THE STATE of ALASKA
GOVERNOR BILL WALKER

Department of Commerce, Community, and Economic Development
DIVISION OF BANKING AND SECURITIES
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MEMORANDUM

TO: All Interested Persons

DATE: Tuesday, February 23, 2016

FROM: Emily Gaffney,
Regulations Specialist

RE: ANCSA Regulations, Proxy Solicitation Updates & Fees

The following 11 pages of regulations reflect 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) that are required to file with the Department of Commerce, Community, and Economic Development (DCCED) under AS 45.55.139. The attached document is the official version of the regulations as approved by the Department of Law, adopted by DCCED, and filed by the Lieutenant Governor. The changes update disclosure requirements for proxy solicitations and establish fees. **The regulations take effect on March 20, 2016.**

NOTE: A corporation required to file with the Division under AS 45.55.139 must pay the fee required by 3 AAC 08.920 concurrently with each annual report filed on or after March 20, 2016.

A corporation, and its shareholders, required to file with the Division under AS 45.55.139, does not need to comply with the changes to the proxy statement disclosures under 3 AAC 08.345 and 3 AAC 08.355 until January 1, 2017.

The following changes are made to the regulations:

- Updates what must be included in a description of a board candidate in a board's proxy statement when elections are scheduled to take place.
- Clarifies that the required statement in a board's proxy statement of officer and director remuneration must include all compensation and disclose each of the five most highly compensated persons of the corporation, whether directors or officers.

- Clarifies the disclosure requirements in a board's proxy statement involving a corporation's financial transactions in excess of $20,000 with a director, nominee, or a member of the director's or nominee's family.
- Specifies that a board's proxy statement is required to disclose legal proceedings during the last 10 years to which any director, nominee, or executive officer has been a party to with interests adverse to the corporation or its subsidiaries.
- Requires that a board's proxy statement include a brief description of the board's leadership structure and attendance policy for meetings.
- Requires that a board's proxy statement include the name of any director who has notified the corporation in writing that the director intends to oppose an action that is to be submitted to a shareholder vote.
- Requires that a board's proxy statement include a brief description of the nominating procedures for board candidates.
- Clarifies that a board candidate is responsible for the accuracy of the information provided to the board for inclusion in a board's proxy statement and that if a candidate engages in any additional solicitation, the candidate must comply with the requirements for a non-board solicitation.
- Updates what must be included in a description of a board candidate in a non-board solicitation when elections are scheduled to take place.
- Clarifies 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 member.
- Specifies 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 or its subsidiaries.
- Requires that a non-board solicitation must also disclose a substantial interest by a family member of the participant in the solicitation in any matter requiring action at the next meeting.
- Specifies that when the administrator opens an investigation it shall provide the alleged violator and may provide the corporation with written notification.
- Adds definitions for the terms "affiliate," "control," "minor offense," "residence," and "subsidiary." Modifies the definition of "entity."
- Establishes fees for certain ANCSA corporations required to file with DCCED under AS 45.55.139. The fees are an annual $250 filing fee and an additional fee on a sliding scale from $250-$25,000, based on a corporation's total asset size.
- Corrects citations to state and federal law.

The official regulations will be published in Register 217, April 2016 of the Alaska Administrative Code, and will be available online at www.legis.state.ak.us/basis/aac.asp.

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OFFICE OF THE LIEUTENANT GOVERNOR
ALASKA

MEMORANDUM

TO: Micaela Fowler, Department of Commerce, Community and Economic Development

FROM: Scott Meriwether, Office of the Lieutenant Governor
465.4081

DATE: February 22, 2016

RE: Filed Permanent Regulations: Department of Commerce, Community and Economic Development

Regulations re: securities and proxy solicitations for corporations organized under 43 U.S.C. 1601 - 1629h (Alaska Native Claims Settlement Act) (3 AAC 08.305; 3 AAC 08.345; 3 AAC 08.355; 3 AAC 08.360; 3 AAC 08.365; 3 AAC 08.920(c))

Attorney General File:	JU2015200860
Regulation Filed:	February 19, 2016
Effective Date:	March 20, 2016
Print:	217, April 2016

cc with enclosures: Linda Miller, Department of Law
Dianne Blumer, Administrative Regulation Review Committee
Judy Herndon, LexisNexis

ORDER ADOPTING CHANGES TO REGULATIONS
OF DEPARTMENT OF COMMERCE, COMMUNITY,
AND ECONOMIC DEVELOPMENT

The attached 11 pages of regulations, dealing with proxy solicitations for certain corporations organized under the Alaska Native Claims Settlement Act, are adopted and certified to be a correct copy of the regulation changes that the Department of Commerce, Community, and Economic Development adopts under the authority of AS 45.55.950 and after compliance with the Administrative Procedure Act (AS 44.62), specifically including notice under AS 44.62.190 and 44.62.200 and opportunity for public comment under AS 44.62.210.

This action is not expected to require an increased appropriation.

In considering public comments, the Department of Commerce, Community, and Economic Development paid special attention to the cost to private persons of the regulatory action being taken.

The regulation changes adopted under this order take effect on the 30th day after they have been filed by the lieutenant governor, as provided in AS 44.62.180.

Date: January 20, 2016

FILING CERTIFICATION

I, Byron Mallott, Lieutenant Governor for the State of Alaska, certify that on February 19, 2016, at 2:35 p.m., I filed the attached regulations according to the provisions of AS 44.62.040 - 44.62.120.

Lieutenant Governor

Effective: March 20, 2016

Register: 217, April 2016

THE STATE of ALASKA
GOVERNOR BILL WALKER

Department of Commerce, Community, and Economic Development

OFFICE OF THE COMMISSIONER

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ALASKA DEPARTMENT OF COMMERCE, COMMUNITY, AND ECONOMIC DEVELOPMENT

Delegation of Authority

In accordance with AS 44.17.010, the authority and responsibility for adopting regulations, outside of the Division of Corporations, Business and Professional Licensing (CBPL), but for the Department of Commerce, Community, and Economic Development (DCCED), under the Alaska Administrative Procedure Act, is hereby delegated to:

Micaela Fowler
Legislative Liaison
Office of the Commissioner
DCCED
P.O. Box 110800
Juneau, AK 99811-0800
907-465-2503
micaela.fowler@alaska.gov

In accordance with AS 44.17.010, the authority and responsibility for adopting regulations of the Division of Corporations, Business and Professional Licensing, under the Alaska Administrative Procedure Act, is hereby delegated to:

Janey Hovenden
Director
CBPL
DCCED
P.O. Box 110806
Juneau, AK 99811-0806
907-465-2538
janey.hovenden@alaska.gov

This Delegation of Authority will remain in effect until modified or revoked by a subsequent delegation. This Delegation supersedes and revokes all delegations preceding it.

Dated the 16th day of March, 2015

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

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** (and 43 U.S.C. 1601 - 1629h) [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 3/20/2016, Register 217)

Authority: AS 45.55.138 AS 45.55.240 **AS 45.55.950**

AS 45.55.139

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, and **state and city of residence** [~~AND~~ ADDRESS];

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

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

(D) the **total number of board meetings, including regularly scheduled and special meetings,** and the **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 meetings 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 **persons of the corporation, whether directors or officers,** ~~[DIRECTORS 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~~ (the director) 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]

(((Publisher: To reflect the addition of 3 AAC 08.345(b)(17), please add an "and" connector at the end of 3 AAC 08.345(b)(16).)))

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 3/20/2016 Register 217)

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 (meetings) 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 ¶(i) principal employment or occupation [and] employer, ¶(ii) **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**

((retain lowercase))

[WITH] ANY entity since the beginning of the corporation's last fiscal year and presently proposed financial transactions by the corporation with ~~any~~ that ~~such~~ **person or** [ANY] 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 3/20/2016 Register 217)

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 3/20/2016, Register 217)

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 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~~ of the Alaska Rules of Minor Offense Procedure 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 3/20/2016, Register 217)

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~~ A corporations subject to the requirements of AS 45.55.139 shall ~~be assessed~~ pay 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~~ is due concurrently with the filing of the corporation's annual report. The additional fee ~~will be~~ is 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. 2/20/72, Register 41; am 10/1/99, Register 151; am 4/19/2000, Register 154; am 4/20/2000, Register 154; am 1/4/2013, Register 205; am 3/4/2015, Register 213; am 1/17/2016, Register 216; 3/20/2016, Register 217)

Authority: AS 45.55.110 ~~AS 45.55.138~~ ~~AS 45.55.160~~ AS 45.55.950

AS 45.55.139 AS 45.55.980