NOTICE OF PROPOSED CHANGES TO PROXY SOLICITATIONS FOR CERTAIN ANCSA CORPORATIONS IN THE REGULATIONS OF THE DEPARTMENT OF COMMERCE, COMMUNITY, AND ECONOMIC DEVELOPMENT

BRIEF DESCRIPTION

The Department of Commerce, Community, and Economic Development proposes regulations to update proxy solicitations and to add fees for certain ANCSA corporations who are required to file with the Department of Commerce, Community, and Economic Development under AS 45.55.139.

The Department of Commerce, Community, and Economic Development proposes to adopt regulation changes in Title 3, Chapter 8, of the Alaska Administrative Code, dealing with proxy solicitations for certain corporations organized under the Alaska Native Claims Settlement Act ("ANCSA"), including the following:

(1) 3 AAC 08.305 is proposed to be amended by correcting an outdated citation to state law.

(2) 3 AAC 08.345(b)(1) is proposed to be amended by updating what must be included in descriptions of board candidates in a board solicited proxy statement when elections are scheduled to take place.

(3) 3 AAC 08.345(b)(2) is proposed to be amended by clarifying that the required statement in a board solicited proxy statement of officer and director remuneration must include all compensation.

(4) 3 AAC 08.345(b)(3) is proposed to be amended by clarifying disclosure requirements in a board solicited proxy statement involving the corporation's financial transactions in excess of $20,000 with a director, nominee, executive officer, or one of their family members.

(5) 3 AAC 08.345(b)(4) is proposed to be amended by specifying that a board solicited proxy statement is required to disclose legal proceedings during the last 10 years to which any director, nominee, or executive director has been a party to with interests adverse to the corporation.

(6) 3 AAC 08.345(b)(7) is proposed to be amended by requiring a board solicited proxy statement include a brief description of the board's leadership structure and attendance policy for meetings.

(7) 3 AAC 08.345(b)(15) is proposed to be amended by requiring a board solicited proxy statement include the name of any director who has notified the corporation in writing that he or she intends to oppose an action that is to be submitted to a shareholder vote.

(8) 3 AAC 08.345(b) is proposed to be amended by adding a new paragraph requiring a board solicited proxy statement include a description of the nominating procedures for board candidates.

(9) 3 AAC 08.345 is proposed to be amended by adding a new subsection clarifying that a board candidate is responsible for the accuracy of the information provided to the board for inclusion in a board solicited proxy statement and that if a candidate engages in any additional solicitation he or she must comply with the requirements for non-board solicitations.

(10) 3 AAC 08.355(4) is proposed to be amended by updating what must be included in board candidate descriptions in a non-board solicitation.

(11) 3 AAC 08.355(5) is proposed to be amended by clarifying disclosure requirements in a non-board solicitation involving the corporation's financial transactions in excess of $20,000 with a participant in the solicitation or a participant's family.

(12) 3 AAC 08.355(6) is proposed to be amended by specifying that a non-board solicitation is required to disclose legal proceedings in the last 10 years to which any participant in the solicitation has been a party to with interests adverse to the corporation.

(13) 3 AAC 08.355(11)(B) is proposed to be amended by requiring a non-board solicitation disclose a substantial interest by a family member of the participant in the solicitation in any matter requiring action at the next meeting.

(14) 3 AAC 08.360 is proposed to be amended by specifying that when the administrator opens an investigation it shall provide the alleged violator and may provide the corporation written notification.

(15) 3 AAC 08.365 is proposed to be amended by adding definitions for the terms "affiliate," "control," "minor offense," "residence," and "subsidiary." This section is proposed to be amended by expanding the definition of "family" and by modifying the definition of "entity."

(16) 3 AAC 08.920 is proposed to be amended by establishing fees for certain ANCSA corporations required to file with the Department of Commerce, Community, and Economic Development. The proposed fees are an annual $250 filing fee and an additional fee on a sliding scale from $250-$25,000 based on the corporation's total asset size.

You may comment on the proposed regulation changes, including the potential costs to private persons of complying with the proposed changes, by submitting written comments to Emily Gaffney, Regulations Specialist, Division of Banking and Securities, Department of Commerce, Community, and Economic Development, P.O. Box 110807, Juneau, AK 99811-0807. Additionally, the Department of Commerce, Community, and Economic Development will accept comments by facsimile at (907) 465-1230 and by electronic mail at emily.gaffney@alaska.gov. Comments may also be submitted through the Alaska Online Public Notice System, by accessing this notice on the system and using the comment link. **The comments must be received not later than 4:30 p.m. on November 24, 2015.**

You may submit written questions relevant to the proposed action to Emily Gaffney by electronic mail at emily.gaffney@alaska.gov or by mail at P.O. Box 110807, Juneau, AK 99811-0807. **The questions must be received at least 10 days before the end of the public comment period.** The Department of Commerce, Community, and Economic Development will aggregate its response to substantially similar questions and make the questions and responses available on the Division of Banking and Securities' website at www.commerce.alaska.gov/web/dbs/ancsa.aspx and the Alaska Online Public Notice System. The Department of Commerce, Community, and Economic Development may, but is not required to, answer written questions received after the 10-day cut-off date and before the end of the comment period.

If you are a person with a disability who needs a special accommodation in order to participate in this process, please contact Emily Gaffney at (907) 465-6338 or emily.gaffney@alaska.gov not later than November 16, 2015 to ensure that any necessary accommodations can be provided.

A copy of the proposed regulation changes is available on the Division of Banking and Securities' website at www.commerce.alaska.gov/web/dbs/ancsa.aspx and the Alaska Online Public Notice

System. You may also request a copy by contacting Emily Gaffney at (907) 465-6338 or P.O. Box 110807, Juneau, AK 99811-0807.

After the public comment period ends, the Department of Commerce, Community, and Economic Development will either adopt the proposed regulation changes or other provisions dealing with the same subject, without further notice, or decide to take no action. The language of the final regulation may be different from that of the proposed regulation. **You should comment during the time allowed if your interests could be affected.** Written comments and questions received are public records and are subject to public inspection.

Statutory authority: AS 45.55.950

Statutes being implemented, interpreted, or made specific: AS 45.55.138; AS 45.55.139; AS 45.55.160; AS 45.55.240; AS 45.55.905; AS 45.55.910; AS 45.55.950.

Fiscal information: The proposed regulation changes are not expected to require an increased appropriation.

Date: October 15, 2015

/s/
Emily Gaffney, Regulations Specialist

The Department of Commerce, Community, and Economic Development, Division of Banking and Securities keeps a list of individuals and organizations interested in its regulations. Those on the list will automatically be sent a copy of all the Division's Notice of Proposed Regulation Changes. To be added to or removed from the list, send the request to Division of Banking and Securities, Department of Commerce, Community, and Economic Development, P.O. Box 110807, Juneau, AK 99811-0807. Please include your name and either your electronic mail address or mailing address, as you prefer for receiving notices.

3 AAC 08.305 is amended to read:

3 AAC 08.305. Application of 3 AAC 08.305 - 3 AAC 08.365. 3 AAC 08.305 - 3 AAC 08.365 apply only to corporations organized under **AS 10.06** [AS 10.05] pursuant to the Alaska Native Claims Settlement Act (PL 92-203; 85 Stat. 688; 43 USC § 1601 et seq.) and subject to the requirements of AS 45.55.139. (Eff. 1/4/81, Register 77; am __/__/____, Register ___)

Authority: AS 45.55.138 AS 45.55.139 AS 45.55.240

3 AAC 08.345(b)(1) is amended to read:

(1) if action is to be taken on the election of directors, a description of each nominee of the board who has consented to act if elected and of each director whose term of office will continue after the shareholders' meeting; each description must include

(A) name, age, **state and city of residence** [AND ADDRESS];

(B) all positions and offices presently **and previously** held with the corporation **and its subsidiaries**;

(C) remaining term in office as director and all other periods of service as a director **for the corporation and its subsidiaries**;

(D) **total number of board meetings, including regularly scheduled and special meetings, number of meetings of committees on which the nominee or director served, and the** percentage attendance during the last fiscal year at meetings of the board, including regularly scheduled and special meetings, and meetings of committees on which the nominee or director served, **including those for which the absence was excused** [IF HE NOMINEE OR DIRECTOR ATTENDED FEWER THAN 75 PERCENT OF THE AGGREGATE OF THESE MEETINGS];

(E) the nature of any family relationship with any director, nominee, or executive officer of the corporation and its subsidiaries;

(F) business experience during the past five years, including principal employment or occupation and employer**, and other directorships held for other entities**;

(G) any of the following events which occurred during the past **10** [FIVE] years [WHICH ARE MATERIAL TO AN EVALUATION OF ABILITY OR INTEGRITY]: voluntary or involuntary petition under any bankruptcy or insolvency laws, appointment of a receiver, **pending criminal proceedings, except traffic violations or other minor offenses,** conviction or plea of nolo contendere in a criminal proceeding, except traffic violations or other minor offenses, and the entry of any final judgment, order, or decree, not subsequently reversed or vacated, that the nominee or director engaged in unethical or illegal business practices**, violated fiduciary duties,** or violated securities laws; and

(H) financial transactions by the corporation [WITH ANY ENTITY] since the beginning of the corporation's last fiscal year and presently proposed financial transactions by the corporation **or its subsidiaries** [WITH ANY ENTITY] if

(i) the transactions in the aggregate exceed $20,000; and

(ii) the **transaction is with the nominee, director, a family member thereof, or an entity, other than an affiliate of the corporation, where a** nominee, director, or a member of the nominee's or director's family is employed by, is an officer or director of, or owns, directly or indirectly, an interest in the entity;

3 AAC 08.345(b)(2) is amended to read:

(2) a statement of all current **compensation or other** remuneration distributed or accrued and of all future **compensation or other** remuneration contributed during the corporation's last fiscal year on behalf of

(A) each of the five most highly compensated directors **and** [OR] officers for the director's or officer's services in all capacities to the corporation and its subsidiaries, naming each such person; and

(B) all officers and directors as a group, stating the number of persons in the group without naming them; future remuneration contributed includes amounts that were reported in the corporation's annual report for the last fiscal year for annuity, pension, or retirement plans and for deferred compensation or profit sharing plans; information need not be furnished regarding costs for ordinary and necessary business expenses or for personal benefits, group life, health, hospitalization, or medical reimbursement plans that do not discriminate in favor of officers or directors of the corporation and that are available generally to all salaried employees;

3 AAC 08.345(b)(3) is amended to read:

(3) a brief description**, including purpose and amount,** of financial transactions by the corporation **or its subsidiaries** [WITH ANY ENTITY] since the beginning of the corporation's last fiscal year and any presently proposed financial transactions by the corporation **or a subsidiary** [WITH ANY ENTITY] if

(A) the transactions in the aggregate exceed $20,000; and

(B) the **transaction is with a director, nominee, executive officer, or family member of a director, nominee or executive officer, or is with an entity, other than an affiliate of the corporation, where the director, nominee or** executive officer or a **family** member [OF THE EXECUTIVE OFFICER'S FAMILY] is employed by, is an officer or director of, or owns, directly or indirectly, an interest in the entity;

3 AAC 08.345(b)(4) is amended to read:

(4) a brief description of all legal proceedings to which any director**, nominee,** or executive officer **has been** [IS] a party with interests adverse to the corporation or its subsidiaries **during the last 10 years**;

3 AAC 08.345(b)(7) is amended to read:

(7) **a brief description of the board's leadership structure, including, for example, whether the same person serves as president and board chair, or president and chief executive officer, attendance policy for meetings, and** a list of the board's committees, if any, performing audit, nominating, and compensation functions, the membership of each committee, the number of meetings held by each committee during the last fiscal year, and a brief description of the functions actually performed by each committee;

3 AAC 08.345(b)(15) is amended to read:

(15) for each matter that is to be submitted to a vote of the shareholders, other than the election of directors, a description of the proposal**,** [AND] a statement of the vote required for its approval**, and the name of any director who has notified the corporation in**

writing that he or she intends to oppose the proposed action; for example, if action is to be taken on

(A) a proposed amendment to the articles of incorporation or bylaws, the description must include the reasons for **and against the proposed amendment,** [AND] **the** general effect of the amendment**, and the names of any directors who oppose the amendment**; or

(B) a proposed property transaction, **in addition to identifying any directors who oppose the transaction,** the description must

(i) outline the material features of the proposed transaction;

(ii) state the nature and amount of consideration and, to the extent practicable, outline the facts that bear on the question of the fairness of consideration; and

(iii) state the name and address of the other party or parties to the proposed transaction and the nature of any material relationship of the party or parties to the corporation, its subsidiaries, officers, or directors; [AND]

3 AAC 08.345(b) is amended by adding a new paragraph to read:

(17) a brief description of the nominating procedures for board candidates.

3 AAC 08.345 is amended by adding a new subsection to read:

(c) If a candidate included in a board solicitation or a candidate soliciting write-in votes does not engage in any additional proxy solicitations, the candidate may rely on inclusion in the board's proxy statement, but the candidate remains responsible for the accuracy and

completeness of the information the candidate provided to the board; if however, the candidate, whether recommended by the board or a candidate included on an open proxy, elects to engage in any additional solicitation, the candidate must comply with 3 AAC 08.355. (Eff. 1/4/81, Register 77; am 11/27/88, Register 108; am 11/3/2013, Register 208; am __/__/___, Register ___)

Authority: AS 45.55.138 AS 45.55.160 AS 45.55.950
AS 45.55.139

3 AAC 08.355(4) is amended to read:

(4) if action is to be taken on the election of directors, a description of each nominee of the participant who has consented to act if elected; each description must include, if applicable

(A) name, age, **state and city of residence** [AND ADDRESS];

(B) all positions and offices presently **and previously** held with the corporation **and its subsidiaries**;

(C) remaining term in office as director and all other periods of service as a director **for the corporation and its subsidiaries**;

(D) **total number of board meetings, including regularly scheduled and special meetings, number of meetings of committees on which the nominee served, and the** percentage attendance during the last fiscal year at meetings of the board, including regularly scheduled and special meetings, and meetings of committees on which the nominee served, **including those for which the absence was excused** [IF

THE NOMINEE ATTENDED FEWER THAN 75 PERCENT OF THE AGGREGATE OF THESE MEETINGS];

(E) the nature of any family relationship with any director, nominee, or executive officer of the corporation and its subsidiaries;

(F) business experience during the past five years, including principal employment or occupation and employer**, and other directorships held for other entities**; and

(G) any of the following events that occurred during the past **10** [FIVE] years [WHICH ARE MATERIAL TO AN EVALUATION OF ABILITY OR INTEGRITY]: voluntary or involuntary petition under any bankruptcy or insolvency laws, appointment of a receiver**, pending criminal proceedings except traffic violations or other minor offenses,** conviction or plea of nolo contendere in a criminal proceeding, except traffic violations or other minor offenses, and the entry of any final judgment, order, or decree, not subsequently reversed or vacated, that the nominee engaged in unethical or illegal business practices**, violated fiduciary duties,** or violated securities laws;

3 AAC 08.355(5) is amended to read:

(5) a brief description of financial transactions by the corporation**, including purpose and amount, with that participant, a member of that participant's family, or** [WITH ANY] entity since the beginning of the corporation's last fiscal year and presently proposed financial transactions by the corporation with any **such person or** entity if

(A) the transactions in the aggregate exceed $20,000; and

(B) the participant in the solicitation or a member of the participant's family **is a party to the transaction or** is employed by, is an officer or director of, or owns, directly or indirectly, an interest in the entity **who is a party to the transaction**;

3 AAC 08.355(6) is amended to read:

(6) a brief description of all legal proceedings to which each participant in the solicitation is a party with interests adverse to the corporation or its subsidiaries **during the last 10 years**;

3 AAC 08.355(11)(B) is amended to read:

(B) a description of any substantial interest, direct or indirect, by shareholdings or otherwise, of each participant in the solicitation**, or family member of that participant,** in any matter to be acted upon at the meeting, unless the participant **or family member** owns shares in the corporation and would receive no extra or special benefit not shared on a pro rata basis by all other shareholders of the same class. (Eff. 1/4/81, Register 77; am 11/3/2013, Register 208; am __/__/___, Register ___)

Authority: AS 45.55.138 AS 45.55.160 AS 45.55.950
AS 45.55.139

3 AAC 08.360(f) is amended to read:

(f) If the administrator opens an investigation, the administrator **shall** [MAY] provide the alleged violator and **may provide** the corporation written notice of the investigation. The

administrator may disclose information, including the identity of the requester, if necessary or appropriate to investigate an allegation.

3 AAC 08.360(g) is amended to read:

(g) After investigation, the administrator shall notify the requester, the corporation, **if previously notified under (f) of this section,** and the alleged violator in writing of the administrator's decision to take no administrative action or to issue an order under AS 45.55.920.

(Eff. 11/5/2011, Register 200; am __/__/___, Register ___)

Authority: AS 45.55.139 AS 45.55.905 AS 45.55.950
AS 45.55.160 AS 45.55.910

3 AAC 08.365(5) is amended to read:

(5) "entity" means an individual, sole proprietorship, partnership, joint venture, trust, association, firm, corporation, or other organization, whether or not operated for profit [,WHICH IS NOT A WHOLLY OWNED SUBSIDIARY OF THE CORPORATION];

3 AAC 08.365(7) is amended to read:

(7) "family" **means any relation by blood, marriage, or adoption, not more remote than first cousin** [AN INDIVIDUAL'S SPOUSE, PARENTS, CHILDREN, OR SIBLINGS BY BLOOD OR ADOPTION];

3 AAC 08.365 is amended by adding a new paragraph to read:

(18) "affiliate" has the meaning given in AS 10.06.990(2);

3 AAC 08.365 is amended by adding a new paragraph to read:

(19) "control" has the meaning given in AS 10.06.990(12);

3 AAC 08.365 is amended by adding a new paragraph to read:

(20) "minor offense" has the meaning given in AK R MINOR OFFENSE Rule 2;

3 AAC 08.365 is amended by adding a new paragraph to read:

(21) "residence" means residence for purpose of voting, as determined under AS 15.05.020;

3 AAC 08.365 is amended by adding a new paragraph to read:

(22) "subsidiary" has the meaning given in AS 10.06.990(44). (Eff. 1/4/81, Register 77; am 11/27/88, Register 108; am 1/4/2013, Register 205; am 11/3/2013, Register 208; am __/__/___, Register ___)

Authority: AS 45.55.138 AS 45.55.160 AS 45.55.950
AS 45.55.139

3 AAC 08.920 is amended by adding a new subsection to read:

(c) All corporations subject to the requirements of AS 45.55.139 shall be assessed a filing fee of $250 plus an additional fee based on the corporation's total assets as reported in its last annual report. The filing fee and additional fee will be due concurrently with the filing of the corporation's annual report. The additional fee will be computed using the following schedule:

(1) up to $5,000,000; $250;

(2) $5,000,001 or more, but not over $15,000,000; $500;

(3) $15,000,001 or more, but not over $50,000,000; $1,250;

(4) $50,000,001 or more, but not over $100,000,000; $2,500;

(5) $100,000,001 or more, but not over $250,000,000; $5,000;

(6) $250,000,001 or more, but not over $500,000,000; $12,500.

(7) $500,000,001 or more; $25,000. (Eff. __/__/___, Register ___)

Authority: AS 45.55.138 AS 45.55.160 AS 45.55.950

AS 45.55.139