

ACT 16

S.B. NO. 1078

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

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

SECTION 1. Section 485-6, Hawaii Revised Statutes, is amended to read as follows:

“**§485-6 Exempt transactions.** The following transactions 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]~~ to sell securities of an issuer, if the transaction is part of an issue which:
 - (A) There are no more than twenty-five offerees, wherever located (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;]
 - (B) The issuer reasonably believes that all purchasers, wherever located, (other than those designated in paragraph (8)), are purchasing for investment;
 - (C) No commission, discount, or other remuneration is paid or given, directly or indirectly, to a person, other than a dealer or agent registered under this chapter, for soliciting a prospective purchaser in this State; and
 - (D) The securities of the issuer are not offered or sold by general solicitation or any general advertisement or other advertising medium;
 - (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) (A) Any transactions not involving a public offering[, and in addition, any categories of transactions effected in accordance with any rules the commissioner may adopt under chapter 91 pursuant to this paragraph with a view to uniformity with federal law;] within the meaning of section 4(2) of the Securities Act of 1933, but not including any transaction specified in the rules and regulations thereunder; or
- (B) Any offer or sale of securities made in compliance with rules 501, 502, 503, 505, and 506 of Regulation D, 17 Code of Federal Regulations section 230.501, under the Securities Act of 1933;
- (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 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)[-]; and
- (18) Any transaction that is exempt or would be exempt under rule 701, 17 Code of Federal Regulations section 230.701, promulgated under section 3(b) of the Securities Act of 1933."

SECTION 2. 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. (a) Upon any notice filing under section 485-4.5, any application for registration by notification under section 485-9 made by an

issuer, 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.

(b) Any 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 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.]~~

(c) 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 3. 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 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 shall be filed ~~[in]~~ with 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.]~~ by rule or order. The commissioner may also require ~~[such]~~ additional information ~~[as to]~~ regarding the applicant's previous history, record, and association, including without limitation the following:

- (1) ~~[Any]~~ 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 condition and history;
- (3) ~~[Whether]~~ Disclosure as to 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 that the commissioner deems necessary to establish the qualifications of the applicant.

There shall be filed in or 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.]~~ prescribed by the commissioner by rule or order.

(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 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]~~ as an investment adviser, in such form ~~[as the commissioner [shall] may prescribe[-],~~ by rule or order shall be filed ~~[in] with~~ 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) The commissioner may also require additional information regarding the applicant's previous history, record, and association, including without limitation the following:

- (1) 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] (2) Disclosure as to 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)] (3) 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 condition and history; and~~
 - ~~(C) Any additional information that the commissioner deems necessary to establish the applicant's qualifications.~~

~~[The] To the extent appropriate, the¹ commissioner [may] shall use [a] uniform registration [form] application forms 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.] for purposes of this section; and shall, to the extent appropriate, permit the electronic filing of such forms through the Central Registration Depository or the Investment Adviser Registration Depository of the National Association of Securities Dealers.~~

(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 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 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 is 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 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.] An application for registration as a salesperson shall be filed by a registered dealer with the office of the commissioner in such form as the commissioner may prescribe by rule or order. The commissioner may also require additional information regarding the applicant's history, record, and association including without limitation 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 condition and 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 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,~~] application for registration as an investment adviser representative shall be filed [in] with 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.~~] in such form as the commissioner may prescribe by rule or order. The commissioner may also require additional information regarding the applicant's history, record, and association including without limitation 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) (2) 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) (3) 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 names and business addresses of all persons ~~[found eligible for registration]~~ registered under this chapter 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 and shall be]~~ open to public inspection. Except as ~~[hereinafter provided,]~~ otherwise provided by the commissioner by rule or order, 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]~~, investment advisers, salespersons, and investment adviser representatives under this section shall expire on December 31 of each year[-] unless renewed prior to expiration. Applications for renewals shall be made not less than thirty nor more than sixty days before the end of the ~~[expiration]~~ year ~~[or]~~, unless the dealer, investment adviser, salesperson, or investment adviser representative is registered with the commissioner through the Central Registration Depository system or the Investment Adviser Registration Depository in which case the renewal shall be filed with the commissioner as provided through [the Central Registration Depository] that 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]~~ termination shall take effect as of the date and time of filing of the notice. ~~[Upon revocation or termination of the registration of any 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]~~, \$100 in the case of 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'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.]~~ If any information contained in an application for registration filed with the commissioner under this chapter becomes inaccurate or changes, the registrant shall promptly file a correcting amendment with the commissioner. If the registrant is a salesperson or investment adviser representative, the dealer or investment adviser with which such registrant is affiliated or employed by shall file the amendment with the commissioner.

~~(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)~~ (n) 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 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)]~~ (o) 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)]~~ (p) 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)]~~ (q) 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 4. Section 485-23, Hawaii Revised Statutes, is amended to read as follows:

"§485-23 Appeals to circuit court, first circuit; time; bonds; costs; ~~[trial de novo];~~ decree; further appeal. An appeal may be taken by any aggrieved person from any final order of the commissioner of securities to the circuit court of the first circuit in the manner provided in chapter 91. The appellant shall execute a bond in the penal sum of \$1,000 to the State, with sufficient surety, to be approved by the commissioner or the court, conditioned upon the faithful prosecution of the appeal to final judgment, and the payment of all such costs as shall be adjudged against the appellant. The appeal shall be ~~[heard de novo,]~~ conducted without a jury and confined to the record, and it may be given precedence by the court over other matters pending in the court. ~~[The court shall receive and consider evidence, whether oral or documentary, concerning the order of the commissioner from whom the appeal is taken.]~~ If the order of the commissioner is reversed the court shall by its mandate specifically direct the commissioner as to the commissioner's further action in the matter, including the making and entering of any order or orders in connection therewith, and the conditions, limitations, or restrictions to be therein contained; provided that the commissioner shall not thereby be barred from thereafter revoking or altering the order for any proper cause which may thereafter accrue or be discovered. If the order is affirmed, the appellant shall not be barred after thirty days from filing a new application provided the application is not otherwise barred or limited. The appeal shall not in anywise suspend the operation of the order appealed

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from during the pendency of the appeal unless upon proper order of the commissioner or the court. An appeal may be taken from the decree of the circuit court to the supreme court.”

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect on July 1, 2001.

(Approved April 19, 2001.)

Note

1. “The” should be underscored.