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From: Julius Brecht <jbrecht@akatty.com>
Sent: Wednesday, March 26, 2014 12:59 PM
To: Rep. Lindsey Holmes
Cc: lorie.hovanec@alaska.gov
Subject: HB 308

Rep. Lindsey Holmes:

I recently reviewed House Bill 308, an act relating to exemptions from the Alaska Securities Act (ASA). I am an attorney in private practice with offices presently in Anchorage, Alaska. Principal areas of my practice include state and federal securities law and business and finance law. I am a past director of the Alaska Division of Banking and Securities, the division within the Alaska Department of Commerce, Community and Economic Development, charged with administering ASA. In that capacity, I was also appointed as the Alaska Administrator of Securities (Administrator) to administer ASA at the time. My comments are my own, i.e., they are not presented on behalf of any other person. My comments are based upon my experience in reviewing and making use of ASA, primarily in advising clients from time to time.

Other than grammatical and other limited changes, for which I have no comment, HB 308 makes a number of changes to ASA, which in substance fall within two areas: (1) elimination of filing requirements relating to certain transactional exemptions from securities registration; and (2) addition of a new transactional exemption dealing with stock issued by corporations formed under the Alaska Native Claims Settlement Act (ANCSA). Through this email, I express my position as being in favor of both items (1) and (2).

With regard to item (1), the changes are to occur in AS 45.55.900(b)(5)(A)(iv), 45.55.900(b)(5)(B)(vii) and 45.55.900(b)(7)(B). In each case, the change is to eliminate a requirement that a filing be made with the Administrator before the offering is made and before a person may rely upon the exemption. In each case, the filing with the Administrator is of limited information regarding the proposed offering but not a copy of the disclosure statement through which the offering is to be made. In each case, the person seeking the corresponding exemption from registration can simply read the statute and come to the conclusion that the terms of the exemption can, or cannot otherwise, be satisfied. In addition, even should the filing requirements be eliminated, the person may under AS 45.55.970(e) seek an interpretive opinion from the Administrator as to the availability of a given registration exemption, based upon a given set of facts. Elimination of the filing requirement does mean that, thereafter, the division does not get notice of, and does not get limited information regarding, the offering from the prospective issuer before the offering is commenced. The usefulness to the Administrator in his or her role in protecting the investing public by receipt of such a filing prior to commencement of an offering is a question for the division. However, based upon my experience in dealing with the exemptions associated with item (1), I believe the elimination of the filing requirements does no harm to the integrity of ASA in protecting the investing public.

With regard to item (2), the new transactional exemption is set forth at Sec. 45.55.900(b)(21). It appears that the proposed new transactional exemption from registration deals only with stock issued to Alaska Natives in the various regional and village corporations established through ANCSA. The initial issue of that stock on or about 1971 was exempted from registration under ASA through AS 45.55.138. Stock subsequently issued to Alaska Natives who did not participate in that initial issue of stock (After-Issued Stock) by those ANCSA corporations is also a security under ASA. There does not otherwise appear to be a workable exemption from registration under ASA for that After-Issued Stock when issued and distributed to Alaska Natives. I am not sure I see a reason for allowing an exemption for the initial issue of Alaska Native corporation stock and not have an exemption for After-Issued Stock later issued for a similar purpose, i.e., for Alaska Natives (whose only distinction from the Alaska Natives receiving the initial issue of stock is that they were born after that initial distribution) to share in ownership of the ANCSA corporation in question. Item (2) provides a transactional exemption in ASA for that After-Issued Stock.

Thank you for the opportunity to share my thoughts with you on HB 308.

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