



MEMORANDUM

TO: All Interested Persons

DATE: Wednesday, December 30, 2015

FROM: Emily Gaffney,
Regulations Specialist

RE: Securities Regulations Updates, Fees

The following 10 pages reflect changes made to the Securities Regulations in Title 3, Chapter 8 of the Alaska Administrative Code. The attached document is the official version of the regulations as approved by the Department of Law, adopted by the Department of Commerce, Community, and Economic Development, and filed by the Lieutenant Governor. The changes update and clarify existing regulations, update fees for certain securities filings, and add a new fee for broker-dealer branch offices. **The regulations take effect on January 17, 2016.**

The following changes are made to the regulations:

- Clarifies when an agent application is deemed abandoned.
- Establishes a new \$75 annual registration fee for broker-dealer branch offices.
- Requires registered persons to fully cooperate with the administrator during a determination of whether a securities violation has occurred. A registrant's failure to cooperate may itself be a violation and result in denial, suspension, or revocation of registration.
- Clarifies that notice filings for mutual funds are effective in Alaska only when they become effective with the Securities and Exchange Commission (SEC).
- Eliminates a filing fee option for an automatic one-year extension.
- Clarifies that renewals for notice filings will not be accepted earlier than 60 days before the filing's expiration date.
- Adopts the North American Securities Administration Association's (NASAA) model rules on suitability standards.
- Clarifies that the administrator may request additional information relating to an applicant's filing. The filer is given 30 days after receipt of the request to comply.

- Clarifies when the administrator may determine applications for registration or exemption to be terminated, abandoned, or withdrawn.
- Clarifies that issuers who have filed an SEC Form D may still claim an applicable state exemption.
- Increases the amount of time from five to 10 days that an applicant has to file advertising material and increases the amount of time from five to 10 days that the administrator has to disallow the advertising. Clarifies that “advertisement” includes websites, social media, and portals/intermediaries.
- Eliminates expedited review and fees for filings.
- Eliminates refundable portion of filing fees.
- Raises fees for interpretative opinion/“No Action Letters” from \$100 to \$250.
- Raises fees for rescission filings under AS 45.55.900(b)(19) from \$50 to \$250.
- Adds a definition of “institutional buyer” with the meaning given in 17 C.F.R. 230.144A.
- Corrects citations to federal law.

The official regulations will be published in April 2016, and will be available online at <http://www.legis.state.ak.us/basis/aac.asp>.

Register ~~217~~, April 2016 COMMERCE, COMMUNITY, AND EC. DEV

3 AAC 08.011(p) is repealed and readopted to read:

(p) 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 under (o) of this section; or

(4) has failed to respond within 30 days after receipt of an administrator's request under AS 45.55.910. (Eff. 2/20/72, Register 41; am 10/1/99, Register 151; am 4/19/2000,

Register 154; am 1 / 17 / 2016, Register ~~217~~)

Authority: AS 45.55.040 AS 45.55.060 AS 45.55.950
AS 45.55.050

3 AAC 08.015(a)(1) is amended by adding a new subparagraph to read:

(F) a broker-dealer branch office, \$75;

(Eff. 9/8/91, Register 119; am 10/1/99, Register 151; am 1 / 17 / 2016, Register ~~217~~)

Authority: AS 45.55.040 AS 45.55.915 AS 45.55.950
AS 45.55.910

3 AAC 08 is amended by adding a new section to Article 1 to read:

3 AAC 08.075. Failure to cooperate. (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 45.55 or this chapter or an order issued under AS 45.55 or this chapter.

(b) A registered person's wilful failure to cooperate, absent good cause or bona fide claim of privilege, may be determined by the administrator a violation of AS 45.55 within the meaning of 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 45.55.910 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 45.55 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 45.55 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.

(c) For purposes of this section, a registered person includes

(1) a person who the administrator has approved to conduct business as a broker-dealer, agent, state investment adviser, or investment adviser representative; and

(2) a person applying for registration as a broker-dealer, agent, state investment adviser, or investment adviser representative. (Eff. 1 / 17 / 2016, Register 217)

Authority: AS 45.55.060 AS 45.55.910 AS 45.55.950

3 AAC 08.085(c) is amended by adding a new paragraph to read:

(4) evidence the filing is effective with the SEC.

3 AAC 08.085(e) is amended to read:

(e) A notice filing under this section is valid for one year from the effective date established under (d) of this section [, OR FOR TWO YEARS FROM THAT DATE IF, WHEN SUBMITTING THE ITEMS REQUIRED BY (c) OF THIS SECTION, THE ISSUER PAID THE FEE REQUIRED BY 3 AAC 08.920(a)(4) FOR AN AUTOMATIC EXTENSION]. To renew a notice, the issuer must submit the items required by (c) 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.** (Eff. 4/19/2000, Register 154; am 1 / 17 / 2016, Register 217)

Authority: AS 45.55.075 AS 45.55.110 AS 45.55.950

3 AAC 08.222(1) is amended to read:

(1) a minimum annual gross income of **\$70,000** [\$60,000] and a minimum net worth of **\$70,000** [\$60,000], exclusive of principal automobile, principal residence, and home furnishings; or

Register 217, April 2016 COMMERCE, COMMUNITY, AND EC. DEV

3 AAC 08.222(2) is amended to read:

(2) a minimum net worth of \$250,000 [\$225,000], exclusive of principal automobile, principal residence, and home furnishings. (Eff. 4/19/2000, Register 154; am 1/17/2016, Register 217)

Authority: AS 45.55.120 AS 45.55.950

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 45.55 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 [WILL, IN THE ADMINISTRATOR'S DISCRETION,] 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) is repealed and readopted 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:

(1) an applicant requests withdrawal before the effective date of the registration or exemption;

(2) an applicant requests termination after the effective date of the registration or exemption;

(3) the administrator determines an application for registration or exemption to be abandoned because the applicant fails to complete the application process, including

(A) paying the appropriate fee;

(B) completing and filing the required documents; or

(C) failing to respond to a request for information within 90 days after the application;

(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 45.55.910.

3 AAC 08.230(m) is amended to read:

(m) The requirements of (g) - (l) [(g)-(l)] of this section do not apply to an issuer that submits a notice filing for federal covered securities.

3 AAC 08.230 is amended by adding a new subsection 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 45.55.120. (Eff. 2/20/72, Register 41; am 4/19/2000, Register 154; am 10/26/2000, Register 156; am 1/17/2016, Register 217)

Authority: AS 45.55.075 AS 45.55.110 AS 45.55.950

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. 77r(b)(4)(D) (secs. 4(a)(2) [4(2)] and 18(b)(4)(D) of the Securities Act of 1933) shall file with the administrator no later than 15 days after the first sale of that federal covered security in this state

(1) a notice on SEC Form D, including Part E and the Appendix, or on any successor form adopted by the SEC; and

(2) a nonrefundable notice filing fee as provided in 3 AAC 08.920(a)(3).

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 [, OR FOR TWO YEARS FROM THAT DATE IF, WHEN SUBMITTING THE ITEMS REQUIRED UNDER (a) OF THIS SECTION, THE ISSUER PAID THE FEE REQUIRED BY 3 AAC 08.920(a)(3) FOR AN AUTOMATIC EXTENSION]. 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.**

3 AAC 08.506 is amended by adding new subsections to read:

(e) To qualify as a federal covered security under AS 45.55.075, offers and sales under this section must satisfy all the terms and conditions of this section and 17 C.F.R. 230.506.

(f) Notwithstanding (a) of this section, an issuer may choose to claim an available

Register 217, April 2016 COMMERCE, COMMUNITY, AND EC. DEV

exemption under AS 45.55.900 even if the issuer has filed an SEC Form D with the SEC.

However, securities offered under an available exemption under AS 45.55.900 will not be considered federal covered securities. (Eff. 5/24/84, Register 90; am 4/19/2000, Register 154; am 1 / 17 / 2016, Register 217)

Authority: AS 45.55.075 AS 45.55.950

3 AAC 08.900(a) is amended to read:

(a) Except as provided in (c) of this section, an advertisement to be used or circulated in connection with the sale and promotion of a public offering of securities is subject to the following requirements and restrictions:

(1) at least 10 [FIVE] days before the intended use or dissemination of the advertisement, the applicant shall file with the administrator one copy of the proposed material;

(2) the use of the material is permitted if not disallowed by the administrator by written notice or otherwise within 10 [FIVE] days from the date filed;

(3) the administrator will not issue formal approval of the literature, and the user is responsible for determining the accuracy and reliability of the statements and material to be used in conformity with this section.

3 AAC 08.900(e) is amended by adding a new paragraph to read:

(4) issuer-based website, social media account, blogging site, or other investing portal or intermediary. (Eff. 2/20/72, Register 41; am 4/19/2000, Register 154; am 6/8/2001, Register 158; am 3/4/2015, Register 213; am 1 / 17 / 2016, Register 217)

Authority: AS 45.55.150 AS 45.55.170 AS 45.55.950

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

(3) the nonrefundable notice fee for offerings of securities covered under 15 U.S.C. 77r(b)(4)(D) (sec. 18(b)(4)(D) of the Securities Act of 1933), as amended is \$600 for one year [, OR \$1,100 IF AN AUTOMATIC EXTENSION OF ONE YEAR IS DESIRED BY THE ISSUER AT THE TIME THE NOTICE IS FILED];

3 AAC 08.920(a)(4) is amended to read:

(4) the nonrefundable notice fee for offerings of securities covered under 15 U.S.C. 77r(b)(2) (sec. 18(b)(2) of the Securities Act of 1933), as amended is \$600 for one year [, OR \$1,100 IF AN AUTOMATIC EXTENSION OF ONE YEAR IS DESIRED BY THE ISSUER AT THE TIME THAT THE NOTICE IS FILED];

3 AAC 08.920(a)(5) is amended to read:

(5) a person filing an application for registration of securities shall pay a nonrefundable [FILING FEE OF \$100 AND A REFUNDABLE REGISTRATION] fee of \$600 [\$500] for one year [, OR A NONREFUNDABLE FILING FEE OF \$100 AND A REFUNDABLE REGISTRATION FEE OF \$1,100 IF AN AUTOMATIC EXTENSION OF ONE YEAR IS DESIRED BY THE ISSUER AT THE TIME THE APPLICATION FOR REGISTRATION APPLICATION IS FILED];

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), shall pay a nonrefundable fee of \$50 [, OR A NONREFUNDABLE FEE OF \$125 IF AN EXPEDITED REVIEW PROCEDURE IS REQUESTED AND THE FEE IS PAID IN A FORM AUTHORIZED BY (2) OF THIS SUBSECTION];

3 AAC 08.920(a)(7) is amended to read:

(7) a person filing a request for interpretative opinions under AS 45.55.970(e), including requests for "No Action Letters," [,] shall pay a nonrefundable fee of \$250 [\$100; THE EXPEDITED REVIEW PROCEDURE IS NOT AVAILABLE FOR THESE REQUESTS];

3 AAC 08.920(a)(9) is amended to read:

(9) a person submitting a solicitation of interest form under 3 AAC 08.087 shall pay a nonrefundable fee of \$50 [, OR A NONREFUNDABLE FEE OF \$125 IF AN EXPEDITED REVIEW PROCEDURE IS REQUESTED AND THE FEE IS PAID IN A FORM AUTHORIZED BY (2) OF THIS SUBSECTION];

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

(11) a person filing or required to file a notice under AS 45.55.900(b)(19) shall pay a nonrefundable fee of \$250.

(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

Register 217, April 2016 COMMERCE, COMMUNITY, AND EC. DEV

217)

Authority: AS 45.55.110 AS 45.55.139 AS 45.55.950

3 AAC 08.950(32)(I) is amended to read:

(I) qualified purchaser as defined under 15 U.S.C. 80a-2(a)(51)

[P.L. 104-290] (sec. 209(b) of the National Securities Markets Improvement Act of 1996);

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

(75) "institutional buyer" has the meaning given in 17 C.F.R. 230.144A, as revised as of October 1, 2013, and adopted by reference. (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)

Authority: AS 45.55.950 AS 45.55.990