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**TO THE HOUSE COMMITTEE CONSUMER PROTECTION & COMMERCE**  
**THE TWENTY-SEVENTH LEGISLATURE**  
**REGULAR SESSION OF 2014**

Date: Monday, February 3, 2014

Time: 2:10 p.m.

Conference Room: 325

**PRESENTATION OF**  
**DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS**  
**BUSINESS REGISTRATION DIVISION**

**TESTIMONY ON HOUSE BILL NO. 2005**  
**RELATING TO A SECURITIES AND COMMODITIES EXCHANGE**

TO THE HONORABLE ANGUS L. K. MCKELVEY AND MEMBERS OF THE COMMITTEES:

Thank you for the opportunity to testify. My name is Tung Chan, Commissioner of Securities and head of the Business Registration Division ("Division") of the Department of Commerce and Consumer Affairs.

This bill establishes the mid-pacific securities and commodities exchange to position Hawaii as an international marketplace to trade when the world's other exchanges are closed and to trade securities and commodities that are not available through other exchanges. The Division has serious concerns about this bill and must oppose.

First, no other exchange in the United States is statutorily-created. Each one is a purely private concern. This bill, however, contemplates a statutorily-created exchange

that is fundamentally shaped by statute to the extent it could not be considered a true private enterprise.

These provisions indicate that the state is creating and controlling key aspects of the exchange yet no funding mechanism is provided. Establishing such an exchange would involve sizeable capital investments to, for example, set up a clearinghouse function for trades and to hire personnel with the requisite knowledge and expertise to make all the initial regulatory filings and start the exchange. The bill, however, does not disburse general funds, mandate private investment or provide any other funding mechanisms to capitalize the exchange. We are left with the question of how this entity will come into being.

This concern is exacerbated by the fact that no one is charged with clear responsibility of an initial incorporator and an initial board. The bill says there will be 10 directors and each is to be paid for his or her service, but the bill does not indicate how the initial voting directors will be appointed or elected and by whom. In a purely private enterprise, the people who want the exchange would initially set it up and run it. Here, the state wants the exchange but doesn't appoint anyone to set it up.

Turning to regulatory matters, all national exchanges in the United States (including the New York Stock Exchange, Chicago Mercantile Exchange, former Pacific Stock Exchange) must comply with the Securities and Exchange Act of 1934 by registering with U.S. Securities Exchange Commission. Compliance with federal law must happen before a national exchange can commence activity. While the bill states that the corporate entity must comply with HRS chapter 414 (relating to profit corporations) or 414D (relating to nonprofit corporations), it does not clearly state that

the exchange must comply with federal securities and exchange laws or any other state law, including state securities laws under Chapter 485A before the exchange commences. If the board or administrators fail to comply with regulatory or registration requirements, what happens? Can this statutorily-created entity be administratively terminated for failure to file its annual reports? Can this statutorily-created entity be subject to regulatory enforcement?

Finally, this bill contemplates that the exchange make available for trade securities and commodities that are not normally available. These decisions are left solely up to the exchange Board without limitations to legality and regulatory compliance. The sale of certain commodities may raise the need for the creation of new regulatory schemes that are not currently in place. It may be difficult for regulatory agencies to keep pace with the exchange without any warning of what the Board intends to trade.

There are other technical and market concerns including the problem of maintaining market volume in smaller exchanges and illiquidity problems for investors. We have, however, limited our testimony today to significant structural problems.

For the foregoing reasons, the Department opposes this bill. Thank you for the opportunity to testify. I would be happy to answer any questions the Committee may have.



**DEPARTMENT OF BUSINESS,  
ECONOMIC DEVELOPMENT & TOURISM**

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Written Statement of  
**RICHARD C. LIM**  
**Director**  
Department of Business, Economic Development & Tourism  
before the  
**HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE**

Monday, February 3, 2014  
2:10 pm  
State Capitol, Conference Room 325

in consideration of

**HB 2005**  
**RELATING TO A SECURITIES AND COMMODITIES EXCHANGE**

Chair McKelvey, Vice Chair Kawakami and Members of the Committee.

This measure proposes to establish the Mid-Pacific Securities and Commodities Exchange, an independent corporation to provide an international marketplace for the exchange of securities and commodities during the off hours and for the exchange of securities and commodities that are not traded on the world's other securities and commodities exchanges.

While DBEDT would have no oversight responsibilities for the exchange, it would be responsible for prescribing and receiving financial and statistical information. DBEDT does not have the capacity or the specialized expertise to assist with this initiative.

Thank you for the opportunity to offer comments.