

STATE OF ALASKA
DEPARTMENT OF COMMERCE, COMMUNITY, AND ECONOMIC DEVELOPMENT
DIVISION OF BANKING AND SECURITIES

IN THE MATTER OF:)

The 13th Regional Corporation,)

Respondent.)

ALASKA ORDER NO. 10-05-S
Final Order to Cease and Desist
and to Prefile Proxy Materials

I. INTRODUCTION

The Department of Commerce, Community, and Economic Development, Division of Banking and Securities (“division”), is responsible for administration of the Alaska Securities Act (“Act”) at AS 45.55 and the regulations adopted under the Act at 3 AAC 08. Having conducted an investigation pursuant to AS 45.55.910(a)(1), the division finds as follows:

II. FACTS

1. The 13th Regional Corporation (13th Region) is an Alaska Native corporation organized under the Alaska Native Claims Settlement Act (ANCSA).

2. During the calendar year 2006, the 13th Region did not file any proxy or proxy-related materials with the division under AS 45.55.139.

3. In late 2007, pursuant to AS 45.55.139, the 13th Region filed materials related to its 2007 Annual Meeting. The materials contained a 2007 Notice of Annual Meeting and Proxy Info Statement (proxy statement), a proxy form, an early bird prize form, and a 2006 Annual Report. The proxy statement contained an undated letter from Michael Rawley, Chairman of the Board, detailing plans and expectations for the 13th Region during the 2007 operating year. Mr. Rawley states that the 13th Region will show a net profit of \$700,000 for the 2007 operating year. In addition, he discusses the hiring of Joseph D. Mace as CEO/CFO, the role of Mr. Mace and President Jackie Rashleger, the movement of the 13th Region’s land entitlement initiative and HR 5617, the profitable return of the 13th Region’s operations, and the date and location of the 2007 annual meeting, which

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1 was scheduled for February 23, 2008, at the Tukwila Marriott Courtyard Hotel. In his letter, Mr.
2 Rawley does not discuss the 2006 operating year which ended on December 31, 2006.

3 4. A shareholder complaint was filed on February 6, 2008, alleging information contained in
4 the 13th Region's 2007 proxy statement was in violation of the administrative code regulating
5 ANCSA proxy solicitations. The complaint alleges:

- 6 a) a violation of 3 AAC 08.315 for the failure to reference the 2006 operating results and
7 instead discussing the projections of the 2007 operating results in a letter to shareholders by
8 Michael Rawley, Chairman of the Board;
- 9 b) a violation of 3 AAC 08.345(b)(2) for the failure of the 13th Region to disclose all
10 remuneration for the five most highly compensated directors or officers; and
- 11 c) a violation of 3 AAC 08.345(b)(5), for the failure to disclose information related to the
12 corporation's relationship with its independent public accountants.

13 III. LEGAL STANDARDS

14 1. A corporation subject to AS 45.55.139 is required to file with the division proxy solicitation
15 materials that the corporation distributes to 30 or more Alaska resident shareholders.

16 2. Under AS 45.55.160 "[a] person may not, in a document filed with the administrator or in a
17 proceeding under this chapter, make or cause to be made an untrue statement of a material fact or
18 omit to state a material fact necessary in order to make the statements made, in the light of the
19 circumstances under which they are made, not misleading."

20 3. 3 AAC 08.315(a) states, in relevant part, "[a] solicitation may not be made by means of a
21 proxy statement, proxy, notice of meeting, or other communication that contains a material
22 misrepresentation. A misrepresentation is a statement that, at the time and under the circumstances
23 in which it is made (1) is false or misleading with respect to a material fact; (2) omits a material fact
24 necessary in order to make a statement made in the solicitation not false or misleading; or (3) omits a

1 material fact necessary to correct a statement, in an earlier communication regarding the solicitation
2 of a proxy for the same meeting or subject matter, which has become false or misleading. A
3 misrepresentation is material if there is substantial likelihood that a reasonable shareholder would
4 consider it important in deciding how to vote.”

5 4. 3 AAC 08.345(a) requires, in relevant part, “[t]he solicitation of proxies on behalf of the
6 board for an annual meeting must be preceded or accompanied by the annual report for the
7 corporation’s last fiscal year, unless (1) the solicitation is made on behalf of the board before the
8 annual report is available; (2) solicitation is being made at the time in opposition to the board; and
9 (3) the board’s proxy statement includes an undertaking to furnish the annual report to all
10 shareholders being solicited at least 50 days before the date of the annual meeting.”

11 5. 3 AAC 08.345(b)(2) requires an ANCSA corporation to provide shareholders a disclosure
12 statement that includes “all current remuneration distributed or accrued and . . . all future
13 remuneration contributed during the corporation's last fiscal year on behalf of (A) each of the five
14 most highly compensated directors or officers for his services in all capacities to the corporation and
15 its subsidiaries, naming each such person; and (B) all officers and directors as a group, stating the
16 number of persons in the group without naming them; future remuneration contributed includes
17 amounts which were reported in the corporation's annual report for the last fiscal year for annuity,
18 pension or retirement plans and for deferred compensation or profit sharing plans.”

19 6. 3 AAC 08.345(b), in relevant part, requires: “(b) The solicitation of proxies on behalf of the
20 board must be preceded or accompanied by a dated, written proxy statement including . . . (5) if
21 action is to be taken on the election of directors or other matters for which the financial statements
22 are material to the exercise of prudent judgment, a description of the corporation’s relationship with
23 its independent public accountants; this description must include . . . (D) the percentage relationship
24

1 which the aggregate of the fees for all nonaudit services bears to the aggregate of fees for both audit
2 and nonaudit services performed by the principal accountant and paid for by the corporation.”

3 IV. CONCLUSIONS OF LAW

4 1. The 13th Region is subject to the requirements of AS 45.55.139 and pertinent regulations
5 due to its having 500 or more shareholders and assets exceeding \$1,000,000 during the time period
6 relevant to this investigation.

7 2. The proxy materials for the 2007 annual meeting included a proxy, notice of annual meeting
8 and proxy statement, and the 2006 annual report. The proxy statement included a letter from
9 Michael Rawley, Chairman of the Board, that detailed the activities of the 13th Region and the
10 anticipated financial results for the 2007 operating year. Complainant alleges that Mr. Rawley’s
11 letter should have discussed the 2006 operating results, and that not doing so is a violation of
12 AS 45.55.160. 3 AAC 08.345(b) specifies the annual report either precede or be accompanied with
13 a proxy solicitation, unless the solicitation is made on behalf of the board before the annual report is
14 available. At the time of Mr. Rawley’s letter, the 2007 operating year had not been completed, and
15 therefore the 2007 annual report was not available. The 13th Region included the 2006 annual report
16 with the proxy statement, proxy, and other materials. Mr. Rawley’s letter clearly identified that the
17 financial data and other information related to the management of the corporation and the annual
18 meeting of shareholders were for the current operating year (2007). The division finds the letter to
19 shareholders by Michael Rawley did not violate AS 45.55.160 or 3 AAC 08.315(a).

20 3. The proxy statement contained partial information regarding remuneration to the five most
21 highly paid officers and directors. The information in the 2007 proxy statement detailed salaries
22 paid during 2005. 3 AAC 08.345(b)(2) requires a proxy statement to contain “a statement of all
23 current remuneration distributed or accrued and ... all future remuneration contributed during the
24 corporation’s last fiscal year . . .” 3 AAC 08.345(b)(2)(A) and (B) require disclosure of all

1 remuneration contributed to the five most highly paid directors or officers, naming each such person,
2 and the remuneration paid to all officers and directors as a group, stating the number of persons in
3 the group without naming them. The division finds the 13th Region failed to make the disclosures
4 required by 3 AAC 08.345(b)(2). The information disclosed was not from the last fiscal year, which
5 would have been 2006, since the 2007 operating year had not yet been completed. The division
6 further finds the facts not disclosed in the proxy statement under 3 AAC 08.345(b)(2)(A) and (B) are
7 material omissions under AS 45.55.160 and 3 AAC 08.315(a). The statement contained in the proxy
8 statement did not disclose “all current remuneration distributed or accrued and . . . all future
9 remuneration contributed during the corporation’s last fiscal year” for the five most highly
10 compensated directors or officers, and did not contain the required information for all officers and
11 directors as a group.

12 4. 3 AAC 08.345(b)(5) requires a statement regarding services provided by an independent
13 third-party accountant during the last fiscal year. The proxy statement includes the following
14 description of accounting services provided by Peterson Sullivan, PLLC:

15 “(a) audit services in conjunction with the examination of the Corporation’s financial
16 statements; and (b) non-audit tax and professional services. The tax services consisted
17 of tax planning, preparing and filing of federal and state returns. They also provided
18 professional services, including audit and other accounting services. They provided
19 89% of such services for 2005.”

20 In addition, the proxy statement stated that “Patrick Rhodes & Associates, PLLC provided end of the
21 month review during 2005 for 11% of the total for professional accounting services.”

22 3 AAC 08.345(b)(5)(D) requires the percentage relationship which the aggregate of the fees for all
23 nonaudit services bears to the aggregate of fees for both audit and nonaudit services performed by
24 the principal accountant. The comparison for Peterson Sullivan, PLLC and Patrick Rhodes &

1 Associates, PLLC were the percentage services provide by each firm, and not an aggregation of the
2 services performed by the principal accountant. Additionally, the certified public accountants who
3 prepared the 2006 Independent Auditor's Report and Consolidated Financial Statements for the 13th
4 Region and its subsidiaries are not mentioned in the proxy statement disclosures for the 2007 annual
5 meeting. The division finds the 13th Region failed to make the disclosures required under 3 AAC
6 08.345(b)(5), because the information disclosed was not for the last fiscal year. The division further
7 finds the 13th Region failed to meet the disclosure required under 3 AAC 08.345(b)(5)(D), because
8 the information did not include statements regarding the percentage relationship which the aggregate
9 of the fees for all nonaudit services bears to the aggregate of fees for both audit and nonaudit
10 services performed by the principal accountant and paid for by the corporation.

11 5. On June 27, 2006, the division and the 13th Region agreed to Consent Order 06-09 S. The
12 13th Region agreed not to commit any future violations of the ANCSA proxy regulations. The
13 division finds the 13th Region to be in violation of Consent Order 06-09 S.

14 V. PROCEDURAL BACKGROUND

15 1. On April 15, 2011, the division issued Order No. 10-05-S, Temporary Order to Cease and
16 Desist and to Prefile Proxy Materials and Notice of Opportunity for Hearing.

17 2. On April 15, 2011, the division sent Order No. 10-05-S to the registered agent for the 13th
18 Region, Walter Featherly, Esq., at 601 West Fifth Avenue, Suite 700, Anchorage, Alaska 99501, by
19 certified mail, return receipt requested; the order was received by the registered agent on April 18,
20 2011.

21 3. On April 15, 2011, the division sent Order No. 10-05-S by first class mail to the president of
22 the 13th Region, Michael E. Rawley, at 611 12th Avenue S, Suite 300, Seattle, WA 98044-1911; the
23 mailing was not returned to the division.

24

1 4. Order No. 10-05-S provided notice that the 13th Region had 15 days after receipt of Order
2 10-05-S to request a hearing and if no hearing was requested, Order 10-05-S would become a final
3 order under AS 45.55.920(d).

4 5. The 13th Region has not requested a hearing as to Order 10-05-S.

5 6. Under AS 45.55.920(d), Order 10-05-S is made a Final Order to Cease and Desist and to
6 Prefile Proxy Materials.

7 **VI. FINAL ORDER TO CEASE AND DESIST**
8 **AND TO PREFILE PROXY MATERIALS**

9 1. Pursuant to AS 45.55.920(a)(1), the Administrator finds the 13th Region violated the Act as
10 specified above and further finds it is in the public interest to issue this Order.

11 2. Pursuant to AS 45.55.920(a)(1)(A), the 13th Region is hereby ordered to cease and desist
12 from continuing the acts or practices cited above and from committing any future acts or practices
13 that would violate the Alaska Securities Act.

14 3. Pursuant to AS 45.55.920(a)(1)(B), the 13th Region shall, for a period of three years from
15 the date this Order is made final, prefile with the division all materials relating to proxy solicitations
16 that may be submitted under AS 45.55.139, at least ten (10) working days before distribution of the
17 materials to shareholders. If the division provides notice to the 13th Region that the prefiled material
18 violates the Act or regulations adopted under the Act, the 13th Region will not distribute any of the
19 materials until authorized by the division.

20 **VII. NOTICE OF APPEAL RIGHTS**

21 Under AS 45.55.940(a), a person aggrieved by this final order of the administrator may
22 obtain a review of the order in the superior court by filing a notice of appeal in accordance with the
23 Rules of Appellate Procedure. Under Appellate Rule 602(a)(2), the notice of appeal must be filed
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1 within 30 days from the date this final order is mailed or otherwise distributed to the appellant.

2 SO ORDERED this 13th day of June, 2011.

3

4 /s/ Lorie L. Hovanec
5 _____
6 Lorie L. Hovanec, Administrator
7 Division of Banking and Securities

7 Contact Person:
8 Roger W. Prince, Securities Examiner
9 (907) 269-8144

Certificate of Service

10 This is to certify that on June 13, 2011, a copy of this document was mailed by USPS certified mail, return receipt
11 requested, and USPS first class mail to the following registered agent:

11 Walter T. Featherly, Esq.,
12 601 West Fifth Avenue, Suite 700,
13 Anchorage, Alaska 99501

13 and by USPS first class mail to

14 Michael E. Rawley
15 President, 13th Regional Corporation
16 611 12th Avenue S, Suite 300
17 Seattle, WA 98044-1911.

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