

Revised Alaska Securities Act — learning some new ropes

By: Julius J. Brecht

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Now you see it...now you don't! After a run of almost 60 years, the Alaska Securities Act (formerly AS 45.55, "ASA"), is no more.¹ It has been replaced by the *revised* Alaska Securities Act (AS 45.56, "RASA"). RASA became effective on Jan. 1, 2019.

So, like the new recruits of mariners of olden times in boarding a sailing vessel for the first time thus requiring learning a new set of procedures to work the sails (including tying knots in ropes that controlled their use in movement of the vessel), the legal practitioner in advising a client on state securities law in Alaska ought to become familiar with the provisions of RASA.

Alaska, in becoming the 49th state in 1959, chose to establish its regulation of securities through adoption of the then recent publication of the National Conference of Commissioners on Uniform State Laws ("National Conference"). That publication was the Uniform Securities Act of 1956 ("USA 1956"). In so doing, Alaska became one of the first states to adopt USA 1956.

ASA served as a useful basis for securities regulation way up north until Congress flexed its muscles, principally through enactment of the National Securities Market Improvement Act of 1996 ("NSMIA"). That is, NSMIA preempted several aspects of state securities regulation, including several provisions of ASA.

Through the years, ASA was amended from time to time to accommodate federal preemption and to address other matters. However, as time went on, ASA began to look more and more like a patch quilt of multiple changes to the state's securities law.

At the same time, Alaska found itself becoming out of step with newer approaches of the National Conference and other states in their securities regulation. That is, through those years, the National Conference subsequently published a number of succeeding model securities acts. Several other states gravitated to those succeeding models.

These versions, in part, adjusted state securities law to accommodate the encroachment of federal preemption. The most recent version published by the commission was the Uniform Securities Act of 2002 ("USA 2002"). RASA is based upon USA 2002.

USA 2002 took into consideration the federal inroads established through NSMIA. At one time, approximately 40 states subscribed to USA 1956. However, within a relatively short period of time, many states chose to adopt USA 2002.

At present, the National Conference's website shows there are 20 states and one territory that have changed their securities laws to follow USA 2002. In 2003, Oklahoma and Missouri were the first two states to adopt USA 2002. Alaska is the most recent state to adopt that uniform act.

Jurisdictions adopting USA 2002 come from all over the country and are as follows:

- Western states — Alaska, Idaho, New Mexico, Wyoming and Hawaii.
- Midwestern states — South Dakota, Kansas, Oklahoma, Minnesota, Iowa, Missouri, Wisconsin, Michigan and Indiana.
- Southern states — Mississippi, Georgia and South Carolina.
- Northeastern states — New Hampshire, Vermont and Maine.
- Virgin Islands.

A careful read of RASA indicates that many of the areas addressed in ASA have counterparts in RASA, although the wording of the provisions is not always identical. For example, both acts similarly provide that a person may not offer or sell a security in Alaska, with limited exceptions. The exceptions are that the security is registered under RASA (and previously, under ASA), is exempted from registration under the act or is a federal covered security. In short, a federal covered security is one for which NSMIA preempts state security registration law.

In addition, RASA sets forth a new provision that a broker dealer, investment adviser or qualified individual, reasonably believing that a covered adult has been, or may be, subject to

financial exploitation, must report the matter to adult protective services. RASA specifically identifies a covered adult as a natural person who is 60 years of age or older or a “vulnerable adult.”²

As a further caution necessitating a careful read of RASA, the number of subsections of securities exemptions from registration is shorter in RASA as compared to ASA. However, the number of subsections of securities transactional exemptions from registration is greater in RASA as compared to ASA. Of course, a registration exemption does not exempt a person from the anti-fraud provisions of RASA (or when it was effective, ASA).

RASA (like ASA before it) is administered through the Alaska Department of Commerce, Community and Economic Development, Division of Banking and Securities (“Department”).

Under RASA, civil penalties have been strengthened in proceedings administered by the department. For example, under the previous ASA provisions, civil penalties for multiple violations in a single proceeding were limited to not more than a total of \$25,000. However, under RASA, the department may impose a civil penalty of not more than \$100,000 for a single violation, with limited exception.

That exception is where a person or entity engages in conduct prohibited by RASA against an “older person” or a vulnerable adult. The term “older person” is not defined in RASA. However, in such instance, the person engaging in the prohibited conduct may be liable for an additional civil penalty of treble damages.

With a new securities statute, Alaska’s judicial interpretation must now change course to focus on RASA. There may be scant judicial precedent in RASA for a time. However, because RASA is based upon USA 2002, there is the possibility of referring for guidance to court interpretation of similar statutory provisions of other jurisdictions that have also adopted USA 2002.

As of this writing, the department had not publicized proposed regulations for interpreting and otherwise administering RASA. That is, no proposed regulations had been noticed to the public (it was anticipated that the department would give such public notice in the then near future). So, there is an additional challenge in working with RASA in not knowing how the department intends to administer the new statute going forward from the time of its effectiveness.

Presumably, previous regulations in place to administer ASA were never intended to be authority outside of ASA and occurring after the repeal of ASA. For example, they were not intended to provide guidance in interpreting RASA.

The issue of correctly placed authority ought to be resolved with the department’s adoption of new regulations pursuant to authority in RASA. Of course, that adoption would be after appropriate public notice of, and after opportunity for public comment on, those regulations.

The regulations interpreting ASA were lengthy. There are a number of areas of RASA that may need further clarification through regulation or interpretive opinion by the department. It is then likely that the regulations interpreting RASA are to be equally detailed. In the meantime, and in anticipation of those proposed regulations, best wishes on your read of RASA!

Julius J. Brecht is an attorney in private practice and Of Counsel with the law firm of Bankston Gronning Brecht, P.C. with offices in Anchorage. His concentration of practice is in state and federal securities law and corporate and finance law. He may be reached at jbrecht@bgbalaska.com.

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¹ Codification of the Alaska Statutes continues to use AS 45.55 but with a new title of “Alaska Native Claims Settlement Act Corporations Proxy Solicitations and Stock” and corresponding content.

² The term “vulnerable adult” is defined in RASA as meaning the term as defined in AS 47.24.900.