

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. 18-161-S**  
5 HARLEY SUNDOWN ) **ORDER TO CEASE AND DESIST,**  
6 ) **IMPOSING CIVIL PENALTIES**  
7 ) **AND**  
8 Respondent. ) **CONSENT TO ORDER**  
9 \_\_\_\_\_ )

10 The Director of the Department of Commerce, Community, and Economic  
11 Development, Division of Banking and Securities (“Administrator”), has conducted an  
12 investigation into certain activities of Harley Sundown (“Respondent”), and has determined  
13 that Respondent violated certain provisions of the Alaska Native Claims Settlement Act  
14 Corporations Proxy Solicitation and Stock Act, Alaska Statute (AS) 45.55 *et seq.* (“ANCSA  
15 Proxy Solicitations Act”).

16 Respondent agrees that the Administrator has jurisdiction over Respondent and these  
17 matters pursuant to the ANCSA Proxy Solicitations Act.

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

22 **I. FINDINGS OF FACT**

- 23 1. Respondent is a shareholder of Calista Corporation (“Calista”).  
24 2. Calista is organized pursuant to the Alaska Native Claims Settlement Act

1 (ANCSA), 43 U.S.C. 1601 *et seq.*

2 3. Calista has certified to the Administrator that it has more than 500 shareholders  
3 and total assets exceeding \$1,000,000.

4 4. The former Chairman of Calista’s Board of Directors (the “Former Chairman”) was  
5 elected to Calista’s Board of Directors on July 9, 2016, and was appointed board chair on  
6 July 27, 2017.

7 5. On March 9, 2018, six directors, constituting a majority of Calista’s Board of  
8 Directors (the “Majority”) voted to remove the Former Chairman as board chair. The vote  
9 occurred after Calista’s Corporate Governance, Employee & Compensation Committee  
10 determined that the Former Chairman interjected himself into Calista’s investigation of  
11 “Employee A.” Employee A is a former Calista employee who Calista terminated on  
12 November 15, 2017 after Calista investigated Employee A for possible sexual harassment.

13 6. On or about May 2018, Respondent published a series of posts to his Facebook  
14 account.

15 7. Respondent’s Facebook posts stated: “[T]he[y] align themselves to protect a  
16 sexual harasser . . . .” The posts further stated: “When [the Former Chairman] was elected  
17 board [*sic*], somehow, the outgoing chairman selected who would serve on the committees . .  
18 . . [T]his is normally the new board chairs [*sic*] prerogative to name who sits on the  
19 committees.”

20 8. Respondent stated to the Administrator that the individual he referred to as a  
21 “sexual harasser” in his Facebook posts is Employee A.

22 9. Respondent stated to the Administrator that Respondent was referring to the  
23 Majority’s vote to remove the Former Chairman as board chair when Respondent stated in his  
24 Facebook post that “the[y] align themselves to protect a sexual harasser . . . .”

1 10. Respondent did not file the Facebook posts with the Administrator.

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

4 12. Calista's bylaws require committee appointments to be made by vote of Calista's  
5 entire board, and do not grant Calista's board chair authority to make committee appointments.

6 13. Calista's entire Board of Directors appointed committee members after both the  
7 Former Chairman's election to Calista's Board of Directors and his appointment as board chair.

8 14. Calista terminated Employee A before the Majority voted to remove the Former  
9 Chairman as board chair.

10 15. Respondent stated to the Administrator that the purpose of the Majority's vote to  
11 remove the Former Chairman as board chair was not to protect Employee A.

## 12 II. CONCLUSIONS OF LAW

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

15 2. Respondent's Facebook posts are "proxy statements" as defined in 3 AAC  
16 08.365(14) because they are a communication made available to shareholders under  
17 circumstances reasonably calculated to result in the procurement, withholding, or revocation of  
18 a proxy

19 3. Respondent violated 3 AAC 08.307 by failing to file his proxy statement  
20 concurrently with the Administrator when he distributed it to shareholders.

21 4. Respondent violated 3 AAC 08.315(a) by materially misrepresenting Calista's board  
22 chair may appoint directors to committees, that the outgoing board chair made committee  
23 appointments when the Former Chairman was elected to the board, and that the purpose of the  
24 Majority's vote to remove the Former Chairman as board chair was to protect Employee A.



1 **Consent to Entry of Order**

2 I, Harley Sundown, state that I have read the foregoing Order, that I am aware of the  
3 right to a hearing and appeal in this matter and have waived the same.

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

8 I understand that the Department reserves the right to take further actions to enforce  
9 this Order or to take appropriate action upon discovery of other violations of the ANCSA  
10 Proxy Solicitations Act, and that I will fully comply with the terms and conditions of this  
11 Order, the ANCSA Proxy Solicitations Act and associated regulations.

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

13 July 30, 2019

14 Date

/s/ Harley Sundown

Harley Sundown

15  
16 SUBSCRIBED AND SWORN TO before me this 30th day of July, 2019 at  
17 City of Scammon Bay, Alaska.

18 /s/ Jessica Hunter

Notary Public in and for Alaska

19 Jessica Hunter

20 Notary Printed Name

My commission expires: 11/1/2020

21  
22 Contact Person:  
23 Adam Marks  
Financial Examiner  
24 (907) 269-7499