

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

4 IN THE MATTER OF: ) **ORDER NO. 16-227-S**  
5 MARIE TOZIER ) **TEMPORARY CEASE AND DESIST**  
6 ) **ORDER EFFECTIVE IMMEDIATELY,**  
7 ) **ASSESSING CIVIL PENALTIES,**  
8 Respondent. ) **WITH NOTICE OF HEARING RIGHTS**  
9 ) **and**  
10 ) **NOTICE OF FINAL CEASE AND**  
11 ) **DESIST ORDER**

12 The Director of the Department of Commerce, Community, and Economic  
13 Development, Division of Banking and Securities (“Administrator”), has conducted an  
14 investigation into certain activities of Marie Tozier (“Respondent”), and has determined that  
15 Respondent violated certain provisions of the Alaska Securities Act, Alaska Statute (AS)  
16 45.55 *et seq.*

17 **I. FINDINGS OF FACT**

- 18 1. Respondent is a shareholder of Sitnasuak Native Corporation (“SNC”).
- 19 2. SNC is organized pursuant to the Alaska Native Claims Settlement Act  
20 (“ANCSA”), 43 U.S.C. 1601 *et seq.*
- 21 3. SNC has certified to the Administrator that it has more than 500 shareholders  
22 and total assets exceeding \$1,000,000.
- 23 4. On May 7, 2016, Respondent stated in a Facebook post that was sent to 30 or more  
24 shareholders that “Discretionary proxies are a great tool to elect fraudsters to the board. I say  
NO THANK YOU [*sic*] to fraudsters and those who protect them. [J.E.] is the one who collects  
Discretionary Proxies and uses them to grant people, who otherwise would not get

1 elected, a winning seat.”

2 5. SNC held its annual meeting on June 4, 2016.

3 6. After the SNC annual meeting, the Administrator received a timely request for  
4 investigation regarding Respondent’s Facebook post.<sup>1</sup>

5 7. On January 12, 2017, Respondent published an advertisement in the Nome Nugget  
6 that encouraged SNC shareholders to “Vote your OWN [sic] proxy!” and “Stand up and say  
7 ‘NO’ [sic] to SNC Directors that ask you to vote a discretionary proxy.” In addition, the  
8 advertisement stated that it was “Paid for by Sitnasuak Shareholders for Positive Change.”

9 8. The Administrator received another timely request for investigation regarding the  
10 Nome Nugget advertisement.

11 9. SNC’s next annual meeting is scheduled for June 3, 2017.

12 10. Respondent did not file her Facebook post or advertisement with the Administrator  
13 concurrently with their distribution to shareholders.

14 11. Respondent did not file with the Administrator a dated, written proxy statement  
15 containing the disclosures required in 3 AAC 08.355.

16 12. The Administrator attempted to contact Respondent by telephone and certified mail  
17 over a period of several months, but has received no response as of the date of this order.

18 13. SNC allows shareholders to use discretionary proxies and to cumulate votes in the  
19 election of directors.

20 14. Current law allows a shareholder to delegate voting rights through a discretionary  
21 proxy to another shareholder, who may then cumulate votes in the election of directors. When  
22 shareholders vote via discretionary proxies, they consent to the cumulation of their votes and to  
23 the proxyholder’s voting according to the proxyholder’s discretion. No votes are counted until  
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<sup>1</sup> The Administrator opened case number 2017-00042 for this second request for investigation. The two investigations have been combined per 3 AAC 08.360(d).

1 the proxyholder exercises discretion to vote the proxy how he or she chooses.

## 2 **II. CONCLUSIONS OF LAW**

3 1. Respondent is subject to the filing requirements of AS 45.55.139 because she is a  
4 shareholder of SNC and SNC is subject to the filing requirements.

5 2. Respondent's Facebook post and advertisement are "proxy solicitations" as defined  
6 in 3 AAC 08.365(16) because they are communications to shareholders under circumstances  
7 reasonably calculated to result in the procurement, withholding, or revocation of a proxy.

8 3. Respondent violated 3 AAC 08.307 by failing to file her proxy solicitations  
9 concurrently with the Administrator when she distributed them to shareholders.

10 4. Respondent violated 3 AAC 08.315(a) by materially misrepresenting that  
11 discretionary proxies allow a single person to alter the outcome of an election because the  
12 cumulation of votes, permitted by law and SNC rules, does not alter the outcome of the  
13 election, as the outcome has not been determined until the votes are cumulated and cast.

14 5. Respondent violated 3 AAC 08.355 by failing to file with the Administrator  
15 required disclosures relating to proxy solicitation.

16 6. Respondent is subject to a civil penalty pursuant to AS 45.55.920(c) because she  
17 violated AS 45.55.139, 3 AAC 08.307, 3 AAC 08.315(a), and 3 AAC 08.355.

## 18 **III. ORDER and NOTICE**

19 Pursuant to AS 45.55.920, and on the basis of the Findings of Fact and Conclusions of  
20 Law, the Administrator ORDERS Respondent to:

21 1. Pay a civil penalty in the amount of one thousand five hundred dollars (\$1,500).

22 This amount is immediately due to the Administrator.

23 2. Comply with all provisions of the Alaska Securities Act, including associated  
24 regulations.

1 Pursuant to AS 45.55.920(d), if Respondent desires a hearing, she must file her request  
2 for a hearing within 15 days after receipt of this Order. The request for a hearing must be in  
3 writing, must be directed to the Administrator, and must state the grounds for the request to set  
4 aside or modify the Order. This Order takes effect immediately, remains in effect until 10 days  
5 after the hearing is held, and becomes final if a hearing is not requested within 15 days after the  
6 receipt of this notice.

7 This Order is a publicly disclosable document.

8 **IT IS SO ORDERED.**

9 Chris Hladick, Commissioner  
10 Department of Commerce, Community and  
Economic Development

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12 DATED: April 19, 2017

/s/ Kevin Anselm  
13 BY: Kevin Anselm, Director  
14 Division of Banking and Securities  
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