

ACT 149

H.B. NO. 2481

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 a new section to be appropriately designated and to read as follows:

“§485- Withdrawal. (a) An application for registration as a dealer, investment adviser, salesperson, or investment adviser representative, may be withdrawn without prejudice by the applicant upon notice to the commissioner in such form as the commissioner may prescribe before the registration becomes effective, unless a proceeding under section 485-15 is pending.

(b) Withdrawal from registration as a dealer, investment adviser, salesperson, or investment adviser representative shall be effective ninety days after receipt by the commissioner of an application to withdraw, or at such earlier time as the commissioner may allow, unless:

- (1) A proceeding under section 485-15 against the registered person is pending when the application to withdraw is received or is instituted within ninety days thereafter; or
- (2) Additional information regarding the application to withdraw is requested by the commissioner within ninety days after the application is filed.

(c) If a proceeding is pending or instituted under section 485-15 or if additional information is requested, withdrawal shall be effective at the time and upon the conditions imposed by order of the commissioner. If no proceeding is pending or instituted under section 485-15 or if no additional information is requested and withdrawal becomes effective, the commissioner may institute a proceeding under section 485-15 within two years after the withdrawal became effective and enter an order as of the last date on which registration was effective.

(d) Unless another date is specified by the federal covered adviser, withdrawal of a notice filing by a federal covered adviser becomes effective upon receipt by the commissioner of notice from the adviser of the withdrawal.”

SECTION 2. Section 485-1, Hawaii Revised Statutes, is amended by amending the definition of “dealer” to read as follows:

“(3) “Dealer” means any person engaged in the business of effecting transactions in securities for the account of others or for the person’s own account. “Dealer” does not include:

(A) [a] A salesperson[.];

(B) [an] An issuer[.];

(C) [a] A person who has no place of business in this State if:

(i) [the] The person effects transactions in this State exclusively with or through the issuers of the securities involved in the transactions; other dealers; or 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 more than fifteen offers to sell or to buy into this State in any manner to persons other than those specified in clause (i), whether or not the offeror or any of the offerees is then present in this State[.]; [or]

(D) [any] Any person licensed as a real estate broker or real estate salesperson under the laws of the State while effecting transactions in a security exempted by section 485-6(14)[.]; or

(E) A person who is a resident of Canada, has no office or other physical presence in this State, and:

(i) Only effects or attempts to effect transactions in securities with or through the issuers of securities involved in the transactions, broker 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; with or for a person from Canada who is present temporarily in this State and with whom a bona fide business relationship existed before the person entered this State; or with or for a person from Canada who is present in this State, whose transactions are in a self-directed tax advantaged retirement plan in Canada of which the person is the holder or contributor;

(ii) Files a notice in the form of the person’s current Canadian securities registration and a consent to service of process;

- (iii) Is a member of a duly authorized self-regulatory organization or stock exchange in Canada;
- (iv) Maintains the provincial or territorial registration and membership in a self-regulatory organization or stock exchange of the person in good standing;
- (v) Discloses to the person's clients in this State that the person is not subject to the full regulatory requirements of this chapter; and
- (vi) Does not violate this chapter."

SECTION 3. Section 485-2, Hawaii Revised Statutes, is amended to read as follows:

"§485-2 Commissioner of securities. (a) The administration of this chapter shall be vested in the commissioner of securities. The director of commerce and consumer affairs shall, with the approval of the governor, appoint the commissioner of securities who shall not be subject to chapters 76 and 77. The securities commissioner shall hold the commissioner's office at the pleasure of the director of commerce and consumer affairs and shall be responsible for the performance of the duties imposed under this chapter.

(b) The commissioner of securities may adopt, amend, and repeal, pursuant to chapter 91, such rules as may be necessary to carry out the purposes of this chapter.

(c) Notwithstanding subsection (b), the commissioner of securities may adopt, amend, and repeal forms and orders necessary to implement this chapter without regard to chapter 91. No form or order shall be adopted, amended, or repealed without regard to chapter 91, unless the commissioner of securities finds that the action is in the public interest, necessary or appropriate for the protection of investors, and consistent with the purposes of this chapter."

SECTION 4. Section 485-6, Hawaii Revised Statutes, is amended to read as follows:

"§485-6 Exempt transactions. The following transactions [are exempted] shall be exempt from sections 485-4.5, 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 the order is pending under either this chapter or 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, 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 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 under the laws of the State of an apartment in a condominium project, and a rental management contract relating to 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;

- (15) Any transactions not involving a public offering, and in addition, any categories of transactions effected in accordance with any rules the commissioner may [issue] adopt under chapter 91 pursuant to this paragraph with a view to uniformity with federal law; [and]
- (16) (A) Any transactions involving the offer or sale of a security by an issuer to an accredited investor that meet the following requirements:
- (i) The issuer reasonably believes that the sale is to persons who are accredited investors;
 - (ii) The issuer is not in the development stage, without specific business plan or purpose;
 - (iii) The issuer has not indicated that the issuer's business plan is to engage in a merger or acquisition with an unidentified company or companies, or other entity or person; and
 - (iv) The issuer reasonably believes that all purchasers are purchasing for investment purposes and not with the view to, or for sales in connection with, a distribution of the security. Any resale of a security sold in reliance [of] on this exemption within twelve months of sale shall be presumed to be made with a view to distribute and not to invest, except a resale pursuant to a registration statement effective under section 485-8, or to an accredited investor pursuant to an exemption available under chapter 485;
- (B) The exemption under this paragraph shall not apply to an issuer if the issuer; any affiliated issuer; any beneficial owner of ten per cent or more of any class of the issuer's equity securities; any issuer's predecessor, director, officer, general partner, or promoter presently connected in any capacity with the issuer; and any underwriter or partner, director, or officer of the underwriter of the securities to be offered:
- (i) Within the last five years has filed a registration statement that is the subject of a currently effective registration stop order entered by any state securities administrator or the United States Securities and Exchange Commission;
 - (ii) Within the last five years has been convicted of any criminal offense in connection with the offer, purchase, or sale of any security, or involving fraud or deceit;
 - (iii) Is currently subject to any state or federal administrative enforcement order or judgment entered within the last five years, finding fraud or deceit in connection with the purchase or sale of any security; or
 - (iv) Is currently subject to any order, judgment, or decree of any court of competent jurisdiction, entered within the last five years, temporarily, preliminarily, or permanently restraining or enjoining such party from engaging in or continuing to engage in any conduct or practice involving fraud or deceit in connection with the purchase or sale of any security;
- (C) Subparagraph (B) shall not apply if:
- (i) The party subject to the disqualification is licensed or registered to conduct securities-related business in the state in which the order, judgment, or decree creating the disqualification was entered against such party;

- (ii) Before the first offer under this exemption, the commissioner, or the court or regulatory authority that entered the order, judgment, or decree waives the disqualifications; or
 - (iii) The issuer establishes that the issuer did not know and in the exercise of reasonable care, based on a factual inquiry, could not have known that a disqualification existed under this paragraph;
- (D) An issuer claiming the exemption under this section, within fifteen days after the first sale in this State, shall file with the commissioner a notice of transaction, a consent to service of process, a copy of the general announcement as required by section [§]485-24.6[§], and a \$200 filing fee; and
- (E) For the purposes of this paragraph, “accredited investor” shall have the same meaning as provided in 17 Code of Federal Regulations section 230.501(a)[.]; and
- (17) Any offer or sale of a security effected by a resident of Canada who is excluded from the definition of “dealer” under section 485-1(3)(E).”

SECTION 5. Section 485-14, Hawaii Revised Statutes, is amended to read as follows:

“§485-14 Registration of dealers, investment advisers, salespersons, and investment adviser representatives. (a) It is unlawful for any person to transact business in this State as a dealer, investment adviser, salesperson, or investment adviser representative unless registered under this chapter. However, nothing in this chapter shall prevent the commissioner from participating, in whole or in part, in the Central Registration Depository system, in cooperation with the National Association of Securities Dealers, Inc., other states, and the United States, to the extent participation is deemed to be in the public interest of this State.

(b) Eligibility for registration as a dealer. To be eligible for registration as a dealer, an applicant shall have had (or if the applicant is a partnership or corporation have at least one partner, officer, or employee who has) at least one year of experience as a full-time security salesperson or experience as a security salesperson on a part-time basis found by the commissioner of securities to be substantially equivalent thereto[.]; provided that [the foregoing] this experience requirement shall not apply to issuers of securities applying for registration as dealers for the sole purpose of issuing and selling securities issued by them.

(c) Application for registration as a dealer. An application for registration as a dealer [in writing] shall be filed in the office of the commissioner in such form as the commissioner may prescribe, duly verified by oath, and shall state the principal office of the applicant wherever situated, and the location of the principal office and branch offices in the State, if any, the name and style of doing business, the names, residence, and business of principals, copartners, officers, and directors, specifying as to each person’s capacity and title, the general plan and character of business, the length of time the dealer has been engaged in business and information as to the time, place, and character of experience as a securities salesperson. The commissioner may also require such additional information as to the applicant’s previous history, record, and association including the following:

- (1) 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 condition and history;
- (3) Whether the dealer, or any person employed by or associated in business with the dealer, is subject to any disqualification which would

be a basis for denial, suspension, or revocation of registration of the dealer under section 485-15; and

- (4) Any other information [as] that the commissioner deems necessary to establish the qualifications of the applicant.

There shall be filed with such application an irrevocable written consent to the service of process upon the commissioner in actions against the dealer in manner and form provided in section 485-12.

(d) Eligibility for registration as an investment adviser. To be eligible for registration under this chapter, an investment adviser shall have complied with the mandatory provisions [mandatory] of this section, and shall take and pass an oral or written examination, or both, prescribed by the commissioner, to test the applicant's knowledge of the securities business; provided that the commissioner may by rule set forth exemptions to the examination requirement. Every person required to take such an examination at or before the time of the examination, shall pay to the commissioner a fee of \$250.

(e) Registration of investment advisers. An application for registration, duly verified by oath by the applicant, and in such form as the commissioner shall prescribe, 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 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 disquali-

- fication 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 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 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 the form encompasses the information required under this section.

(f) Approval, bond. If the commissioner finds that the applicant for registration as a dealer is eligible for 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 the dealer's filing of 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 a surety by a surety company authorized to do business in the State; provided that no bond is required of or from any 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 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] to fulfill 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 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] to fulfill 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 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 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.

(i) Registration of salespersons. An information statement, containing information [as] that the commissioner shall prescribe, shall be filed where prescribed by the commissioner, together with an appointment of the applicant as a salesperson by a registered dealer. 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 salesperson or any person associated in business with the salesperson is subject to any disqualification which would be a basis for denial, suspension, or revocation of registration of the salesperson 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 a salesperson designated by any registered dealer to be eligible for registration as a salesperson, the commissioner shall register the person as a salesperson upon the payment of the fee hereinafter provided.

(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 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 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 information 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 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.

(l) Recording; duration; renewal; fee. The [name] names and addresses of all persons found eligible for registration as dealers, investment advisers, salespersons, or investment adviser representatives and all orders with respect thereto shall be recorded in a register of dealers, investment advisers, salespersons, and investment adviser representatives kept in the office of the commissioner [which] and shall be open to public inspection. Except as hereinafter provided, every registration for investment advisers and investment adviser representatives under this section shall expire on December 31 in each odd-numbered year, and every registration for dealers and salespersons under this section shall expire on December 31 of each year. Applications for renewals shall be made not less than thirty nor more than sixty days before the end of the expiration year or as provided through the Central Registration Depository system. Any applicant for renewal of a dealer, investment adviser, salesperson, or investment adviser representative registration who does not submit the application within the time prescribed by this section shall pay a penalty of one hundred per cent of the applicable renewal fee. Any applicant for renewal of a dealer or investment adviser registration who submits the application after December 31 of the expiration year shall be required to reapply as a new dealer or investment adviser. The registration of any dealer, investment adviser, salesperson, or investment adviser representative may be revoked or terminated prior to its expiration by written notice filed with the commissioner by the registered dealer, registered salesperson, registered investment adviser, or registered investment adviser representative concerned, and the revocation shall take effect as of the date and time of filing of the notice. Upon revocation or termination of the registration of any

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dealer, investment adviser, salesperson, or investment adviser representative, the dealer's, investment adviser's, salesperson's, or investment adviser representative's certificate of registration shall be surrendered to the commissioner for cancellation. The fee for registration and for each renewal shall be \$200 in the case of dealers and investment advisers and \$50 in the case of salespersons and investment adviser representatives.

(m) Changes. Changes in registration occasioned by changes in the personnel of a partnership or in the principals, copartners, officers, or directors of any [dealer] dealer's or investment adviser's business may be made from time to time by written application setting forth the facts with respect to such change.

(n) Announcement of registration application. The commissioner, by rule, may require an applicant for initial registration as a dealer, investment adviser, salesperson, or investment adviser representative to publish an announcement of the application in one or more newspapers of general circulation in this State.

(o) Notice of intent to offer. Every registered dealer who intends to offer any security of any issue registered or to be registered shall notify the commissioner in writing of the dealer's intention [so] to do[.] so. The notice shall contain the name of the dealer[,] and shall state the name of the security to be offered for sale, and whenever a dealer has prepared such notice and has forwarded the same by registered mail, postage prepaid, and properly addressed to the commissioner, such dealer, as to the contents of the notice and the filing thereof, is deemed to have complied with the requirements of this subsection.

(p) Issuers as dealers. Any issuer of a security required to be registered under this chapter selling such securities (other than in exempt transactions as defined in section 485-6), and any issuer of an exempt security as defined in section 485-4(9) and (10) offering such securities (other than (1) in exempt transactions as defined in section 485-6, or (2) through a dealer registered pursuant to this chapter) shall file with the commissioner a bond, or deposit securities or cash in an amount, based on the total capitalization, to be determined by the commissioner in the commissioner's discretion, which amount, however, shall not be less than \$5,000, nor more than \$25,000, subject also to the same conditions as herein prescribed in the case of dealers, and may appoint salespersons in the manner herein prescribed in the case of dealers.

(q) Capital requirement for dealers and investment advisers who have custody of or discretionary authority over client money, securities, or other assets. 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.

(r) A registered broker dealer or investment adviser may file an application for registration of a successor, whether or not the successor is then in existence, for the unexpired portion of the year. There shall be no filing fee for registration of a successor."

SECTION 6. Section 485-15, Hawaii Revised Statutes, is amended to read as follows:

“§485-15 Denial, revocation, or suspension of dealers’, investment advisers’, salespersons’, and investment adviser representatives’ registration; suspension during investigation, etc. Upon the finding of errors in a registration statement or the filing of complaints by consumers or by any government agency, the commissioner may conduct an investigation of the applicant or registrant and [registration under section 485-14 may be refused or any registration granted may be revoked by the commissioner of securities] the commissioner may deny an application for registration, revoke or suspend any registration, or limit or impose conditions on the securities activities that a registrant may conduct in this State, if after [a] reasonable notice and a hearing the commissioner determines that the applicant or registrant [so registered]:

- (1) Has filed an application for registration which as of its effective date, or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in light of the circumstances under which it was made, false or misleading with respect to any material fact;
- (2) Has violated or failed to comply with any provision of this chapter or any rule or order under this chapter;
- (3) Has been convicted, within the past ten years, of any misdemeanor involving a security or any aspect of the securities business, or any felony;
- (4) Is permanently or temporarily enjoined by any court of competent jurisdiction for engaging in or continuing any conduct or practice involving any aspect of the securities business;
- (5) Is the subject of an order of the commissioner denying, suspending, or revoking registration as a dealer, investment adviser, salesperson, or investment adviser representative;
- (6) Is the subject of an order entered within the past five years by the securities administrator of any other state or by the Securities and Exchange Commission denying or revoking registration as a dealer, investment adviser, salesperson, or investment adviser representative, or the substantial equivalent of those terms as defined in this chapter, or is the subject of an order of the Securities and Exchange Commission suspending or expelling the applicant or registrant from a national securities exchange or national securities association registered under the Securities Exchange Act of 1934, or is the subject of a United States Post Office fraud order; but:
 - (A) The commissioner may not institute a revocation or suspension proceeding under this paragraph more than one year from the date of the order relied on[.]; and
 - (B) The commissioner may not enter an order under this paragraph on the basis of an order under another law of this State unless that order was based on facts which would currently constitute a ground for an order under this section;
- (7) Has engaged or is about to engage in fraudulent, dishonest, or unethical practices in the securities business;
- (8) Is insolvent, either in the sense that liabilities exceed assets or in the sense that the dealer, investment adviser, salesperson, or investment adviser representative cannot meet obligations as they mature; but the commissioner may not enter an order against a dealer or investment adviser under this paragraph without a finding of insolvency as to the dealer or investment adviser;
- (9) Is not qualified on the basis of such factors as training, experience, and knowledge of the securities business;

- (10) Has failed reasonably to supervise agents, if a dealer[,] or an agent of a dealer with supervisory responsibilities, or employees, if an investment adviser[;] or an employee of an investment adviser with supervisory responsibilities; for the purposes of this paragraph no person shall be deemed to have failed reasonably to supervise any person if there have been established procedures, and a system for applying such procedures, which would reasonably be expected to prevent and detect, insofar as practicable, any such violations by such other person, and such person has reasonably discharged the duties and obligations incumbent upon the person by reason of such procedures and system without reasonable cause to believe that such procedures and system were not being complied with; or
- (11) Has demonstrated unworthiness to transact the business of dealer, investment adviser, salesperson, or investment adviser representative.

In cases of charges against a salesperson or investment adviser representative notice thereof shall also be given the dealer or investment adviser employing such salesperson or investment adviser representative. Pending the hearing, the commissioner may order the suspension of the dealer's, investment adviser's, salesperson's, or investment adviser representative's registration; provided the order states the cause for the suspension.

Until the entry of a final order the suspension of the dealer's or investment adviser's registration, though binding upon the persons notified thereof, shall be deemed confidential, and shall not be published, unless it appears that the order of suspension has been violated after notice.

In the event the commissioner determines to refuse or revoke a registration as [hereinabove] provided[,] in this section, the commissioner shall enter a final order [herein] with the commissioner's findings on the register of dealers, investment advisers, salespersons, and investment adviser representatives; and suspension or revocation of the registration of a dealer or investment adviser shall also suspend or revoke the registration of all the dealer's or investment adviser's salespersons or investment adviser representatives.

It shall be sufficient cause for refusal or cancellation of registration in case of a partnership or corporation or any unincorporated association, if any member of a partnership or any officer or director of the corporation or association has been guilty of any act or omission which would be cause for refusing or revoking the registration of an individual dealer, investment adviser, salesperson, or investment adviser representative."

SECTION 7. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

SECTION 8. This Act shall take effect upon its approval.

(Approved May 30, 2000.)

Note

1. Edited pursuant to HRS §23G-16.5.