

A Bill for an Act Relating to the Sale of Securities.

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

SECTION 1. Paragraph (12) of section 485-1, Hawaii Revised Statutes, relating to definitions of words and phrases used in chapter 485, Hawaii Revised Statutes (Uniform Securities Act (Modified)) is amended to read as follows:

“(12 “Security” means any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting trust certificate, certificate of deposit for a security, certificate of interest in an oil, gas, or mining title or lease, option on commodity futures contracts or, in general, any interest or instrument commonly known as a “security,” or any certificate for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. “Security” does not include any insurance of endowment policy or annuity contract.”

SECTION 2. Section 485-4, Hawaii Revised Statutes, which enumerates securities that are exempt from the Uniform Securities Act (Modified) is amended by adding a new paragraph to read as follows:

“(12) Any option on a commodity futures contract subject to regulation under the Commodity Exchange Act.”

SECTION 3. Section 485-10, Hawaii Revised Statutes, relating to registration by qualification is amended by adding a new subsection to read as follows:

“(g) With respect to options on commodity futures contracts the following shall be observed:

- (1) An application for registration of options on commodities futures contracts shall contain the same information specified in paragraph (b) of this section, except in the case of subparagraph (b)(3).
- (2) The prospectus shall contain the following information in lieu of the information required in subparagraph (b)(3) of this section:
 - (A) Name and address of issuer and issuer’s principal office in the State, if any.
 - (B) Total dollar value of contracts to be offered, specifying the commodities involved.
 - (C) How the offering price is calculated.
 - (D) A brief description of the method by which the contracts are to be offered, and if the offering is to be made through underwriters, the name and address of each underwriter and the amount of the participation of each underwriter with a statement of any material relationship between the issuer and underwriter.
 - (E) The policy which the issuer plans to follow to assure that it will

have sufficient funds to pay its investors upon the exercise of option contracts.

- (F) Summary of the terms and conditions of the customers agreement.
- (G) Information requested by the following provisions in paragraph (b)(3) shall be stated:
(I), (J), (K), (L), (N), and (O)
- (H) Such information that may be required by rules and regulations.
- (3) No option contracts shall be offered or sold in the state under this section, unless the issuer has a paid-in capital of at least \$100,000, and unless its net cash value is 1.25 times its open option cash position.
- (4) As used in this section, the following meanings shall apply:
 - (A) "Option on a commodity futures contract" means right to buy or sell a commodity futures contract at a fixed price during a pre-determined period of time;
 - (B) "Net issuers cash value" means all cash in customers accounts payable plus net value of issuers hedging account.
 - (C) "Hedging account" means account with which issuer maintains to buy or sell commodity futures as a protection against loss due to price fluctuation.
 - (D) "Open option cash position" means the value of all outstanding open options.
- (5) The net issuers cash value and the open option cash position shall be compiled at the end of each business day. In the event the issuer's cash value goes below one hundred twenty-five per cent of its open option cash position, the issuer shall be prohibited to sell new options and will be limited to liquidating its existing options and it shall immediately notify the director of regulatory agencies.
- (6) Options on commodity futures contracts registered with the Securities and Exchange Commission under the Securities Act of 1933, shall be exempt from registration under this section."

SECTION 4. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

SECTION 5. This Act shall take effect upon its approval.

(Approved May 31, 1973.)

*Edited accordingly.