IN THE MATTER OF:  
CHARLES E. FAGERSTROM  
Respondent.

ORDER NO. 17-154-S
ORDER TO CEASE AND DESIST, IMPOSING CIVIL PENALTIES AND CONSENT TO ORDER

The Director of the Department of Commerce, Community, and Economic Development, Division of Banking and Securities (“Administrator”), has conducted an investigation into certain activities of Charles E. Fagerstrom (“Respondent”), and has determined that Respondent violated certain provisions of the Alaska Securities Act, Alaska Statute (AS) 45.55 et seq.

Respondent agrees that the Administrator has jurisdiction over Respondent and these matters pursuant to the Alaska Securities Act.

Respondent wishes to resolve and settle this matter with the Administrator. As evidenced by the authorized signature on this Order, Respondent consents to the entry of this Order based on the Conclusions of Law and Order. Respondent waives his right to appeal under AS 45.55.920(d).

I. FINDINGS OF FACT

1. Respondent is a shareholder of Sitnasuak Native Corporation (SNC).

2. SNC is organized pursuant to the Alaska Native Claims Settlement Act (ANCSA), 43 U.S.C. 1601 et seq.
3. SNC has certified to the Administrator that it has more than 500 shareholders and total assets exceeding $1,000,000.

4. On or about the first week of May 2017, Respondent mailed a letter (the “Letter”) to over 1,000 SNC shareholders. The return address box on the Letter identified the sender as “SNC Shareholders for Free Speech.” The Letter did not identify Respondent or any other person as being the sender.

5. The Letter stated: “[V]oting your OWN [sic] proxy can help STOP [sic]:[...]unethical voting processes.”

6. Respondent stated to the Administrator that he authored and distributed the Letter.

7. The Letter was not preceded or accompanied by a dated, written proxy statement disclosing, among other information, the name and address of each participant, including each proxyholder, who has joined or proposes to join in the solicitation.

8. Respondent stated to the Administrator that the “unethical voting processes” he referred to in the Letter referred to SNC board members using discretionary proxies in the election of directors.

9. Alaska law and SNC bylaws allow shareholders, including board members, to use discretionary proxies and to cumulate votes in the election of directors.

II. CONCLUSIONS OF LAW

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

2. The Letter distributed by Respondent to SNC shareholders is a “proxy statement” as defined in 3 AAC 08.365(14) because it is a communication that was made available to shareholders under circumstances reasonably calculated to result in the procurement, withholding, or revocation of a proxy.
3. Respondent violated 3 AAC 08.315(a) by materially misrepresenting that the use of discretionary proxies is unethical, as Alaska law and SNC’s bylaws allow for the use of discretionary proxies.

4. Respondent violated 3 AAC 08.355(2) by anonymously distributing proxy solicitations.

5. Respondent violated 3 AAC 08.355(4) by failing to file with the Administrator the required disclosures relating to proxy solicitation.

6. Respondent is subject to a civil penalty pursuant to AS 45.55.920(c) because he violated 3 AAC 08.315(a), 3 AAC 08.355(2) and 3 AAC 08.355(4).

III. ORDER

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

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

2. Comply with all provisions of the Alaska Securities Act and associated regulations.

This Order is a publicly disclosable document.

IT IS SO ORDERED.

Julie Anderson, Commissioner
Department of Commerce, Community and Economic Development

DATED: 3-29-2019       /s/ Patrice Walsh
BY: Patrice Walsh, Director
Division of Banking and Securities

¹ The Administrator received a check for $1,500 from Respondent on March 15, 2019, constituting payment in full and satisfaction of the civil penalty.
Consent to Entry of Order

I, Charles E. Fagerstrom, state that I have read the foregoing Order, that I am aware of the right to a hearing and appeal in this matter and have waived the same.

I admit to the jurisdiction of the Department of Commerce, Community and Economic Development, Division of Banking and Securities (“Department”) and further consent to entry of this Order by the Department as settlement of the issues contained in this Order. I admit to violation of the Alaska Securities Act.

I understand that the Department reserves the right to take further actions to enforce this Order or to take appropriate action upon discovery of other violations of the Alaska Securities Act, and that I will fully comply with the terms and conditions of this Order, the Alaska Securities Act and associated regulations.

I enter into this Order voluntarily and understand that this Order is a public document.

______________________________
Date
3/15/19
/s/ Charles E. Fagerstrom

/subscribed and sworn to before me this 15th day of March , 2019 at Anchorage , Alaska .

______________________________
Notary Public in and for Alaska

/s/ Thomas V. Wang

Notary Printed Name
My commission expires: 12-13-2022

Contact Person:
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