

## Proposed Crowdfunding Exemption Language (Alaska Securities Act SB 108/HB 194)

**Sec. 45.56.220. Small intrastate securities offerings.** (a) An offer or sale of securities conducted solely in this state to a person who has established residency in this state, by an issuer in a transaction that meets the requirements of this section, is exempted from the requirements of AS 45.56.105, 45.56.305 - 45.56.360, and 45.56.550 and is subject to the following limitations:

- (1) the issuer of the security shall be a for-profit corporation or other for-profit entity, or business cooperative with its principal place of business in this state and licensed with the department;
- (2) the transaction shall meet the requirements of the federal exemption for intrastate offerings in 15 U.S.C. 77c(a)(11) (Securities Act of 1933) and 17 C.F.R. Part 230.147; the securities must be offered to and sold only to persons who have established residency in this state at the time of purchase; before any offer or sale under this exemption, the seller shall obtain documentary evidence from each prospective purchaser that provides the seller with a reasonable basis to believe the investor has established residency in this state;
- (3) the sum of all cash and other consideration to be received for all sales of the security in reliance on this exemption shall not exceed \$1,000,000, less the aggregate amount received for all sales of securities by the issuer within the 12 months before the first offer or sale made in reliance on this exemption;
- (4) the issuer shall not accept more than \$5,000 from any single purchaser unless the purchaser is an accredited investor as defined by 17 C.F.R. Part 230.501;
- (5) the issuer must reasonably believe that all purchasers of securities are purchasing for investment and not for sale in connection with a distribution of the security;
- (6) a commission or remuneration shall not be paid or given, directly or indirectly, for any person's participation in the offer or sale of securities for the issuer unless the person is registered as a broker-dealer, agent, investment adviser representative, or investment adviser under AS 45.56.405 - 45.56.440;
- (7) all funds received from investors shall be deposited into a bank or depository institution authorized to do business in this state, and all funds shall be used in accordance with representations made to investors;
- (8) not less than 10 days before the use of any general solicitation or within 15 days after the first sale of the security under this exemption, provided no general solicitation has been used before the sale, whichever occurs first, the issuer shall provide a notice to the administrator as prescribed in regulations for this section; the notice shall specify that the issuer is conducting an offering in reliance upon this

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exemption and shall contain the names and addresses of

- (A) the issuer;
- (B) officers, directors, and any control person of the issuer;
- (C) all persons who will be involved in the offer or sale of securities on behalf of the issuer; and
- (D) the bank or other depository institution in which investor funds will be deposited;

- (9) the issuer shall not be, either before or as a result of the offering
- (A) an investment company as defined by 15 U.S.C. 80a-1 - 80a-64 (Investment Company Act of 1940), or subject to the reporting requirements of 15 U.S.C. 78m or 78o (Securities Exchange Act of 1934); or
  - (B) a broker-dealer, agent, investment adviser representative, or investment adviser as defined by AS 45.56.405 - 45.56.440;

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

(11) the issuer shall require all purchasers to sign the following statement at the time of sale: "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";

(12) this exemption shall not be used in conjunction with any other exemption under AS 45.56, except the exemption to institutional investors under AS 45.56.405 and 45.56.435 and for offers and sales to controlling persons of the issuer; sales to controlling persons shall not count toward the limitation in AS 45.56.220(a)(3);

(13) nothing in this exemption shall be construed to alleviate any person from the anti-fraud provisions under AS 45.56.505 - 45.56.560, nor shall the exemption be construed to provide relief from any other provisions of AS 45.56 other than as expressly stated;

(14) in this subsection, "residency" has the meaning given in AS 01.10.055.

(b) The administrator may by order deny or revoke the exemption specified in this section with respect to a specific security if it finds that the sale of the security would work or tend to work a fraud upon the purchasers of it. An order under this subsection may not operate retroactively. A person may be considered to have violated

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AS 45.56.205 - 45.56.250 by reason of any offer or sale effected after the entry of an order under this subsection if the person sustains the burden of proof that the person did not know and, in the exercise of reasonable care, could have not known of the order. In any proceeding under AS 45.56, the burden of proving an exemption is on the person claiming the exemption.

(c) Any person who makes application to the department for an exemption under AS 45.56.220 shall be assessed a filing fee as prescribed in regulations for this section.

**Sec. 45.56.230. Disqualifier.** A security or transaction exempted from registration under AS 45.56.205 - 45.56.250 shall not be available if the issuer, or any of its officers, controlling people, or promoters is subject to a disqualifier enumerated in 15 U.S.C. 78c(a)(39) (Dodd-Frank Wall Street Reform and Consumer Protection 17 Act) as of the date of the transaction or offer.