The original documents are located in Box 38, folder "1/2/76 S1469 Amend Alaska Native Claims Settlement Act of 1971 (1)" of the White House Records Office: Legislation Case Files at the Gerald R. Ford Presidential Library.

APPROVED
JAN 2 - 1976

agreed 1/2/76

THE WHITE HOUSE

WASHINGTON

ACTION

Last Day: January 2

December 31, 1975

Posted 1/2/76
To Archives
1/5/76

MEMORANDUM FOR THE PRESIDENT

FROM: JIM CANNON

SUBJECT: Enrolled Bill S. 1469 - Amend Alaska Native Claims Settlement Act of 1971

BACKGROUND

The Alaska Native Claims Settlement Act of 1971 was designed to provide compensation to Alaskan natives for their aboriginal claims to land, for a total of $965 million and 40 million acres, respectively. The enrolled bill would amend the 1971 Act to rectify inequities, authorize additional benefits for Native Corporations, assure that benefits under the Act are not taken into account under other Federal assistance programs like Food Stamps and provide several other benefits.

While the enrolled bill contains several desirable benefits from the government's standpoint for the natives, like opening a new period of enrollment for those who failed to file previously and permitting merger or native corporations, it also contains a number of undersirable aspects like Federal interest payments on native escrow accounts, $1.6 million in special grants, exclusion of benefits from determining food stamp eligibility and exemption of native corporations from securities laws administered by the SEC until 1991. Treasury and SEC are opposed to the bill for these reasons.

Agriculture and OMB recommend veto because of the provision in the bill which would permit the Native Southeast Alaska Regional Corporation (Sealaska) to acquire 200,000 to 250,000 acres of land within the Tongass National Forest. Although the natives had received previous compensation for their claim to the Tongass National Forest, the 1971 Act allowed claim to non-national forest land, but since this is mostly wasteland, this bill would offer National Forest land instead. Agriculture claims that this is in effect "double dipping" for certain natives and inequitable to those who would not be eligible.

Interior recommends approval because the enrolled bill would resolve most of the deficiencies of the 1971 Act. Max Friedersdorf also recommends approval because of Senator Steven's and Congressman Young's strong support. He suggests that if veto is decided upon that they be notified prior to announcement and also be given a commitment that you would support new legislation excluding the Sealaska-Tongass Forest provision.

The bill was passed on both Houses by voice vote. Additional discussion is provided in OMB's enrolled bill resport at Tab A.

RECOMMENDATION

Agriculture, Treasury, SEC, Marrs, Seidman, Lynn, Larzarus and I recommend veto.

Interior and Friedersdorf recommend approval.

DECISION

Sign S. 1469 at Tab B.

Veto S. 1469 and sign the attached veto message at Tab C. _____

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

DEC 30 1975

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill S. 1469 - Amend Alaska Native Claims Settlement Act of 1971
Sponsors - Sen. Stevens (R) Alaska and Sen. Jackson (D) Washington

Last Day for Action

January 2, 1976 - Friday

Purpose

Amends the Alaska Native Claims Settlement Act to: rectify certain inequities and inadequacies in the Act; authorize additional benefits and special treatment for specified Native Corporations; assure that benefits under the Act are not taken into account under other federally assisted programs such as food stamps; exempt Native Corporations from the operation of the Federal securities laws such as the Investment Company Act of 1940, and for other purposes.

Agency Recommendations

Office of Management and Budget	Disapproval (Veto message attached)
Department of Agriculture	Disapproval (Veto message attached)
Securities and Exchange Commission	Disapproval
Department of the Treasury	Would concur in a veto recommendation
Department of the Interior	Approval
Department of Justice	Defers to Interior
Department of Health, Education and Welfare	Defers to Interior

Discussion

The Alaska Native Claims Settlement Act of 1971 was designed to provide comprehensive and definitive compensation to the Natives for the value of their aboriginal claims to land in Alaska. Basically, the Act authorized monetary payments and land conveyances to individual Natives, to 12 Native Regional Corporations, and to approximately 220 Native Village Corporations in the aggregate amount of approximately $965 million and 40 million acres, respectively.

S. 1469 embodies the first series of major amendments to the 1971 Settlement Act. The bill contains a number of desirable or acceptable changes in the Act, some technical in nature, which would improve its operation and correct anomalies or inequities. However, the bill also contains a number of undesirable features which the Administration unsuccessfully opposed in committee.

In its enrolled bill letter, Interior states that the urgent need for the desirable amendments that S. 1469 would make in the 1971 Act outweigh the undesirable features retained in the bill. On the other hand, Agriculture strongly urges your veto of the bill, stating in its enrolled bill letter that approval would upset the balance struck between a number of competing interests by the 1971 Act and open the door to a series of further claims. The SEC and Treasury also support veto on much narrower grounds of special concern to them.

As a basis for our own recommendation for disapproval, we are briefly describing below the key desirable and undesirable features of the bill. Of this latter group, the most questionable is the special eligibility to land in the Tongass National Forest to be given to the Native Southeast Alaska Corporation, and we have discussed it separately because we regard its justification as the key to the action that should be taken on the bill as a whole.

Desirable or Acceptable Features

The following paragraphs list some of the provisions of the bill that fall in this category.

Reopening enrollment. This provision would grant to Natives, estimated to number more than 1,000, who failed to file timely for enrollment and eligibility for benefits under the 1971 Act an additional one-year period from the date of the enactment of S. 1469 to seek such enrollment.

Merger of Native Corporations. This provision would remove the present prohibition against mergers and permit consolidation of Native Village Corporations. This provision grew out of the fact that a number of the 220 Native Village Corporations have too few members or have too poor a resource base to enable them to operate effectively if at all.

Escrow accounts. This provision would authorize the establishment of accounts in the Treasury to hold for the benefit of the Natives proceeds obtained from the sale or use of resources on lands they have selected under the 1971 Act but on which title has not yet been transferred.

Internal Revenue Act exemption. This provision would exempt stock of the Native Corporations from inheritance taxes until 1991 in view of the fact that such stock cannot be alienated until that date.

Undesirable Features

The following paragraphs list the significant provisions falling in this category other than the Southeast Alaska/ Tongass National Forest land entitlement discussed separately.

Interest payments. This provision would authorize the payment of interest (probably less than $1 million annually) on funds held by the Treasury in the newly established escrow accounts (see above) and the existing Alaska Native Fund from which quarterly disbursements are made of the cash payments authorized by the 1971 Settlement Act. These interest payments were justified on the grounds that interest is paid on most other Indian accounts held in the Treasury. However, the Administration opposed the provision that payment of interest on these management-type funds (as contrasted to the trust-fund nature of other Indian accounts) was not justified, and, for this reason, Treasury now supports a veto recommendation.

Special grants. This provision would authorize grants totaling $1.6 million to certain Native Corporations which, because of special circumstances, were not eligible for cash payments under the 1971 Act. The argument in support of the grants is that the Corporations need the money for start-up planning and development costs. The Administration opposed on the grounds that any such funds should come out of the overall settlement.

Food Stamps. This provision would bar any payment or benefit under the 1971 Act from being considered as either income or resources in determining food stamp eligibility (or eligibility under other federally assisted programs). The Administration had argued that such benefits should not be excluded from counting as resources. However, this discrepancy is admittedly only one of the number that exists in the way various benefits are treated for income and resource purposes under the Food Stamp Program.

Exemption from Federal securities laws. This provision would exempt the Native Corporations from the operation of the securities laws administered by the Securities and Exchange Commission until 1991 (until that date Native corporate stock cannot be alienated). The rationale behind the exemption involves congressional belief that the complex and highly technical requirements of the securities laws would be costly and involve extended administrative delays. The legislative history indicated the congressional belief that the laws of the State of Alaska are adequate to protect the Natives and that the Federal laws can be reimposed if experience proves this to be necessary.

The Securities and Exchange Commission recommends veto of S. 1469 because of this exemption although the Commission does note that a decision to veto will have to take into account the bill as a whole. Basically, the Commission believes that the large amount of cash and the generally unsophisticated nature of the Natives require the protection of the securities laws, particularly the Investment Company Act of 1940. The Commission does note that it has attempted to work with the Corporations to minimize the burden of compliance.

Southeast Alaska Corporation -- Tongass National Forest

This provision would permit the Native Southeast Alaska Regional Corporation (Sealaska) to select some 200,000 to 250,000 acres of "bonus lands" from within the Tongass National Forest.

Because, prior to the enactment of the 1971 Settlement Act, the Natives of this Region had been compensated for land taken from them for the Tongass National Forest, Sealaska was not given any basic land selection rights by the 1971 Act. However, it is entitled to share (to the extent of 200,000 to 250,000 acres) in the so-called "bonus lands", the lands left over out of 2,000,000 acres set aside for specified purposes such as gravesites. The 1971 Act bars such selections from being made within certain Federal areas including National Forests, so the present provision has been enacted to set aside this prohibition.

The legislative history indicates that this present provision for Sealaska grows out of the physical characteristics of the region. The Tongass National Forest occupies most of the acreage in the region, and the remaining land from which Sealaska could select is asserted to be largely mountain ranges and glaciers. The provision was, therefore, necessary to give the Corporation a viable area from which to select its bonus lands.

As already noted, Agriculture is recommending veto generally on the broad grounds of upsetting the balance struck by the 1971 Settlement Act. The Department is, however, particularly concerned by the authorization for the National Forest selection. It argues that to permit Sealaska to select from the forest would be an important factor in upsetting the settlement balance, be contrary to the protection of the public purposes, multiple-use of the forest that the 1971 Act was designed to protect, allow the Natives to select land for which they had already been compensated, and be inequitable to other Native Corporations.

Senator Stevens described this provision as "equitable" on the Senate floor, and Congressman Young (R - Alaska) made the following statement on the House floor:

> "This section embodies a compromise negotiated and supported by Sealaska, the State of Alaska, Native villages in the region and various environmental groups. It was necessitated by the fact that nearly all the land in southeast Alaska is either within a national monument or national forest. Most of the remaining area, from within which Sealaska would otherwise have had to make its only land selections, are in remote areas of the region and of little, if any, economic value. Since a key factor in the corporations long term survival as a profit-making enterprise is the successful management of its land resources, it was imperative that Sealaska be able to select lands with economic potential.
>
> Under the terms of this section, the corporation will be able to select such lands in areas generally contiguous to existing village selections, thus providing for large and more efficient Native land management units."

We believe that it would be unconscionable and unjustified to give Sealaska this special land selection entitlement. The approximately 15,000 Natives (of a total of some 78,000) of this region are now participating in the cash payments being made under the 1971 Act, they were granted special compensation prior to the enactment of the 1971 Act, and the villages, groups, and individuals that make up the Sealaska Region are already entitled to approximately 300,000 acres from the Tongass National Forest. There appears to be no real justification to add to all of this a special entitlement of 200-250,000 acres, worth according to Agriculture estimates, about $300 million. The situation facing the Sealaska Corporation is basically the same as that facing other Native regional corporations, namely, that they are limited to selections within their geographical regions excluding Federal areas, and the lands so available for selection may vary widely in quality and value from one area to another.

Conclusions

As indicated earlier in this memorandum, we believe that the Sealaska provision should be determinative of action on the bill. Having concluded to recommend a veto for this reason, we believe that other undesirable features should be deleted from successor legislation.

In line with this, we have prepared for your consideration a revision of Agriculture's veto message specifically identifying the Sealaska provision, and the securities laws exemption as major grounds for veto but also suggesting that there are other changes that ought to be made and that the Administration will be willing to work closely with the Congress in developing an acceptable bill.

It should be noted that the Sealaska provision was not contained in the bill that originally passed the Senate. The House version, which did contain it, was passed by voice vote and the Senate adopted the House provisions without change, also by voice vote.

In conclusion, we believe that Interior's point about the urgency of many of these amendments is met by the commitment in the proposed veto message for your quick approval of revised legislation.

James T. Lynn
Director

Enclosures

To. J. Cavanaugh 12-30-75 9:45 a.m.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

DEC 30 1975

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill S. 1469 - Amend Alaska Native Claims Settlement Act of 1971
Sponsors - Sen. Stevens (R) Alaska and Sen. Jackson (D) Washington

Last Day for Action

January 2, 1976 - Friday

Purpose

Amends the Alaska Native Claims Settlement Act to: rectify certain inequities and inadequacies in the Act; authorize additional benefits and special treatment for specified Native Corporations; assure that benefits under the Act are not taken into account under other federally assisted programs such as food stamps; exempt Native Corporations from the operation of the Federal securities laws such as the Investment Company Act of 1940, and for other purposes.

Agency Recommendations

Office of Management and Budget	Disapproval (Veto message attached)
Department of Agriculture	Disapproval (Veto message attached)
Securities and Exchange Commission	Disapproval
Department of the Treasury	Would concur in a veto recommendation
Department of the Interior	Approval
Department of Justice	Defers to Interior
Department of Health, Education and Welfare	Defers to Interior

T[illegible]E SENATE

RRR

I return herewith without my approval S. 1469, a bill "To provide, under or by amendment of the Alaska Native Claims Settlement Act, for the late enrollment of certain Natives, the establishment of an escrow account for the proceeds of certain lands, the treatment of certain payments and grants, and the consolidation of existing regional corporations, and for other purposes."

The Alaska Native Claims Settlement Act of 1971 established a basic framework designed to provide fair and final settlement of the claims of Alaska Natives for their aboriginal land rights in the area.

This 1971 Act was necessarily a complex piece of legislation ~~and its~~ OUR experience IN THE OF THE SETTLEMENT ACT ongoing implementation has disclosed the need for a number of changes to resolve ambiguities and eliminate legal and administrative problems.

S. 1469 contains a number of desirable and acceptable provisions aimed at correcting the shortcomings of the 1971 Act.

I welcome the enactment of these provisions which would enable us to move ahead promptly ~~and which will~~ IN SERVING the best interest of the Natives and the State of Alaska.

I regret, however, that this commendable objective has been compromised by the addition of other provisions which I cannot, in good conscience, accept. ~~The bill has~~ Among those provisions, I have found two to be ~~Among those, I would single out two as particularly objectionable.~~ particularly objectionable.

First is the provision that would authorize the Southeast Alaska Regional Corporation to select AS MUCH AS 250,000 acres of land "BONUS" within the Tongass National Forest, thereby setting aside a prohibition FROM 1971 Act barring all such selections from within specified Federal areas, including National Forests. I am advised that this land has an estimated value of approximately $300 million.

While I understand that the land the Southeast Alaska Regional Corporation IS permitted to select under the 1971 Act is limited in amount and value, I do not believe that this fact can justify $300 MILLION a windfall for this group of approximately 15,000 Natives. They are now receiving cash payments under the 1971 Act and have benefitted from special compensation paid prior to 1971 for the taking of their land. Also, under existing law they are already entitled to APPROXIMATELY 300,000 acres of land in the Tongass National Forest.

The second objectionable provision unwisely exempts until 1991 Native Corporations from the protections of the Federal securities laws.

It is true that COMPLIANCE with such laws places a burden on any corporation and that the Native Corporations of Alaska are particularly lacking in the skills and resources needed for full compliance. I am advised, however, that the Securities and Exchange Commission, which administers these laws, has sought, and will continue to seek, TO OF THE SECURITIES LAWS to the capabilities of the corporations concerned. UNIQUE SITUATIONS AND

Fundamentally, however, I believe we have a situation in Alaska that demands the continued application of these laws. Large sums of cash are being handled by corporate officials of limited experience on behalf of Native owners who lack understanding of sophisticated investment policies. This is the very kind of situation which these securities laws are designed to provide protection. The legislative history suggests that the Congress will reimpose the laws if experience indicates this to be necessary, I need hardly observe that such action would come too late to provide adequate protection for many investors.

There are other features of S. 1469 which the Administration would like modified or clarified to assure legislation that is fair to the Natives, the State, and the American people. In order to provide the necessary changes in the 1971 Act which are urgently required, my Administration is prepared to begin work immediately with the Congress when it reconvenes to develop sound legislation that I can approve promptly.

Our objective in this endeavor and in the future should be to depart from the framework of the 1971 Settlement Act only in the most compelling cases. Otherwise, we face an endless series of delays and inequities that can only serve to defeat the original intent of the Act.

I return herewith without my approval S. 1469, a bill "To provide, under or by amendment of the Alaska Native Claims Settlement Act, for the late enrollment of certain Natives, the establishment of an escrow account for the proceeds of certain lands, the treatment of certain payments and grants, and the consolidation of existing regional corporations, and for other purposes."

The Alaska Native Claims Settlement Act of 1971 established a basic framework designed to provide fair and final settlement of the claims of Alaska Natives for their aboriginal land rights in the area.

This 1971 Act was necessarily a complex piece of legislation. Our experience in the ongoing implementation of the Settlement Act has disclosed the need for a number of changes to resolve ambiguities and eliminate legal and administrative problems.

S. 1469 contains a number of desirable and acceptable provisions aimed at correcting the shortcomings of the 1971 Act. I welcome the enactment of these provisions which would enable us to move ahead promptly in serving the best interest of the Natives and the State of Alaska.

I regret, however, that this commendable objective has been compromised by the addition of other provisions which I cannot, in good conscience, accept. Among those provisions, I have found two to be particularly objectionable.

First is the provision that would authorize the Southeast Alaska Regional Corporation to select as much as 250,000 acres of "bonus lands" from within the Tongass National Forest, thereby setting aside a 1971 Act prohibition barring all such selections from within specified Federal areas, including National Forests. I am advised that this land has an estimated value of approximately $300 million.

While I understand that the land the Southeast Alaska Regional Corporation is permitted to select under the 1971 Act is limited in amount and value, I do not believe that this fact can justify a $300 million windfall for this group of approximately 15,000 Natives. They are now receiving cash payments under the 1971 Act and have benefitted from special compensation paid prior to 1971 for the taking of their land. Also, under existing law they are already entitled to approximately 300,000 acres of land in the Tongass National Forest.

The second objectionable provision unwisely exempts until 1991 Native Corporations from the protections of the Federal securities laws.

It is true that compliance with such laws places a burden on any corporation and that the Native Corporations of Alaska are particularly lacking in the skills and resources needed for full compliance. I am advised, however, that the Securities and Exchange Commission, which administers

these laws, has sought, and will continue to seek, to tailor the requirements of the securities laws to the unique situations and capabilities of the corporations concerned.

Fundamentally, however, I believe we have a situation in Alaska that demands the continued application of these laws. Corporate officials of limited experience are handling large sums of cash on behalf of financially unsophisticated Native owners. This is the very kind of situation in which these securities laws are designed to provide protection.

While the legislative history suggests that the Congress will reimpose applicability of the securities laws, if experience indicates this to be necessary, this provides insufficient protection. Such action would come too late to provide adequate protection for many investors.

There are other features of S. 1469 which the Administration would like modified or clarified to assure legislation that is fair to the Natives, the State, and the American people. In order to provide the necessary changes in the 1971 Act which are urgently required, my Administration is prepared to begin work immediately with the Congress when it reconvenes to develop sound legislation that I can approve promptly.

Our objective in this endeavor and in the future should be to depart from the framework of the 1971 Settlement Act

only in the most compelling cases. Otherwise, we face an endless series of delays and inequities that can only serve to defeat the original intent of the Act.

THE WHITE HOUSE

ACTION MEMORANDUM WASHINGTON LOG NO.: 1539

Date: December 30 Time: 5:00pm

FOR ACTION: Paul Leach
George Humphreys
Dick Parsons
Max Friedersdorf
Bill Seidman
Ted Marrs Vetto Lazarus

cc (for information): Jack Marsh
Jim Cavanaugh
Warren Hendriks

FROM THE STAFF SECRETARY

DUE: Date: December 31 Time: noon

SUBJECT:

S. 1469-Amend Alaska Native Claims
Settlement Act of 1971

ACTION REQUESTED:

____ For Necessary Action ____ For Your Recommendations

____ Prepare Agenda and Brief ____ Draft Reply

x
____ For Your Comments ____ Draft Remarks

REMARKS:

Please return to Judy Johnston, ground floor West Wing

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

K. R. COLE, JR.
For the President

TO THE SENATE

I return herewith without my approval S. 1469, a bill "To provide, under or by amendment of the Alaska Native Claims Settlement Act, for the late enrollment of certain Natives, the establishment of an escrow account for the proceeds of certain lands, the treatment of certain payments and grants, and the consolidation of existing regional corporations, and for other purposes."

The Alaska Native Claims Settlement Act of 1971 established a basic framework designed to provide fair and final settlement of the claims of Alaska Natives for their aboriginal land rights in the area.

This 1971 Act was necessarily a complex piece of legislation, and its ongoing implementation has disclosed the need for a number of changes to resolve ambiguities and eliminate legal and administrative problems.

S. 1469 contains a number of desirable and acceptable provisions aimed at correcting the shortcomings of the 1971 Act.

I welcome the enactment of these provisions which would enable us to move ahead promptly and which serve the best interest of the Natives and the State of Alaska.

I regret, however, that this commendable objective has been compromised by the addition of other provisions which I cannot, in good conscience, accept.

Among those, I would single out two as particularly objectionable.

First is the provision that would authorize the Southeast Alaska Regional Corporation to select from 200,000 to 250,000 acres of land within the Tongass National Forest, thereby setting aside a prohibition, in the 1971 Act, barring all such selections from within specified Federal areas including National Forests. I am advised that this land has an estimated value of $300 million.

While I understand that the land the Southeast Alaska Regional Corporation can select under existing law is limited in amount and value, I do not believe that this fact can justify such a windfall for this group of approximately 15,000. They are now receiving cash payments under the 1971 Act and have benefitted from special compensation paid prior to 1971 for the taking of their land, and under existing law they are already entitled to more than 300,000 acres of land in the Tongass National Forest.

The second objectionable provision unwisely exempts until 1991 Native Corporations from the protections of the Federal securities laws.

It is true that complying with such laws places a burden on any corporation and that the Native Corporations of Alaska are particularly lacking in the skills and resources needed for full compliance. I am advised, however, that the Securities and Exchange Commission, which administers these laws, has sought, and will continue to seek, to adapt their application in these special cases with a view to tailoring the requirements to the capabilities of the corporation concerned, to the greatest extent possible.

Fundamentally, however, I believe we have a situation in Alaska that demands the continued application of these laws. Large sums of cash are being handled by corporate officials of limited experience on behalf of Native owners who lack understanding of sophisticated investment policy. This is the very kind of situation which brought these security laws into being in the first instance.

The legislative history suggests that the Congress will reimpose these laws if experience indicates this to be necessary. I need hardly observe that such action would come too late to provide adequate protection for many investors.

There are other features of S. 1469 which the Administration felt needed to be modified or clarified to assure legislation that is fair to the Natives, the State, and the American people.

The Administration is prepared to begin work immediately with the Congress when it reconvenes to develop sound legislation that I can approve promptly.

Our objective in this endeavor and in the future should be to depart from the framework of the 1971 Settlement Act only in the most compelling cases. Otherwise, we face an endless series of delays and inequities that can only serve to defeat the original intent of the Act.

THE WHITE HOUSE

January , 1976

DEPARTMENT OF AGRICULTURE
OFFICE OF THE SECRETARY
WASHINGTON, D. C. 20250

December 24, 1975

Honorable James T. Lynn
Director, Office of Management
and Budget

Dear Mr. Lynn:

As requested by your office, here are our views on S. 1469, a bill "To provide, under or by amendment of the Alaska Native Claims Settlement Act, for the late enrollment of certain Natives, the establishment of an escrow account for the proceeds of certain lands, the treatment of certain payments and grants, and the consolidation of existing regional corporations, and for other purposes."

This Department recommends that the President not approve the legislation.

The Department of Agriculture is strongly opposed to section 2(c) of the enrolled enactment relating to proceeds from public easements, section 4 relating to food stamp eligibility of Alaska Natives, and section 10 relating to the selection of National Forest lands by the Southeastern Alaska Regional Corporation. Moreover, we oppose in principle the inclusion of sections 12 and 15 relating to the surface and subsurface entitlement of Cook Inlet and Koniag Regional Corporations.

Our specific concerns about each of these provisions are discussed in detail in the enclosed supplemental statement. In addition to these concerns, we would note that many of the provisions of the enrolled enactment are inconsistent with the recommendations of other Executive Departments and agencies which reported on the bill to the Congress.

The Department of Agriculture is seriously concerned with the continuing efforts to amend the Settlement Act. In our view, the Alaska Native Claims Settlement Act represents a fair and equitable settlement of the interests of the Alaska Natives, the State of Alaska, and the Nation at large. The Act resulted from long and careful deliberation by several Congresses and the Executive Branch and represents a careful balance and compromise of the various interests. With enactment of the Settlement Act, it was clearly the intent of Congress to settle the issue of the Natives' aboriginal land claims once and for all. Therefore, it is incumbent upon the Federal Government, the State of Alaska, and the Nation to make a good faith effort to carry out the provisions of that settlement. In our view, amendments to the Act should be limited to resolving conflicts that are inherent in the Act and to solving procedural matters which have developed in trying to implement the Act.

The amendments to the Settlement Act contained in S. 1469 go far beyond resolving problems inherent in the Act. Instead S. 1469 circumvents the Act, providing new land entitlements and new benefits and abridging the procedures established in the Act for resolving land selection conflicts.

We believe that approval of S. 1469 will ultimately open the door to major alterations in the settlement and lead to the reopening of issues which were clearly thought to be settled by the passage of the Settlement Act. We do not believe this would be in the best interests of the Alaska Natives, the State or the public at large. For this and the other reasons cited herein, we urge the President not to approve the Act.

A proposed disapproval message is enclosed for the President's consideration.

Sincerely,

JOHN A. KNEBEL

Under Secretary

Enclosures

SUPPLEMENTAL STATEMENT OF THE U.S. DEPARTMENT OF AGRICULTURE
ON THE ENROLLED ACT, S. 1469

Section 2(c) - Proceeds From Public Easements

Section 2(c) provides that proceeds from public easements reserved pursuant to section 17(b)(3) of the Settlement Act shall be paid to the grantee of such conveyance in accordance with such grantee's proportionate share. The intent of the provision is not clear, and we are concerned about how the term "proceeds" might be construed.

Two types of easements are being reserved in support of the National Forest System program in Alaska. The first type includes those necessary to maintain the existing rights of third parties. Proceeds from these easements will pass to the Natives under the provisions of section 14(g) of the Settlement Act. No easements are being reserved by the Forest Service solely for the future use of third parties.

The second type of easement includes those necessary to provide access to the National Forests and to otherwise support management of National Forest programs. We do not anticipate any proceeds from these public easements in the sense of charges for use of reserved easements.

However, we are concerned that the term "proceeds" might be construed to include receipts from sale or use of National Forest resources which require use of a reserved easement--for example, a timber sale contract which required hauling logs over a road on a reserved easement--or if the "proceeds" were to include road maintenance or road construction cost-recovery charges levied by the Forest Service on a non-Federal user. We do not believe that such receipts or cost-recovery charges should be considered as proceeds. However, neither the act nor the Committee report offers any guidance as to the definition of the term "proceeds" or the intent of this subsection.

The broad and unspecified nature of this subsection and the absence of Committee guidance invite conflicts between the Executive Branch and the Natives over what constitutes proceeds from public easement. Our experience with the Settlement Act to date leads us to believe that litigation is a certainty if this provision becomes law. Such conflicts have characterized much of the implementation of the Settlement Act, and we see no merit in inviting additional disputes over the intent of the law.

We wish to point out that this Department and the Department of the Interior raised these concerns with the House Subcommittee on Indian Affairs and offered an amendment which would have provided clear direction on which proceeds would be distributed to the Natives from these easements and the manner in which these proceeds would be computed. The amendment was rejected by the Subcommittee without comment.

Section 4 - Food Stamp Eligibility

Section 4 of S. 1469 amends the Alaska Native Claims Settlement Act to state that any compensation, remuneration, revenue, or other benefits received by any member of such household under the Settlement Act shall be disregarded in determining the eligibility of any household to participate in the Food Stamp Program. We are opposed to this language, because it is too broad and could cause the Food Stamp Program to have to disregard as income and resources payments from timber and mineral rights and corporate salaries and as a result wealthy households could become eligible.

We believe that all money available to any household should be considered as income and that all households should be treated in the same manner regardless of their source of income or resources. In addition, we believe that this is the only way to maintain national eligibility standards which is a requirement of the Food Stamp Act.

Section 10 - Sealaska Amendment

Section 10 of S. 1469 would amend section 16(b) of the Settlement Act to permit Sealaska Regional Corporation to select the lands to which it is entitled under section 14(h)(8) from lands withdrawn for but not conveyed to Village Corporations within the Region. However, Sealaska could not select lands on Admiralty Island and, without the consent of the Governor of Alaska, could not select lands in the Saxman and Yakutat withdrawal areas.

The Department of Agriculture is strongly opposed to this provision.

An important aspect of the balance achieved by the Alaska Native Claims Settlement Act (ANCSA) was the special treatment of land selection by the natives of southeast Alaska. In 1968 the Court of Claims entered judgment in behalf of the Tlingit and Haida Indians of southeast Alaska in the amount of some $7.5 million. Most of this amount represented compensation for the Federal taking of land which became the Tongass National Forest. In formulating ANCSA, the Congress recognized this cash settlement. It also recognized that the value of lands in southeast Alaska with its water access and commercial timber is greater than that of other regions in Alaska and that there was a need to prevent conflict between the purposes of the Act and the purposes for which the National Forests were established. Accordingly, under ANCSA, the southeast native village corporations were limited to selections of 23,040 acres each, and the Southeast Regional Corporation (Sealaska) was excluded from land selection under section 12. The only land which Congress entitled Sealaska to select was a share of the balance of the two million acres withdrawn under section 14(h). By specifically authorizing conveyances from the National Forests for section 14(h)(1), (2), (3), and (5), it is clear that Congress did not intend for 14(h)(8) conveyances to be made from National Forest lands.

Section 10 of S. 1469 would alter the balance of the Settlement Act by awarding Sealaska a greater settlement than Congress intended and by giving Sealaska selection rights on lands for which compensation has already been granted. It would also have a detrimental effect on land selections by the other Regional Corporations and represent an inequity to them. First, by amending section 16, the Sealaska amendment would affect the formula under section 12 which governs the amount of lands that all other Regional Corporations may select and would reduce the amount of lands to which these corporations are entitled. The effect would be to prevent the conveyance of the full 40 million acres provided for in the Act. Secondly, Sealaska Region would receive 14(h)(8) lands of far greater surface value than would the other Regional Corporations. Moreover, if section 10 is enacted, it is probable that the Chugach and Koniag Regions would desire similar treatment for their entitlements under 14(h)(8). These Regions are claiming difficulty in selecting the full amount of lands to which they are entitled under section 12(c) because of the limitation on selections from the National Forests and the National Wildlife Refuge System.

In our view, section 10 represents the kind of conflict between National Forest purposes and the interests of the Alaska Natives that ANCSA sought to eliminate. Section 10 would likely result in an additional 200-250,000 acres being withdrawn from the Tongass National Forest. These lands contain the full range of resource values for which the National Forest was established. The public values include significant wildlife habitat, recreation use areas, access to major fishing areas, and lands suited to timber harvest. We believe the benefits of multiple resource management can best be achieved by retaining these lands as part of the National Forest System.

There are sufficient D-1 lands within southeastern Alaska to provide for Sealaska Corporation's selection as originally contemplated in the Alaska Natives Claims Settlement Act. We believe that selections from these lands, which are known to be mineralized, would be comparable to lands available to other regional corporations under section 14(h)(8) of the Act.

Section 12 - Cook Inlet Settlement

Section 12 of S. 1469 would legislate an agreement between the State of Alaska, the Cook Inlet Regional Corporation, and the U.S. Department of the Interior to resolve land entitlement difficulties experienced by Cook Inlet.

There are no National Forest lands involved in this agreement. However, we are informed that, although some of the Department of the Interior agencies support the terms of this agreement, the Secretary of the Interior has not had the opportunity to review the agreement and has expressed a desire to do so.

Moreover, this Department has repeatedly expressed its concerns to the Department of the Interior about the wisdom of entering in negotiations on land entitlements in contravention of the procedures set forth in the Settlement Act. Experience has shown that entering negotiations with one Native Group leads to the extension of such agreements to others.

We also question the advisability of accommodating particular Native selections from existing Federal reservations such as the National Wildlife Refuges and the National Forests. The Cook Inlet settlement embodied in S. 1469 involves conveyance of lands and resources in the Kenai Moose Range. This could set a precedent for further conveyances of public lands in Alaska, including the National Forests, as other regions seek to negotiate better land selections.

Finally, the agreement permits Cook Inlet to select certain lands outside its Regional boundaries. In our view, this matter has not been sufficiently explored within the Administration in terms of precedent or potential conflicts among Regional Corporations.

Since the Secretary of the Interior, to our knowledge, has not reviewed the terms of this agreement, and the precedents that might be established by legislating this agreement have not been fully explored, we strenuously oppose the provisions of section 12.

Section 15 - Conveyance to Koniag Regional Corporation

Section 15 of S. 1469 would convey to Koniag Regional Corporation the subsurface estate under certain lands proposed for establishment as the Aniakchak Caldera National Monument.

While the lands and interests involved in this conveyance are not under the jurisdiction of this Department, we are opposed to the inclusion of this provision in S. 1469.

The Settlement Act provides for dual withdrawals of the d-2 lands and for these dual withdrawals to be considered at the time the Congress considers the d-2 proposals for new national forests, parks, refuges, and wild and scenic rivers. We are unaware of any urgency which would necessitate resolving the selection of Koniag Regional Corporation's land selection problems now. In our view, the better course is to consider all aspects of each d-2 proposal together as the Settlement Act provides.

We are concerned that enactment of this provision would establish a precedent for considering other conflicting withdrawals out of context of the d-2 proposals. Again, we believe the Act should be allowed to function as originally set forth by the Congress rather than to be amended on a piece-meal basis as conflicts and dual withdrawals occur.

Proposed Veto Message on S. 1469

To the Senate:

I am returning herewith, without my signature, S. 1469, a bill to amend the Alaska Native Claims Settlement Act. While there are several provisions of this legislation which are much needed, on balance, I believe this legislation is not in the best interests of the Alaska Natives, the State of Alaska or the American public at large.

This Administration is committed to implementing the Alaska Native Claims Settlement Act as efficiently and quickly as possible. Toward this end, we have brought to the attention of the Congress a number of problems which have developed in implementing the Act which require legislative remedy.

However, the bill now before me goes beyond resolving problems inherent in the Act. I am concerned that certain of the amendments contained in S. 1469 could open the door to and establish precedents for additional alterations in the settlement. Unchecked, such alterations could ultimately lead to reopening of basic issues which Congress and the Executive Branch clearly thought to be settled by passage of the Alaska Native Claims Settlement Act.

It is in the best interests of the Alaska Natives, the State of Alaska, and the Nation at large to complete the implementation of the Settlement Act so that the various parties can get on with the business of managing Alaska's resources and planning for the future for the benefit of her citizens.

The alterations and precedents that would be established through S. 1469 in my view represent a step backward and would promote continuing conflict and disagreement over the terms of the settlement.

In returning S. 1469 to the Congress, I want to emphasize that this Administration stands ready to work closely with the appropriate Committees to produce a bill which will solve the problems that have developed in implementing the Act. With renewed communication, these problems can be resolved quickly to the satisfaction of all parties involved in the Alaska Native Claims Settlement Act.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

OFFICE OF
THE COMMISSIONER

The Honorable James T. Lynn
Director
Office of Management and Budget
Washington, D.C. 20503

Re: S. 1469, 94th Congress; amendments to the Alaska Native Claims Settlement Act

Dear Mr. Lynn:

In the absence of the Chairman, I am responding to the December 22, 1975, request of Mr. Countee of your staff for the Commission's views on S. 1469, a bill to amend the Alaska Native Claims Settlement Act of 1971, 43 U.S.C. 1609-24. The Congress passed this legislation on December 16, 1975, and, accordingly, we understand that your office will shortly advise the President whether he should sign or veto it. As we have indicated in previous correspondence with your office (copies of which are attached), the Commission strongly opposes Section 3 of S. 1469, which would totally exempt, through 1991, corporations organized pursuant to the Settlement Act (ANCSA corporations) from the federal securities laws. We realize that your determination of whether to advise that the President veto the bill must depend on a weighing of the merits of the legislation as a whole, and that the Commission's expertise does not extend to the broader issues concerning the relationship between the federal government and the Alaska natives. This Commission, however, adheres to its opposition to the exemption in Section 3, and, accordingly recommends in favor of a veto on that basis. Perhaps, after a veto, Congress could reconsider the enactment of similar legislation which omits the exemptive provisions of Section 3.

The Commission has dealt with the securities problems arising from the Settlement Act during the past two years. In that period, we have become well acquainted with the origin and unique characteristics of the ANCSA corporations and with the purposes which those entities are expected to fulfill. Based on that experience, the Commission believes that the interests of the Alaska native shareholders would be seriously disadvantaged,

and the objectives of the Settlement Act thwarted, since the Act makes unavailable to the Alaska native shareholders the protections afforded by the federal securities laws, particularly those provided by the Investment Company Act of 1940. While the specific grounds for our objections to legislation such as S. 1469 have been developed in detail in the prior correspondence, we have summarized below certain salient points.

Our immediate concerns and emphasis upon Investment Company Act protections for these shareholders stem from two basic conditions which resulted from the passage of the Settlement Act and which have not changed materially during the past two years. First, the assets of the ANCSA corporations consist predominantly of substantial pools of liquid capital, presently representing an aggregate of approximately $270,000,000 in Settlement Act appropriations. Second, it appears that the majority of shareholders of these companies are unsophisticated in corporate and investment matters.

Under these circumstances, there is reason to believe that the managers of the ANCSA corporations, as trustees of large amounts of capital readily convertible into cash, might be subject to the same human temptations and potential for conflict of interest which gave rise to the passage of the Investment Company Act. That law was enacted upon the basis of findings made by the Commission in its exhaustive study of abuses suffered by investment company shareholders during the 1920's and 1930's. One of the primary abuses was the operation of investment companies for the benefit of insiders such as officers, directors and investment advisers, and other affiliated persons, or for the benefit of brokers and dealers, or special classes of security holders of such companies.

Pursuant to Section 17 of the Investment Company Act, the Commission is authorized to review transactions between investment companies and their affiliates prior to their consummation to determine whether such transactions are fair and involve no disadvantage to investment company shareholders. This provision thus provides protection for investment company shareholders

which the antifraud provisions of the other securities laws do not provide. Moreover, unlike the prohibitions of the antifraud provisions of the other securities laws, which apply only to the purchase or sale of a security, Section 17 of the Investment Company Act provides for Commission review of affiliated transactions regardless of the nature of the property involved, be it securities, cash, other forms of personal property, or real property.

We believe that this aspect of the greater scope of Section 17 will be highly significant in the case of the ANCSA corporations, because they are expected to be dealing with each other in affiliated land transactions and other types of ventures not involving the purchase or sale of a security. We have already reviewed two such transactions involving ANCSA corporations and difficult questions of land valuation. In this connection it is important to bear in mind the size of the ANCSA corporations, in terms of the aggregate value of their assets. The Settlement Act calls for the distribution of nearly one billion dollars in cash to the ANCSA corporations over a period of approximately ten years. They are also entitled to approximately 40 million acres of land in the State of Alaska, having an as yet undetermined, but obviously enormous value.

The Commission is sensitive to the fact that the full regulatory burdens to which traditional investment companies are subject should not be imposed on the ANCSA corporations. In February of 1974, the Commission adopted Rule 6c-2 (T) [17 C.F.R. 270.6c-2] under the Investment Company Act, which exempts those ANCSA corporations which register as investment companies under the Act from all but five provisions of the Act. This rule is a temporary measure, and we expect it to be superseded by the proposed permanent rule, Rule 6c-2, which the Commission issued for comment on August 22, 1975. Although Rule 6c-2 would increase somewhat the regulatory burden upon the larger ANCSA corporations which register beyond that imposed under the temporary rule, such additional requirements constitute what we consider the minimum protections that are necessary and appropriate to the protection of the interests of the Alaska native shareholders.

As to the effect of the Securities Exchange Act of 1934 on the ANCSA corporations, it is probable that a number of the larger corporations will become subject to the reporting provisions of that Act if and when they cease to be investment companies by engaging in some operating business, such as land development. The Exchange Act was designed primarily to prevent fraud in the purchase and sale of securities and to provide investors with material information upon which to base investment decisions. This Commission feels strongly that the requirement for public disclosure of material activities conducted by a publicly-held corporation, as well as the public disclosure of material benefits personally derived by those individuals entrusted to manage the affairs of such companies, affords important protection to the individual shareholders. We believe that such disclosures frequently form the only basis on which the owners can judge the stewardship and competency of those chosen to manage their company. Further, such disclosures are often the only source of adequate information available to stockholders or their legal representatives in determining their rights and remedies under applicable laws.

I trust that the foregoing will assist you in advising the President as to the Commission's position on Section 3 of S. 1469. Should you determine that you need additional information on this matter, please do not hesitate to contact us.

Sincerely,

Philip A. Loomis

Philip A. Loomis, Jr.
Commissioner

Enclosures

2-5
Rec Staff

CHAIRMAN'S OFFICE
HAND DELIVERED
NOV 25 1975

Honorable James M. Frey
Assistant Director for Legislative
Reference
Office of Management and Budget
Executive Office of the President
Washington, D.C. 20503

ATTENTION: MISS MARTHA RAMSEY
7201 New Executive Office Building

Re: H.R. 6644, 94th Congress

Dear Mr. Frey:

In reply to your request of November 17, 1975, for our views on H.R. 6644, which would amend the Alaska Native Claims Settlement Act of 1971 ("ANCSA") (434 U.S.C. 1601-24), I wish to advise you that the Commission strongly opposes the provision of Section 28 of the bill which would exempt corporations organized pursuant to ANCSA ("ANCSA Corporations") from the federal securities laws.

The Commission believes that the disclosure and regulatory requirements of the federal securities laws, particularly those provided by the Investment Company Act, are essential to prevent the dissipation of the assets awarded to the Alaska native population by the U.S. Government. We are concerned that the substantial pools of liquid capital held by the ANCSA Corporations for the benefit of large numbers of unsophisticated investors may well set the stage for the same types of abuses which led to the adoption of the Investment Company Act in 1940. This could happen in two ways. With respect to those ANCSA Corporations which have retained external investment advisers, it would appear that such outside advisers would perform a role much like that performed by investment advisers who serve the more traditional investment companies which are subject to the Investment Company Act. With respect to those ANCSA Corporations which rely upon their own boards of directors to manage their investment portfolios, it is likely that, even assuming the best of intentions and honesty, they will be subject to temptations and conflicts of interest.

In either case, the ANCSA Corporations would appear to have the same need for the substantive protections afforded by the Investment Company Act, such as those guarding against self-dealing and breach of fiduciary duty, as do other types of investment companies. It is our view that the shareholders of the ANCSA Corporations would seem to require -- and to deserve -- the same basic protections afforded shareholders of other companies subject to our jurisdiction.

The Commission is, however, well aware of the need for flexibility, consistent with the protection of investors, in administering the federal securities laws as those laws apply to ANCSA Corporations. We believe that the securities laws can be administered in such a manner as to afford the shareholders in the ANCSA Corporations the same protections enjoyed by all shareholders of public corporations, without unduly burdening the ANCSA Corporations. To that end, the Commission has attempted to tailor its regulation of the ANCSA Corporations under the Investment Company Act to the particular needs and circumstances of the Alaska native shareholders.

Since February, 1974, ANCSA Corporations have been governed by Rule 6c-2(T) [17 C.F.R. 270 6c-2] under the Investment Company Act, which exempts those ANCSA Corporations which are investment companies within the meaning of that Act from all but five of the provisions of the Act. This rule is a temporary measure, and we expect it to be superseded by the proposed permanent rule, Rule 6c-2, which the Commission issued for comment on August 22, 1975. Although Rule 6c-2 would somewhat increase the regulatory burden upon the larger ANCSA Corporations beyond that imposed under the temporary rule, such additional requirements constitute what we consider the minimum protections that are necessary and appropriate to the protection of the interests of the Alaska native shareholders. A copy of temporary Rule 6c-2(T) is attached to the enclosed letter of May 13, 1975 to Congressman Meeds, Chairman of the Subcommittee on Indian Affairs of the House Committee on Interior and Insular Affairs; a copy of proposed Rule 6c-2 is attached to the enclosed letter of September 12, 1975 to Senator Jackson, Chairman of the Senate Interior and Insular Affairs Committee.

Concerning the effect of the Securities Act of 1933 and the Securities Exchange Act of 1934 on the ANCSA Corporations, we would like to emphasize that subjecting the ANCSA Corporations to the requirements of those Acts does not mean that this Commission exercises any control over the internal affairs of ANCSA Corporations.

Those Acts were designed primarily to prevent fraud in the purchase and sale of securities, and to provide investors with material information upon which to base investment decisions. This Commission feels strongly that the requirement for public disclosure of material activities conducted by a publicly-held corporation, as well as the public disclosure of material benefits personally derived by those individuals entrusted to manage the affairs of such companies, affords important protection to the individual shareholders. We believe that such disclosures frequently form the only basis on which the owners can judge the stewardship and competency of those chosen to manage their company. Further, such disclosures are often the only source of adequate information available to stockholders or their legal representatives in determining their rights and remedies under applicable laws.

Thus, the Commission's basic position continues to be that no legislative exemption is necessary or appropriate with respect to the ANCSA Corporations because the Commission's rule-making authority, which underlies temporary Rule 6c-2(T) and the proposed permanent measure, Rule 6c-2, provides the most effective means of dealing with the securities laws issues created by the Settlement Act.

Should the Congress determine that some statutory exemptive relief is necessary, however, we would consider the following alternative position as less dangerous than the total exemption proposed in H.R. 5644:

The Settlement Act could be amended to incorporate into the statute the exemptive relief embodied in proposed Rule 6c-2, together with a resolution by the Congress that the Commission should continually review the situation and grant such further relief from the securities laws for the ANCSA Corporations while their stock remains inalienable as is consistent with the interests of their shareholders and other investors.

I trust that the foregoing will assist you in understanding our position on the Alaska Native Claims Settlement Act corporations. I wish to advise you that we are preparing to advise Chairman Haley of the House Interior Committee directly of our current views on

H.R. 6644 and to seek permission to testify against Section 28.

If you need additional information or assistance in this matter, please do not hesitate to contact me.

Sincerely,

Roderick M. Hills
Chairman

Enclosures

ASMostoff
APJones
PSKiernan
CGFrailey/pm
11-24-75

CGF

O.K.

Carson Grailey
Ashcroft

HAND DELIVERED

FEB 1 1974

Honorable Lloyd Meeds, Chairman
Subcommittee on Indian Affairs
House Committee on Interior
and Insular Affairs
United States House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

You have invited me to appear before your subcommittee to testify on H. R. 12355,1/ a bill to amend the Alaska Native Claims Settlement Act of 1971.2/ In addition, you have requested official comment by the Commission on the bill, calling attention particularly to Section 3, which would amend the Settlement Act to exempt any corporation organized pursuant to its provisions ("ANSCA Corporations") from the provisions of the Investment Company Act of 1940,3/ as amended ("Act").

We understand that as many as 200 corporations will be organized with almost 80,000 beneficiary shareholders and that the corporations are already receiving large amounts of money, perhaps, as much as $1 billion. It appears that, for the next few years, at least until they have selected their real estate investments and begun to engage primarily in owning land or operating a business, many of these corporations will be investment companies within the meaning of Sections 3(a)(1) and 3(a)(3) of the Act.

I am concerned that the substantial pools of liquid capital held by the ANSCA Corporations for the benefit of large numbers of unsophisticated investors may well set the stage for the same types of abuses which led to adoption of the Act in 1940. This might happen in two ways. It seems unlikely that the boards of directors of the corporations, composed entirely of Alaska natives, would have any substantial experience in managing portfolios of securities as large as those which the corporations will hold. Under these circumstances, it will be natural for the directors to seek outside assistance. The outside advisers would perform a role much like

---

1/ 93d Cong., 2d Sess. (1974); 120 Cong. Rec. H-299 (daily ed., January 29, 1974)

2/ ,85 Stat. 688

3/ 54 Stat. 789

that performed by investment advisers who advise the more traditional investment companies which are subject to the Act. Secondly, to the extent that the native boards of directors attempt to carry on investment activities themselves, even assuming the best of intentions and honesty, they will be subject to temptations and conflicts of interest. In either event, the corporations would appear to have the same need for the substantive protections afforded by the Act, such as those guarding against self-dealing and breach of fiduciary duty, as did other types of investment companies prior to adoption of the Act.

The Commission has not, at this time, had the opportunity to draft a formal comment on the complex question as to whether or to what extent the ANSCA Corporations should be permanently exempted from the Act. I hope you can understand that removal of any of the substantive protections which the Act provides for these companies and their shareholders must be weighed very carefully. It would be a great tragedy if the compensation given by Congress to Alaska natives for their land rights under the Settlement Act were diluted or diminished by the removal of the ANSCA Corporations from the Act's jurisdiction.

I do, of course, understand the concern which underlies the present bill and its counterpart, S. 2771/ The ANSCA Corporations might well have substantial problems in complying with the numerous technical provisions of the Act, some of which may be at odds with their very operation. I have, therefore, instructed the Commission's Division of Investment Management Regulation expeditiously to propose for the Commission's consideration, a rule which would temporarily exempt the ANSCA Corporations from all but the most essential provisions of the Act. Such a rule would be retroactive to December 18, 1971, the date of enactment of the Settlement Act, and would relieve the ANSCA Corporations from compliance with the technical provisions of the Investment Company Act. The Commission could then proceed deliberately with a thorough study of the extent to which permanent relief from the Act may be warranted.

The Division has informed me of its present intention to recommend to the Commission a temporary rule under Section 6(c) of the Act exempting the ANSCA Corporations from all sections of the Act except 8(a), 9, 17, 36, and 37 which the Division believes are essential.

Section 8(a) of the Act would require the ANSCA Corporations to register with the Commission by filing a Form N-8A disclosing basic information such as the name and address of the corporation, the names of its officers, directors, and adviser and the identity of other companies substantial amounts of whose securities are held by the Corporation. The more detailed information requested by the Commission's Form N-8B-1 would not be required.

1/ 93d Cong., 1st Sess. (1973); 119 Cong. Rec. S-21767 (daily ed. December 4, 1973)

Section 9 of the Act prohibits a person convicted of certain crimes or enjoined from certain specified activities from serving as an officer, director, member of an advisory board, investment adviser, or depositor of an investment company and also provides procedures for the removal of this prohibition under appropriate circumstances.

Section 17, generally speaking, would protect the shareholders of the ANSCA Corporations from self-dealing by management and other affiliates by requiring Commission approval before the corporations engaged in transactions with affiliated persons.

Section 36 authorizes the Commission or a shareholder to bring a civil action against officers, directors, members of advisory boards, investment advisers, depositors or underwriters of registered companies for breach of fiduciary duty involving personal misconduct. It further provides that an investment adviser is deemed to have a fiduciary duty with respect to the receipt of compensation for services or payments of a material nature paid by the investment company.

Finally, Section 37 makes it a crime under the Act to steal or embezzle the property of an investment company.

I believe that the proposed course of action I have described provides a reasonable and preferable alternative to the adoption at this time of H. R. 12355. It would provide appropriate investor protections and yet not hamper the corporations in their basic operations, making legislative relief unnecessary.

In the meantime, however, it would seem that the ANSCA Corporations would not have been unnecessarily restricted in their operations by the technical provisions of the Act and they and their shareholders, the Alaska natives, would have had the benefit of the Commission's detailed examination of their need for the protections of the Act.

Thank you for this opportunity to comment on the proposed legislation and please do not hesitate to inform me if I can be of further assistance. I trust that this letter of comment will suffice for your subcommittee's purposes and that it will not be necessary for me to appear in person.

Sincerely,

Ray Garrett, Jr.
Chairman

PKIERNAN:sg
2-1-74

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

OFFICE OF
THE CHAIRMAN

MAY 13 1975

Honorable Lloyd Meeds, Chairman
Subcommittee on Indian Affairs
House Committee on Interior
and Insular Affairs
United States House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

It has come to our attention that your Committee is now considering H.R. 6644, 1/ a bill to amend the Alaska Native Claims Settlement Act of 1971.2/ The staff of the Commission has recently conferred with representatives of the Department of the Interior and the Office of Management and Budget, and, as a result of that conference, we wish to offer comments with respect to two sections of the proposed bill, Sections 103 and 107, which involve the securities laws, the Investment Company Act of 1940 ("1940 Act") in particular.

Section 103 would add a new provision to the Settlement Act giving the corporations organized pursuant thereto ("ANCSA Corporations") a temporary exemption from the 1940 Act until December 31, 1976. In introducing this bill to the House, Congressman Young indicated that without such an exemption, certain ANCSA Corporations investing some of their funds "in commercial bank time deposits or certificates of deposit" might "risk being classified as investment companies." He further indicated that such an exemption would "provide necessary breathing room to the SEC and the Native corporations to permit resolution of long-range problems."3/

As I indicated in my letter to you of February 1, 1975, commenting upon an identical provision in H.R. 12355,4/ I

1/ 94th Cong., 1st Sess. (1975), 121 Cong. Rec. H-3596 (daily ed., May 1, 1975).

2/ 85 Stat. 688.

3/ Supra n. 1, at 3596, 3597.

4/ 93rd Cong., 2nd Sess. (1974); 120 Cong. Rec. H-299 (daily ed., January 29, 1974).

believe it would be unwise to exempt the ANCSA Corporations from all provisions of the 1940 Act. The Commission's position was then, and continues to be, that certain provisions of the Act should be applied to ANCSA Corporations falling within the 1940 Act's definition of investment company in order to protect the substantial pools of liquid capital which these companies hold in trust for the benefit of numerous unsophisticated Alaska native shareholders.

ANCSA Corporations are not restricted by the Settlement Act, the securities laws, or Alaska law to investing in bank time deposits or certificates of deposit; and, in fact, it is our understanding that certain of them are investing in other types of securities. In any event, the application of the 1940 Act to a corporation investing in certificates of deposit and other securities of a relatively non-speculative character is more than a technical complication. Numerous so-called money market funds registered under the 1940 Act voluntarily restrict their investments to certificates of deposit, government securities, and like investments; and certain of the protections afforded shareholders of such funds by the 1940 Act would be appropriate for an ANCSA Corporation with similar voluntary investment restrictions.

As you are probably aware, in accordance with my earlier letter to you, the Commission acted promptly last year to exempt the ANCSA Corporations from all but the most essential provisions of the 1940 Act by adopting temporary Rule 6c-2(T).5/ The Commission has received a number of comments on the proposed rule, and, having analyzed these, the Commission's staff has recently submitted a revised version of the proposed rule to the Commission. The Commission intends promptly to consider the staff recommendations and either to adopt a permanent exemptive rule or ask for further public comments on a revised proposal. As presently proposed by the staff, Rule 6c-2 would add the proxy, reporting and record-keeping requirements of the Act to the group of provisions from which ANCSA

5/ Rule 6c-2(T) exempts ANCSA Corporations registering pursuant to Section 8(a) of the Act from all provisions of the 1940 Act except Sections 9, 17, 36, and 37 (Investment Company Act Release No. 8251, February 26, 1974, attached).

Corporations registering under the rule would not be exempt. It should be emphasized that both the temporary rule and the proposed permanent rule affect only those ANCSA Corporations which choose to register with the Commission pursuant to Section 8(a) of the 1940 Act.

We should also point out that, if the Congress exempts the ANCSA Corporations from the 1940 Act, a number of the companies would continue to be subject to the Securities Exchange Act of 1934 ("Exchange Act") as companies having 500 or more shareholders and more than $1,000,000 in assets. Such companies would have to comply with the registration, reporting, and proxy solicitation provisions of the Exchange Act. We believe that these provisions provide significant protections to the shareholders of the ANCSA Corporations and that such shareholders should not be given any less protection under the Exchange Act than Congress has given to shareholders of other, more conventional corporations. However, we believe it would be most unfortunate if the ANCSA Corporations were exempted during the time they are investment companies from a statute specifically designed to regulate investment companies and be subject only to the requirements of a statute which is designed basically to inform the Commission and the investing public as to securities of publicly traded companies.

Section 107 of the bill would authorize the ANCSA Corporations to merge or consolidate under Alaska law. First, assuming that Section 103 is not adopted, we do not think this provision standing alone would exempt merger transactions from the Commission's jurisdiction under Section 17 of the 1940 Act, which relates to the transactions between affiliates.

Second, if the bill were changed to exempt such mergers from the 1940 Act, we do not feel that such a change would serve the interests of ANCSA shareholders. Any mergers of ANCSA Corporations which constitute transactions of affiliated persons or companies within the meaning of Section 17 should remain subject, in our view, to the standards of fairness imposed by that section. Commission review of these mergers is especially important because of the difficulty of ascertaining the value of ANCSA Corporation assets for purposes of an exchange of shares or an acquisition of assets.

We have gained some familiarity recently with at least one proposed merger involving ANCSA Corporations, that proposed by the NANA Regional Corporation and a number of its village corporations. As we understand it, that merger would involve the exchange of rights now vested in natives belonging to the various corporations. Such vested rights, although difficult to value at this time, would presumptively differ from one corporation to another; yet, subsequent to the exchange, the affected natives would all have equal rights. We are troubled that such a shift in vested rights among investors who now have the protections of the 1940 Act might, if the proposed bill were adopted, take place without any consideration of its fairness. Our view in this regard is buttressed by our understanding that there is no provision of Alaska Corporation law which provides protections comparable to those afforded by Section 17.

Thank you for the opportunity of commenting on H.R. 6644. We trust that our comments will be of assistance to you and we stand ready to provide you with whatever further assistance you may desire.

Sincerely,

Ray Garrett, Jr.
Chairman

Enclosure

"interested person" when used with respect to an investment company, investment adviser, or principal underwriter for an investment company to include any broker or dealer registered under the 1934 Act or any affiliated person of such a broker or dealer. Section 2(a) (3) defines an "affiliated person" of another person to include any director of such other person. Treynor, as a director of O'Brien, would be an affiliated person of a broker or dealer and, therefore, an "interested person" of the Funds and of their investment adviser and principal underwriter.

Section 6(c) of the Act provides that the Commission by order, upon application, may conditionally or unconditionally exempt any person, security, or transaction from any provision or provisions of the Act if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicants contend that Treynor should not be deemed an "interested person" of the Funds, VS, or BM&R because his affiliation with OA would not affect or impair his independence in acting on behalf of the Funds and their shareholders and that the requested exemption is therefore consistent with the provisions of Section 6(c) of the Act.

NOTICE IS FURTHER GIVEN that any interested person may, not later than March 22, 1974, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reasons for such request, and the issues of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D. C. 20549. A copy of such request shall be served personally or by mail (air mail if the person being served is located more than 500 miles from the point of mailing) upon Applicant at the address stated above. Proof of such service (by affidavit, or in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule O-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following March 22, 1974, unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

By the Commission.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 8251/February 26, 1974

NOTICE OF ADOPTION OF TEMPORARY RULE 6c-2(T) AND OF PROPOSAL TO ADOPT RULE 6c-2, BOTH UNDER THE INVESTMENT COMPANY ACT OF 19[illegible] CONDITIONALLY EXEMPTING CORPORATIONS ORGANIZED PURSUANT TO THE ALASKA NATIV[illegible] CLAIMS SETTLEMENT ACT FROM ALL PROVISIO[illegible] OF THE INVESTMENT COMPANY ACT OF 1940 EXCEPT SECTIONS 8(a), 9, 17, 36, AND 37. (File No[illegible] S7-514)

NOTICE IS HEREBY GIVEN that the Securities and E[illegible] change Commission hereby adopts temporary Rule 6c[illegible] and proposes to adopt Rule 6c-2, both under the Inves[illegible] ment Company Act of 1940 ("Act") to exempt from al[illegible] provisions of the Act except Sections 8(a), 9, 17, 36, a[illegible] 37 corporations organized pursuant to the Alaska Nativ[illegible] Claims Settlement Act of 1971 1/ ("Settlement Act") (such corporations hereinafter referred to collectively a[illegible] "ANCSA Corporations"). Such exemptions are conditi[illegible] upon adherence by the ANCSA Corporations to reporti[illegible] and other requirements specified herein. Rule 6c-2(T) effective as of December 18, 1971, the date of the enact[illegible] ment of the Settlement Act; it will be superseded at suc[illegible] time as the Commission takes action on proposed Rule 6c-2, which, as proposed, would provide the same relief on a permanent basis as is now provided by Rule 6c-2(T[illegible]

The ANCSA Corporations have been (or will soon be) organized to hold and administer the extensive land gra[illegible] mineral rights, cash, and mineral revenues intended by t[illegible] Government of the United States to recompense Alaska[illegible] native Indian Aleut and Eskimo population ("Alaska Natives") for lands within the State of Alaska. In acco[illegible] ance with this statutory purpose, the ANCSA Corpora[illegible] will be owned and managed exclusively by Alaska Nativ[illegible] who will be given shares of stock in the ANCSA Corpo[illegible] rations. The ANCSA Corporations consist of twelve "Regional Corporations," representing the Alaska Nati[illegible] residing in twelve geographical districts designated by t[illegible] Department of the Interior, and more than 200 "Villa[illegible] Corporations" within these districts each representing Alaska Natives residing in a village.

Although the ANCSA Corporations are to be given substantial real estate and subsurface mineral interests, ma[illegible] of such interests are not presently specifically identifia[illegible] as they are to be selected and acquired over a four-year[illegible] period in accordance with the provisions of the Settlem[illegible] Act. Distribution of a significant portion of monetary compensation was made almost immediately upon ena[illegible] ment of the Settlement Act, however, and $130,000,[illegible] of such monies has already been received by the twelve Regional Corporations. Furthermore, large additional distributions of cash will be made to the ANCSA Corpo[illegible] rations in the next few years, so that, during this perio[illegible] at least until they have fully exercised their land grant privileges and have begun to engage primarily in owning land or operating a business, many of the ANCSA Corp[illegible] rations may be investment companies within the meani[illegible] of Sections 3(a) (1) and 3(a) (3) of the Act. 2/

It appears that, without compliance with the Act or exemptive relief by the Commission, questions may be raised whether many ANCSA Corporations may operate in interstate commerce or buy securities in interstate co[illegible] merce. 3/ Several ANCSA Corporations have filed app[illegible] cations for orders of the Commission pursuant to Sec[illegible] 3(b) (2) of the Act, each claiming, in effect, that it[illegible]

SEC D[illegible]

primarily engaged in a business other than that of being an investment company. 4/ In view of the large number of ANCSA Corporations, many of which are potential applicants of this type, and the serious question as to whether such ANCSA Corporations can meet the operational prerequisites for a Section 3(b)(2) order, the Commission has determined to grant appropriate temporary exemptive relief by the promulgation of a rule pursuant to Section 6(c) of the Act and to propose that such relief be made permanent.

Rule 6c-2(T) temporarily removes all ANCSA Corporations from the burden of complying with various requirements of the Act. Such corporations will be obliged to comply with only those provisions which provide essential protection for the substantial pools of liquid capital they hold in trust for the Alaska Natives. Accordingly, Rule 6c-2(T) provides that the ANCSA Corporations shall be exempt from all provisions of the Act except Sections 8(a), 9, 17, 36, and 37 provided, however, that such corporations must comply with certain reporting and other requirements set forth in the rule. Rule 6c-2 would provide exactly the same relief on a permanent basis, if adopted.

Section 8(a) of the Act requires the ANCSA Corporations to register with the Commission by filing a Form N-8A disclosing basic information such as the name and address of the corporation, the names of its officers, directors, and adviser and the identity of other companies substantial amounts of the securities of which are held by the registrant. The more detailed Form N-8B-1 registration statement will not be required.

Section 9 of the Act prohibits a person convicted of certain crimes or enjoined from certain specified activities, generally crimes and activities involving securities transactions and the functions of underwriters, brokers, dealers and financial institutions, from serving as an officer, director, member of an advisory board, investment adviser, or depositor of a registered investment company. Section 9 also provides procedures for the removal of this prohibition under appropriate circumstances.

Section 17, generally speaking, requires Commission approval before the ANCSA Corporations may engage in certain transactions with affiliated persons.

Section 36 authorizes the Commission or a shareholder to bring a civil action against officers, directors, members of advisory boards, investment advisers, depositors or underwriters of registered companies for breach of fiduciary duty involving personal misconduct. It further provides that an investment adviser is deemed to have a fiduciary duty with respect to the receipt of compensation for services or payments of a material nature paid by the investment company.

Section 37 makes it a crime under the Act to steal or embezzle the property of an investment company.

The exemptions granted by the rules may be claimed only by ANCSA Corporations which meet conditions requiring them to file annually with the Commission copies of reports required by Section 7(o) of the Settlement Act, and to maintain the records used as the basis for such reports for examination by the Commission.

Rule 6(c)-2(T) is hereby adopted pursuant to Sections 6(c), 38(a), and 39 of the Act. Proposed Rule 6(c)-2 would be adopted pursuant to the same provisions. Section 6(c) of the Act provides that the Commission by rule, regulation, or order may conditionally or unconditionally exempt any person, security, or transaction or any class of persons, securities, or transactions from any provision or provisions of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes intended by the policy and provisions of the Act. Section 38(a) states, in part, that the Commission shall have the authority from time to time to make, issue and amend such rules and regulations as are necessary or appropriate to the exercise of the powers conferred upon the Commission elsewhere in the Act. Section 39 states in part that, subject to the Federal Register Act, rules and regulations of the Commission under the Act shall be effective upon publication in the manner prescribed by the Commission.

The text of Rule 6c-2(T) is as follows:

Rule 6c-2(T) Temporary Exemption for Corporations Organized pursuant to the Alaska Native Claims Settlement Act of 1971.

Any corporation organized pursuant to the Alaska Native Claims Settlement Act of 1971 ("Settlement Act") ("ANCSA Corporations") shall be temporarily exempt from all provisions of the Act except Sections 8(a), 9, 17, 36, and 37 subject to the following conditions:

Any company claiming exemptions pursuant to this rule shall file annually with the Commission copies of the reports required by Section 7(o) of the Settlement Act and shall maintain and keep current the accounts, books, and other documents relating to its business which constitute the record forming the basis for such information and of the auditor's certifications thereto. All such accounts, books, and other documents shall be subject at any time and from time to time to such reasonable periodic, special, and other examinations by the Commission, or any member or representative thereof, as the Commission may prescribe. Such company shall furnish to the Commission, within such time as the Commission may prescribe, copies of or extracts from such records which may be prepared without undue effort, expense, or delay as the Commission may by order require.

The Commission finds that the adoption of Rule 6c-2(T) is appropriate in the public interest and is consistent with the protection of investors and the purposes intended by the policy and provisions of the Act. The Commission further finds, in accordance with the requirements of the Administrative Procedure Act, 5/ that notice of Rule 6c-2(T) prior to its adoption and public procedure thereon are impracticable and unnecessary since the rule will be temporary in its effect and will not exempt any ANCSA Corporations from those provisions of the Act needed to provide essential protections for the assets being held for the benefit of the Alaska Natives until such time as the rule is adopted. 6/ Accordingly, Rule 6c2(T) shall become effective on February 26, 1974, retroactive to December 18, 1971, the date of enactment of the Settlement Act.

The text of proposed Rule 6c-2 is as follows:

Rule 6c-2 Exemption for Corporations Organized pursuant to the Alaska Native Claims Settlement Act of 1971.

Any corporation organized pursuant to the Alaska Native Claims Settlement Act of 1971 ("Settlement Act"); ("ANCSA Corporation") shall be exempt from all provisions of the Act except Sections 8(a), 9, 17, 36, and 37 subject to the following conditions:

Any company claiming exemptions pursuant to this rule shall file annually with the Commission copies of the reports required by Section 7(o) of the Settlement Act and shall maintain and keep current the accounts, books, and other documents relating to its business which constitute the record forming the basis for such information and of the auditor's certifications thereto. All such accounts, books, and other documents shall be subject at any time and from time to time to such reasonable periodic, special, and other examinations by the Commission, or any member or representative thereof, as the Commission may prescribe. Such company shall furnish to the Commission, within such time as the Commission may prescribe, copies of or extracts from such records which may be prepared without undue effort, expense, or delay as the Commission may by order require.

All interested persons are invited to submit views and comments with respect to proposed Rule 6c-2, in writing, to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, Washington, D. C. 20549, on or before April 10, 1974. All communications with respect to this matter should refer to File No. S7-514. Such communications will be available for public inspection.

By the Commission.

George A. Fitzsimmons
Secretary

1/ 85 Stat. 688

2/ Section 3(a) (1) defines "investment company" as any issuer which is or holds itself out as being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting, or trading in securities. Section 3(a) (3) defines "investment company" as any issuer which is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40 percent of the value of such issuer's total assets (excluding Government securities and cash items) on an unconsolidated basis.

3/ Such activities might be precluded by Sections 7(a) (4) and 7(b) (3) of the Act, which provide, respectively, that an unregistered investment company may not engage in any business in interstate commerce and that no depositor or trustee of or underwriter for any unregistered investment company may sell or purchase for the account of such company, by the use of the mails or any means or instrumentality of interstate commerce, any security or interest in a security, by whomever issued.

4/ Section 3(b) (2) provides, in pertinent part, that if the Commission finds that an issuer is primarily engaged in a business or businesses other than that of investing, reinvesting, owning, holding, or trading in securities, such issuer shall not be an investment company within the meaning of the Act.

5/ 5 U.S.C. §551 et seq. (1970)

6/ Id. §553 (d) (1).

INVESTMENT COMPANY ACT OF 1940
Release No. 8252/February 25, 1974

In the Matter of

FORD INTERNATIONAL FINANCE CORPORATION
c/o Ford Motor Company
The American Road
Dearborn, Michigan
(812-3437).

ORDER EXEMPTING APPLICANT FROM ALL PROVISIONS OF THE ACT PURSUANT TO SECTION 6(c)

Ford International Finance Corporation ("Applicant"), a Delaware corporation has filed an application pursuant to Section 6(c) of the Investment Company Act of 1940 (the "Act") for an order exempting it from all provisions of the Act.

Applicant, which was organized as a Finance Subsidiary of the Ford Motor Company, presently operates in conformity with the provisions of Rule 6c-1.

In March 1973, Applicant issued and sold, through underwriters, to foreign purchasers, an aggregate of $75,000,000 principal amount of its convertible guaranteed debentures due a maximum of 15 years from the date of issue. Such offering was designated as subject to the Interest Equalization Tax in accordance with applicable provisions of the Internal Revenue Code.

Applicant proposes to lend a portion or all of the proceeds of its foreign public offering to Ford. This would enable Ford to make investments directly in its foreign affiliates, rather than require Applicant to make such investments for Ford. Any funds loaned to Ford would, within a short time thereafter, be invested in a foreign affiliated of Ford, either as loans or as equity investments.

On January 22, 1974, the Commission issued a notice of the filing of the application (Investment Company Act Release No. 8196). The notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the application might be issued upon the basis of the information stated in the application unless a hearing should be ordered. No request for a hearing has been filed and the Commission has not ordered a hearing.

On the 30th day of January 1974, the President, by Executive Order No. 11766, reduced the Interest Equalization Tax to zero, effective as of that date.

The matter has been considered and it has been found that

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

OFFICE OF
THE CHAIRMAN

CHAIRMAN'S OFFICE
MAILED

SEP 12 1975

Signed by:_____

Honorable Henry Jackson, Chairman
Senate Committee on Interior and
Insular Affairs, Room 3106
Dirksen Senate Office Building
Washington, D.C. 20510

Dear Mr. Chairman:

I am writing to inform you of certain actions the Commission has recently taken that pertain to S.1469, a bill considered by your Committee and passed by the Senate on August 1, 1975, which would exempt all corporations organized pursuant to the Alaska Native Claims Settlement Act of 1971 ("ANCSA Corporations" and "Settlement Act," respectively) from all provisions of the Securities Act of 1933, the Securities Exchange Act of 1934, and the Investment Company Act of 1940 ("Act") through December 31, 1991.

On August 22, 1975 the Commission amended existing temporary Rule 6c-2(T) under the Act to clarify its retroactive effect and its registration requirement and issued for public comment a revised version of proposed Rule 6c-2 under the Act (Investment Company Act Release No. 8902, attached). Both Rule 6c-2(T) and proposed Rule 6c-2 provide substantial exemptive relief for ANCSA Corporations. The comment period for the proposal ends October 1, 1975.

The new version of the proposed rule would exempt ANCSA Corporations registering under the Act ("ANCSA Registrants") from all but the most essential provisions of the Act, which include its proxy solicitation, periodic reporting, and financial recordkeeping requirements. However, these requirements would be modified significantly by the provision in the Rule limiting their applicability to ANCSA Registrants having 500 or more shareholders and more than one million dollars in total assets. In addition, the revised proposal would provide substantial blanket exemptions from the Act's restrictions on affiliated transactions to allow ANCSA Registrants to deal with each other in the manner apparently contemplated by the Settlement Act without obtaining Commission exemptive orders for each transaction.

I must tell you that the breadth of the exemption to be conferred by S.1469 is startling as contrasted with the approach the Commission

is taking in our rule-making procedure. The Commission sees a very real need for securities laws protections, particularly the Act's regulatory requirements, for the Alaska Native shareholders. I enclose herewith for your information a copy of my letter of July 28, 1975 to the Honorable Lloyd Meeds, Chairman of the Subcommittee on Indian Affairs of the House Interior and Insular Affairs Committee, which explains the Commission's concern in this area in somewhat greater detail. A copy of this letter was forwarded to Mr. Steven Quarles, Legislative Counsel to your Committee, on July 31, 1975.

Because of the highly controversial nature of S.1469 and the dramatic impact it could have for Alaska Native shareholders, we strongly urge that the Commission be afforded the opportunity of presenting its views on the matter in testimony before your Committee, which we understand will be considering additional amendments to the Settlement Act in the near future. Should you wish, we would also be pleased to have members of the Commission's staff meet with members of your staff to discuss the legislation prior to an appearance by the Commission before your Committee. We are making a similar request of Chairman Meeds since his Committee is considering similar amendments to the Settlement Act.

Sincerely,

Ray Garrett, Jr.
Chairman

Enc.

cc: Stephen Quarles
Legislative Counsel

d. Assume that Section 10(c)(2) of the Act requires a showing that economies claimed to be obtainable through amalgamation cannot be achieved in comparable measure by other means: 2/

(1) Can the claimed economies be achieved through pooling?

(2) If not, why not? Be as specific as possible. Concrete references to the history and experience of the CCD Pool would be helpful.

5. Are there any other significant factual considerations that have changed materially since the record closed? If so, what are they? What makes each such consideration significant?

Wherever possible, briefs should cite publicly available materials as authority for all answers given. The briefs may give as much explanation of the answers as desired and may cite additional explantory statistical matter. The Commission seeks enlightenment on the facts. It sees no need for further exercises in legal dialectic. Accordingly, legal argument should be kept ot a minimum or omitted altogether.

In view of our desire not to overly extend these proceedings, we will not be inclined to grant extensions of time within which to file the requested briefs.

Accordingly, IT IS ORDERED that:

1. AEP's brief in response to the foregoing questions is due on or before October 28, 1975.

2. CSOE's brief in response to the foregoing questions is due on or before October 28, 1975.

3. The briefs of Cincinnati Gas & Electric Company and Dayton Power and Light Company in response to questions 4 and 5 are due on or before October 28, 1975.

4. All persons who wish to do so may file reply briefs on or before December 29, 1975.

By the Commission (Commissioners LOOMIS, EVANS and SOMMER); Chairman GARRETT and Commissioner POLLACK not participating.

George A. Fitzsimmons
Secretary

1/ That term as it relates to an electric utility system is defined in Section 2(a)(29)(A) of the Act.

2/ See in this respect, *New England Electric System*, Public Utility Holding Company Act Release No. 18801 (February 4, 1975), 6 SEC Docket 225.

INVESTMENT COMPANY ACT

INVESTMENT COMPANY ACT OF 1940
Release No. 8902/August 22, 1975

NOTICE OF PROPOSAL TO ADOPT RULE 6c-2 UNDER THE INVESTMENT COMPANY ACT OF 1940 EXEMPTING CORPORATIONS ORGANIZED PURSUANT TO THE ALASKA NATIVE CLAIMS SETTLEMENT ACT FROM SECTIONS 8(b), 11, 12, 13, 14, 15(b), 15(d), 16, 18, 19, 20(b), 20(c), 20(d), 21(a), 22, 23, 24, 26, 27, 28, 29, 30(b)(1), 30(c), 30(f), 32(a)(2), 32(a)(3), 32(a)(4), 35(a), 35(b), 35(c) AND RULES ADOPTED BY THE COMMISSION UNDER SUCH SECTIONS, AND PROVIDING PARTIAL EXEMPTIVE RELIEF FROM SECTIONS 17(a), 17(d), 20(a), 30(a) AND 30(d) OF THE ACT AND THE RULES THEREUNDER, AND OF AMENDMENT OF EXISTING RULE 6c-2(T) TO MAKE CLEAR THE RETROACTIVE NATURE OF THE RELIEF CONFERRED BY SUCH TEMPORARY RULE

NOTICE IS HEREBY GIVEN that the Securities and Exchange Commission proposes to adopt an amended version of previously proposed Rule 6c-2 (the "Rule") under the Investment Company Act of 1940 ("Act"), which would provide corporations organized pursuant to the Alaska Native Claims Settlement Act of 1971 1/ ("ANCSA Corporations" and "Settlement Act", respectively) substantial exemptive relief from the requirements and prohibitions of the Act, and to amend temporary Rule 6c-2(T) under the Act, which will be superseded by Rule 6c-2 if the latter is adopted.

Proposed Rule 6c-2 and Rule 6c-2(T) are, respectively, proposed and amended pursuant to Sections 6(c), 38(a), and 39 of the Act. Section 6(c) of the Act provides that the Commission by rule, regulation, or order may conditionally or unconditionally exempt any person, security, or transaction or any class of persons, securities, or transactions from any provision or provisions of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes intended by the policy and provisions of the Act. Section 38(a) states, in part, that the Commission shall have the authority from time to time to make, issue and amend such rules and regulations as are necessary or appropriate to the exercise of powers conferred upon the Commission elsewhere in the Act. Section 39 states in part that, subject to the Federal Register Act, rules and regulations of the Commission under the Act shall be effective upon publication in the manner prescribed by the Commission.

As originally proposed by the Commission on February 26, 1974, Rule 6c-2 would have exempted the ANCSA Corporations from all provisions of the Act except Sections 8(a), 9, 17, 36, and 37. The Rule is now being amended to provide, in effect, that ANCSA Corporations registering under its provisions ("ANCSA Registrants") will be subject to all provisions of the Act except Sections 8(b), 11, 12, 13, 14, 15(b), 15(d), 16, 18, 19, 20(b), 20(c), 20(d), 21, 22, 23, 24, 26, 27, 28, 29, 30(b)(1), 30(c), 30(f), 32(a)(2), 32(a)(4), 35(a), 35(b), and 35(c), and to provide partial exemptive relief from Sections 17(a) and 17(d), and Rule 17d-1(a), and Sections 20(a), 30(a), and 30(d) under the Act. This notice, as it relates to Rule 6c-2, is

being published so that interested persons will have an opportunity to comment upon the revised proposal before any final action is taken with respect to it.

The amendments to temporary Rule 6c-2(T) herein adopted are designed to make it clear that the relief afforded by the temporary rule is retroactive to December 18, 1971, the date of enactment of the Settlement Act (Rule 6c-2 is not proposed to be retroactive) and that registration pursuant to Section 8(a) of the Act is necessary to qualify for the exemptive relief afforded by the rule. Rule 6c-2(T) will remain in effect as now amended until such time as the Commission takes action on proposed Rule 6c-2 or rescinds Rule 6c-2(T). Registration by an ANCSA Corporation which is an investment company pursuant to Section 8(a) during the effectiveness of Rule 6c-2(T) will enable such corporation to claim the relief afforded by proposed Rule 6c-2, if adopted, as well as that afforded by Rule 6c-2(T). (ANCSA Corporations are reminded, however, that if they have registered or now register pursuant to Section 8(a) during the existence of Rule 6c-2(T), they will become subject to Rule 6c-2 if it is adopted and to the greater burden of compliance the latter rule would impose. ANCSA Corporations which have not registered pursuant to the temporary rule, should do so immediately if they are in need of its retroactive protection).

The ANCSA Corporations have been organized to hold and administer the extensive land grants, mineral rights, cash, and mineral revenues intended by the Government of the United States to recompense Alaska's native Indian Aleut and Eskimo population ("Alaska Natives") for lands within the State of Alaska. In accordance with this statutory purpose, the NACSA Corporations are owned and managed exclusively by Alaska Natives, who have been given all the shares of stock in the ANCSA Corporations. The ANCSA Corporations consist of twelve "Regional Corporations," representing the Alaska Natives residing in twelve geographical districts designated by the Department of the Interior, and more than 200 "Village Corporations" within these districts, each representing Alaska Natives residing in a village. There will also be the so-called "Thirteenth Regional Corporation" for Natives who are not residents of the State of Alaska. The organization of this corporation has been ordered by a recent court decision.

Although the ANCSA Corporations are entitled to receive substantial real estate and subsurface mineral interests, many of such interests are not presently specifically identifiable, as they are to be selected and acquired over a four-year period in accordance with the provisions of the Settlement Act. However, distribution of significant amounts of the monetary portion of the settlement was made almost immediately upon enactment of the Settlement Act and large additional distributions of cash will be made to the ANCSA Corporations in the next few years. 2/ As a result, during this period, at least until they have fully exercised their land grant privileges and have begun to engage primarily in owning and developing land or operating a business, a number of the NACSA Corporations may be investment companies within the meaning of Sections 3(a)(1) and 3(a)(3) of the Act. 3/ To date, 32 ANCSA Corporations have registered under the Act and are covered by temporary Rule 6c-2(T). NOTE: ANCSA Corporations having fewer than 100 shareholders are not investment companies within the meaning of the Act and need not register with the Commission.

The exemptions the temporary rule provides are made retroactive to the date of enactment of the Settlement Act so that questions will not be raised whether ANCSA Corporations registering during the period of effectiveness of the temporary rule had violated Section 7 of the Act by operating in interstate commerce or purchasing securities in interstate commerce. 4/

Rule 6c-2

As now proposed, Rule 6c-2 would remove all ANCSA Registrants from the burden of complying with certain specified requirements of the Act. Such Registrants would be obliged to comply with only those provisions which provide essential protection for the substantial pools of liquid capital they hold in trust for the Alaska Natives. Accordingly, if adopted, Rule 6c-2 would provide that ANCSA Registrants shall be exempt from Sections 8(b), 11, 12, 13, 14, 15(b), 15(d), 16, 18, 19, 20(b), 20(c), 20(d), 21, 22, 23, 24, 26, 27, 28, 29, 30(b)(1), 30(c), 30(f), 32(a)(2), 32(a)(3), 32(a)(4), 35(a), 35(b), and 35(c) of the Act, and shall be partially exempted from the provisions of Sections 17(a) and 17(d) of the Act, and Rule 17d-1(a) thereunder, and of Sections 20(a), 30(a), and 30(d) of the Act, all as described in detail hereinafter. It is noteworthy that the format of the present proposed version of the Rule is the reverse of the original format in that the present format would, in effect, make ANCSA Registrants generally subject to the Act and exempt therefrom only as specifically provided in the Rule, whereas under the original structure ANCSA Registrants would have been generally exempted from the Act, and subject thereto only as specifically provided in the Rule. It should be recognized that this new structure would not result in the imposition of any significant additional burdens upon ANCSA Registrants; most of the additional provisions of the Act that would be embraced by the new structure are directed to the Commission rather than to registered investment companies and pertain to matters of enforcement or administrative procedure. 5/ The new format would also embrace the definitional sections of the Act, 6/ which were not included in the original version of the proposed Rule.

The major substantive provisions which the present proposed version of the Rule would add to the list of provisions with which ANCSA Registrants would have been required to comply under the original proposal are the following: Sections 10(a), 15, 20(a), 30(a), 30(d), 31(a), 31(b), and 33. As explained in more detail below, the impact of these additional provisions would be lessened substantially by the provisions the Rule would make to exempt ANCSA Registrants below a certain size from the proxy, periodic reporting, and financial recordkeeping requirements of the Act. In addition, the new proposed version of the Rule would afford ANCSA Registrants substantial blanket exemptions from Section 17 of the Act, beyond those which are presently provided by existing rules under Section 17.

It should also be understood that ANCSA Corporations

which are not investment companies need not register with the Commission at all and would not be affected by the Rule. 7/ Other ANCSA Corporations would be subject to the Rule and eligible for its exemptions only if they register pursuant to Section 8(a) of the Act. The proposed Rule has also been modified to clarify that the exemptive relief it would afford would take effect as of the date of registration by an ANCSA Corporation pursuant to Section 8(a).

The new version of the Rule makes it clear, by not exempting ANCSA Corporations from Section 7 of the Act, that registration under the Act is required in order to obtain the exemptive relief provided by the Rule. Section 7, together with Section 8(a), have the effect of requiring ANCSA Corporations that are investment companies ("ANCSA Investment Companies") to register under the Rule if they wish to engage in certain essential activities, 8/ and any such ANCSA Corporation wishing to qualify for the protections afforded by Rule 6c-2 would, therefore, be required to register with the Commission on Form N-8A pursuant to Section 8(a). The wording of the Rule itself has been amended to make this clear.

ANCSA Registrants would be subject under the present proposed version of the Rule to the requirements of Section 10 of the Act, which provides certain requirements as to the composition of boards of directors of registered investment companies for the purpose of establishing some degree of independence of management on such boards. ANCSA Registrants would be primarily affected by paragraphs (a), (b)(1), (b)(3), and (c) of Section 10. Section 10(a) of the Act provides that no more than 60% of an investment company's board of directors may be "interested persons" of the company. Insofar as relevant to an ANCSA Registrant, the term "interested person" is defined by Section 2(a)(19) of the Act to include all "affiliated persons" 9/ of the Registrant and its investment adviser; members of the immediate family of persons affiliated with the investment adviser; and those holding beneficial or legal interests as fiduciaries in securities issued by the adviser or its controlling persons; any person affiliated with a broker-dealer registered under the Securities Exchange Act of 1934; legal counsel for the Registrant or its investment adviser (and such legal counsel's partners or employees); and anyone having a "material business or professional relationship" with the Registrant or its investment adviser or with the executive officers or controlling persons thereof.

Section 10(b)(1) prohibits a registered investment company from employing as regular broker any director, officer, or employee of such registered company, or any person with whom such persons are affiliated, unless a majority of the board of directors of such registered company are not such brokers or affiliated persons. Section 10(b)(3) prohibits a registered investment company from having an investment banker or an affiliated person thereof as director, officer, or employee unless a majority of its board of directors consists of persons who are not investment bankers or affiliated persons of any investment banker. Section 10(c), in pertinent part, prohibits a registered investment company from having a majority of its board of directors consisting of the officers, directors, or employees of any one bank.

ANCSA Registrants would also be subject to the provisions of Section 15 of the Act, as it pertains to the investment advisory agreements into which such Registrants may enter. 10/ However, the provisions of Section 15 dealing with shareholder action with respect to the advisory agreement would not be applicable in the case of ANCSA Registrants. Thus, ANCSA Registrants would be subject to Section 15(a) of the Act, insofar as it requires an advisory contract to be in writing, to describe precisely all compensation to be paid thereunder, to be renewed each year by the board of directors, to be terminable by the board at any time on 60 day's notice, and to be terminable automatically upon assignment. In addition, Section 15(c) of the Act, in pertinent part, would require that the investment advisory agreement initially be approved by and renewed only upon the approval of a majority of the registrant's directors who were not parties to the agreement or interested persons of any such party. Such directors would have to cast their votes on the advisory agreement in person at a meeting called for the purpose of voting on such approval. Additionally, it would be the duty of the directors of the registrant to request and evaluate, and the duty of the adviser to furnish, such information as may reasonably be necessary to evaluate the terms of the advisory contract.

As originally proposed, the Rule would have required ANCSA Registrants to comply with the provisions of Section 17 of the Act and the rules thereunder as provisions of the Act deemed essential to protect the pools of liquid capital entrusted to the corporations for the benefit of the Alaska Natives. Section 17 and such rules, generally speaking, would protect the shareholders of ANCSA Registrants from self-dealing by management and other affiliates, particularly persons who would be affiliated with the ANCSA Corporations through "insider" relationships, such as investment advisers, officers, and directors, by prohibiting these affiliates from entering into transactions with their ANCSA Corporations without obtaining Commission approval. 11/ It would also require the ANCSA Corporations to make certain arrangements for the custody of their securities and similar investments and provide fidelity bonding for certain of their officers and employees. 12/

As a result of comments received on the original proposal to adopt Rule 6c-2, the Commission has revised the Rule to provide substantial blanket exemptions from Sections 17(a) and 17(d) of the Act, and Rule 17d-1(a) thereunder, for affiliated transactions involving ANCSA Registrants, under circumstances and conditions which would make it unlikely that overreaching, unfairness, or disadvantage to an ANCSA Registrant would be involved. However, the Rule would not provide significant blanket relief for transactions involving ANCSA Registrants and their affiliated persons where such affiliated persons were natural persons 13/ or non-ANCSA Registrants. Most transactions of this kind would remain subject to Commission review pursuant to Section 17(b) of the Act or Rules 17d-1(a) and 17d-1(b) thereunder.

As now proposed, the Rule would provide an automatic exemption from Section 17(a) of the Act, and Section 17(d) of the Act and Rule 17d-1 thereunder, for transactions involving ANCSA Registrants under the following conditions:

(1) participation in the transaction by any ANCSA Registrant could not exceed $50,000;

(2) the board of directors of each NACSA Registrant would be required to make a determination that participation by such ANCSA Registrant in the proposed transaction would be fair and reasonable and would not involve any overreaching of its shareholders;

(3)(a), where all of the directors of an ANCSA Registrant were "disinterested" in the proposed transaction, the participation by the ANCSA Registrant would have to be approved by a majority of such directors or (b), where one or more directors of any such ANCSA Registrant were not disinterested, the proposed transaction could still be consummated without a Commission order provided (i) that the ANCSA Registrant were a Village Corporation, (ii) the proposed transaction received the approval of a majority of the disinterested directors of the ANCSA Registrant and a majority of the disinterested directors of the Regional Corporation for such ANCSA Registrant, and (iii) that such Regional Corporation was not itself a party to the transaction;

(4) the board of directors of each participating ANCSA registrant would be required to request from each affiliated person of any ANCSA Registrant, or from an affiliated person of such affiliated person, who is a part to the proposed transaction, the information reasonably necessary to make the required determination, and to evaluate such information prior to making the determination; 14/

(5) each such affiliated person would be required to receive a certified copy of the required determination made by each group of directors prior to consummation of the proposed transaction. 15/

The term "disinterested director" in the proposed Rule is defined as a director having no financial interest in the transaction other than his interest as a shareholder of the ANCSA Registrant involved.

The foregoing exemption should provide a reasonable degree of freedom to ANCSA Registrants to enter into transactions between and among themselves where the dollar value of participation by each of them is relatively small. Illustrative of the type of affiliated transaction which would be exempt, and the conditions the Rule would place on the exemption, is the following hypothetical transaction:

> Village Corporations V, W, X, Y, and Z, each of which is an ANCSA Registrant located in the "A" Region, enter into a joint venture agreement with the Alaska Lumber Company (' ALC") to develop certain timber lands in their region, each ANCSA Registrant agreeing to commit $40,000 of its funds to the joint venture. The chief executive officer and principal stockholder of ALC is Jones, a member of the board of directors of Y Corporation and President of A Corporation, the Regional Corporation for the district in which V, W, X, Y, and Z are located. Y has five persons on its board, including in addition to Jones, Smith, a minority stockholder of ALC. The board of directors of each ANCSA Registrant makes the determination, based in part upon information furnished by ALC, that participation by such Registrant in the proposed joint enterprise would be fair and reasonable and would not involve any overreaching of its shareholders. This determination was made, in the case of W, X and Z, by majority vote of the directors; in the case of Y, a favorable determination was made by two of the three disinterested directors, as well as by Jones and Smith, so that the proposal received the requisite approval by Y. In the case of V Corporation, the board of directors of which includes Wilson, whose paving company has contracted with ALC to build access roads through the timber lands, the approval was obtained by a 2 to 1 majority of the three disinterested directors. Because not all of the directors of Y and V are disinterested directors, the proposed joint enterprise would need the approval of the disinterested directors of A, the Regional Corporation, which has five men, including Smith and Wilson on its board, each man representing one of the five villages in the region. This approval is obtained, notwithstanding the fact that one of the three disinterested directors votes against the proposal on the grounds that the joint venture would be undercapitalized unless A committed at least $50,000 of its funds to the enterprise. A, of course, would be precluded from participating in the transaction because Jones, Smith and Wilson each has a financial interest in the proposed transaction.

Thus, in the hypothetical situation described above, the proposed joint enterprise could be undertaken without obtaining a Commission exemptive order pursuant to Section 17(b) or Rule 17d-1. However, if each of the five directors of A had a financial interest in the joint enterprise, the transaction would not be exempt and could not be consummated without a Commission order. The transaction might be exempt under Rule 17a-6 and Rule 17d-1(d)(5), as modified by the Rule and explained hereinafter, provided that A Corporation owned no securities of any of the Village ANCSA Registrants and any director owning any such securities was disqualified from voting on the transaction.

Rule 6c-2 would provide additional freedom to ANCSA Registrants to deal with each other by expanding for transactions involving ANCSA Registrants the automatic exemptions now provided by Rules 17a-6 and 17d-1(d)(5). Rules 17a-6 and 17d-1(d)(5) presently provide automatic exemptions for transactions otherwise prohibited, respectively, by Sections 17(a) and 17(d) of the Act and Rule 17d-1 thereunder, where the likelihood of overreaching or disadvantage to the investment company is reduced by the condition that no person in a position to influence the decisions of the registered investment company ("upstream affiliate") is a party to the transaction or has a financial interest in a party to the transaction (other than the registered investment company). 16/ Rule 6c-2 enlarges these exemptions in three ways. First, it would extend to transactions involving ANCSA Registrants the relief which paragraph (a) of Rule 17a-6 provides only for transactions involving licensed Small Business Investment Companies ("SBICs") and venture capital companies. Thus, Rule 6c-2 would eliminate, for purposes of transactions involving ANCSA Registrants, the distinction drawn by paragraph (b) of Rule 17a-6 between public and "non-public" companies, 17/ so that if the basic

conditions of Rule 17a-6 were met the automatic exemption would be triggered regardless of whether or not public or "non-public" companies were involved in such transactions. Joint transactions under Section 17(d) would, of course, be automatically exempted where the conditions of that rule, as modified by Rule 6c-2, were met, and no modification would be necessary with respect to the non-public ocmpany issue since Rule 17d-1 (d)(5) makes no distinction.

Second, Rule 6c-2 would widen the exemptions afforded by both Rule 17a-6 and 17d-1(d)(5) for transactions involving ANCSA Registrants by, in effect, removing from the upstream affiliate group persons directly or indirectly under common control with the ANCSA Registrant. 18/ Thus the Rule would provide that, where two or more Village ANCSA Registrants are participating in a transaction and they would be deemed affiliated persons of each other only because they were in the same region, such Registrants would not be deemed affiliated persons provided that (A) their Regional Corporation did not own any securities issued by either of them, and (B) any director of the Regional Corporation who owned any securities issued by such Village ANCSA Registrants would be disqualified from voting on the proposed transaction. This modification would allow co-operative ventures between and among Village ANCSA Registrants in the region to occur without the necessity of a Section 17 application, notwithstanding an affiliation between the village entities based upon the controlling influence which the Regional Corporations may have over the Village Corporations pursuant to certain provisions of the Settlement Act. The conditions which the Rule would impose upon the availability of this relief are designed to reduce the likelihood of overreaching in such transactions by requiring that the Regional Corporation not own any securities issued by the Village Corporations and by stipulating that, if any director of the Regional Corporation owns any securities issued by the Village Corporations, such director would be ineligible to vote upon the proposed transaction.

Third, Rule 6c-2 would eliminate for ANCSA Registrants the requirement that a registered investment company not commit more than 5 percent of its assets to a proposed joint enterprise exempted from Section 17(d) by Rule 17d-1(d)(5). This modification is deemed appropriate because the possibility that public shareholders of companies controlled by ANCSA Registrants would be disadvantaged in joint transactions would appear to be minimal.

The effect of the foregoing exemption may be illustrated by the following hypothetical transaction:

> The X, Y and Z Village Corporations are ANCSA Registrants situated in the A Region, for which the A Corporation, also a registered company investment, is the Regional Corporation. X, Y and Z enter into an agreement with the Alaska Construction Company ("ACC") to build a dam across a certain river within the region, and it is estimated that the project will cost approximately $3 million. X, Y and Z each agree to commit $500,000 to the enterprise, and A agrees to provide the remaining $1.5 million. Wilson, a director of A, is a resident of X and as such is a stockholder of X Corporation; Jones, a director of A, is a resident of Y and as such is a stockholder of Y Corporation; Smith, a director of A, is a resident of Z and as such is a stockholder of Z Corporation. It is clear that this transaction would not qualify for the minimum dollar amount exemption described above. However, it is also apparent that, in the absence of additional circumstances, the transaction would qualify, regardless of whether public or non-public companies are involved, for the expanded relief provided by Rules 17a-6 and 17d-1(d)(5). The participation by X, Y and Z in the enterprise would not destroy the exemption afforded by these rules even though they may be deemed persons under common control by A because Rule 6c-2 eliminates this class of persons from the category of upstream affiliates for purposes of transactions involving ANCSA Registrants. Each of the companies involved can commit more than 5% of its assets to the transaction without destroying the exemption. Wilson, Jones and Smith did not participate in the vote by directors of A on the transaction; the remaining seven directors, each representing a village in the A Region, and none of whom had a financial interest in the enterprise, approved the transaction. Thus, the joint enterprise could be effected without a Commission order pursuant to Section 17(b) or Rule 17d-1. If, however, the circumstances were to change so that a person in the prohibited category became a party to the transaction, or acquired a financial interest in the transaction, or the Regional Corporation owned securities issued by any of the Village Corporations participating in the transaction, the automatic exemption would not be available. For example, assuming the basic set of facts set forth above, suppose that Brown, the treasurer of X, decides three months after the joint enterprise has commenced to buy shares of the common stock of ACC. In so doing, Brown, would be acquiring a financial interest in a party to the joint enterprise, and because he is not a non-executive employee the transaction would not qualify for the exemptions afforded by Rules 17a-6 and 17d-1(d)(5) by reason of sub-paragraphs (a)(1) and (d)(5)(i)(a), respectively, of those rules. 19/

The foregoing illustration shows the effect upon ANCSA Registrants of Rules 17a-6 and 17d-1(d)(5) as modified by the proposed Rule. The modifications are designed to give ANCSA Registrants the freedom to deal with each other in the manner contemplated by the Settlement Act under conditions which make it unlikely that overreaching of or disadvantage to the ANCSA Registrant would be involved.

Section 20(a) of the Act and the rules thereunder are included among the provisions of the Act from which ANCSA Registrants of a certain size would not be exempted in order to insure that the larger ANCSA Registrants make full disclosure of relevant facts to their shareholders if and when they solicit proxies in connection with the election of directors and other matters requiring shareholder approval. 20/ The Rule would exempt ANCSA Registrants having fewer than 500 shareholders and less than a million dollars in total assets from these

requirements on the grounds that ANCSA Registrants ought not to be subjected to a greater burden of compliance with respect to proxy solicitation than non-investment companies.

Section 21(b) of the Act prohibits a registered investment company from making loans to persons who control the registered company or who are under common control with such company. The applicability of this section [ANCSA Registrants would be exempted from Section 21(a)] would prohibit, for example, loans between Village ANCSA Registrants in the same region, and loans from a Village ANCSA Registrant to its Regional Corporation. These prohibitions would apply, notwithstanding the relief afforded by the Rule for affiliated transactions under Section 17.

ANCSA Registrants having 500 or more shareholders and more than a million dollars in total assets would be required to file an annual report with the Commission, pursuant to Section 30(a) of the Act and Rule 30a-1 thereunder. Smaller ANCSA Registrants would be exempt from these provisions but would instead be required to file copies of the audit reports required by the Settlement Act, as presently provided by Rule 6c-2(T). 21/ The basis for applying Section 30(a) to ANCSA Registrants having 500 or more shareholders and more than a million dollars in total assets is again the criteria established by the Exchange Act, which limits its periodic reporting requirements to issuers of this size. 22/ Smaller ANCSA Registrants would be exempt from Section 30(a) and Rule 30a-1 thereunder but would instead be required to file with the Commission copies of the Settlement Act reports. 23/

To simplify the annual reporting process for the larger ANCSA Registrants, the Rule would instruct such Registrants to answer the items on Form N-5R, the annual report form used by SBICs registered under the Act, rather than Form N-1R, the form generally prescribed for the annual reports of registered management companies. Form N-5R would be more suitable for ANCSA Registrants than Form N-1R because virtually all the items on Form N-5R would be applicable to ANCSA Registrants and would call for nearly all the information the Commission would want with respect to them, whereas at least thirty-two 24/ of the seventy-one items, nearly half, of Form N-1R would not apply to ANCSA Registrants. The Rule would instruct ANCSA Registrants to disregard the Instructions as to Financial Statements provided on Form N-5R and to follow in lieu thereof the instructions the Rule itself provides with respect to financial statements. Those instructions are based on the requirements of Form N-1R and would require an ANCSA Registrant to file as part of its annual report the following financial statements, all in accordance with the requirements of Regulation S-X: (1) a certified balance sheet as of the close of the fiscal year; (2) certified statements of income and expense realized and unrealized gain or loss on investments, and changes in net assets, each as required by Rules 6-04, 6-05, and 6-08 of Regulation S-X, respectively; (3) a certified consolidated balance sheet of the ANCSA Registrant and its subsidiaries as of the close of the fiscal year of the registrant, in accordance with Rule 6-02 of Regulation S-X; (4) certified consolidated statements of income and expense, realized and unrealized gain or loss on investments, and changes in net assets for the ANCSA Registrant and its subsidiaries, consolidated for the fiscal year, each as specified in Rules 6-04, 6-05, 6-06, and 6-08 of Regulation S-X, respectively; and (5) the financial statements for each subsidiary not consolidated which would be required if the subsidiary were itself an ANCSA Registrant. 25/

All ANCSA Registrants regardless of size would be exempt from the requirement of filing quarterly reports with the Commission provided by Section 30(b)(1) of the Act. This exemption results from the fact that the express purpose of the quarterly reporting requirement is to keep current the information and documents contained in the registration statement of the registered investment company; since ANCSA Registrants would be exempted under the Rule from the registration statement requirement of Section 8(b), they would thereby be exempt from the quarterly reporting requirements of Section 30(b)(1).

The proposed Rule would exempt ANCSA Registrants from the requirements of Section 30(d) of the Act, and Rule 30d-1 thereunder, to the extent that such section, together with such rule, require reports to be transmitted to shareholders more than once annually. The basis for this exemption is again the principle that ANCSA Registrants should not be burdened with a greater reporting requirement than that which is imposed upon non-investment companies by the Exchange Act. The Exchange Act does not require reports to shareholders more than once annually, in conjunction with the proxy solicitation requirements of Section 14 of the Exchange Act. Annual reports to Alaska Native shareholders should be sufficient to provide them with the information they need to vote intelligently on matters of corporate policy and management.

Rule 30d-1 requires such reports to contain a balance sheet accompanied by a statement of the aggregate value of investments on the date of such balance sheet, a list showing the amounts and values of securities owned on the date of such balance sheet, a statement of income for the period covered by the report, a statement of surplus, a statement of the aggregate remuneration paid by the company during the reporting period to management and a statement of the aggregate dollar amount of purchases and sales of investment securities.

As now proposed, the Rule would subject ANCSA Registrants having more than one million dollars in total assets and 500 or more shareholders to the recordkeeping requirements of Section 31(a) and 31(b) of the Act. Smaller ANCSA Registrants would be required to maintain and preserve the records underlying the audit reports required by Sections 7(o) and 8(c) of the Settlement Act. The Act's recordkeeping requirements would supplement the Rule's reporting requirements and would provide a more effective means of preventing misuse of the liquid assets held by the larger companies than the recordkeeping provisions of the Settlement Act. The Act's recordkeeping requirements are fairly extensive but they should serve a useful purpose, not only in assisting the Commission's regulatory function but in educating the managers of NACSA Registrants in financial recordkeeping practices.

Section 31(a), in pertinent part, requires every registered investment company and its investment adviser to maintain

and preserve accounts, books and other documents constituting the financial record of the investment company. Section 31(b) requires that all records maintained pursuant to Section 31(a) be subject to examination by the staff of the Commission. Rule 31a-1 under the act describes those records which must be maintained by registered investment companies, certain majority-owned subsidiaries thereof, and other persons having transactions with investment companies.

Paragraph (a) under the rule requires that the accounts, books, and other documents relating to the investment company's business, which constitute the record forming the basis for financial statements and auditor certificates required to be filed with the Commission, be maintained and kept current. Paragraph (b) of the rule itemizes the records that must be maintained and specifies the information that they should reflect. Paragraphs (c), (d), (e), and (f) describe the accounts, books, records, and documents that are required to be maintained by certain other related persons.

Rule 31a-2 describes those records which are required to be preserved by registered investment companies, certain majority-owned subsidiaries thereof, and other persons having transactions with registered investment companies. The rule specifies the periods for which various records should be preserved, and the form (i.e., microfilm, etc.) in which they may be stored.

Rule 31a-3 states that if records required to be maintained and preserved pursuant to Rules 31a-1 and 31a-2 are maintained or preserved by persons other than the persons required to maintain or preserve such records, a written agreement is necessary. Where a bank or member of a national securities exchange acts as custodian, transfer agent, or dividend disbursing agent, such bank or exchange member must agree in writing to make any records relating to such service available upon request and to preserve records required by Rule 31a-1 so as to conform with Rule 31a-2. Parties other than banks or exchange members performing custodian, transfer agent, or dividend disbursing services must agree in writing that the related records are the property of the person required to maintain and preserve such records and will be surrendered promptly upon request.

Section 32(a)(1) of the Act prohibits a registered investment company from filing with the Commission any certified financial statement without the independent accountant having been selected by majority vote of the company's independent directors. However, the Rule exempts ANCSA Registrants from the further requirements of Section 32(a) that the selection be ratified by the shareholders, that the accountant's tenure be terminable at the will of a majority of the shareholders, and that the accountant's certificate be addressed to both the directors and the security holders. The Commission believes that these additional requirements would not be meaningful in the case of ANCSA Registrants.

Section 33 of the Act requires registered investment companies and affiliated persons who are defendants in civil actions brought by the investment company or by a security holder in a derivative capacity against an officer, director, investment adviser, trustee, or depositor of the company to file with the Commission copies of all papers filed in such proceedings. The application of Section 33 of the Act will alert the Commission to the initiation, development and results of litigation involving the ANCSA Registrants and their insiders, which might in turn have implications under the securities laws.

The foregoing paragraphs provide an outline of the major substantive provisions of the Act which would be made applicable to ANCSA Registrants as a result of amendments to the proposed rule. Interested persons are referred to the notice 26/ originally proposing Rule 6c-2 for further textual explanation of the purposes of the Rule and of subjecting ANCSA Registrants to Sections 9, 17, 36, and 37. Interested persons are reminded of the fact that the present proposed version of the Rule would embrace a number of other sections of the Act, some of which could have a substantive impact upon ANCSA Registrants, 27/ but most of which are either enabling sections, 28/ empowering the Commission to take certain measures to enforce the Act, or general procedural 29/ sections which are appropriate to the overall administration of the Act. The applicability of these sections to ANCSA Registrants and to matters pertaining to ANCSA Registrants should not place additional burdens of a significant nature upon the Alaska Native shareholders or affiliated persons of ANCSA Registrants.

* * * * *

As modified, proposed Rule 6c-2 under the Investment Company Act of 1940 would read as follows:

The proposed rules would read as follows:

"Rule 6c-2

"Exemption for Corporations Organized Pursuant to the Alaska Native Claims Settlement Act of 1971.

"Any corporation organized pursuant to the Alaska Native Claims Settlement Act of 1971 ("ANCSA Corporation" and "Settlement Act," respectively) shall be exempt from the following provisions of the Act: Sections 8(b), 11, 12, 13, 14, 15(b), 15(d), 16, 18, 19, 20(b), 20(c), 20(d), 21(a), 22, 23, 24, 26, 27, 28, 29, 30(b)(1), 30(c), 30(f), 32(a)(2), 32(a)(3), 32(a)(4), 35(a), 35(b), and 35(c), and any rules adopted by the Commission under such sections. Such exemptive relief shall be available to any ANCSA Corporation which registers with the Commission in the manner prescribed by Section *8(a)* ("ANCSA Registrant") and shall take effect as of the date of such registration. In addition to the foregoing, the following special exemptions and instructions shall be applicable to ANCSA Registrants:

(a) ANCSA Registrants shall be exempt from the requirements of Section 15(a) of the Act to the extent that it provides for approval of advisory agreements by majority vote of shareholders.

(b) A transaction shall be exempt from the prohibitions of Sections 17(a) and 17(d), and Rule 17d-1 under Section 17(d), provided that:

(1) the amount of assets to be committed by each ANCSA

Registrant which is a party to the transaction is less than $50,000 in value; and

(2) the board of directors of each ANCSA Registrant participating therein has determined that such participation will be fair and reasonable and does not involve any overreaching of its shareholders and such determination meets the following conditions:

(i) where all members of the board of an ANCSA Registrant are disinterested directors, as defined in subparagraph (c)(1) of this rule, the determination shall be made by majority vote of such directors.

(ii) where one or more members of the board of directors of such ANCSA Registrant is not a disinterested director, such determination shall be made by a vote of the majority of the disinterested directors of such ANCSA Registrant and approved by a vote of a majority of the disinterested directors of the regional corporation for such ANCSA Registrant, and such regional corporation shall not be a party to the transaction;

(iii) where one or more members of a regional corporation is not a disinterested director, such corporation shall not be a party to a transaction exempted by this section *(b)*, notwithstanding the fact that every director of each village corporation participating in the transaction is a disinterested director; and further provided

(iv)(A) The directors of an ANCSA Registrant voting with respect to a proposed transaction pursuant to the terms of this section *(b)* shall request from each affiliated person of any ANCSA Registrant, or from an affiliated person of such affiliated person, who is a party to such transaction such information as may reasonably be necessary to make the determination by each group of directors required by the terms of this section *(b)*, and to evaluate such information prior to making such determination;

(B) each such affiliated person, and each such affiliated person of such affiliated person, shall have received a certified copy of the determination made by each group of directors required by this section *(b)* prior to consummation of the proposed transaction.

(c) For the purpose of determining the availability of the exemption provided by section *(b)* of this rule:

(1) The term "disinterested director" shall mean a director who has no direct or indirect financial interest in the proposed transaction for which the exemption is sought other than by reason of his interest as a shareholder in an ANCSA Registrant.

(2) The term "village corporation" and "regional corporation" shall be as defined in the Settlement Act.

(d) For purposes of Rules 17a-6 and 17d-1(d)(5) under Section 17 of the Act, the following special provisions shall apply with respect to transactions involving ANCSA Registrants:

(1) The exemption provided by section (a) of Rule 17a-6 shall be available as if the ANCSA Registrant which is a party to such transaction were a company principally engaged in the business of underwriting, furnishing capital to industry, financing promotional enterprises, purchasing securities of issuers for which no ready market is in existence, and reorganizing companies or similar activities;

(2) The exemption provided by Rule 17a-6 and 17d-1(d)(5) shall be available without regard to whether or not an ANCSA Registrant, or a company it controls, commits in excess of 5% of its assets to a proposed joint enterprise within the meaning of such rule;

(3) For purposes of both Rule 17a-6 and Rule 17d-1(d)(5), where two or more ANCSA Registrants which are village corporations are parties to a proposed transaction, and would be deemed affiliated persons of each other only because they are deemed controlled persons of the regional corporation for the region in which they are located, such ANCSA Registrants shall not be deemed affiliated persons of each other provided (A) that such regional corporation does not own any securities issued by such ANCSA Registrants and (B) that any member of the board of directors of such regional corporation who owns any securities of such ANCSA Registrants is disqualified from voting upon the proposed transaction.

(e) An ANCSA Registrant which does not have total assets exceeding one million dollars and 500 or more shareholders shall be exempt from the requirements of Section 20(a) of the Act.

(f) An ANCSA Registrant which does not have total assets exceeding one million dollars and 500 or more shareholders shall be exempt from the requirements of Section 30(a) of the Act; however, such Registrants shall file with the Commission certified copies of the audit reports required to be filed by Sections 7(o) and 8(c) of the Settlement Act.

(g) An ANCSA Registrant having total assets exceeding one million dollars and 500 or more shareholders shall be subject to Section 30(a) of the Act and Rule 30a-1(a) thereunder; for purposes of complying with these requirements an ANCSA Registrant shall file its annual report with the Commission on Form N-5R, the form prescribed for small business investment companies, *provided however*, that instructions provided on Form N-5R under the heading "Instructions As To Financial Statements" shall not apply to an ANCSA Registrant, and the following instructions shall be applicable in lieu thereof:

An ANCSA Registrant subject to Section 30(a) of the Act shall file the following financial statements with its annual report on Form N-5R, all in accordance with the requirements of Regulation S-X: (1) a certified balance sheet or statement of assets and liabilities as of the close of the fiscal year; (2) certified statements of income and expense, realized and unrealized gain or loss on investments, and changes in net assets, each as required by Rules 6-04, 6-05, 6-06, and 6-08 of Regulation S-X, respectively; (3) a certified consolidated balance sheet of the ANCSA Registrant and its subsidiaries as of the close of the fiscal year of the registrant, in accordance with Rule 6-02 of Regulation S-X; (4) certified consolidated statements of income and expense, realized and unrealized gain or loss investments, and changes in net assets for the registrant and its subsidi-

aries, consolidated for the fiscal year, each as specified in Rules 6-04, 6-05, 6-06, and 6-08 of Regulation S-X, respectively; and (5) the financial statements for each subsidiary not consolidated which would be required if the subsidiary were itself a registrant.

(h) All ANCSA Registrants shall be exempt from the requirements of Section 30(d) and Rule 30d-1 thereunder to the extent that such section, together with such rule, require reports to be transmitted to shareholders of an ANCSA Registrant more than once annually.

NOTE: 1/ Additional relief from the Act covering the period from December 18, 1971 until the adoption of the present rule is available pursuant to temporary Rule 6c-2(T) to any ANCSA Corporation which was registered in the manner prescribed by Section 8(a) and remained so registered during the effectiveness of such temporary rule.

* * * * *

Rule 6c-2(T)

Rule 6c-2(T) was adopted by the Commission on February 26, 1974, in the same release as originally proposed Rule 6c-2, 30/ and has provided ANCSA Corporations registering with the Commission pursuant to Section 8(a) of the Act substantial interim relief from the provisions of the Act. The Commission declared Rule 6c-2(T) effective as of December 18, 1971, the date of enactment of the Settlement Act, so that ANCSA Corporations registering pursuant to Section 8(a) would not be subject to legal challenge for operating as unregistered investment companies prior to the adoption of the rule. However, the Commission has decided that this purpose may not have effectively been explained, since the rule's retroactive effect was not spelled out in the body of the rule but merely implied by its effective date. To correct this deficiency and to make it clear that registration pursuant to Section 8(a) of the Act is necessary to qualify for the exemptive relief afforded by the rule, the Commission hereby amends Rule 6c-2(T) to provide that all ANCSA Corporations which register pursuant to Section 8(a) will thereby obtain the exemptive relief afforded by the rule as of December 18, 1971, the date of enactment of the Settlement Act. The proposed permanent rule, Rule 6c-2, will supersede Rule 6c-2(T), if adopted, but will afford no retroactive relief; ANCSA Corporations registering after the effective date of Rule 6c-2 would be protected, prospectively only, from the date of such registration. Hence, to obtain the relief provided in Rule 6c-2(T) from the date of enactment of the Settlement Act, any ANCSA Corporations which have not yet registered pursuant to Section 8(a) but wish to obtain the retroactive relief afforded by Rule 6c-2(T) should register immediately so as to insure their registration prior to the date Rule 6c-2 takes effect. Such registration will subject the registrant to the more extensive requirements of proposed Rule 6c-2 if that rule is adopted.

As amended, the text of temporary Rule 6c-2(T) is as follows:

"Rule 6c-2(T) TEMPORARY EXEMPTION FOR CORPORATIONS ORGANIZED PURSUANT TO THE ALASKA NATIVE CLAIMS SETTLEMENT ACT OF 1971.

Any corporation organized pursuant to the Alaska Native Claims Settlement Act of 1971 which registers with the Commission in the manner prescribed by Section 8(a) of the Act shall, as of December 18, 1971, be temporarily exempt from all provisions of the Act except Sections 9, 17, 36, and 37 subject to the following conditions:

Any company claiming exemptions pursuant to this rule shall file annually with the Commission copies of the reports required by Sections 7(o) and 8(c) of the Settlement Act and shall maintain and keep current the accounts, books and other documents relating to its business which constitute the record forming the basis for such information and of the auditor's certifications thereto. All such accounts, books and other documents shall be subject at any time and from time to time to such reasonable periodic, special and other examinations by the Commission, or any member or representative thereof, as the Commission may prescribe. Such company shall furnish to the Commission, within such time as the Commission may prescribe, copies of or extracts from such records which may be prepared without undue effort, expense, or delay as the Commission may by order require."

The Commission finds that the amendment of Rule 6c-2 (T) is appropriate in the public interest and is consistent with the protection of investors and the purposes intended by the policy and provisions of the Act. The Commission further finds in accordance with the provisions of the Administrative Procedure Act 31/ that notice of Rule 6-2(T), as amended, is unnecessary because the terms of substance of the rule have already been given in the notice 32/ announcing its original adoption. 33/ In addition, since Rule 6c-2(T) is a substantive rule which grants an exemption and the present amendment of the rule is merely a clarification of its meaning and not a substantive change in its provisions, the rule may be made effective immediately. 34/ Accordingly, amended Rule 6c-2(T) shall become effective on August 22, 1975.

All interested persons are invited to submit their views and comments on the proposed adoption of Rule 6c-2. Written statements of views and comments in respect to the proposed Rule should be submitted to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, N. W., Washington, D. C. 20549, on or before October 1, 1975 and should refer to File No. S7-514. All such communications will be available for public inspection.

By the Commission.

George A. Fitzsimmons
Secretary

1/ P. L. 92-203, 92nd Cong., 85 stat. 688.

2/ To date, approximately 260 million dollars in cash have been distributed to the ANCSA Corporations as a group.

3/ Section 3(a)(1) defines "investment company' as an issuer which is or holds itself out as being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting, or trading in securities. Section 3(a)(3) defines "investment company" as any issuer which is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40 percent of the value of such issuer's total assets (excluding Government securities and cash items) on an unconsolidated basis.

4/ Such activities might have been precluded by Section 7(a)(4) of the Act, which provides that an unregistered investment company may not engage in any business in interstate commerce.

5/ See, e.g., Sections 38-46, and 50-53 of the Act.

6/ See, e.g., Sections 2(a), 3(a), 4, 5(a) and 5(b) of the Act. Section 2(a) contains the general definitions under the Act. The inclusion of this section is appropriate to enhance compliance with the other sections included in the Rule, wherein defined terms may be used. For example, in Section 17 of the Act, the term "affiliated person" is used extensively. Section 3(a), containing the Act's definition of investment company, is described, in pertinent part, in note 3, *supra.* Section 4 sets forth the Act's classifications of investment companies, and Sections 5(a) and 5(b) the subclasses.

7/ Section 7 of the Act in effect prohibits an investment company not registered under Section 8 of the Act from selling or acquiring securities in interstate commerce or controlling any investment company engaged in such activities, and from engaging in any business in interstate commerce or controlling any company engaged in interstate commerce.

8/ Section 10(b)(2) would likely not apply to ANCSA Registrants because they do not have principal underwriters at present, and in all probability will not be issuing underwritten securities in the foreseeable future. Section 10(d) applies only to open-end companies. Section 10(f), prohibiting purchases by a registered investment during the existence of an underwriting syndicate, could apply to transactions involving ANCSA Registrants. Section 10(g) would apply to any ANCSA Registrant having an advisory board. Section 10(h), by its terms, would not apply to ANCSA Registrants.

9/ Affiliated persons are defined in Section 2(a)(3) of the Act to include: (A) any person directly or indirectly owning, controlling, or holding with power to vote, 5 per centum or more of the outstanding voting securities of such other person; (B) any person 5 per centum or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by such other person; (C) any person, directly or indirectly controlling, controlled by, or under common control with, such other person; (D) any officer, director, partner, copartner, or employee of such other person; (E) if such other person is an investment company, any investment adviser thereof or any member of an advisory board thereof; and (F) if such other person is an unincorporated investment company not having a board of directors, the depositor thereof.

10/ The Rule assumes that ANCSA Registrants do not and will not have principal underwriting agreements.

11/ Section 17(a) of the Act, as here pertinent, prohibits an affiliated person of a registered investment company, or any affiliated person of such a person, from selling property to, or purchasing, or borrowing property from the registered company, or any company controlled by such registered company, without a prior Commission order pursuant to Section 17(b). An exemptive order may be obtained under Section 17(b) if the Commission finds, upon application that the evidence establishes that the terms of the proposed transaction, including the consideration to be paid, or received, are reasonable and fair and do not involve overreaching on the part of any person concerned and that the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act.

On the other hand, Section 17(d) and Rule 17d-1 thereunder, as here pertinent, prohibit affiliated persons, and their affiliates, from participating in joint enterprises or arrangements with registered investment companies or their controlled companies without a prior Commission order obtained pursuant to Rule 17d-1(a). Rule 17d-1(b) provides that the Commission will, in passing upon such applications, consider whether the participation of the registered investment company or its controlled company in the proposed transaction is consistent with the provisions, policies and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants.

12/ See Sections 17(f) and 17(g) of the Act and Commission rules thereunder.

13/ For an example of this type of transaction, see in the *Matter of Kikiktagruk Inupiat Corporation, et al.* File No. 812-3801, Investment Company Act Release No. 8851, July 18, 1975.

14/ In this connection, see Section 15(c) of the Act.

15/ The purpose of this requirement would be to assure that the affiliated persons, to whom the prohibitions of Sections 17(a), 17(d), and Rule 17d-1, run, receive notification that the determination required by the Rule had in fact been made prior to consummation of the transaction.

16/ Persons in the upstream affiliate category would include, for ANCSA Registrant purposes, the officers, directors, employees, investment adviser, and controlling persons of the ANCSA Registrant, owners of more than 5% of the outstanding shares of the company, persons under common control with the company, except as explained *infra*, p. 12, or any affiliated persons of these persons.

17/ Paragraph (b) of Rule 17a-6 provides the same ex-

emption which paragraph (a) provides for transactions involving SBICs and venture capital companies for transactions involving all other types of investment companies except that under paragraph (b) any controlled or affiliated companies involved must be "non-public," i.e., their outstanding securities must be beneficially owned by not more than 100 persons.

18/ The provisions which would in effect be nullified for transactions involving ANCSA Registrants are paragraphs (4) and (D) of Rules 17a-6(a) and 17d-1(d)(5), respectively, which include among the upstream affiliate group persons directly or indirectly controlled by the registered investment company, (except persons who, if they were not directly or indirectly controlled by the registered investment company, would not be directly or indirectly under the control of a person who controls the registered investment company).

19/ Both of these provisions include within the upstream affiliate category employees of the registered investment company. Subparagraph (c)(1)(iv) of Rule 17a-6 and subparagraph (iii)(d) of Rule 17d-1(d)(5) both define the term "financial interest", as used in the rules, to exclude an interest of a "non-executive" employee. However, the treasurer of a corporation would not be deemed a "non-executive" employee.

20/ Rule 20a-1 under Section 20(a) requires that proxy solicitation respecting a security issued by a registered investment company be effected in compliance with Rules 20a-2 and 20a-3 under the Act, and with all rules and regulations adopted pursuant to Section 14(a) of the Securities Exchange Act.

Rule 20a-2 requires that the proxy statement contain specified information in addition to that required by the proxy rules under the Exchange Act, if action is to be taken with respect to (1) the selection of directors and the solicitation is by or for management or by or for an investment adviser, or (2) an investment advisory contract. Rule 20a-3 requires disclosure in the proxy statement regarding the material interests of officers, directors, and nominees for election as directors of registered investment companies under certain circumstances enumerated in Item 7 of Schedule 14A under the Exchange Act or if action is to be taken with respect to an investment advisory contract.

21/ See Investment Company Act Release No. 8251, February 26, 1974.

22/ See Sections 12(g) and 13(a) of the Exchange Act.

23/ See Sections 7(0) and 8(c) of the Settlement Act.

24/ See items 1.02, 1.03, 1.06, 1.07, 1.11, 1.18, 1.19, 1.29, 1.34-1.39, 2.01, 2.03, 2.04, 2.05, 2.06, 2.13, 2.14, 2.15, 2.16, 2.23-2.29, 2.31, and 2.32 of Form N-1R.

25/ This requirement would be subject to Rules 4-03 and 6-02-3 of Regulation S-X regarding group statements of unconsolidated subsidiaries.

26/ Investment Company Act Release No. 8251.

27/ See, e.g., Sections 47-49 of the Act.

28/ See, e.g., Section 41, 42, 45 and 46 of the Act.

29/ See, e.g., Sections 38-40, 43, 44, 46, and 50-53 of the Act.

30/ Investment Company Act Release No. 8251.

31/ 5 U.S.C. §551 et seq. (1970).

32/ Investment Company Act Release No. 8251.

33/ See Sections 553(b)(3) and 553(b)(3)(B) of the Administrative Procedure Act.

34/ Section 553(d) of the Administrative Procedure Act provides, in pertinent part, that the required publication of a substantive rule must be made not less than 30 days before its effective date except in the case of a substantive rule which grants or recognizes an exemption or relieves a restriction. Section 553(d)(1).

INVESTMENT COMPANY ACT OF 1940
Release No. 8903/August 26, 1975

In the Matter of

PENNSYLVANIA INSURED
MUNICIPAL BOND TRUST
First Series (and Subsequent Series)

BUTCHER & SINGER
1500 Walnut Street
Philadelphia, Pa. 19102

ELKINS, STROUD, SUPLEE & CO.
1700 Market Street
Philadelphia, Pa. 19102

(812-3845)

NOTICE OF FILING OF APPLICATION PURSUANT TO SECTION 6(c) FOR ORDERS OF EXEMPTION FROM PROVISIONS OF SECTION 14(a) OF THE ACT AND FROM RULES 19b-1 AND 22c-1 UNDER THE ACT

NOTICE IS HEREBY GIVEN that Pennsylvania Insured Municipal Bond Trust, First Series (the "Trust"),

CHAIRMAN'S OFFICE
HAND DELIVERED

JUL 28 1975

Honorable Lloyd Meeds, Chairman
Subcommittee on Indian Affairs
House Committee on Interior and Insular Affairs
United States House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This responds to your letter of June 3, 1975 concerning comments made to you by Mr. Richard Baenen, Counsel to the NANA Regional Corporation, Inc., as to the Commission's handling of certain Alaska Native Claims Settlement Act corporations ("ANCSA Corporations") and H.R. 6644.

Many of the points raised in Mr. Baenen's letter to you of May 29 and in his testimony before your subcommittee during the recent hearings on H.R. 6644 [illegible] in the Commission's earlier letter of comment to you with respect [illegible] cord. I asked the staff, therefore, to prepare the enclosed report responding to Mr. Baenen's principal complaints with the Commission's actions but omitting so far as was possible unnecessary repetition of our earlier comments on that bill. The report seems to fairly set forth our side of this matter and I hope that it adequately responds to your request for comments.

I would like, however, to address myself to an important point made in your letter to me and to the steps the Commission is considering with respect to our future regulation of the ANCSA Corporations. You state that you "feel that the SEC has utterly failed to perceive the difference between the nature and purpose of the Native corporations and the nature and purpose of the purely commercial enterprises which the SEC was established to regulate."

As a general proposition, the securities laws provide appropriate relief from their [illegible] for certain non-commercial [illegible]. To cite one example, Section 3(c)(10) of the Investment Company Act of 1940 (the "Act") exempts from the definition of "investment company" ... "[any] company or [illegible] [illegible] for religious, educational, benevolent, fraternal, charitable, or reformatory purposes, [illegible] (emphasis added).

It does not appear, however, that the ANCSA Corporations can meet this test of existing exclusively for non-profit purposes. The legislative history of the Alaska Native Claims Settlement Act of 1970 ("Settlement Act") indicates that they were established for the express purpose of generating earnings and other benefits which would inure to their shareholders, and they are structured to operate much like normal commercial corporations. A similar analysis of the other relevant securities laws leads to a like conclusion with respect to their coverage of ANCSA Corporations. Thus, to the extent that certain ANCSA Corporations meet the definition of investment company contained in the Act and are subject to the provisions of other securities laws, they would seem to require - and to deserve - the same basic protections afforded shareholders of other companies subject to our jurisdiction.

It seems worth noting that this result may have been anticipated by the Congress at the time the Settlement Act was being drafted. The extent to which the Commission would be given jurisdiction over such companies was in fact considered at that time, and it was apparently determined not to suggest legislatively the parameters of such jurisdiction, leaving it to the Commission itself to grant any necessary exemptive relief. 1/

We are, of course, mindful of the legislative origin and purpose of these corporations, and in many ways their problems under the securities laws are unlike those of a substantial number of other companies [illegible] which have been and continue to be regulated under the Act by the Commission. I think in this regard of the many small business investment companies registered under the Act, including minority enterprise small business investment companies.

The Commission's position in this matter is a difficult one. We are on the one hand statutorily charged with protecting the substantial assets of large numbers of ANCSA shareholders whose lack of financial sophistication makes them a tempting target for the types of fraud and overreaching which our securities laws were designed to prevent. We are, on the other hand, acutely aware that these shareholders are members of a native society whose values and concerns have little relationship to the financial world with which our regulations were designed to deal and that, if we attempt to force

---

1/ See Alaska Native Claims Settlement Act of 1970, H. 1830 (Rep. No. 91-[illegible]) 91st Cong., 2d. Sess., June 11, 1970. See also, S. Rep. No. 91-[illegible], 91st Cong. 2d. Sess., June 11, 1970; cf. 85 Stat. 688 (1971).

Honorable Lloyd Meeds, Chairman
Page Three

those regulations upon that society rather than tailor them to it, we may not achieve the protections we seek but may rather create substantial unnecessary bureaucratic burdens.

To the extent that the ANCSA Corporations have special needs requiring special relief from the securities laws, we attempted in Rule 6c-2(T) under the Act to provide such relief where we concluded that to do so was in accord with the public interest and other standards which circumscribe our authority. Should Congress ultimately determine that they wish to assume this function by legislatively exempting ANCSA Corporations from the securities laws, as advocated by Mr. Baenen, that is, of course, their prerogative.

More immediately, we are continuing our efforts to find a means to provide for all the possible relief from the securities laws which will be helpful to the ANCSA Corporations and in the interest of their shareholders, and I have informed the staff of the Commission's Division of Investment Management Regulation that I consider this to be a matter of the highest priority. As you will note in the attached staff report, the staff of the Division hopes to shortly present to the Commission for its consideration a revised version of Rule 6c-2, the previously proposed permanent version of Rule 6c-2(T) under the Act.

In [illegible] draft form, the proposed revision would substantially [illegible] all of the major [illegible] with [illegible] under the securities laws but would call for [illegible] in the way of [illegible] reporting and compliance with the proxy rules [illegible] currently required by Rule 6c-2(T). Even when and if such a revised rule is adopted, however, the Commission's search for a better form of protection for the ANCSA shareholders will not be ended. We intend to monitor insofar as is possible the effects of our regulation on these companies, primarily by asking that their representatives keep us informed of their problems with our regulatory program; and we are considering the possibility of sending representatives to Alaska for face-to-face talks with ANCSA officers and directors.

In a legislative context, as you well know, the Commission has in the past [illegible] proposals for [illegible] the securities laws without [illegible] the ultimate effect of such [illegible]. I am sure that the Commission would be interested in [illegible] your [illegible]. However, if it [illegible] the protection of the securities laws as compared with the burdens imposed by such [illegible].

Page Two

Thank you for the courtesy of responding to Mr. Hassett's letter and your own opinion as to this matter. Please let me know if we can be of any further assistance.

Sincerely,

Ray Garrett, Jr.
Chairman

RGJr:mmb

REPORT OF THE DIVISION OF INVESTMENT MANAGEMENT REGULATION IN RESPONSE TO A LETTER OF JUNE 3, 1975, FROM MR. RICHARD BAENEN, COUNSEL TO NANA REGIONAL CORPORATION TO THE HONORABLE LLOYD MEEDS.

Mr. Baenen has raised a number of issues as to the appropriateness of the Commission's actions with respect to certain of the corporations established pursuant to the Alaska Native Claims Settlement Act ("ANCSA Corporations" and "Settlement Act," respectively). His major contentions - with the exception of those relating to H.R.6644 on which the Commission has already commented - and the staff responses thereto, 1/ are as follows:

(1) Contention: The Commission consistently ignored the special circumstances surrounding the ANCSA Corporations and their stockholders in its dealings with the NANA Regional Corporation, Inc. ("NANA"), a registered investment company, and the resulting "protection" caused a waste of substantial amounts of NANA's money received under the Settlement Act.

Staff Response: The Division's April 4, 1975 letter, confirming a March 27, 1975 telephone conversation, stated that the shareholder meeting to vote on the proposed merger could be held if Congress passed legislation providing the proposed merger a specific exemption from the Investment Company Act of 1940 ("Act"). Even now, if such legislation is passed, NANA will be able to use some of the allegedly wasted monies to continue the procedures necessary to effectuate the merger. 2/

In any event, a recitation of the history of this no-action letter may clarify the fact that the staff has acted out of concern for the welfare of the affected ANCSA shareholders rather than out of ignorance of their special circumstances. On February 26, 1975, the Division advised NANA's counsel of its no-action position on the applicability of Section 17 of the Act to the proposed merger of NANA and eleven village corporations. 3/ On March 10, 1975, this Division wrote a second letter, not withdrawing the prior letter as

---

1/ The Division of Corporation Finance has been consulted in the preparation of this report.

2/ While Mr. Baenen stated on page 3 of his May 29, 1975 letter that "(t)he intended 'protection' of Section 17 therefore resulted in wasting close to $200,000 of NANA's money...", at no point does he explain the source of this figure. On page 254 of Mr. Baenen's testimony, he does list expenses totaling $63,000; there is no accounting for the remainder of the alleged "waste".

3/ A no-action letter is merely a staff statement, without force of law, that it would not recommend that the Commission take any enforcement action if the parties proceed in a certain manner. This is a highly discretionary process, and there is no requirement that the staff take no-action positions in any circumstances. The validity of a particular no-action position always depends on the facts being exactly as presented without any significant deviations or omissions.

Mr. Baenen incorrectly suggested on page 253 of his testimony; this second letter was merely a supplement intended to make it clear that the first letter should not be interpreted as passing on the fairness of the proposed merger, as it was only an expression of the staff's decision to defer to Congress on the question of such fairness.

The Division's third letter of March 27, 1975, advising counsel that the no-action position was withdrawn, was sent after counsel had informed staff members that they had discovered what appeared to be two separate violations of Section 17's self-dealing prohibitions. The staff had also had an opportunity by that time to consider the effect of certain applicable provisions of Alaska state law which would have fixed the rights of shareholders dissenting from the merger at the time of the meeting in April, 1975, even though the merger would not occur until some months later after Congress had passed the necessary legislation. It appeared that in the months between the shareholders meeting approving the merger and the merger itself additional information would become available which would assist the shareholders in deciding whether to approve the merger and/or perfect their dissenters' rights. Finally, the registration documents filed by NANA provided the staff with important new information which tended to show that the terms of the merger were somewhat arbitrary because of the lack of any accurate valuations of the assets being merged.

Based on all of these factors together the Division decided to withdraw its earlier no-action position. This merely reflected the staff's determination that, in view of the important developments noted, we would not undertake to refrain from proposing that the Commission take enforcement action with respect to such meeting and merger. We believed, and continue to believe, that it would have been contrary to the statutory function of the Commission for the staff to have maintained its no-action position with respect to these matters in view of these developments.

(2) Contention: The Commission more generally ignores the special circumstances surrounding ANCSA Corporations and their stockholders, and the fact that these circumstances tend to render any strict or literal application of the securities laws a meaningless but very expensive technical exercise.

Staff Response: The Commission's formal letter of comment on H.R. 6644 cited in Mr. Meeds' letter was directed primarily to Section 103 of that bill, which would temporarily exempt ANCSA Corporations from all provisions of the Act, and would appear to be responsive to Mr. Baenen's comment with respect to the application of the Act to such corporations.

With respect to other relevant securities laws, the staff believes that the protections and benefits contemplated by the Securities Exchange Act of 1934 ("Exchange Act") should continue to be made available to holders of stock in the ANCSA Corporations which meet the criteria established by such Act.

The applicable provisions of the Exchange Act were designed primarily to provide investors with certain material information upon which an informed investment decision could be made in the acquisition or disposition of a security, execution of a proxy, or otherwise. For example, such laws require disclosure of the principal provisions of material transactions which disclosures may assist shareholders in pursuing any rights which they may have under the applicable state laws and require that certain material information be provided to the shareholders who would be entitled to vote upon proposals made by management for shareholder action. Accordingly, the staff does not believe that the absence of a trading market eliminates the necessity to inform shareholders of material financial and business information regarding their corporation. Nevertheless, the staff is now giving active consideration, in the context of its reviews of proposed Rule 6c-2 under the Act, to whether ANCSA Corporations should be required to submit Exchange Act reports under all the same circumstances and in the same detail as other corporations subject to that statute.

(3) Contention: Serious problems may exist for years to come in ever receiving a determination by the Commission that the terms of any Section 17 transaction are fair and equitable and that such transactions are not likely to take place without such determinations, driving smaller ANCSA Corporations into bankruptcy. Problems encountered with Kotzebue application cited as an example.

Staff Response: The key standards which guide the Commission in determining whether or not a Section 17 application can be granted are whether the transaction which is the subject of such application is "reasonable and fair" and devoid of "overreaching on the part of any person concerned" (Section 17(b) of the Act) or whether the participation by the registered ANCSA Corporation in such transaction is "on a basis different from or less advantageous than that of other participants" (Rule 17d-1). The Commission would be unable to grant an application under Section 17 in two instances - where it is clear that these standards are not being met or where the applicant has not carried its burden of eliciting sufficient facts for the Commission to judge whether the standards are met or not. We believe that this is entirely appropriate absent some other protective mechanism. It would seem to be a dereliction of the Commission's regulatory responsibilities to ANCSA Corporations that are investment companies if we were to approve a Section 17 transaction where an ANCSA Corporation was being treated unreasonably or unfairly or was being overreached or was participating on a basis less advantageous than that of other participants or where an ANCSA applicant had not presented the Commission with sufficient facts for it to judge whether or not this was the case.

We have no reason to believe, however, as is implied by Mr. Bacon's letter, that the Commission will be able to grant no Section 17 application filed in the next several years. For this to be true, one would have to assume that all such transactions would either involve some basic unfairness to an ANCSA Corporation or relate to subject matters where the applicants would be unwilling or unable to provide the Commission with sufficient facts for it to make an

informed judgement. Furthermore, in response to the comments received on proposed Rule 6c-2, and in light of its experience thus far with the ANCSA Corporations, the staff is now drafting, and hopes very shortly to present to the Commission, a revised version of that rule which will exempt from coverage by Section 17 certain transactions involving ANCSA Corporations which do not appear to present the dangers with which the section was designed to deal. As we now envision the rule, these might include transactions which do not involve large amounts of money and which have been passed upon by an appropriate group of directors who have no direct financial stake other than as ANCSA shareholders.

In its review of the Kotzebue application, the staff has, of course, been primarily concerned with the question of fairness of the proposed purchase price, which is $275,000. Staff members also felt that before they could approve an application for exemption of a transaction in which an investment company would be expending this amount, plus an estimated $1,100,000 in renovating expenses, in total more than half of its net worth, to procure office space for itself, the applicants should be required to make some demonstration that the investment company would need the space.

(4) Contention: The Commission's letter of comment on H.R. 6644 appears to understate the number of corporations to whom the Act would apply in asserting that only corporations which "choose" to register under the Act would be affected. This obviously is not truly a matter of choice since, if a corporation comes within the definition of an investment company, a failure to register would constitute a violation of the Act.

Staff Response: In stating that, "both the temporary and the proposed permanent rule (Rule 6c-2) affect only those ANCSA Corporations which choose to register with the Commission" (emphasis added), the Commission's letter did not speculate as to the number of ANCSA Corporations affected by the Act as opposed to the cited rules. Whether in fact a particular corporation falls within the definition of investment company contained in the Act and would be required to register is dependent upon what investment strategy is followed by that corporation. It would appear that neither the Commission nor any other governmental body has sufficient information at present to determine how many ANCSA Corporations come within such definition. There are currently 32 such corporations which have registered as investment companies.

(5) Contention: For years to come the Commission will take the position that the land held by ANCSA Corporations may be given only minimal value, or no value at all, in determining whether they are investment companies. This will lead to a conclusion that most ANCSA Corporations are investment companies.

Staff Response: It is true that the present uncertainties as to the value of the land involved in the proposed merger of companies in the NANA region, when coupled with the fact that the merger would

involve the exchange of substantially disproportionate rights now vested in natives belonging to the various corporations, would make it very difficult for the Commission to make the finding of fairness required by Section 17 of the Act without further evidence of the value of such land or some modification of Rule 6c-2 as discussed above.

However, somewhat different considerations would be relevant and appropriate in connection with determining whether an ANCSA Corporation which held title to substantial amounts of land and at the same time invested in securities would be an investment company within the meaning of the Act.

In this connection, Section 2(a)(41) of the Act provides in effect that, in the context of determining the status of a company under the Act, "value" of assets (other than securities for which market quotations are readily available) means "fair value...as determined in good faith by the board of directors" (emphasis added).

If a value determination were made by the board of directors in good faith, unless some contrary evidence were available, the staff would generally not object to that valuation being used in any proceedi to determine the status of an ANCSA Corporation under the Act. Thus, it is very likely that on the transfer to an ANCSA Corporation, which may now be heavily invested in securities, of the substantial interests in land to which it is entitled, it could, within a relatively short time, no longer be subject to the Act.

THE DEPUTY SECRETARY OF THE TREASURY

WASHINGTON, D.C. 20220

DEC 24 1975

Director, Office of Management and Budget
Executive Office of the President
Washington, D. C. 20503

Attention: Assistant Director for Legislative Reference

Sir:

Reference is made to your request for the views of this Department on the enrolled enactment of S. 1469, "To provide, under or by amendment of the Alaska Native Claims Settlement Act, for the late enrollment of certain Natives, the establishment of an escrow account for the proceeds of certain lands, the treatment of certain payments and grants, and the consolidation of existing regional corporations, and for other purposes."

Section 2 of the enrolled enactment would provide for the payment of interest on an escrow account to be established in connection with the settlement of Alaska Native claims. Section 5 in effect would provide for the payment of interest on amounts in the Alaska Native Fund. Payment of interest on these amounts would not be appropriate. The interest would result in additional compensation to Alaskan natives beyond the "final settlement" contemplated in the Alaska Native Claims Settlement Act. Moreover, the additional compensation would be provided outside of the normal budget review/appropriations process. These interest payment provisions were opposed in reports to the Congress by Interior, OMB and Treasury.

In view of the foregoing, the Department would concur in a recommendation that the enrolled enactment not be approved by the President.

Sincerely yours,

Stephen S. Gardner

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

DEC 10 1975

Dear Mr. Chairman:

This Department would like to offer its views on H.R. 6644, as reported by the Subcommittee on Indian Affairs of the House Committee on Interior and Insular Affairs on September 30, 1975. H.R. 6644 is a bill "To provide, under or by amendment of the Alaska Native Claims Settlement Act, for the late enrollment of certain Natives, the establishment of an escrow account for the proceeds of certain lands, the treatment of certain payments and grants, and the consolidation of existing regional corporations, and for other purposes."

We recommend enactment of H.R. 6644 as reported by the Subcommittee on Indian Affairs if amended as suggested herein.

Section 1

Section 1(a) of the bill authorizes the Secretary of the Interior to review all applications filed within one year after the date of enactment of the bill by persons who missed the March 30, 1973, deadline for filing applications for enrollment as Alaska Natives. The Secretary would then enroll those Alaska Natives who meet the qualifications for enrollment set out in the Alaska Native Claims Settlement Act (ANCSA) except for their failure to meet the March 30, 1973, deadline.

Further, section 1(a) sets forth the procedures for making all the changes required by the amendments to the roll resulting from the new enrollments thereunder, specifically with regard to the issuance of stock in the proper Native corporation to any Native newly enrolled and to future distributions under the Settlement Act. Section 1(a) also provides that no land entitlements of regions, villages or groups, or eligibility of villages or groups, will be affected by the changes in enrollment thereunder. We support the provisions of section 1(a).

Under section 1(b), the Secretary is authorized to poll Natives enrolled to villages or groups not recognized as village corporations under ANCSA, and which are located within the boundaries of former reserves where village corporations elected surface

and subsurface rights under section 19(b) of ANCSA. The Secretary may allow these Natives to enroll to a section 19(b) village corporation, or enroll on an at-large basis to the region in which the village or group is located.

On St. Lawrence Island, where the village corporations of Gambell and Savoonga elected to take title to their former reserves, approximately 20 Natives enrolled to places on the Island itself other than to Gambell or Savoonga. Therefore, they are not members of either village, and are not entitled to benefits received by these village corporations under ANCSA. These individuals are currently shareholders at-large in their regional corporation. Under section 1(b) they would be given the opportunity to enroll in one of the villages, or remain shareholders at-large in their region. The language of section 1(b) is general and would apply to other situations similar to St. Lawrence Island.

While we support the provisions of section 1(b), we would note that St. Lawrence Island is not a village or group, but a place. This section would better serve its purpose if the words "Native villages or Native groups" on page 3, line 6, were deleted, and the word "places" substituted instead, and the words "village or group is" on line 13, page 3, were deleted, and the words "those places are" substituted. Otherwise, the bill may not resolve the problem of the major category of people it was designed to help - the Natives enrolled to places on St. Lawrence Island.

Section 1(b) is unclear as to whether the Secretary may allow these individuals to enroll to the section 19(b) villages at their option, or at the option of the villages concerned. We construe section 1(b) to mean the former.

Further, we would note that the individuals eligible to elect under section 1(b) are currently enrolled at-large to their region and, if they do not elect to enroll to a section 19(b) village corporation, they will remain at-large shareholders. Accordingly, we recommend that the words "to enroll" on page 3, line 12 be deleted and the words "remain enrolled" be substituted in their place.

We would also note that section 1(b) may impact the Regional entitlements under sections 12(b) and 14(h)(8) of ANCSA by changing the Regional population factors.

While we support the provisions of sections 1(a) and (b), we cannot support the provisions of section 1(c) and recommend that it be deleted.

Section 1(c) directs the Secretary to redetermine the places of residence, as of April 1, 1970, for those Natives who, in the enrollment process, designated their domicile as a place that was later determined ineligible as a Native village or group on grounds which include an insufficient number of residents. Such redetermined residence shall be such Native's place of residence as of April 1, 1970, for all purposes under ANCSA.

We oppose the provisions of section 1(c) for a number of reasons: First, the Natives affected by section 1(c) theoretically designated their residence properly, and this provision would authorize forum shopping to give these Natives a chance to circumvent the consequences of their original choice. These Natives would not only qualify for additional benefits, but would dilute the benefits of those Natives enrolled in those villages or groups to which these section 1(c) Natives would redetermine their residence. In fact, under this interpretation of section 1(c), those Natives who redetermine their residence would receive a greater per capita distribution than those Natives who enrolled properly in the beginning.

Second, section 1(c) discriminates among Natives who are at-large shareholders in a region. Many Natives designated their place of residence on their enrollment application at a location that did not qualify as a Native village under the provisions of ANCSA. Many of the locations failed to qualify as villages because of an insufficient number of enrollees, while other locations failed to qualify for other reasons. All Natives whose place of enrollment failed to qualify as a village were enrolled as at-large members of their respective Regional Corporation. Therefore, those at-large shareholders who enrolled to a location determined ineligible as a village because of an insufficient number of residents get a second chance, while those at-large shareholders who enrolled to a location found ineligible as a village on other grounds, do not. This result is inequitable.

Third, many of the villages determined ineligible by the Department have appealed the determination, so the issue of eligibility is presently in litigation. Further, the Department has not yet determined the eligibility of any Native groups. Therefore, section 1(c) is premature and speculative.

Finally, section 1(c) is unclear as to whether the section applies only to those Natives enrolled to villages found ineligible because of insufficient number of residents, or to villages also found ineligible on other grounds.

Section 2

Under section 2(a), the Secretary is given the authority to deposit proceeds received by the Federal government which are derived from contracts, leases, permits, rights-of-way or easements pertaining to lands or resources of lands withdrawn for Native selection pursuant to ANCSA in an escrow account until such time as disposition is made of the land and then to transfer such proceeds to the person or entity receiving title to the land. This provision would be effective from either the date of enactment of H.R. 6644 or January 1, 1976, whichever occurs first.

There presently exists no authority in the Secretary of the Interior to pay over to the Alaska Natives the proceeds derived from actions which he must take with regard to lands that are withdrawn for Native selection but which are not yet conveyed. The Alaska Natives have indicated to the Department the need for this authority, and we support the establishment of an escrow account.

While we support the provisions of section 2(a), we recommend a number of clarifying amendments.

First, on page 5, line 2, we recommend that the words "or January 1, 1976, whichever occurs first," be deleted. To administer the escrow account it will be necessary to develop a system which will accurately relate revenues to the tracts producing the revenues and the tracts selected. If H.R. 6644 is enacted after January 1, 1976, the escrow account will be partially retroactive, and the accounting procedures will present administrative and legal difficulties. Further, the monies derived between January 1, 1976 and the date of enactment of H.R. 6644 may have already been distributed to either the State of Alaska under the Mineral Leasing Act, or to the Alaska Native Fund, and thus expended.

Second, the reference to section 14(g) of ANCSA on page 5, line 2, is incorrect. These leases, licenses, permits or rights-of-way were not issued pursuant to section 14(g), but, rather, were outstanding at the time of conveyance to the Native

Corporation and were reserved by section 14(g). Thus, we recommend that the following language be inserted between the words "to" and "section" on line 4, page 5: "appropriate law and which would be reserved in any conveyance in accordance with."

Third, section 2(a) refers to "any and all proceeds derived" from certain less-than-fee interests which may be derived from Native lands prior to conveyance. On certain types of applications, the applicant must pay for a Federal processing fee and for the cost of the environmental impact statement. We recommend that the language of section 2(a) be amended to exempt these two payments from the application of this provision.

Finally, section 2(a) contains two separate time periods for paying out the funds in the escrow account and we recommend that they be conformed. The proceeds derived from the activities on lands withdrawn for Native selection, which are deposited in the escrow account, are to be paid to the selecting corporation or individual at the time of conveyance. However, receipts in the escrow account from lands withdrawn but not selected shall be paid to non-Natives "upon the expiration of the selection or election rights of the individuals for whose benefit such lands were withdrawn or reserved." We advise that payments to non-Natives from the escrow account be made at the time of conveyance to the Natives, or when the Secretary determines that these lands will not be conveyed to the selecting corporation. Otherwise, the monies in the escrow account may be tied up for a considerable length of time.

While we support the creation of the escrow account, we cannot support the provisions of section 2(b), which would authorize interest payments on such account and give authority to the Secretary to reinvest the proceeds in the account. There are many other similar accounts administered by the Federal Government on which no interest is paid and in which there is no reinvestment authority. In our judgment, section 2(b) would establish an unfavorable precedent.

Section 2(c) relates to public easements reserved pursuant to section 17(b)(3) of ANCSA. Section 2(c) would insure that proceeds derived from these section 17(b)(3) reserved easements at any time after conveyance has been issued, shall be paid to the grantee of such conveyance in accordance with such grantee's proportionate share. Without the certainty provided by section 2(c), it would be administratively prohibitive to distribute the income to the owners of land covered by the easement reservation.

However, we would note the potential ambiguity with regard to the interpretation of the word "proceeds," in section 2(c). It is unclear whether the term applies to fees derived from permits issued by the U.S. for hauling timber and minerals over these reserved easements, or to the receipts from the sale of the items hauled. Accordingly, we recommend substituting the words "rental and use fees" for the word "proceeds" in section 2(c), line 18, page 6.

Further, we recommend that the words "paid by commercial users for" be inserted right after the term "rental and use fees" on line 18, page 6. It should be recognized that most easements will produce little or no income. However, commercial uses will generate income, which should be made available to the Native owners.

We would also recommend that the period on line 22, page 6, be changed to a comma, and the following words be added: "to be computed in the same manner as fractional interests are computed pursuant to section 14(g) of the Settlement Act."

Finally, we would suggest an additional sentence after our amended sentence on line 22, page 6. This sentence reads as follows: "As used in this subsection rental and use fees shall not include road maintenance or other cost-recovery charges levied to a non-Federal user." These costs would not be in the nature of proceeds, but go to the actual cost of maintaining the easement by the United States.

These recommendations are the result of discussions between this Department and the United States Forest Service.

Section 2(d) provides that to the extent there is a conflict between the provisions of section 2 and any other Federal laws applicable to Alaska, the provisions of section 2 will govern. Further, any payment made to any corporation or individual under section 2(a) of H.R. 6644 shall not be subject to any prior obligations under sections 9(d) or (f) of ANCSA. This Department recommended the addition of a provision to section 2 parallel to that of section 26 of ANCSA in our report on H.R. 6644 as introduced, dated May 12, 1975. This recommendation has become section 2(d) of H.R. 6644 as reported by the Subcommittee on Indian Affairs and we support its enactment.

Section 3

Section 3 amends ANCSA to exempt, until December 31, 1991, corporations organized thereunder from the provisions of the Investment Company Act of 1940, the Securities Act of 1933, and the Securities and Exchange Commission Act of 1934. We defer in our views to the Securities and Exchange Commission.

Section 4

Section 4(a) amends ANCSA to provide that payments and grants thereunder shall not be deemed to substitute for any governmental programs otherwise available to the Natives as citizens of the United States and of Alaska.

Section 4(b) further amends ANCSA to exempt benefits received by any member of a household under the Settlement Act from being used in a determination of that individual's eligibility to participate in the Food Stamp Act.

The provisions of section 4 are currently under examination within the Administration.

Section 5

Section 5 relates to a December 28, 1973, decision by the Comptroller General that the Alaska Native Fund will not bear interest or be eligible for reinvestment by the Secretary pursuant to sections 161a and 162a of title 25 of the United States Code. The actual language of section 5 states that for purposes of 25 U.S.C. 161a and 162a the Alaska Native Fund shall, pending distributions under section 6(c) of ANCSA, "be considered to consist of funds held in trust by the Government of the United States for the benefit of Indian tribes." Section 5 further provides that nothing in the section will be construed to create or terminate any trust relationship between the U.S. and any corporation or individual entitled to receive benefits under ANCSA.

We object to the classification of these funds as trust funds. Section 2(b) of ANCSA specifically declares that the settlement of aboriginal claims by Alaska Natives should be accomplished ". . . in conformity with the real economic and social needs of Natives . . . without creating a reservation system or lengthy wardship or trusteeship . . ." Although the proviso

In section 6(e), on page 14, lines 12-13, there is no definition as to what constitutes "within the boundaries of the Native village." We would note that the majority of Native villages are not municipalities and, therefore, do not have boundaries created by State statute as do other Alaskan communities.

Section 7

We have no objection to the provisions of section 7, which would extend the life of the Joint Federal-State Land Use Planning Commission for Alaska to June 30, 1979.

Section 8

Section 8 amends section 7(c) of the Settlement Act. The new amendment directs the Secretary of the Interior to create a 13th Region for those Alaska Natives who are non-residents of Alaska and gives them authority to establish a regional corporation.

With the exception of the savings clause proviso of new section 7(c)(9), we recommend that section 8 be deleted. Pursuant to an order entered October 6, 1975, by the United States District Court for the District of Columbia, the 13th Region has already been established and the 13th Regional Corporation is in the process of being formed. The manner of formation of the corporation is similar to that prescribed by section 8, with the exception of the election of eligible non-resident Alaska Natives to be in or out of the 13th Region. The manner of this election has also been prescribed by the October 6, court order.

Effective October 1, 1975, this Department established the 13th Region. On October 11, by computer effort, 4,534 persons were transferred from the twelve Alaska Regions into the 13th Region according to their last written request made on or before August 15, 1973. Pursuant to the October 6 court order the Department has invited eight bona fide organizations presently known by the Secretary to represent non-resident Alaska Natives to submit the names of not more than five consenting nominees for election as incorporators and members of the interim board of directors of the 13th Regional Corporation. The Department prepared ballots with the names of 24 such nominees and on November 10 sent one ballot to each of the 3,100 adult 13th Region enrollees with instructions to vote for not more

than 5 nominees and to return the ballot by December 1. The results will be tabulated by December 10 and the nominees receiving the highest number of votes shall be recognized as incorporators for the purpose of preparing and submitting the proposed articles of incorporation and bylaws for the 13th Regional Corporation. Those so recognized will also constitute the initial board of directors to serve until the first meeting of shareholders or until their successors are elected and qualify.

The proposed articles of incorporation and bylaws are to be approved by early January 1976; the first meeting of the shareholders and election of the board of directors is to be held by early February, 1976; and by February 15, 1976, the corporation is to be paid its share of monies in the Alaska Native Fund. Pursuant to the October 6 order, when the 13th Regional Corporation makes its first distribution, all adult non-resident Native enrollees, whether or not presently enrolled in the 13th Region, shall be given a final opportunity to elect their preference for enrollment in the 13th Region or one of the other 12 Regions.

Accordingly, we recommend that section 8 be deleted as it is unnecessary, but that the savings clause of amended section 7(c)(9) of ANCSA under section 8 of this bill be retained.

Section 9

Under section 19(b) of ANCSA, seven Native villages elected to acquire title to the surface and subsurface estate of former reserves in lieu of receiving both benefits as a Native village under ANCSA, and regional corporation benefits.

Section 9 concerns one of the seven villages, Klukwan, Inc., which voted to retain the former reserve, the Klukwan Reserve or Reservation. Chilkat Indian Village, the organization of Natives who actually reside on the reserve, had negotiated a mineral lease in 1970, and it has been alleged in pending litigation that valid existing rights under this lease may survive the enactment of ANCSA and the extinguishment of the reserve itself. While all the residents of the reserve are members of Chilkat Indian Village, many of those non-residents who enrolled there and are stockholders in Klukwan, Inc., are not members of Chilkat. The mineral deposit is the major element of value in the lands of the former reserve and if the Chilkat position is correct the majority of Klukwan's shareholders would not receive the benefit of either the lease or the Settlement Act.

Section 9 would amend section 16 of ANCSA to allow the shareholders of Klukwan, Inc., to participate in the Act's benefits as if they had not elected to acquire title to their former reserve, including the selection of land, providing that Klukwan, Inc., will quit claim all its rights, title and interest in the reserve to Chilkat Indian Village.

We support the provisions of section 9. However, while section 9 would take care of the reserve land and rights thereto, it may not extend to $100,000 in lease rentals already derived from the lease after the passage of the Settlement Act. In our judgment, the United States and Klukwan, Inc., should also quit claim to Chilkat all rights to rentals and other benefits paid by the lessee prior to the passage of this bill. Further, Chilkat should also relinquish any claims it might have against Klukwan, Inc., the United States or the lessee, for mispayment.

We would note that section 9 may affect the Regions under section 12(c) of ANCSA by decreasing the acreage factor by 23,933, and under section 14(h)(8) by changing the Regional population factor.

Section 10

Section 10 would amend section 16(b) of ANCSA. Pursuant to amended section 16(b), the allocations received by the Southeastern Alaska Regional Corporation under section 14(h)(8) of ANCSA would be selected and conveyed from lands withdrawn by section 16(a) of ANCSA that were not selected by the village corporations, with the exception of lands on Admiralty Island in the Angoon withdrawal area, and lands in the Yakutat and Saxman withdrawal areas without the consent of the Governor of Alaska.

With the exception of some small amounts of public domain land around the Village of Klukwan, section 10 would permit the Sealaska Regional Corporation to make land selections pursuant to section 14(h)(8) of ANCSA primarily within the Tongass National Forest. Accordingly, this Department defers to the views of the U.S. Forest Service, as they are the agency with jurisdiction over those lands.

We would point out, however, that section 10 of H.R. 6644 as reported by the Subcommittee on Indian Affairs could have an impact upon section 12(c) of ANCSA. Part of the section

12(c) formula concerns allocations among the Regional Corporations based upon lands selected under section 16 of the Settlement Act. Since section 10 of H.R. 6644 amends section 16(b) rather than section 14(h)(8) of ANCSA, section 10 could be interpreted to effect the formula, and thus the entitlements of the other Regions, under section 12(c) of the Settlement Act.

Section 11

Section 11 of H.R. 6644 would amend section 7(a) of ANCSA to fix the boundary between the Southeastern and Chugach Regions at the 141st meridian provided that with regard to lands conveyed to it in the vicinity of Icy Bay, the Chugach Regional Corporation shall accord to Natives enrolled to the village of Yakutat the same rights and privileges for traditional purposes on such lands as it would accord its own shareholders.

The effect of this amendment would be to settle the boundary dispute between the two Regions, and within the settled boundary allow the Natives of the village of Yakutat, which is in the Southeastern Alaska Region, to use the lands around Icy Bay, in the Chugach Region, for subsistence purposes.

Although the boundary question is presently in arbitration in accordance with section 7(a) of ANCSA, if this amendment is acceptable to the two Regions involved, then we would support it. However, we would note that we construe this provision to be self-executing, with the rights and obligations therefrom flowing between the two Regions, and conferring no obligation upon this Department to write this language into patents issued pursuant to ANCSA.

Further, we would suggest that the term "in the vicinity of Icy Bay" on lines 14-15, page 30, be more precisely defined.

Section 12

Section 12 of H.R. 6644 as reported by the Subcommittee on Indian Affairs contains provisions to resolve the land selection problem of the Cook Inlet Region, Inc. For several months now representatives of the Department, the State of Alaska, and Cook Inlet have engaged in extensive discussions about possible solutions to this problem. The parties to these discussions have not yet arrived at a mutually acceptable settlement. As of this writing, the final details are still being negotiated.

pursuant to section 7 of ANCSA, including the right to receive distributions under section 7(j), and the stock of any Village Corporation organized pursuant to section 8 of ANCSA, shall not be includable in the gross estate of a decedent under sections 2031 and 2033 of the Internal Reveune Code.

We have no objection to the provisions of section 13. However, we would note that section 7(h)(3) of ANCSA prohibits alienation of stock until January 1, 1992, not December 18, 1991. Accordingly, we recommend that the date "December 18, 1991," on line 4, page 33, be deleted, and the date "January 1, 1992" be substituted in its place.

Section 14

Section 14(a) would provide a one-time payment of $250,000 to each of the corporations organized pursuant to section 14(h)(3) of ANCSA. Although the members of these four corporations (Kenai, Sitka, Juneau and Kodiak) are stockholders in their respective regional corporations, these corporations are not themselves recipients of funds under ANCSA. These corporations, however, are incurring expenses in organizing and operating themselves, making land selections and in engaging in necessary planning.

Section 14(b) provides for payments of $100,000 each to six of the seven villages (excluding Klukwan, Inc.) who chose to retain former reserves under section 19(b) of ANCSA. These villages chose title to former reserves in lieu of the benefits accorded a village under ANCSA and, as such, are not eligible to select other land or receive a distribution of regional corporation funds. Further, the members thereof are not shareholders in their respective regional corporations.

Under section 14(c), the funds provided under 14(a) and (b) are to be used only for planning and development, and for other purposes for which these corporations were organized under ANCSA.

Section 14(d) authorizes $1,600,000 in fiscal year 1976 to implement section 14.

We believe there is no basis for increasing the total amount of the Alaska Native Claims Settlement Act by $1.6 million in addition to the $962,500 million already provided. Any funds provided for these 10 corporations should be authorized from the present Alaska Native Fund.

Section 15

Section 15 of H.R. 6644 would direct the Secretary of the Interior to convey to the Koniag Regional Corporation the subsurface estate of certain lands selected by such corporation located within the Aniakchak Caldera National Monument. Further, notwithstanding the inclusion of the surface estate of these lands in any national monument or other national land system referred to in section 17(d)(2) of ANCSA, Koniag, Inc., may use the surface estate as is reasonably necessary to mine the subsurface, subject to regulations by the Secretary to protect the surface.

This provision would legislate an agreement between this Department and Koniag, Inc., concerning the lands within the area proposed by this Department for establishment as the Aniakchak Caldera National Monument in the National Park System under section 17(d)(2) of ANCSA. The Department had agreed to recommend to the Congress, at the time the Aniakchak proposal was being considered, that Koniag, Inc., be permitted to make specific subsurface selections within the Monument.

We believe, however, that a Congressional decision regarding the lands available for selection within the Monument be made at the same time Congress considers the establishment of the Monument. In that way Congress would have before it all of the relevant information concerning the resource values in the area and it would be in the best position to make a judgment on the matter. Further, we believe that public hearings on the amendment should be held. We continue to believe that the better course would be to consider all aspects of each D-2 proposal together, rather than in piecemeal fashion. However, should the Committee decide to go forward with the Koniag amendment at this time, we have no objection to the substance of the amendment in section 15 of H.R. 6644 as reported by the Subcommittee on Indian Affairs.

Time has not permitted securing advice from the Office of Management and Budget as to the relationship of this report to the program of the President.

Sincerely yours,

Acting Secretary of the Interior

Honorable James A. Haley
Chairman, Committee on
Interior and Insular Affairs
U.S. House of Representatives
Washington, D.C. 20515

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

DEC 23 1975

Dear Mr. Lynn:

This responds to your request for our views on the enrolled bill S. 1469, "To provide, under or by amendment of the Alaska Native Claims Settlement Act, for the late enrollment of certain Natives, the establishment of an escrow for the proceeds of certain lands, the treatment of certain payments and grants, and the consolidation of existing regional corporations, and for other purposes."

We recommend that the President approve the enrolled bill.

As enrolled, S. 1469 would supplement and amend the Alaska Native Claims Settlement Act (85 Stat. 688). We have commented in detail and at length on most of the provisions that have become part of S. 1469. We have attached these comments as an appendix to this report in order to provide a detailed description and analysis of the bill's provisions.

The Alaska Native Claims Settlement Act (hereinafter ANCSA) is an extremely complex and intricate law, both in its provisions and implementation. Because of the complicated nature of the settlement and its administration, it had become manifest in the last four years that serious deficiencies existed in the legislation which were delaying and impeding the Act's implementation to the detriment of this Department, the Alaska Natives and the State. All the parties agreed that amendments were needed to cure these deficiencies. While the Congress did not adopt all our recommendations when it passed S. 1469 the enrolled bill would result in curing most of the deficiencies that were seriously impeding the Act's implementation, and delaying completion of the settlement. In our judgment the urgent need for these amendments outweighs those recommendation which were not adopted.

We would note that while section 5 of the enrolled bill provides for the Alaska Native Fund to be considered as consisting of funds held in trust, it also contains a proviso that nothing in the section shall be construed to create or terminate any trust relationshp between the U.S. and any corporation or individual entitled to receive benefits under ANCSA. While the Alaska Native Fund would be treated like a trust fund, the Congress made clear

its intent that such treatment would not create a new fiduciary relationship (House Report No. 94-729 at 24). Because of the express language in section 5 and the clear intent of the Congress in the House Interior Committee report, we see no indication that a court would be able to find the existence of a new fiduciary duty in the United States towards the Alaska Natives.

Section 12 of the enrolled bill would accomplish the complex task of resolving the extreme problems that the Cook Inlet Regional Corporation has encountered in adequately fulfilling its land entitlements under section 12(c) of ANCSA. This provision is the culmination of eight months of intensive discussions among this Department, the Natives involved and the State. This section would resolve harmful jurisdictional conflicts and arbitrary ownership patterns within the Cook Inlet Region. The Region and the State strongly support it, and we recommend its implementation.

Because of the overriding need to correct the defects in ANCSA, and to expedite this Department's responsibilities under the Act, we recommend that the President approve the enrolled bill.

Sincerely yours,

Royston C. Hughes

Assistant Secretary of the Interior

Honorable James T. Lynn
Director
Office of Management and Budget
Washington, D.C. 20503

Enclosure

ASSISTANT ATTORNEY GENERAL
LEGISLATIVE AFFAIRS

Department of Justice
Washington, D.C. 20530

December 24, 1975

Honorable James T. Lynn
Director
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Lynn:

In compliance with your request, I have examined a facsimile of the enrolled bill S. 1469, "To provide, under or by amendment of the Alaska Native Claims Settlement Act, for the late enrollment of certain Natives, the establishment of an escrow account for the proceeds of certain lands, the treatment of certain payments and grants, and the consolidation of existing regional corporations, and for other purposes."

Although some of the provisions of the enrolled bill relate to litigation arising under the Alaska Native Claims Settlement Act, we have no objections to those provisions.

With respect to whether or not the bill as a whole should receive Executive approval, we defer to the views of the Department of the Interior, which is responsible for the administration of the Alaska Native Claims Settlement Act.

Sincerely,

Michael M. Uhlmann

Michael M. Uhlmann
Assistant Attorney General

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

DEC 24 1975

The Honorable James T. Lynn
Director, Office of Management
and Budget
Washington, D. C. 20503

Dear Mr. Lynn:

This is in response to your request of December 22, 1975, for a report on S. 1469, an enrolled bill "To provide, under or by amendment of the Alaska Native Claims Settlement Act, for the late enrollment of certain Natives, the establishment of an escrow account for the proceeds of certain lands, the treatment of certain payments and grants, and the consolidation of existing regional corporations, and for other purposes."

The only provision in the bill which would significantly affect the programs of this Department is section 4 which would add to the Alaska Native Claims Settlement Act a new section 29 providing that payments and grants under that Act shall not be deemed a substitute for any governmental programs otherwise available to the Native people of Alaska. Because section 29 would be consistent with the manner in which the Department currently administers the programs principally affected (the Supplemental Security Income (SSI) program and the program of Aid to Families with Dependent Children (AFDC)), we have no objection to its inclusion in the bill. On the question of the desirability of enactment of the bill itself, we defer to the Department of the Interior.

This Department had already announced that with respect to determinations of eligibility under the cash assistance programs--SSI and AFDC--payments under the Settlement Act would be disregarded as both income and resources. Therefore, the enactment of the enrolled bill would have no effect on the operation of these programs.

The principal arguments which supported this Department's decision to disregard Settlement Act payments were based on

Congressional intent expressed in section 2(c) of the Act which provides in part that "no provision of this Act shall replace or diminish any right, privilege, or obligation of Natives as citizens of the United States or of Alaska, or relieve, replace, or diminish any obligation of the United States or the State of Alaska to protect and promote the rights or welfare of Natives as citizens of the United States . . . ." This interpretation was buttressed by the remedial nature of the Settlement Act and our conclusion that in perfecting the Natives' rights to property that was already theirs, the Congress could not have intended at the same time to deprive them of other benefits designed to meet their serious economic and social needs. In addition, this interpretation results in Alaskan Natives receiving the same treatment under the Settlement Act as Indians receive under the Indian Judgment Act, Public Law 93-134, which has a similar purpose. Section 4 of the enrolled bill would merely confirm the interpretation we have already made.

We therefore have no objection to the enrolled bill insofar as it affects the programs of this Department, but defer to the Department of the Interior as to the desirability of the bill's enactment.

Sincerely,

Secretary

THE WHITE HOUSE

WASHINGTON

December 31, 1975

MEMORANDUM FOR: JIM CAVANAUGH

FROM: MAX FRIEDERSDORF M.F.

SUBJECT: S. 1469 - Amend Alaska Native Claims Settlement Act of 1971

I recommend the bill be signed.

Senator Ted Stevens (R-Alaska) is adamant and Representative Don Young (R-Alaska) also strongly supports the bill.

Congressman Young comments, "on balance the bill is a good bill and must be signed. If the bill is vetoed the matter will end up in the courts and the settlement of the claims will be years away. This bill removes the serious deficiences that have delayed the settlement of claims. This bill will be a step forward in implementing the basic purpose of the 1971 law. A veto will not be a step forward, will continue the problems, will require litigation and will be politically damaging."

If the bill is vetoed, I recommend a prior notification to Senator Stevens and Representative Young together with a commitment to seek quick approval of new legislation excluding the Sealaska-Tongass Forest provisions.

The bill passed the House by voice vote on December 16, and passed the Senate by voice vote on August 1.

THE WHITE HOUSE

WASHINGTON

December 31, 1975

MEMORANDUM FOR: JIM CAVANAUGH

FROM: MAX FRIEDERSDORF M.F.

SUBJECT: S. 1469 - Amend Alaska Native Claims Settlement Act of 1971

I recommend the bill be signed.

Senator Ted Stevens (R-Alaska) is adamant and Representative Don Young (R-Alaska) also strongly supports the bill.

Congressman Young comments, "on balance the bill is a good bill and must be signed. If the bill is vetoed the matter will end up in the courts and the settlement of the claims will be years away. This bill removes the serious deficiences that have delayed the settlement of claims. This bill will be a step forward in implementing the basic purpose of the 1971 law. A veto will not be a step forward, will continue the problems, will require litigation and will be politically damaging."

If the bill is vetoed, I recommend a prior notification to Senator Stevens and Representative Young together with a commitment to seek quick approval of new legislation excluding the Sealaska-Tongass Forest provisions.

The bill passed the House by voice vote on December 16, and passed the Senate by voice vote on August 1.

THE WHITE HOUSE

ACTION MEMORANDUM WASHINGTON LOG NO.: 1539

Date: December 30 Time: 5:00pm

FOR ACTION: Paul Leach
George Humphreys
Dick Parsons
Max Friedersdorf
Bill Seidman
Ted Marrs

cc (for information): Jack Marsh
Jim Cavanaugh
Warren Hendriks

FROM THE STAFF SECRETARY

DUE: Date: December 31 Time: noon

SUBJECT:

S. 1469-Amend Alaska Native Claims
Settlement Act of 1971

ACTION REQUESTED:

____ For Necessary Action ____ For Your Recommendations

____ Prepare Agenda and Brief ____ Draft Reply

x
____ For Your Comments ____ Draft Remarks

REMARKS:

Please return to Judy Johnston, ground floor West Wing

Vito

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

For the President

To: Judy Johnston

From: Bobbie Greene Kilberg

Subject: S.~~2~~]469 Amend Alaska Native Claims Settlement Act of '71

1. The Counsel's Office believes that the provision in the bill to allow Sealaska Corp. to choose 200,000 to 250,000 acres of "bonus lands" from within the Tongass National Forest does change the provisions of the 1971 Act and could set an unwise precedent for other regional corporations to request changes in land selection beneficial to them. On this basis, we would reluctantly agree with OMB's veto recommendation. At the same time, the President should be aware that the lawyers representing the Natives of the Sealaska Corp. think that the 1971 Act entitled them to choose the "bonus lands" from within the National Forest and view the '75 Amendments as simply clarifying an already existing right. Interior thinks there is some merit to the Natives argument but also that there ~~is~~ are legal arguments against that position. The net result of a veto, will be extended litigation over the land choosing rights.

2. There are ~~xxxxxxxxxxxxxxxxx~~ valid arguments to be made for exempting the Native corporations from the Federal securities laws for a period of 20 years. If that was the only provision in the Amendments being objected to, the Counsel's office would not support a veto. Our preference is that the veto message not contain any reference to the securities exemption provision and ~~it is my understanding~~ that we will get a chance to review the veto statement, if the President decides to veto the bill.

3. The OMB memo and draft veto statement could be misread to imply that the bill gives the Sealaska region an additional entitlement of 200,000-250,000 acres of land over and above its entitlement under the '71 Act. The bill does not do that--it changes and broadens the area from which the 200,000-250,000 acres allowed under the '71 Act may be selected. It should be noted that if the Sealaska Corp. cannot select the "bonus lands" from the National Forest, it must select the lands from an area that is proposed as the Mt. Elistes Park.

THE WHITE HOUSE

WASHINGTON

December 31, 1975

MEMORANDUM FOR JIM CAVANAUGH

FROM: JUDY JOHNSTON

Since Lynn May brought the attached memorandum over, Bobbie Kilberg has hedged on the Counsel's veto signal a little but not completely. Attached are her comments which may need to be incorporated.

One of the things Bobbie has felt strongly on this entire bill is that if the President does decide to veto the bill that she have another crack at the veto message. She believes that the message should not contain any reference to the securities exemption provision.

I am typing the messy veto message

J.J.

P.2 needs to see before

THE WHITE HOUSE

WASHINGTON

December 31, 1975

MEMORANDUM FOR JIM CANNON

FROM: LYNN MAY Lynn May

SUBJECT: Enrolled Bill - S. 1469

The attached enrolled bill was staffed to George Humphries, Paul Leach and Dick Parsons (me) for comments. Leach and I recommend veto because we feel that the double dipping aspect of the bill is inequitable and because it allocates land that would best be utilized in a National Forest.

George, on the other hand, while he recognizes the inequity, recommends signature of what is essentially a local interest bill that has a strong chance of override.

While the cover memo reflects you as recommending veto, you may want instead to recommend signature. If so, please let Judy Johnston know.

Attachment

THE WHITE HOUSE

ACTION MEMORANDUM WASHINGTON LOG NO.: 1539

Date: December 30 Time: 5:00pm

FOR ACTION: Paul Leach
George Humphreys
Dick Parsons
Max Friedersdorf
Bill Seidman
Ted Marrs
FROM THE STAFF SECRETARY

cc (for information): Jack Marsh
Jim Cavanaugh
Warren Hendriks

DUE: Date: December 31 Time: noon

SUBJECT:

S. 1469-Amend Alaska Native Claims Settlement Act of 1971

ACTION REQUESTED:

____ For Necessary Action ____ For Your Recommendations

____ Prepare Agenda and Brief ____ Draft Reply

x
____ For Your Comments ____ Draft Remarks

REMARKS:

Please return to Judy Johnston, ground floor West Wing

Concur in OMB position

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.