
A BILL FOR AN ACT

RELATING TO INVESTMENT SECURITIES ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 485-25, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "**§485-25 Fraudulent and other prohibited practices.** (a)

4 It is unlawful for any person, in connection with the offer,
5 sale, or purchase (whether in a transaction described in section
6 485-6 or otherwise) of any security (whether or not of a class
7 described in section 485-4), in the State, directly or
8 indirectly:

9 (1) To employ any device, scheme, or artifice to defraud;

10 (2) To make any untrue statement of a material fact or
11 omit to state a material fact necessary in order to
12 make the statements made, in the light of the
13 circumstances under which they are made, not
14 misleading;

15 (3) To engage in any act, practice, or course of business
16 ~~[which]~~ that operates or would operate as a fraud or
17 deceit upon any person;



- 1 (4) To issue, circulate, or publish any prospectus,
2 circular, advertisement, printed matter, document,
3 pamphlet, leaflet, or other literature (in this
4 chapter sometimes referred to collectively as
5 "advertising matter") [~~which shall contain~~] that
6 contains an untrue statement of a material fact or
7 [~~omit~~] omits to state a material fact necessary in
8 order to make the statements therein made, in the
9 light of the circumstances under which they are made,
10 not misleading;
- 11 (5) To issue, circulate, or publish any advertising matter
12 or make any written representation, unless the name of
13 the person issuing, circulating, publishing, or making
14 the same and the fact that the person is issuing,
15 circulating, or making the same [~~shall be~~] is clearly
16 indicated thereon;
- 17 (6) To make any statement or representation, or issue,
18 circulate, or publish any advertising matter
19 containing any statement, to the effect that the
20 security has been in any way approved or endorsed by
21 the commissioner of securities; or



1 (7) To issue, circulate, or publish any advertising matter
2 unless a copy thereof has been previously filed with
3 the office of the commissioner, or unless the
4 commissioner has by rule or order exempted the filing
5 of any advertising material.

6 (b) It is unlawful for any person who receives any
7 consideration from another person primarily for advising the
8 other person as to the value of securities or their purchase or
9 sale, whether through the issuance of analyses or reports or
10 otherwise:

11 (1) To employ any device, scheme, or artifice to defraud
12 the other person; or

13 (2) To engage in any act, practice, or course of business
14 ~~[which]~~ that operates or would operate as a fraud or
15 deceit upon the other person.

16 (c) It is unlawful for any investment adviser to enter
17 into, extend, or renew any investment advisory contract unless
18 it provides in writing:

19 (1) ~~[That]~~ Except as provided in subsection (d), that the
20 investment adviser shall not be compensated on the
21 basis of a share of capital gains upon or capital



1 appreciation of the funds or any portion of the funds
2 of the client;

3 (2) That no assignment of the contract may be made by the
4 investment adviser without the consent of the other
5 party to the contract;

6 (3) That the investment adviser, if a partnership, shall
7 notify the other party to the contract of any change
8 in the membership of the partnership within a
9 reasonable time after the change;

10 (4) That the investment adviser and investment adviser
11 representative shall disclose to the client, in a
12 separate disclosure statement, the capacity in which
13 the investment adviser and investment adviser
14 representative are acting and the compensation to be
15 received in situations where:

16 (A) The investment adviser is acting as principal for
17 the investment adviser's own account and
18 knowingly sells any security to or purchases any
19 security from a client for whom the investment
20 adviser is acting as investment adviser; or

21 (B) The investment adviser is acting as broker for a
22 person other than the client and knowingly



1 effects any sale or purchase of securities, real
2 estate, insurance contracts, annuities contracts,
3 or any types of real or personal property for the
4 account of the client; and

5 (5) That the investment adviser and investment adviser
6 representative shall provide the disclosure statement
7 described in subsection (c)(4) and obtain the written
8 consent of the client to the transactions described in
9 the disclosure statement prior to the closing of the
10 transactions.

11 (d) ~~[Paragraph]~~ subsection (c)(1) does not prohibit an
12 investment advisory contract ~~[which provides]~~ that:

13 (1) Provides for compensation based upon the total value
14 of a fund averaged over a definite period, or as of
15 definite dates or taken as of a definite date~~[-]~~; or

16 (2) Provides for compensation to the investment adviser on
17 the basis of a share of capital gains or capital
18 appreciation of the funds of the client; provided
19 that:

20 (A) The conditions and requirements as defined in
21 rule 205-3 under the Investment Company Act of
22 1940 (17 C.F.R. section 275.205-3) are met; and

1 (B) Before entering into the advisory contract, and
2 in addition to the requirements of United States
3 Securities and Exchange Commission Form ADV, the
4 investment adviser shall disclose in writing to
5 the client or the client's independent agent all
6 material information concerning the proposed
7 advisory arrangement.

8 (e) "Assignment", as used in [paragraph] subsection (c)
9 (2), includes any direct or indirect transfer or hypothecation
10 of an investment advisory contract by the assignor or of a
11 controlling block of the assignor's outstanding voting
12 securities by a security holder of the assignor; but, if the
13 investment adviser is a partnership, no assignment of an
14 investment advisory contract is considered to result from the
15 death or withdrawal of a minority of the members of the
16 investment adviser having only a minority interest in the
17 business of the investment adviser, or from the admission to the
18 investment adviser of one or more members who, after admission,
19 will be only a minority of the members and will have only a
20 minority interest in the business.



1 [~~(d)~~] (f) It is unlawful for any investment adviser to use
2 any scheme, device, or artifice to circumvent or attempt to
3 circumvent the prohibitions or limitations in subsection (c).

4 [~~(e)~~] (g) Subsection (a) (5) and (7) shall not apply to any
5 advertising matter that is covered by section 18(a) of the
6 Securities Act of 1933, which relates to or is used in
7 connection with the offer or sale of a federal covered
8 security."

9 SECTION 2. Statutory material to be repealed is bracketed
10 and stricken. New statutory material is underscored.

11 SECTION 3. This Act shall take effect upon its approval.

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INTRODUCED BY:

A handwritten signature in black ink, appearing to be 'RJS', written over a horizontal line.

JAN 19 2005



HB1878

Report Title:

Uniform Securities Act; Investment Advisory Contracts

Description:

Allows conditional methods of compensation for an investment adviser with respect to investment advisory contracts.

