

**ABOUT THE TNC  
DISTRIBUTION  
TRUST**



October 2008

# Today's Goals

- Today's Discussion Is To Inform Shareholders In A General Way About ANCSA Settlement Trusts
- Shareholders Are Not Being Asked To Vote On A Trust Today



WHAT HAS  
BEEN DONE SO  
FAR?



# WHAT HAS BEEN DONE SO FAR?

- TNC's Board developed and approved a draft Trust in September, 2008, SUBJECT TO APPROVAL OF TNC'S SHAREHOLDERS
- A Special Meeting OF TNC'S Shareholders Has Been Called For February 28, 2009 TO Vote On The Trust
- ***The Trust MUST be approved by TNC's Shareholders in a formal vote to become effective as an ANCSA settlement trust***

# WHAT WOULD TNC'S PROPOSED TRUST DO?



- Provide Cash Distributions to all TNC Shareholders on a per share basis
- We call this an “Income” Trust
- Other Types of Settlement Trusts Are Possible, but an “Income” Trust treats all TNC shareholders equally

# WHAT ARE ADVANTAGES TO TNC'S PROPOSED SETTLEMENT TRUST?



- Tax Savings***
- Superior Tax Reporting***
- Creditor Protection***
- Permanence***
- Dedication of Assets to Specific Purpose***

# OVERVIEW OF KEY CONCEPTS/TERMS

- ***Trust Agreement:*** The Contract between TNC and the Trustees of the Trust that establishes the Trust and the rules under which the Trust will operate
- Compare: TNC has Articles of Incorporation and Bylaws that establish the rules for TNC

# OVERVIEW OF KEY CONCEPTS/TERMS

- ***Beneficiaries:*** Persons for whom the Trust is operated, just as TNC is owned by and operated for its shareholders
- The Beneficiaries of the Trust will be TNC's Shareholders



# OVERVIEW OF KEY CONCEPTS/TERMS

- ***Trustees:*** Persons who oversee the Trust just as TNC's directors oversee TNC
- The Trustees of the Trust will be TNC's Directors

# OVERVIEW OF KEY CONCEPTS/TERMS

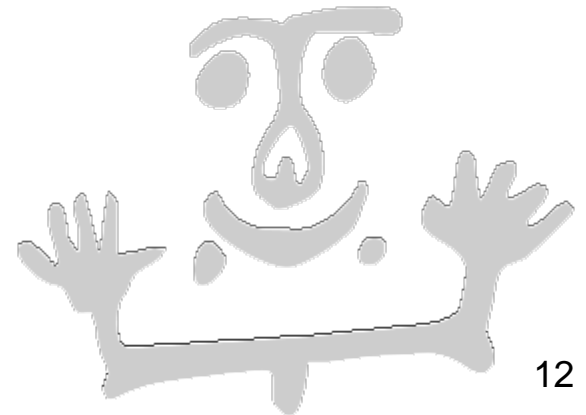
- ***Trust Principal:*** Whatever is contributed to Trust or reinvested in TNC's Trust
- ***Trust Income:*** Whatever is earned when the Trust Principal is invested.

# OVERVIEW OF KEY CONCEPTS/TERMS

## ***Limitations:*** TNC's Trust

- Cannot “operate as a business”
- Must invest its assets passively
- Must be kept separate from TNC

# TRUST UNITS AND DISTRIBUTIONS



# TRUST UNITS

Under the proposed TNC Trust:

- There will be both Class A and Class B Trust Units, just as TNC has Class A and Class B Stock
- Class B Trust Units would be life estate, just as is TNC's Class B stock

# TRUST UNITS

- Each TNC shareholder would receive one Trust Unit for each share of TNC stock
- This would be AUTOMATIC if the Trust is approved
- That is, TNC's shareholders do NOT have to do anything to receive the Trust Units except vote for the Trust

# TRUST DISTRIBUTIONS

Under the proposed TNC Trust:

- Trustees determine the amount of distributions from the Trust, just as TNC directors do when deciding what TNC should distribute
- Trustees will adopt distribution policies just as they already have done for TNC

# TRUST DISTRIBUTIONS

- All Beneficiaries share in Distributions Based on the Number of Trust Units/TNC Shares owned just as they do when TNC makes a distribution
- Principal would not be distributed



# CONTRIBUTIONS TO TRUST



# CONTRIBUTIONS TO THE TRUST

- The Plan Is To Place A Partial Ownership of Some of TNC's Operating Businesses into the Trust
- This Includes Both 8(a) and non 8(a) Businesses

# CONTRIBUTIONS TO THE TRUST

- TNC Would Still Control These Operating Businesses
- Other Assets Such As Cash Could Be Placed in the Trust As Well

SETTLEMENT TRUST  
AND TNC TAX  
TREATMENT



# CURRENT TAX TREATMENT OF TNC & ITS SHAREHOLDERS

- TNC is currently fully taxable
- This means that TNC will pay a combined state and federal tax rate of about 40% on ALL income
- This is a real cash outflow
- Shareholders also normally pay their own tax at approximately 7.5% on dividends

# CURRENT TAX TREATMENT OF TNC & ITS SHAREHOLDERS

- To put this in perspective, here are the taxes TNC has paid in recent years:

2006:	\$ 880,000
2007:	\$2,811,000
2008(est):	\$3,000,000
- Again, these tax payments are real cash outflows that reduce what can be paid to TNC's shareholders

# TAX TREATMENT OF SETTLEMENT TRUSTS

- Section 646 Tax Election For Settlement Trusts (presently available through 12/31/2010)
- Contributions To Trust Would Be Tax Free To Beneficiaries
- 10% Tax Rate On Interest Income
- 0% Tax Rate On Dividend/Capital Gain Income (Through 12/31/2010)
- Distributions Of Income Are Tax Free To Beneficiaries

# TAX TREATMENT OF SETTLEMENT TRUSTS

- Without a section 646 election, then:
  - Contributions to Trust Are potentially taxable to Beneficiaries
  - Trust not taxed on its distributed annual income
  - Trust taxed at highest individual marginal rates (presently 35%) on its undistributed annual income
  - Beneficiaries taxed at their normal rate on the Trust's distributed annual income
- ***Even if Section 646 is not extended after 2010, less tax would still be paid with the Trust than without the Trust.***



# Contrast of Tax Treatment of TNC & Trust

	<i>TNC</i>	<i>Trust (With 646 Election)</i>	<i>Trust (Without 646 Election)</i>
<i>Assumed Income (\$5 mil Trust @ assumed 10% annual earnings)</i>	\$500,000	\$500,000	\$500,000
<i>Tax To TNC or Trust</i>	<u>(200,000)</u>	<u>(50,000)</u>	<u>(0)</u>
<i>Available for Distribution</i>	\$ 300,000	\$450,000	\$500,000
<i>Tax to Shareholders or Beneficiaries</i>	(22,500)	(0)	(75,000)
<i>Kept By Shareholders or Beneficiaries</i>	\$ 277,500 <b>(55.5%)</b>	\$450,000 <b>(90%)</b>	\$ 425,000 <b>(85%)</b>

# CONTRAST OF TAX TREATMENT OF TNC & TRUST

- As we have seen, a Trust is highly tax efficient
- This means more net after tax income is available to produce a given level of distributions for TNC's shareholders

# LEGISLATIVE PROCESS



# LEGISLATIVE PROCESS

- Various Native Corporations have already started the process to get Congress to extend section 646
- Meetings held in D.C. in February, 2008 with Alaska delegation
- Response Positive

# LEGISLATIVE PROCESS

- Goal is to find a suitable “legislative vehicle” that has a chance of passing Congress and being signed by President
- Sen. Stevens attempted to add the 646 extension to the recent “tax extenders” bill, but was unsuccessful

# LEGISLATIVE PROCESS

- Resolution In Support of Extension Will Be Presented at 2008 AFN Convention
- Expectation is that there will be a better chance for Congressional action in 2009

**WHAT'S NEXT?**



# NEXT STEPS FOR TNC TRUST

- TNC has filed Requests With SBA/IRS/Banking & Securities For Approvals Related To Trust
- Work on proxy materials has already begun
- Proxy materials mailed in early January, 2009



# NEXT STEPS FOR TNC TRUST

- SBA has already issued one of the necessary approvals
- This first SBA approval permits the Trust to own up to 49% in multiple 8(a) companies
- SBA will also need to approve specific transfers of 8(a) companies to the Trust

# NEXT STEPS FOR TNC TRUST

- TNC's Shareholders Will Vote On Trust February 28, 2009 – PLEASE VOTE!
- Further Information Will Be Sent To Shareholders Over The Next Several Weeks

**THANK YOU FOR  
YOUR KIND  
ATTENTION**

***Chin'an***

## Questions and Answers about Alaska Native Settlement Trusts

- 1. Exactly what is a Settlement Trust?** **Answer:** A Settlement Trust is a trust organized under the provisions of the Alaska Native Claim Settlement Act (ANCSA) and Alaska law to provide certain benefits to the shareholders of a specific Native corporation.
- 2. How many Settlement Trusts been established?** **Answer:** As of September 30, 2008, about 25 settlement trusts have been established by Alaska Native corporations. In the aggregate, these trusts hold about \$330 million in assets. Not every Native Corporation has established a settlement trust, but those that have established trusts have placed substantial assets in them.
- 3. What benefits can be provided through a Settlement Trust?** **Answer:** A Settlement Trust is to promote the “health, education and welfare of its beneficiaries and preserve the heritage and culture of Natives.”
- 4. What are examples of these benefits?** **Answer:** A Settlement Trust can provide educational scholarships. It could also sponsor Native dance groups or traveling shows of native art. The standard is very broad. Most Settlement Trusts of which we are aware provide straight cash distributions to the beneficiaries on a pro rata basis. At least three other settlement trusts provide benefits for their elders. Two other trusts have been established to provide educational benefits, and one of these trusts provides funeral benefits in addition to the educational benefits. Still another settlement trust has been created to hold cutover timberland in anticipation of the harvest of the second growth.
- 5. Who may be the trustee(s) of the Settlement Trust?** **Answer:** Section 39 of ANCSA says that the trustee(s) of the Settlement Trust must be individuals.
- 6. Is there a limit on the number of trustees?** **Answer:** No.
- 7. Who appoints the trustees?** **Answer:** ANCSA says that the Native Corporation that establishes the Settlement Trust has the “exclusive authority” to appoint and remove trustees. Thus the Board of Directors of the Native Corporation could be the trustees of the Settlement Trust.
- 8. What are the principal advantages of Settlement Trusts?** **Answer:** The advantages are (a) Permanence; (b) Limited Risk; (c) Tax Advantages; and (d) Protection from Creditors.
- 9. Are there limitations as to the investments which a Settlement Trust may make?** **Answer:** Yes. ANCSA provides that a Settlement Trust cannot “operate as a business” and prohibits the conveyance to the trust of certain assets (primarily assets subject to the 7(i) revenue sharing obligations). Beyond that, all assets of the Settlement Trust would need to be invested under what is known as the “prudent person” rule. The trust agreement itself could contain other restrictions on investments. An example of this would be a prohibition on loans to individuals. The trustees may also establish investment policies and guidelines, which often further restrict investments.
- 10. How long may a Settlement Trust last?** **Answer:** A Settlement Trust will last only as long as is specified in the trust agreement that establishes the trust. There is no limit on how long a Settlement Trust may last: in theory, the Settlement Trust could last forever.
- 11. Is there any requirement that a Settlement Trust distribute a particular percentage of its annual income?** **Answer:** No. Subject to the fact that undistributed trust earnings will be taxed to the Trust, and further subject to whatever the Trust Agreement requires, and further subject to any

change in the law which may result from the “inflation proofing” legislation referred to above, a Settlement Trust would not necessarily have to distribute any of its annual income.

**12. Can the creditors of a Native Corporation go after the assets of the Settlement Trust to satisfy the debts of the Native Corporation? Answer:** The answer here is both “yes” and “no”. The assets of a Settlement Trust are subject to the claims of corporate creditors if the claims arose before the assets were placed in Settlement Trust. Put differently, a Settlement Trust cannot be used to defeat the claims of already existing corporate creditors (including those who have contractual relationships with the Native Corporation). On the other hand, if a creditor’s claim against arises against the Native Corporation after the assets are transferred to the Settlement Trust, then the Settlement Trust is not liable for that claim.

**13. May the creditors of a shareholder sue the Settlement Trust to recover the shareholder’s debt? Answer:** The answer here is that the Settlement Trust itself is not liable for a shareholder/beneficiary’s debts. The Settlement Trust usually can be sued for its own debts, not those of the shareholder-beneficiaries. A distribution otherwise payable to a beneficiary generally is protected from seizure by a beneficiary’s creditor before that distribution is actually paid to that beneficiary. However, distributions from a settlement trust can be seized in most cases to satisfy child support obligations in the same way that distributions by a Native corporation can be seized. It is not clear whether the IRS can seize distributions from either a settlement trust or a Native corporation, but the position of the IRS is that it can.

**14. Do settlement trusts have to benefit all beneficiaries at the same time in the same amount? Answer:** It depends on what the Trust Agreement for a particular trust says. Some trusts are set up to pay cash distributions in proportion to ownership of the units of the trust (much like shares). However, some settlement trusts have to be set up in such a way that their benefits will never be paid out proportionately, that is the benefits are “disproportionate”. Examples of these types of settlement trusts include educational trusts, elders trusts, and funeral benefits trusts.

**15. Will use of a settlement trust disqualify a beneficiary from federal needs-based eligibility programs (such as food stamps)? Answer:** The answer again is “maybe”. It is clear from ANCSA that the beneficiary’s interest in the Settlement Trust is not to be counted in determining eligibility. However, it is not clear whether cash distributions from a Settlement Trust can be excluded in the same way that the first \$2,000 of cash distributions from a Native Corporation are excluded. The language allowing the \$2,000 exclusion refers only to distributions by a Native Corporation.

**16. What Are the Tax Rules Related to Settlement Trusts? Answer:** The Internal Revenue Code allows settlement trusts to make a tax election under a provision known as “section 646”. Only ANCSA settlement trusts can make this election. If the section 646 election is made the trust is taxed at very favorable rates of 10% on ordinary income such as interest income and 0% on capital gains and dividends. By contrast, ANCSA corporations are normally taxed at rates of about 40% (unless they have NOLs). This alone produces a huge tax savings on income earned by a settlement trust versus income earned by a Native corporation. But there is more. Distributions of after tax income by a trust that has made the section 646 election are not taxable to the shareholder/beneficiaries, while in most cases, distributions of after tax income by a Native corporation are taxable at rates of between 0% and 15%. And, shareholders that receive distributions of after tax income from a corporation have to report those distributions on their individual income tax returns, while beneficiaries that receive these non taxable distributions from an ANCSA settlement trust do not.