
A BILL FOR AN ACT

RELATING TO A SECURITIES AND COMMODITIES EXCHANGE.

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

1 SECTION 1. The Hawaii Revised Statutes is amended by
2 adding a new chapter to be appropriately designated and to read
3 as follows:

4 "CHAPTER

5 MID-PACIFIC SECURITIES AND COMMODITIES EXCHANGE

6 § -101 Purpose. The mid-pacific securities and
7 commodities exchange is established to provide an international
8 marketplace for the exchange of securities and commodities
9 during the off hours of the world's other securities and
10 commodities exchanges and for the exchange of securities and
11 commodities that are not traded on the world's other securities
12 and commodities exchanges.

13 § -102 Definitions. As used in this chapter:

14 "Administrator" means the chief executive officer of the
15 mid-pacific securities and commodities exchange.

16 "Board" means the board of directors of the mid-pacific
17 securities and commodities exchange.



1 "Exchange" means the mid-pacific securities and commodities
2 exchange.

3 § -103 Mid-pacific securities and commodities exchange,
4 established. (a) The mid-pacific securities and commodities
5 exchange is established as an independent corporation to provide
6 an international marketplace for the sale and purchase of
7 securities and commodities during the off hours of the world's
8 other securities and commodities exchanges, as determined by the
9 board. In addition to the types of securities and commodities
10 offered for sale and purchase through the world's other
11 securities and commodities, exchanges, the exchange shall also
12 provide for the sale and exchange of securities and commodities
13 that are not readily available through those other securities
14 and commodities exchanges, as determined by the board.

15 (b) The exchange shall be organized and operated as a
16 domestic profit corporation. The exchange shall comply with,
17 unless specifically excluded, all requirements relating to the
18 Hawaii business corporation act under chapter 414. The exchange
19 may be reorganized as a nonprofit corporation under chapter
20 414D. The exchange shall not be an agency of the State. The
21 exchange or its liabilities shall not be deemed to constitute



1 debts or liabilities of the State of Hawaii or pledges of the
2 full faith and credit of the State.

3 (c) The exchange's assets shall consist of real and
4 personal property and shall include any moneys paid to the
5 exchange, all property, and other income acquired, earned, or
6 otherwise gained by the use of moneys paid to the exchange by
7 deposits, investments, exchanges, and other transactions. The
8 exchange's assets shall be the sole property of the exchange and
9 shall be used exclusively by the exchange for the operation and
10 obligations of the exchange.

11 § -104 Board of directors; established. (a) The board
12 of directors of the exchange shall be responsible for the
13 organization, management, policies, and activities of the
14 exchange. The board shall consist of nine voting members and
15 one nonvoting member. The voting members shall consist of the
16 following:

- 17 (1) Eight directors who shall be owners, officers, or
18 employees of entities that purchase, sell, or trade
19 securities or commodities sold on the exchange; and
20 (2) One director who shall be a public, at-large member
21 elected by the board of directors.

22 The administrator shall be the nonvoting member of the board.



1 (b) A vacancy on the board shall be filled by appointment
2 of the governor in the case of appointed directors, or by
3 election by the board of directors in the case of positions
4 formerly occupied by a director elected by the board of
5 directors. The person appointed to fill a vacancy shall serve
6 for the remainder of the term of the person's predecessor.

7 (c) Each director shall receive necessary traveling and
8 board expenses incurred in the performance of duty as director
9 and a fee commensurate with the duties expected of actual
10 attendance at board meetings.

11 (d) No person shall be a director who has a direct and
12 substantial interest in a competing securities and commodities
13 exchange as:

- 14 (1) A stockholder (excluding the holding of less than one
15 per cent of the outstanding shares in a publicly
16 traded securities and commodities exchange);
- 17 (2) An employee;
- 18 (3) An attorney; or
- 19 (4) A contracting party (excluding an independent
20 contractor or business owner who does less than
21 twenty-five per cent of its total annual volume of



1 business per year with competing securities and
2 commodities exchanges).

3 § -105 Powers; generally. Except as otherwise limited
4 by this chapter, the exchange may:

- 5 (1) Sue, be sued, complain, and defend, in its corporate
6 name;
- 7 (2) Have a corporate seal, which may be altered at
8 pleasure, and use the seal by causing it, or a
9 facsimile thereof, to be impressed, affixed, or in any
10 other manner reproduced;
- 11 (3) Purchase, take, receive, lease, take by gift, devise,
12 or bequest, or otherwise acquire, own, hold, improve,
13 use, and otherwise deal in and with real or personal
14 property, or any interest therein, wherever situated;
- 15 (4) Sell, convey, mortgage, pledge, lease, exchange,
16 transfer, and otherwise dispose of all and any part of
17 its property and assets;
- 18 (5) Make contracts and incur liabilities, borrow money at
19 such rates of interest as the board may determine,
20 issue guaranty capital shares and surplus notes,
21 require capital contributions, issue its notes,
22 debenture bonds, and other obligations, secure any of



- 1 its obligations by mortgage or pledge of all or any
2 portion of its property or income, and secure
3 financing by any board approved mechanism;
- 4 (6) Allocate fiduciary responsibilities among the
5 directors and designate other persons to carry out
6 fiduciary responsibilities;
- 7 (7) Collect, receive, hold, and disburse all money payable
8 to or by the exchange;
- 9 (8) Deposit the exchange's money in banks or depositories
10 selected by the board and withdraw the exchange's
11 money from such banks or depositories; provided that
12 the withdrawal shall be made or authorized only upon
13 the signatures of at least two persons approved by the
14 board;
- 15 (9) Pay money from the exchange to effectuate the
16 exchange's purpose and administration, including
17 amounts for costs incurred to establish the exchange;
18 and
- 19 (10) Exercise all powers necessary or convenient to effect
20 the purposes of the exchange.

21 § -106 Duties and responsibilities. (a) All corporate
22 powers shall be exercised by or under the authority of the



1 board, unless otherwise provided in this chapter or in the
2 articles of incorporation.

3 (b) The board shall discharge its duties:

4 (1) In accordance with the exchange's purpose;

5 (2) With the care, skill, prudence, and diligence under
6 the circumstances that a prudent director, acting in a
7 like capacity and familiar with such matters would use
8 in conducting a similar enterprise and purpose;

9 (3) By diversifying the exchange's investments to minimize
10 the risk of losses, unless it is prudent not to do so;

11 (4) In accordance with governing legal documents;

12 (5) By having an annual audit of the exchange by an
13 independent certified public accountant;

14 (6) By securing a fidelity bond for the administrator and
15 in its discretion for other agents dealing with the
16 company's assets at the exchange's expense;

17 (7) By purchasing liability insurance for errors and
18 omissions for the board, each director, and any other
19 fiduciary employed or contracted by the exchange to
20 cover liability or losses caused by the act or
21 omission of a fiduciary;



1 (8) By maintaining proper books of accounts and records of
2 the exchange's administration; and

3 (9) By carrying out the reporting and disclosure
4 requirements required by law.

5 (c) Except as otherwise provided by law, the board may:

6 (1) Provide that any written instrument be executed for
7 the exchange by the administrator or the
8 administrator's agent; and

9 (2) Employ persons to administer the exchange, including
10 legal counsel, accountants, administrators, investment
11 managers, other experts, and clerical employees and
12 pay compensation and expenses in connection therewith.

13 § -107 Administrator; appointment; duties. (a) The
14 board shall hire an administrator who shall serve at the
15 pleasure of the board. The administrator shall be the chief
16 executive officer and shall be responsible for the day-to-day
17 operations and management of the exchange.

18 (b) The administrator shall have proven, successful
19 experience as an executive at the general management level in
20 the business of securities and commodities exchange. The
21 administrator shall manage and conduct the business of the
22 exchange according to the board's direction and policies. The



1 administrator shall receive compensation authorized by the
2 board.

3 (c) Before entering the duties of office, the
4 administrator shall give a fidelity bond in an amount and with
5 sureties approved by the board. The premium for the bond shall
6 be paid by the exchange.

7 (d) The administrator shall be an ex officio, nonvoting
8 member of the board.

9 § -108 **Financial management.** (a) The board shall
10 select a custodial trustee to collect, receive, hold, or
11 disburse moneys payable to or by the exchange.

12 (b) The board shall invest the exchange's principal and
13 income without distinction between principal and income and keep
14 the exchange's assets invested in real or personal property or
15 other securities. The board may retain cash temporarily
16 awaiting investment or to meet contemplated payments without
17 liability for interest thereon.

18 (c) The board shall manage the exchange's assets, except
19 to the extent that the authority to manage the exchange's assets
20 is delegated to other qualified investment managers. The board
21 may appoint investment managers to manage, acquire, or dispose
22 of any of the exchange's assets. An investment manager may be



1 designated as an "investment agent". The investment manager
2 shall acknowledge in writing that the investment manager is a
3 fiduciary under the exchange.

4 (d) The board may:

- 5 (1) Sell the exchange's securities. No purchaser of the
6 exchange's securities is bound to see to the
7 application of the purchase money or inquire as to the
8 validity of such sale;
- 9 (2) Vote on behalf of any stocks, bonds, or securities of
10 any corporation or issuer held in the exchange or
11 request any action to such corporation or issuer. The
12 board may give general or special proxies or powers of
13 attorney with or without powers of substitution;
- 14 (3) Participate in reorganizations, recapitalization,
15 consolidations, mergers, and similar transactions for
16 stocks, bonds, or other securities of any corporation
17 that are held by the exchange, and accept and retain
18 any property received thereunder for the exchange;
- 19 (4) Exercise any subscription rights and conversion
20 privileges for the exchange's stocks or securities;
- 21 (5) Compromise, compound, and settle any debt or
22 obligation due to or from the exchange; reduce the



1 amount of principal and interest, damages, and costs
2 of collection in settling such debts;

3 (6) Cause securities held by it to be registered in its
4 own name or in the name of a nominee without
5 indicating that the securities are held in a fiduciary
6 capacity and to hold any securities in bearer form.
7 The exchange's records, however, shall show that such
8 investments are part of the exchange;

9 (7) Delegate its investment powers to investment managers
10 of the exchange to expedite the purchase and sale of
11 securities. The purchase or sale of securities by
12 these managers shall be in the name selected by the
13 board. The authority of these managers to purchase or
14 sell securities for the exchange shall be evidenced by
15 written authority executed by the administrator. The
16 board shall require these managers to keep it
17 currently informed as to the nature and amount of the
18 investments made for the exchange by them. The board
19 may enter into appropriate agreements with these
20 managers setting forth their investment powers and
21 limitations. The board may terminate the services of



- 1 these managers. These managers shall be subject to
2 the board's instructions;
- 3 (8) Pay taxes or assessments that are assessed against the
4 exchange;
- 5 (9) Require any applicant or policyholder to furnish the
6 board with such information necessary for the
7 exchange's administration; and
- 8 (10) Delegate its authority to the administrator or any
9 authorized representative to maintain any legal
10 proceedings necessary to protect the company or the
11 directors or to secure payment due to the exchange.
12 In connection with this delegation, the board or the
13 administrator or their representative may compromise,
14 settle, or release claims on behalf of or against the
15 exchange or the board.

16 § -109 **Financial statements and other reports.** (a) The
17 exchange shall submit to the director of business, economic
18 development, and tourism affairs an annual statement of
19 financial condition audited by an independent certified
20 accountant. The financial statement shall be on a form
21 prescribed by the director of business, economic development,
22 and tourism.



1 (b) The exchange shall compile and maintain statistical
2 data relating to the logistical operations of the exchange. The
3 compiled information shall be submitted annually to the director
4 of business, economic development, and tourism.

5 § -110 **Hours of operation.** The board shall determine
6 and schedule the hours of operation of the mid-pacific
7 securities and commodities exchange in order to maximize the
8 opportunity for users world-wide to engage in the uninterrupted
9 trade of securities and commodities listed on other exchanges
10 but to be traded through the mid-pacific securities and
11 commodities exchange between the closings and next day's
12 openings of those other exchanges.

13 § -111 **Trading of securities and commodities; types.**
14 The board shall determine the types of securities and
15 commodities that may be traded through the exchange based upon
16 the types of securities and commodities that are listed on and
17 traded through other exchanges. The board shall also determine
18 and authorize the trading of any types of securities and
19 commodities that may not be readily available through the other
20 exchanges."



1 SECTION 2. This Act shall take effect upon its approval.

2

INTRODUCED BY:

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H.B. NO. 2005

Report Title:

Securities and Commodities Exchange; Establishment

Description:

Establishes securities and commodities exchange to provide a marketplace for the trading of securities and commodities during the off hours of other exchanges. Provides for the trading of securities and commodities not available through other exchanges as well as those that are so available.

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