

ACT 258

S.B. NO. 2469

A Bill for an Act Relating to the Uniform Securities Act.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 485, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

“§485-A Federal covered securities. (a) The commissioner, by rule or otherwise, may require the filing of any or all of the following documents with respect to a federal covered security under section 18(b)(2) of the Securities Act of 1933:

- (1) Prior to the initial offer of a federal covered security in this State and for purposes of renewal, a copy of the registration statement filed by the issuer with the Securities and Exchange Commission, or in lieu of filing a registration statement, a notice as prescribed by the commissioner;
- (2) A consent to service of process; and
- (3) An initial filing fee of \$200 and an annual renewal fee of \$50 thereafter. The renewal fee shall be collected within two months of the end of the investment or trust company's fiscal year. With respect to an open-end management company, the fees shall be assessed per fund.

(b) The commissioner, by rule or otherwise, may require the issuer of any security that is a federal covered security under section 18(b)(4)(D) of the Securities Act of 1933, to file a notice no later than fifteen days after the first sale in this State of a federal covered security on Securities and Exchange Commission Form D or comparable form, together with a consent to service of process and a \$200 filing fee.

(c) The commissioner, by rule or otherwise, may require the filing of any document filed with the Securities and Exchange Commission under the Securities Act of 1933, for any security that is a federal covered security under section 18(b)(4) of the Securities Act of 1933.

(d) The commissioner, by rule or otherwise, may waive any or all of the provisions of subsection (a), (b), or (c).

§485-B Notice filing requirements for federal covered advisers. It is unlawful for a person to transact business in this State as a federal covered adviser unless the person has filed with the commissioner a copy of those documents that have been filed by the federal covered adviser with the Securities and Exchange Commission that the commissioner, by rule or otherwise, requires to be filed, together with a consent to service of process and a filing fee in the amount specified for investment advisers under section 485-14(l). This filing shall be effective upon receipt and, unless renewed prior to expiration, shall expire on December 31 of each odd-numbered year. It may be renewed by filing with the commissioner those documents that have been filed with the Securities and Exchange Commission that the commissioner, by rule or otherwise, requires to be filed, together with a renewal fee in an amount specified for investment advisers under section 485-14(l). The commissioner may require a federal covered adviser who has filed under this chapter to file any amendments filed with the Securities and Exchange Commission with the commissioner. This filing may be terminated by filing a written notice of termination with the commissioner. The commissioner, by rule or otherwise, may waive any or all of the provisions of this section.”

SECTION 2. Section 485-1, Hawaii Revised Statutes, is amended by adding two new definitions to be appropriately inserted and to read as follows:

“‘Federal covered adviser’ means a person who is registered with the Securities and Exchange Commission under section 203 of the Investment Advisers Act of 1940. ‘Federal covered adviser’ does not include:

- (1) A person who is excluded from the definition of ‘investment adviser’ under section 485-1(6)(A) to (I); or
- (2) Other persons not within the intent of this definition as the commissioner by rule or order may designate.

‘Federal covered security’ means any security that is a ‘covered security’ under section 18(b) of the Securities Act of 1933 or the rules or regulations promulgated thereunder.’”

SECTION 3. Section 485-1, Hawaii Revised Statutes, is amended by amending the definitions of “investment adviser” and “investment adviser representative” to read as follows:

- (6) “Investment adviser” means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. “Investment adviser” does not include:
 - (A) [a] A bank, savings institution, or trust company;
 - (B) [a] A lawyer, accountant, engineer, or teacher whose performance of these services is solely incidental to the practice of the lawyer’s, accountant’s, engineer’s, or teacher’s profession;

- (C) [a] A dealer whose performance of these services is solely incidental to the conduct of the dealer's business as a dealer and who receives no special compensation for them;
 - (D) [a] A publisher of any bona fide newspaper, news magazine, or business or financial publication of general, regular, and paid circulation;
 - (E) [a] A person whose advice, analyses, or reports relate only to securities exempted by section 485-4(1);
 - (F) [a] A person who has no place of business in this State if:
 - (i) [the] The person's only clients in this State are other investment advisers, dealers, banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees[,]; or
 - (ii) [during] During any period of twelve consecutive months the person does not [direct business communications into this State in any manner to] have more than five clients who are residents of this State other than those specified in clause (i)[, whether or not the person or any of the persons to whom the communications are directed is then present in this State];
 - (G) [a] A person who is employed by [a mutual fund which] an investment company that is registered [with the Securities and Exchange Commission;] under the Investment Company Act of 1940;
 - (H) [a] A person who:
 - (i) [is] Is registered with the United States Securities and Exchange Commission under the Investment Advisers Act of 1940[,];
 - (ii) [does] Does not have custody of any client money, securities, or other assets[,];
 - (iii) [does] Does not collect fees from clients more than six months in advance of the end of the period for which [such] the fees are intended to compensate the person for the person's services[,];
 - (iv) [has] Has discretionary authority over client money, securities, or other assets only to invest in securities in which the person has no ownership interest or is considered to have an ownership interest[,]; and
 - (v) [does] Does not advise a client whose money, securities, and other assets under management by [such] the person have a market value of less than \$250,000 per each separate account under management on the date of the inception of the client relationship; [or (I) such other]
 - (I) A person who is excluded from the definition of "investment adviser" under section 202(a)(11) of the Investment Advisers Act of 1940;
 - (J) A federal covered adviser; or
 - (K) Other persons not within the intent of this paragraph as the commissioner [may] by rule or order may designate.
- (7) "Investment adviser representative" means:

- (A) With respect to an investment adviser, any individual other than an investment adviser who represents an investment adviser in the business of advising others, either directly or through publications or writings as to the value of securities or as to the advisability of investing in, purchasing, or selling securities[.]; and
- (B) With respect to a federal covered adviser, any person defined as an “investment adviser representative” who has a “place of business” in this State as those terms are defined in rule 203A-3 of the Securities and Exchange Commission under the Investment Advisers Act of 1940.”

SECTION 4. Section 485-4, Hawaii Revised Statutes, is amended to read as follows:

“**§485-4 Exempt securities.** The following securities are exempt from sections 485-A, 485-8, and 485-25(a)(7):

- (1) Any security (including a revenue obligation) issued or guaranteed by the United States, any state or territory, any political subdivision of a state or territory, or any agency or corporate or other instrumentality of one or more of the foregoing, or any certificate of deposit for any of the foregoing;
- (2) Any security issued or guaranteed by Canada, any Canadian province, any political subdivision of [such] the province, any agency or corporate or other instrumentality of one or more of the foregoing, or any other foreign government with which the United States currently maintains diplomatic relations, if the security is recognized as a valid obligation by the issuer or guarantor;
- (3) Any security issued by and representing an interest in or a debt of, or guaranteed by, any bank organized under the laws of the United States, or any bank, savings institution, or trust company organized and supervised under the laws of any state or territory or any investment certificate issued by a financial services loan company duly licensed under the financial services loan law of the State of Hawaii;
- (4) Any security issued by and representing an interest in or a debt of, or guaranteed by, any federal savings and loan association or any building and loan or similar association organized under the laws of any state or territory and authorized to do business in the State;
- (5) Any security issued by and representing an interest in or a debt of, or guaranteed by, any insurance company organized under the laws of any state or territory and authorized to do business in the State;
- (6) Any security issued or guaranteed by any federal credit union, or any credit union or similar association organized and supervised under the laws of the State;
- (7) Any security issued or guaranteed by any common carrier, public utility, or holding company which is:
 - (A) [subject] Subject to the jurisdiction of the Interstate Commerce Commission;
 - (B) [a] A registered holding company under the Public Utility Holding Company Act of 1935 or a subsidiary of such a company within the meaning of that Act;
 - (C) [regulated] Regulated in respect of its rates and charges by a governmental authority of the United States or any state or territory; or

- (D) [regulated] Regulated in respect of the issuance or guarantee of the security by a governmental authority of the United States or any state or territory;
- (8) Any security, other than a security that is a federal covered security pursuant to section 18(b)(1) of the Securities Act of 1933 and therefore not subject to any registration or filing requirements under this chapter, that is listed or approved for listing upon notice of issuance on any exchange registered or exempted under the Securities Exchange Act of 1934, as amended; any other security of the same issuer which is of senior or substantially equal rank; any security called for by subscription rights or warrants so listed or approved; or any warrant or right to purchase or subscribe for any of the foregoing;
- (9) Any security issued by any issuer organized and operated not for private profit but exclusively for religious, educational, benevolent, charitable, fraternal, social, athletic, or reformatory purposes, or as a chamber of commerce or trade or professional association;
- (10) Any commercial paper which arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, and which evidences an obligation to pay cash within nine months of the date of issuance, exclusive of days of grace, or any renewal of [such] the paper which is likewise limited, or any guarantee of [such] the paper or of any [such] renewal;
- (11) Any investment contract issued in connection with an employees' stock purchase, savings, pension, profit-sharing, or similar benefit plan;
- (12) Any option on a commodity futures contract subject to regulation under the Commodity Exchange Act;
- [(13) Any security issued by an "investment company" as defined by and registered under the "Investment Company Act of 1940" (15 U.S.C. 80a); provided that:
- (A) The issuer is:
- (i) Advised by an investment adviser that is a depository institution, subsidiary, or affiliate thereof, any of which are exempt from registration under the Investment Advisers Act of 1940 (15 U.S.C. 80a-1), or is currently registered as an investment adviser, and has been registered, or is affiliated with an adviser that has been registered as an investment adviser under the Investment Advisers Act of 1940 (15 U.S.C. 80b-3) for at least three years immediately preceding an offer or sale of a security claimed to be exempt under this paragraph and the investment adviser has acted, or is affiliated with an investment adviser that has acted, as an investment adviser to one or more registered investment companies or unit investment trusts for at least three years immediately preceding an offer or sale of a security claimed to be exempt under this paragraph; or
- (ii) The issuer has a sponsor that has at all times throughout the three years prior to an offer or sale of a security claimed to be exempt under this paragraph, sponsored one or more registered investment companies or unit investment trusts whose aggregate total assets have exceeded \$100,000,000; and
- (B) The commissioner has received prior to any sale exempted under this paragraph:

- (i) A notice of intention to sell setting forth the name and address of the issuer and the securities to be offered in this State; and
- (ii) An initial filing fee of \$200 per fund for open-end management companies or a fee of \$200 for unit investment trusts, and an annual renewal fee of \$50 thereafter, to be collected within two months of the end of the investment or trust company's fiscal year.

An exemption under this paragraph does not constitute an exemption from the licensing requirements for salespersons under section 485-14. If any offer or sale is to be made more than twelve months after the date notice under subparagraph (B)(i) is received by the commissioner, another notice and payment of the applicable fee shall be required.

For purposes of this paragraph, an investment adviser is affiliated with another investment adviser if the investment adviser controls, is controlled by, or is under common control with the other investment adviser;

- (14) (13) Any cooperative association membership stock, membership certificates or [share,] shares, or membership capital, pursuant to section 421C-36, or chapter 421;
- [(15)] (14) Any security[, except a security issued by an issuer registered as an open-end management company or unit investment trust under the Investment Company Act of 1940 (15 U.S.C. 80a),] for which a registration statement has been filed under the Securities Act of 1933[.]; provided that no sale shall be made until [such] the registration statement has become effective; and
- [(16)] (15) Any variable annuity contract which is an investment contract prepared by a life insurance company designed to offer continuous income through participation in a mutual fund portfolio or a variable annuity contract based upon a separate account which is registered as a management investment company with the Securities and Exchange Commission.”

SECTION 5. Section 485-6, Hawaii Revised Statutes, is amended to read as follows:

“**§485-6 Exempt transactions.** The following transactions are exempted from sections 485-A, 485-8, and 485-25(a)(7):

- (1) Any isolated nonissuer transaction, whether effected through a dealer or not;
- (2) Any nonissuer distribution of an outstanding security if the manual of Hawaiian securities or any other recognized securities manual contains the names of the issuer's officers and directors, a balance sheet of the issuer as of a date within eighteen months, and a profit and loss statement for either the fiscal year preceding that date or the most recent year of operations, or the security has a fixed maturity or a fixed interest or dividend provision and there has been no default during the current fiscal year or within the three preceding fiscal years (or during the existence of the issuer and any predecessors if less than three years) in the payment of principal, interest, or dividends on the security;
- (3) Any nonissuer transaction effected by or through a registered dealer pursuant to an unsolicited order or offer to buy;

- (4) Any transaction between the issuer or other person on whose behalf the offering is made and an underwriter, or among underwriters;
- (5) Any transaction in a bond or other evidence of indebtedness secured by a real or chattel mortgage or deed of trust, or by an agreement for the sale of real estate or chattels, if the entire mortgage, deed of trust, or agreement, together with all the bonds or other evidences of indebtedness secured thereby, is offered and sold as a unit;
- (6) Any transaction by a personal representative, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator;
- (7) Any transaction executed by a bona fide pledgee without any purpose of evading this chapter;
- (8) Any offer or sale to a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit-sharing trust, or other financial institution or institutional buyer, or to a dealer, whether the purchaser is acting for itself or in some fiduciary capacity;
- (9) Any transaction pursuant to an offer directed by the offerer to not more than twenty-five persons (other than those designated in paragraph (8)) in the State during any period of twelve consecutive months, whether or not the offerer or any of the offerees is then present in the State, if all buyers represent that they are purchasing for investment (rather than with a present view to resale) and the seller reasonably accepts their representations as true, and no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyer;
- (10) Any offer or sale of a preorganization certificate or subscription for any security to be issued by any person if no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective subscriber, and the number of subscribers does not exceed twenty-five;
- (11) Any transaction pursuant to an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, nontransferable warrants, or transferable warrants exercisable within ninety days of their issuance, if no commission or other remuneration (other than a standby commission) is paid or given directly or indirectly for soliciting any security holder in the State;
- (12) Any offer (but not a sale) of a security for which registration statements have been filed under both this chapter and the Securities Act of 1933, if no stop order or refusal order is in effect and no public proceeding or examination looking toward [such an] the order is pending under either this chapter or [such] the Act;
- (13) Any offer or sale by or through a real estate broker or real estate salesperson licensed under the laws of the State [as such], of a security issued on or after July 1, 1961, by a corporation organized under the laws of the State, the holder of which is entitled solely by reason of the holder's ownership thereof, to occupy for dwelling purposes, or to a lease which entitles the holder to occupy for dwelling purposes a house, or an apartment in a building, owned or leased by [such] the corporation, subject, however, to section 485-7;
- (14) Any offer or sale by or through a real estate broker or real estate salesperson licensed [as such] under the laws of the State of an apartment in a condominium project, and a rental management contract relating to [such] the apartment, including an interest in a general or limited partnership formed for the purpose of managing the rental of

- apartments if the rental management contract or the interest in the general or limited partnership is offered at the same time as the apartment is offered. The words “apartment”, “condominium”, and “project” are defined as they are defined in section 514A-3; and
- (15) Any transactions not involving a public offering, and in addition, any categories of transactions effected in accordance with [such] any rules [as] the commissioner may issue under chapter 91 pursuant to this paragraph with a view to uniformity with federal law.”

SECTION 6. Section 485-8, Hawaii Revised Statutes, is amended to read as follows:

“§485-8 Registration of securities. It shall be unlawful for any person to sell or offer to sell in the State, any security except of a class exempt under section 485-4 or unless sold or offered in any transaction exempt under section 485-6 [in the State] or unless it is a federal covered security, unless the security has been registered by notification or by qualification as hereinafter provided. Registration of stock shall be deemed to include the registration of rights to subscribe to the stock if the notice under section 485-9 or the application under section 485-10 includes a statement that the rights are to be issued. A record of the registration of securities shall be kept in a register of securities to be kept in the office of the commissioner of securities in which register [shall] also shall be recorded any notice filings made pursuant to section 485-A and any orders entered by the commissioner with respect to the securities. The register and all information with respect to the securities registered therein shall be open to public inspection.”

SECTION 7. Section 485-12, Hawaii Revised Statutes, is amended to read as follows:

“§485-12 Commissioner as agent to accept service; consent to; actions in what circuit; notice to issuer. Upon any notice filing under section 485-A, any application for registration by notification under section 485-9 made by an issuer [and upon], or any application for registration by qualification under section 485-10, whether made by an issuer or registered dealer, there shall be filed with the initial notice filing or the application the irrevocable written consent of the issuer that in suits, proceedings, and actions growing out of the violation of this chapter, the service on the commissioner of securities of any notice, process, or pleading therein, authorized by the laws of the State, shall be as valid and binding as if due service had been made on the issuer. Any [such] action shall be brought either in the circuit of the plaintiff’s residence or in the circuit in which the commissioner has the commissioner’s office. The written consent shall be authenticated by the seal of the issuer, if it has a seal, and by the acknowledged signature of a member of the copartnership or company, or by the acknowledged signature of any officer of the incorporated or unincorporated association, if it is an incorporated or unincorporated association, duly authorized by resolution of the board of directors, trustees, or managers of the corporation or association, and shall [in such case] be accompanied by a duly certified copy of the resolution of the board of directors, trustees, or managers of the corporation or association, authorizing the officers to execute the same. In case any process or pleadings mentioned in this chapter are served upon the commissioner, it shall be by duplicate copies, one of which shall be filed in the office of the commissioner and another immediately forwarded by the commissioner by registered mail to the principal office of the issuer against which the process or pleadings are directed.”

SECTION 8. Section 485-14, Hawaii Revised Statutes, is amended by amending subsections (e), (f), (g), and (h) to read as follows:

“(e) Registration of investment advisers. An application for registration, duly verified by oath by the applicant, shall be filed in the office of the commissioner accompanied by an irrevocable written consent to the service of process upon the commissioner in actions against the investment adviser in manner and form provided in section 485-12; the applicant’s photograph; and a form of the disclosure statement described in section 485-25(c)(4). Information on the registration statement shall include:

- (1) The name and form of organization under which the investment adviser engages or intends to engage in business; the name of the state or other sovereign power under which the investment adviser is organized; the location of the investment adviser’s principal business office and branch offices, if any; the names and addresses of the investment adviser’s partners, officers, directors, and persons performing similar functions or, if the investment adviser is an individual, of [such] the individual; and the number of the investment adviser’s employees;
- (2) The education, the business affiliations for the past five years, and the present business affiliations of the investment adviser and of the investment adviser’s partners, officers, directors, and persons performing similar functions and of any controlling person thereof;
- (3) The nature of the business of the investment adviser, including the manner of giving advice and rendering analyses or reports;
- (4) A balance sheet certified by an independent public accountant and other certified financial statements if the investment adviser has custody of or discretionary authority over client money, securities, or other assets, or an unaudited, verified balance sheet and financial statements if the investment adviser has no custody of or discretionary authority over client money, securities, or other assets[;]. If the investment adviser maintains its principal place of business in a state other than this State and the investment adviser is registered in that state and in compliance with its financial reporting requirements, this requirement shall be deemed satisfied by the investment adviser filing with the commissioner a copy of those financial statements, if any, that are required to be filed by the adviser in the state where it maintains its principal place of business;
- (5) The nature and scope of the authority of the investment adviser with respect to clients’ funds and accounts;
- (6) The basis or bases upon which the investment adviser is compensated;
- (7) Whether the investment adviser, or any person employed by or associated in business with the investment adviser, is subject to any disqualification which would be a basis for denial, suspension, or revocation of registration of the investment adviser under section 485-15;
- (8) A statement as to whether the principal business of the investment adviser consists or is to consist of acting as investment adviser; and
- (9) Other information as to the applicant’s previous history, record, and association [as] that the commissioner deems necessary including:
 - (A) Disclosure of any injunction or administrative order or conviction of a misdemeanor involving a security or any aspect of the securities business and any conviction of a felony;
 - (B) The applicant’s financial history; and
 - (C) Any additional information [as] that the commissioner deems necessary to establish the applicant’s qualifications.

The commissioner may use a uniform registration form adopted by the North American Securities Administrators Association, the Securities and Exchange Commission, or any national securities exchange or national securities association registered under the Securities Exchange Act of 1934; provided [such] the form encompasses the information required under this section.

[If an applicant is currently registered by the United States Securities and Exchange Commission or any national securities exchange or national securities association registered under the Securities Exchange Act of 1934, the commissioner may accept a certified copy of the registration application the applicant submitted to obtain such registration in lieu of the application required by this section.]

(f) Approval, bond. If the commissioner finds that the applicant for registration as a dealer is eligible for [such] registration, then the commissioner shall register the applicant as a dealer upon payment of the fee hereinafter provided and, except as otherwise provided in this subsection, upon [such] the dealer's filing a bond in the sum of \$5,000 running to the State conditioned upon the faithful compliance with this chapter by the dealer and by all salespersons registered by the dealer while acting for the dealer. The bond shall be executed as surety by a surety company authorized to do business in the State; provided that no bond is required of or from any [such] applicant if the applicant at the time of making application is a member of any recognized stock or bond exchange which has been in existence for a period of five years prior to April 29, 1931; provided further that no bond is required of a dealer if the aggregate par value of the securities to be sold is less than \$5,000 or in the case of no par value stock, if the price at which the stock is to be offered to the public is less than \$5,000 if the person selling or offering the securities for sale to the public notifies the commissioner in writing of the person's intention to make the sale and after the sale files with the commissioner a statement of the kind and amount of stock sold and the price received therefor, but where the aggregate par value of the securities or the price at which the stock is to be offered to the public is less than \$5,000 no more than one [such] sale or offering shall be allowed within a period of one year; provided further that in lieu of the above bond any dealer may deposit and keep deposited with the commissioner cash in the amount of \$5,000 or securities to be approved by the commissioner having a market value at all times of not less than \$5,000 which cash or securities shall be held in trust for the fulfilling of the same terms and conditions as in the case of a bond required by this section, which cash or securities may be withdrawn at any time subject to the deposit in lieu thereof of cash or other securities of equal value, or upon the filing of a bond as provided in this section, and which cash or securities will be so held in trust for a period of two years beyond the revocation or termination of the registration of the dealer depositing the same. No bond shall be required under this section or under this chapter of any dealer that is registered under the Securities Exchange Act of 1934.

(g) Investment adviser's approval; bond, insurance required. If the commissioner finds that the applicant for registration as an investment adviser is eligible for [such] registration, the commissioner shall register the investment adviser upon a payment of a fee hereinafter provided and, except as otherwise provided in this subsection, upon the investment adviser filing a bond in the sum of \$50,000 with the State as the obligee. The bond requirement shall be \$5,000 if the adviser does not have custody of or discretionary authority over client money, securities, or other assets. The bond shall be conditioned upon the faithful compliance with this chapter by the investment adviser. The bond shall be executed as a surety by a surety company authorized to do business in the State; provided that in lieu of the above bond any investment adviser may deposit and keep deposited with the commissioner cash in the applicable amount of \$50,000 or \$5,000 or securities to be approved by the commissioner having a market value at all times of not less than \$50,000 or \$5,000 which cash or securities shall be held in trust for the fulfilling of the same

terms and conditions as in the case of a bond required by this section, which cash or securities may be withdrawn at any time subject to the deposit in lieu thereof of cash or other securities of equal value, or upon the filing of a bond as provided in this section, and which cash or securities will be so held in trust for a period of two years beyond the revocation or termination of the registration of the investment adviser depositing the same. In addition, except as otherwise provided in this subsection, the investment adviser shall file with the commissioner a certificate of insurance which indicates that [such] the investment adviser's business is insured for errors and omissions for at least \$100,000 per occurrence with a \$200,000 aggregate for those with less than two years experience and a \$500,000 aggregate for those with two or more years of experience for the protection of the investment adviser's client, or shall meet an alternative requirement which also provides for the protection of the client of the investment adviser, as determined by rules adopted by the commissioner. This subsection shall not apply to any investment adviser that maintains its principal place of business in a state other than this State; provided that the investment adviser is registered in the state where it maintains its principal place of business and in compliance with that state's net capital and bonding requirements, if any.

(h) Eligibility for registration as a salesperson. To be eligible for registration under this chapter a salesperson shall have complied with the mandatory provisions [mandatory] of this section, shall be designated as a salesperson by a registered dealer, and shall take and pass an oral or written examination, or both, prescribed by the commissioner, to test the salesperson's knowledge of the securities business. Every person required to take such an examination shall, at or before the time the person takes the same, pay a fee as prescribed by the commissioner. However, registration is not required of a salesperson who represents a dealer in effecting transactions in this State limited to those transactions described in section 15(h)(2) of the Securities Exchange Act of 1934. No person shall be designated as a salesperson by, or shall act as a salesperson for, more than one registered dealer."

SECTION 9. Section 485-14, Hawaii Revised Statutes, is amended by amending subsections (j) and (k) to read as follows:

"(j) Eligibility for registration as an investment adviser representative. To be eligible for registration under this chapter, an investment adviser representative shall have complied with the mandatory provisions [mandatory] of this section, shall be designated as a representative by a federal covered adviser or a registered investment adviser, and shall take and pass an oral or written examination, or both, prescribed by the commissioner, to test the representative's knowledge of the investment advisory and securities business; provided that the commissioner may by rule set forth exemptions to the examination requirement. Every person required to take [such] an examination shall, at or before the time the person takes the same, pay a fee as prescribed by the commissioner. No person shall be designated as an investment adviser representative by, or shall act as an investment adviser representative for, more than one federal covered adviser or registered investment adviser.

(k) Registration of investment adviser representative. An information statement, containing [such] information [as] that the commissioner shall prescribe, duly verified by oath by the applicant, shall be filed in the office of the commissioner, together with an appointment of the applicant as an investment adviser representative by a registered investment adviser[.] if the representative is seeking registration with an investment adviser. The commissioner may require the following:

- (1) Disclosure of any injunction or administrative order or conviction of a misdemeanor involving a security or any aspect of the securities business and any conviction of a felony;

- (2) The applicant's financial history and condition;
- (3) Disclosure as to whether the investment adviser representative, or any person associated in business with the investment adviser representative, is subject to any disqualification which would be a basis for denial, suspension, or revocation of registration of the investment adviser representative under section 485-15; and
- (4) Any additional information [as] that the commissioner deems necessary to establish the applicant's qualifications.

If the commissioner finds an investment adviser representative designated by any federal covered adviser or investment adviser to be eligible for registration as an investment adviser representative, the commissioner shall register the person as an investment adviser representative upon the payment of a fee hereinafter provided."

SECTION 10. Section 485-14, Hawaii Revised Statutes, is amended by amending subsection (q) to read as follows:

"(q) Capital requirement for dealers and investment advisers who have custody of or discretionary authority over client money, securities, or other assets. [The] Except as otherwise provided in this subsection, the commissioner may by rule require a minimum capital requirement for registered dealers which shall not be less than \$5,000 in the case of dealers and prescribe a ratio between net capital and aggregate indebtedness. This subsection shall not apply to any dealer that is registered under the Securities Exchange Act of 1934. The commissioner may by rule require a net worth requirement which shall not be less than \$5,000 for investment advisers. This subsection shall not apply to any investment adviser that maintains its principal place of business in a state other than this State; provided that the investment adviser is registered in the state where it maintains its principal place of business and is in compliance with that state's net worth or net capital requirements, if any."

SECTION 11. Section 485-16, Hawaii Revised Statutes, is amended to read as follows:

"§485-16 Dealers' and investment advisers' records and reports; commissioner's powers. [Every] (a) Except as otherwise provided in this section, every dealer and investment adviser registered under this chapter shall make and keep for a period of three years after the close of the calendar or fiscal year to which they pertain, full and complete records of the dealer's or investment adviser's business, which records shall be open to inspection by the commissioner of securities and, in addition, shall file with the commissioner [such] annual or special reports of the condition, financial or other, of the dealer or investment adviser, in [such] the form and detail, [as] that the commissioner shall require. For the purpose of avoiding unnecessary duplication of inspections and examinations, the commissioner may cooperate with the securities administrators of other states, the Securities and Exchange Commission, and any national securities exchange or national securities association registered under the Securities Exchange Act of 1934. If any [such] dealer or investment adviser fails or refuses to make or keep any [such] record or to file any [such] report, the commissioner may subpoena the dealer, investment adviser, or any person having knowledge of the dealer's or investment adviser's affairs to appear and testify or produce documentary evidence, administer oaths, and examine the dealer, or investment adviser, or any [such] person under oath with respect to the affairs of the dealer or investment adviser. The subpoena shall have the same force and effect and shall be served in the same manner as if issued from a court of record. Witness fees and mileage claims shall be allowed the same as for

testimony in a court of record. Witness fees, mileage, and actual expenses necessarily incurred in securing the attendance of witnesses and of testimony and the production of documents shall constitute a charge against the dealer or investment adviser, recoverable by action by the State for the use of the persons entitled thereto. If any individual fails to obey the subpoena or obeys the subpoena and refuses to testify when required concerning the matter under investigation, the commissioner shall file the commissioner's written report thereof and proof of service of the commissioner's subpoena in the circuit court for the circuit in which the examination is being conducted. Thereupon, the court shall forthwith cause the individual to be brought before it to show cause why the individual should not be held in contempt; and if so held, may punish the individual as if the failure or refusal related to a subpoena from or testimony in that court.

(b) This section shall not apply to any dealer that is registered under the Securities Exchange Act of 1934 or to an investment adviser that maintains its principal place in a state other than this State; provided the investment adviser is registered in the state where it maintains its principal place of business and is in compliance with that state's recordkeeping requirements, if any. The commissioner may require:

- (1) The filing of any financial or operational report that is required to be filed under the Securities Exchange Act of 1934 or under the laws of the state where an investment adviser maintains its principal place of business; and
- (2) The production of any document, in accordance with the procedures set forth in subsection (a), required to be maintained by a dealer registered under the Securities Exchange Act of 1934 or by the state in which an investment adviser maintains its principal place of business."

SECTION 12. Section 485-25, Hawaii Revised Statutes, is amended to read as follows:

“§485-25 Fraudulent and other prohibited practices. (a) It is unlawful for any person, in connection with the offer, sale, or purchase (whether in a transaction described in section 485-6 or otherwise) of any security (whether or not of a class described in section 485-4), in the State, directly or indirectly:

- (1) To employ any device, scheme, or artifice to defraud;
- (2) To make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading;
- (3) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person;
- (4) To issue, circulate, or publish any prospectus, circular, advertisement, printed matter, document, pamphlet, leaflet, or other literature (in this chapter sometimes referred to collectively as “advertising matter”) which shall contain an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein made, in the light of the circumstances under which they are made, not misleading;
- (5) To issue, circulate, or publish any advertising matter or make any written representation, unless the name of the person issuing, circulating, publishing, or making the same and the fact that the person is issuing, circulating, or making the same shall be clearly indicated thereon;
- (6) To make any statement or representation, or issue, circulate, or publish any advertising matter containing any statement, to the effect that the

security has been in any way approved or endorsed by the commissioner of securities; or

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

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

- (1) To employ any device, scheme, or artifice to defraud the other person; or
- (2) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon the other person.

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

- (1) That the investment adviser shall not be compensated on the basis of a share of capital gains upon or capital appreciation of the funds or any portion of the funds of the client;
- (2) That no assignment of the contract may be made by the investment adviser without the consent of the other party to the contract;
- (3) That the investment adviser, if a partnership, shall notify the other party to the contract of any change in the membership of the partnership within a reasonable time after the change;
- (4) That the investment adviser and investment adviser representative shall disclose to the client in a separate disclosure statement the capacity in which the investment adviser and investment adviser representative are acting and the compensation to be received in situations where:
 - (A) [the] The investment adviser is acting as principal for the investment adviser's own account and knowingly sells any security to or purchases any security from a client for whom the investment adviser is acting as investment adviser, or,] or
 - (B) [the] The investment adviser is acting as broker for a person other than the client and knowingly effects any sale or purchase of securities, real estate, insurance contracts, annuities contracts, or any types of real or personal property for the account of the client;

and

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

[Clause] Paragraph (1) does not prohibit an investment advisory contract which provides for compensation based upon the total value of a fund averaged over a definite period, or as of definite dates or taken as of a definite date. "Assignment", as used in [clause] paragraph (2), includes any direct or indirect transfer or hypothecation of an investment advisory contract by the assignor or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor; but, if the investment adviser is a partnership, no assignment of an investment advisory contract is considered to result from the death or withdrawal of a minority of the members of the investment adviser having only a minority interest in the business of the investment adviser, or from the admission to the investment adviser of one or more members who, after admission, will be only a minority of the members and will have only a minority interest in the business.

(d) It is unlawful for any investment adviser to use any scheme, device, or artifice to circumvent or attempt to circumvent the prohibitions or limitations in subsection (c).

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

SECTION 13. In codifying the new sections added by section 1 and referred to in this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 14. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

SECTION 15. This Act shall take effect upon its approval.

(Approved July 20, 1998.)

Note

1. Edited pursuant to HRS §23G-16.5.