a resident of this state:

(1) a copy of a valid driver's license or official personal identification card issued by this state;

(2) a copy of a current voter registration issued by this state; or

(3) a copy of property tax records showing the person owns and occupies property in this state as the person's principal residence. (Eff. \_\_/\_\_/\_\_, Register \_\_)

**Authority:** AS 45.55.175 AS 45.55.950

**3 AAC 08.860. Recordkeeping requirements.** (a) An issuer that has filed or is required to file under the exemption in AS 45.55.175 shall keep and maintain written or electronic records

Register \_\_, \_\_\_\_ 2017 COMMERCE, COMMUNITY, AND EC. DEV.

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

- (1) the issuer's filings with the administrator required by 3 AAC 08.810 and 3 AAC 08.840, together with any amendments;
- (2) evidence of state residency consistent with 3 AAC 08.850 from each investor in the offering;
- (3) a manually or electronically signed copy of the investor acknowledgement required by 3 AAC 08.820(c) for each investor in the offering; and
- (4) all other correspondence or other communications with prospective purchasers and investors.

(b) Records under (a) of 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 08.015(b). (Eff. \_\_/\_\_/\_\_, Register \_\_)

**Authority:** AS 45.55.175                      AS 45.55.915                      AS 45.55.950  
AS 45.55.910

**3 AAC 08.870. Website operated by issuer.** (a) An issuer relying on the exemption in AS 45.55.175 may use a website operated by the issuer to advertise, offer, and sell securities if the issuer

Register \_\_, \_\_\_\_ 2017 COMMERCE, COMMUNITY, AND EC. DEV.

(1) segregates all advertising materials and information relating to the offer and sale of securities on a webpage that is not accessible by the general public;

(2) provides a disclaimer on its website explaining that access to securities offerings on the website is limited to residents of this state only and that offers and sales of securities are limited to residents of this state only;

(3) requires an affirmative representation by a visitor to the website that the visitor is a ~~state~~ <sup>of this state</sup> resident before the visitor can view securities-related offering materials on the website; and

(4) supplies the administrator with the address of each webpage where the offering material is located on the notice form required by 3 AAC 08.810(a)(1) and provides the administrator with full access to each webpage at all times.

(b) An issuer using its own website to advertise, offer, and sell securities is not required to comply with 3 AAC 08.880. (Eff. \_\_/\_\_/\_\_, Register \_\_)

**Authority:** AS 45.55.175 AS 45.55.950

**3 AAC 08.880. Website operated by third party.** (a) An issuer relying on the exemption in AS 45.55.175 may use a website operated by a third party to advertise securities. A third-party website shall

(1) be operated by an entity that

(A) has its principal place of business in this state;

(B) is incorporated or organized in this state; and

(C) has an active business license issued under AS 43.70;

Register \_\_\_\_, \_\_\_\_\_ 2017 COMMERCE, COMMUNITY, AND EC. DEV.

(2) provide a disclaimer on its website explaining that access to securities offerings on the third-party website is limited to residents of this state only and that offers and sales of securities are limited to residents of this state only;

(3) require an affirmative representation by a visitor to the third-party website that the visitor is a ~~state~~ <sup>of this state</sup> resident before the visitor can view securities-related advertising materials on the third-party website;

(4) maintain and preserve the following records for a period of five years from the date of the document or communication:

(A) records of any compensation received for acting as a <sup>third party</sup> website, including the name of the payor, the date of the payment, and the name of the issuer;

(B) any agreement or contract between the third-party website and an issuer;

(C) any correspondence or other communications with issuers; and

(D) ledgers or other records that reflect all assets and liabilities, income and expense, and capital accounts;

(5) file with the administrator a notice form as prescribed by the administrator and pay the filing fee required by 3 AAC 08.920(a)(14); and

(6) update any material change on the third-party website notice form and file it with the administrator not later than 30 days from the date of the change.

(b) A third-party website may not

Register \_\_\_\_, \_\_\_\_\_ 2017 COMMERCE, COMMUNITY, AND EC. DEV.

(1) solicit, sell, or effect transactions in securities unless it is a registered broker-dealer under 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;

(2) offer investment advice or recommendations;

(3) compensate employees, agents, or other persons for the solicitation of securities or based on the sale of securities displayed or referenced on the third-party website;

(4) hold, manage, possess, or otherwise handle investor funds or securities;

(5) be affiliated with or under common control with an issuer whose securities appear on the third-party website;

(6) hold a financial interest in an issuer as compensation for services provided to or on behalf of an issuer; or

(7) employ a director, officer, controlling person, or any affiliated person having management authority over the third-party website who has been the subject of any disqualifier described in the regulations adopted under 15 U.S.C. 78c(a)(39).

(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 08.015(b).

(d) A third-party website notice filing under this section expires on December 31 of each year and must be renewed by filing an updated notice form and the annual fee with the

Register \_\_, \_\_\_\_ 2017 COMMERCE, COMMUNITY, AND EC. DEV.

administrator in order to continue operating as a third-party website. (Eff. \_\_\_/\_\_\_/\_\_\_,  
Register \_\_\_)

**Authority:** AS 45.55.175 AS 45.55.915 AS 45.55.950  
AS 45.55.910

**3 AAC 08.895. Definitions relating to small intrastate securities offerings.** In 3 AAC  
08.810 - 3 AAC 08.895,

(1) “general solicitation” includes

(A) an advertisement, article, notice, or other communication published in  
a newspaper, magazine, or similar medium broadcast over television or radio, or  
available on an unrestricted, publicly available website; and

(B) a seminar or meeting to which attendees are invited by general  
solicitation or general advertising;

(2) “third-party website” means a website operated by anyone other than the  
issuer to advertise securities offered under AS 45.55.175. (Eff. \_\_\_/\_\_\_/\_\_\_, Register \_\_\_)

**Authority:** AS 45.55.175 AS 45.55.910 AS 45.55.950

3 AAC 08.910(1)(A) is repealed and readopted to read:

(1) manual exemptions

(A) for the purpose of the “manual exemption” under  
AS 45.55.900(b)(17), the following publications that contain information prescribed at  
AS 45.55.900(b)(17) are “nationally recognized securities manuals”:

Register \_\_, \_\_\_\_ 2017 COMMERCE, COMMUNITY, AND EC. DEV.

- (i) Mergent's *Industrial Manual*;
- (ii) Mergent's *Bank and Finance Manual*;
- (iii) Mergent's *Public Utility Manual*;
- (iv) Mergent's *Municipal and Governmental Manual*;
- (v) Mergent's *Transportation Manual*;
- (vi) Mergent's *OTC Industrial Manual*;
- (vii) Mergent's *OTC Unlisted Manual*;
- (viii) Mergent's *International Manual*;
- (ix) OTC Market Group's *OTCQX Market*;
- (x) OTC Market Group's *OTCQB Market*;

(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 \_\_/\_\_/\_\_, Register \_\_)

**Authority:** AS 45.55.900 AS 45.55.950

3 AAC 08.920(a)(6) is amended to read:

(6) a person filing or required to file a notice under AS 45.55.900, except under AS 45.55.900 (b)(19) **or (22)**, shall pay a nonrefundable fee of \$50;

3 AAC 08.920(a) is amended by adding new paragraphs to read:

(12) a person filing a notice under AS 45.55.175 shall pay a nonrefundable fee of \$150;

Register \_\_\_\_, \_\_\_\_\_ 2017 COMMERCE, COMMUNITY, AND EC. DEV.

(13) a person filing a notice under 3 AAC 08.086 shall pay a nonrefundable fee of \$50;

(14) a person filing a notice under 3 AAC 08.880 shall pay a nonrefundable fee of \$50.

(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 \_\_/\_\_/\_\_, Register \_\_\_\_)

**Authority:** AS 45.55.110      AS 45.55.175      AS 45.55.980  
AS 45.55.139      AS 45.55.950

3 AAC 08.950 is amended by adding a new paragraph to read:

(76) “EFD system” means the Electronic Filing Depository system provided by the North American Securities Administrators Association. (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 \_\_/\_\_/\_\_, Register \_\_\_\_)

**Authority:** AS 45.55.950      AS 45.55.990