

ACT 121

S.B. NO. 2908

A Bill for an Act Relating to Business Registration.

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

SECTION 1. Chapter 414D, Hawaii Revised Statutes, is amended by adding to part X a new section to be appropriately designated and to read as follows:

“§414D- Definitions. As used in this part:

“Association” means an association organized under chapter 421 or 421C.

“Merger” means the procedure authorized by this part in which one domestic or foreign entity combines with one or more domestic or foreign entities resulting in either one surviving entity or one new entity.

“Organizing articles” means:

- (1) For an association, corporation, or nonprofit corporation, the articles of incorporation;
- (2) For a general partnership or limited liability partnership, the registration statement;
- (3) For a limited partnership, the certificate of limited partnership; and
- (4) For a limited liability company, the articles of organization.

“Other business entity” means a profit corporation, limited liability company, general partnership, limited partnership, limited liability partnership, or association.”

SECTION 2. Chapter 414D, Hawaii Revised Statutes, is amended by adding to part XIII a new section to be appropriately designated and to read as follows:

“§414D- Trustees or receivers for dissolved corporations; appointment; powers; duties. (a) When any corporation organized under the laws of this State shall be or shall have been dissolved or shall cease or shall have ceased to exist, the circuit court, upon application of any creditor, member, or director of the corporation, or any other person who shows good cause therefor, and upon a finding that the persons responsible for settling the unfinished business and winding up the affairs of the corporation either are not diligently pursuing such obligations, or cannot be found or otherwise are not available, may either appoint one or more of the

directors of the corporation to be trustees or appoint one or more persons to be receivers of and for the corporation, to do all acts that are necessary for the final settlement of the unfinished business of the corporation. The powers of the trustees or receivers shall be effective for the time period determined by the circuit court.

(b) The relief provided in this section shall be in addition to, and shall not limit or diminish, any remedies otherwise available under the common law or other state or federal statutes or rules. In the event of a conflict between this section and any common law, statute, or rule on the subject, the more beneficial provisions favoring the applicant shall prevail.”

SECTION 3. Section 421-1, Hawaii Revised Statutes, is amended by adding five new definitions to be appropriately inserted and to read as follows:

““Entity” includes domestic and foreign corporations, domestic professional corporations, domestic and foreign limited liability companies, domestic and foreign nonprofit corporations, domestic and foreign business trusts, estates, domestic and foreign partnerships, domestic and foreign limited partnerships, domestic and foreign limited liability partnerships, trusts, two or more persons having joint or common economic interest, associations and cooperative associations, and state, federal, and foreign governments.

““Individual” means a natural person, or the estate of an incompetent or deceased individual.

““Merger” means the procedure authorized by this part in which one domestic or foreign entity combines with one or more domestic or foreign entities resulting in either one surviving entity or one new entity.

““Organizing articles” means:

- (1) For an association, corporation, or nonprofit corporation, the articles of incorporation;
- (2) For a general partnership or limited liability partnership, the registration statement;
- (3) For a limited partnership, the certificate of limited partnership; and
- (4) For a limited liability company, the articles of organization.

““Other business entity” means a corporation, nonprofit corporation, general partnership, limited partnership, limited liability partnership, or limited liability company.”

SECTION 4. Section 414-3, Hawaii Revised Statutes, is amended by amending the definition of “entity” to read as follows:

““Entity” includes domestic and foreign corporations[;], domestic professional corporations[;], domestic and foreign limited liability companies[;], domestic and foreign [not-for-profit] nonprofit corporations[;], domestic and foreign business trusts[;], estates[;], domestic and foreign partnerships[;], domestic and foreign limited partnerships[;], domestic and foreign limited liability partnerships[;], trusts[;], two or more persons having a joint or common economic interest[;], associations and cooperative associations, and state, federal, and foreign governments.”

SECTION 5. Section 414-125, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A corporation shall notify shareholders of the date, time, and place, if any, of each annual and special shareholders’ meeting no fewer than ten nor more than sixty days before the meeting date. If ~~[a meeting is held solely by]~~ remote communication[;] are authorized for use in a meeting, regardless of whether the meeting is held at a designated place or solely by means of remote communication, the notice shall also inform shareholders of the means of remote communication by which shareholders may be deemed to be present in person and allowed to

vote. Unless this chapter or the articles of incorporation require otherwise, the corporation is required to give notice only to shareholders entitled to vote at the meeting.”

SECTION 6. Section 414-163, Hawaii Revised Statutes, is amended by amending subsections (a) to (c) to read as follows:

“(a) An agreement among the shareholders of a corporation that complies with this section is effective among the shareholders and the corporation even though it is inconsistent with one or more other provisions of this chapter in that it:

- (1) Eliminates the board of directors or restricts the discretion or powers of the board of directors;
 - (2) Governs the authorization or making of distributions whether or not in proportion to ownership of shares, subject to limitations in section 414-111[;], including without limitation the elimination, restriction, or expansion of dissenter’s rights;
 - (3) Establishes who shall be directors or officers of the corporation, or their terms of office or manner of selection or removal;
 - (4) Governs, in general or in regard to specific matters, the exercise or division of voting power by or between the shareholders and directors or by or among any of them, including without limitation, the use of weighted voting rights or director proxies[;], or the validity and enforceability of actions that are approved by the directors or shareholders of a corporation, as applicable, in writing, without a meeting, and with the written consent of less than all the directors or shareholders entitled to vote on any such action. An agreement covered under this paragraph may include an agreement to permit any action required or permitted by this chapter to be taken at a shareholders’ meeting to be taken without a meeting; provided that consents in writing, setting forth the action so taken, shall be signed or given by electronic transmission by the holders of the outstanding shares entitled to vote on the action having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted, notwithstanding section 414-124;
 - (5) Establishes the terms and conditions of any agreement for the transfer or use of property or the provision of services between the corporation and any shareholder, director, officer, or employee of the corporation or among any of them;
 - (6) Transfers to one or more shareholders or other persons all or part of the authority to exercise the corporate powers or to manage the business and affairs of the corporation, including the resolution of any issue about which there exists a deadlock among directors or shareholders;
 - (7) Requires dissolution of the corporation at the request of one or more of the shareholders or upon the occurrence of a specified event or contingency; or
 - (8) Otherwise governs the exercise of the corporate powers or the management of the business and affairs of the corporation or the relationship among the shareholders, the directors, and the corporation, or among any of them, and is not contrary to public policy.
- (b) An agreement authorized by this section shall be:
- (1) Set forth:
 - (A) In the articles of incorporation or bylaws and approved by all persons who are shareholders at the time of the agreement; or

- (B) In a written agreement that is signed by all persons who are shareholders at the time of the agreement and is made known to the corporation;
- (2) Subject to amendment only by all persons who are shareholders at the time of the amendment, unless the agreement provides otherwise; ~~and~~
 - (3) Valid for ten years[;]; unless the agreement provides otherwise[.], in which case the agreement may be valid for a longer or shorter term than ten years, or perpetually; and
 - (4) Enforceable against the corporation and all present and future shareholders of the corporation, including persons who become shareholders subsequent to the approval or execution of the agreement and who did not approve or execute the agreement.
- (c) The existence of an agreement authorized by this section shall be noted conspicuously in the corporation's articles of incorporation, on the front or back of each certificate for outstanding shares, or on the information statement required by section 414-87(b). If, at the time of the agreement, the corporation has shares outstanding represented by certificates[;] and the existence of the agreement is not noted in the corporation's articles of incorporation in compliance with this subsection, the corporation shall recall the outstanding certificates and issue substitute certificates that comply with this subsection. The failure to note the existence of the agreement in the articles of incorporation, on the certificate, or on the information statement shall not affect the validity of the agreement or any action taken pursuant to it. Any purchaser of shares who, at the time of purchase, did not have knowledge of the existence of the agreement, shall be entitled to rescission of the purchase. A purchaser shall ~~be deemed to have knowledge of~~ not be entitled to rescission as described in the preceding sentence if, at the time of purchase, the existence of the agreement [if its existence] is noted in the articles of incorporation, on the certificate for the shares, or on the information statement for the shares, in compliance with this subsection and, if the shares are not represented by a certificate[;] and the existence of the agreement is not noted in the articles of incorporation in compliance with this subsection, the information statement is delivered to the purchaser at or prior to the time of purchase of the shares. An action to enforce the right of rescission authorized by this subsection must be commenced within the earlier of ninety days after discovery of the existence of the agreement or two years after the time of purchase of the shares.”

SECTION 7. Section 414-310, Hawaii Revised Statutes, is amended as follows:

1. By adding a new definition to be appropriately inserted and to read:
 ““Association” means an association organized under chapter 421 or 421C.”

2. By amending the definitions of “organizing articles” and “other business entity” to read:

““Organizing articles” means:

- (1) For [a] an association, corporation, or nonprofit corporation, the articles of incorporation;
- (2) For a general partnership or limited liability partnership, the registration statement;
- (3) For a limited partnership, the certificate of limited partnership; and
- (4) For a limited liability company, the articles of organization.

“Other business entity” means a nonprofit corporation, limited liability company, general partnership, limited partnership, ~~or~~ limited liability partnership[.], or association.”

SECTION 8. Section 414-311, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The plan of merger shall set forth:

- (1) The name and jurisdiction of formation or organization of each entity that is a party to the merger;
- (2) The name of the surviving entity with or into which the other entity or entities will merge;
- (3) The terms and conditions of the merger;
- (4) The manner and basis of converting the shares of each corporation into shares, obligations, or other securities of the surviving ~~[or any other corporation]~~ entity, or into cash or other property in whole or in part;
- (5) The street address of the surviving entity’s principal place of business or, if no street address is available, the rural post office number or post office box designated or made available by the United States Postal Service; and
- (6) Amendments, if any, to the organizing articles of the surviving entity or, if no amendments are desired, a statement that the organizing articles of the surviving entity shall not be amended pursuant to the merger.”

SECTION 9. Section 414-311.6, Hawaii Revised Statutes, is amended to read as follows:

“§414-311.6 Foreign mergers. ~~[Filings for mergers between foreign entities registered in this State shall be subject to section 414-315(d).]~~ (a) Whenever a foreign entity authorized to transact business in this State shall be a party to a statutory merger permitted by the laws of the state or country under the laws of which it is organized, and the foreign entity shall be the surviving entity, it shall, within sixty days after the merger becomes effective, file with the department director a certificate evidencing the merger, duly authenticated by the proper officer of the state or country under the laws of which the statutory merger was effectuated. The certificate evidencing the merger shall be evidence of a change of name if the name of the surviving entity is changed thereby. If the certificate is in a foreign language, a translation under oath of the translator shall accompany the certificate.

(b) Whenever a foreign entity authorized to transact business in this State shall be a party to a statutory merger permitted by the laws of the state or country under the laws of which it is organized, and that entity shall not be the surviving entity, the surviving entity shall, within sixty days after the merger becomes effective, file with the department director a certificate evidencing the merger in the form prescribed by subsection (a).”

SECTION 10. Section 414-315, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

“(a) After a plan of merger or share exchange is approved by the shareholders, or adopted by the board of directors if shareholder approval is not required, ~~[the surviving or acquiring corporation shall deliver to the department director for filing]~~ articles of merger or share exchange [setting forth:] shall be signed on behalf of each corporation and each other entity that is a party to the merger and shall be delivered to the department director for filing. The articles of merger or share exchange shall set forth:

- (1) For a merger, the name and jurisdiction of each entity that is a party to the merger and the name, address, and jurisdiction of the surviving

- entity with or into which they propose to merge, which is hereinafter designated as the surviving entity;
- (2) For a share exchange, the name of the corporation whose shares will be acquired and the name of the acquiring corporation;
 - (3) A statement that the plan of merger or share exchange has been approved by each entity involved in the merger or share exchange;
 - ~~[(4) If shareholder approval was not required, a statement to that effect;~~
 - (5) ~~If approval of the shareholders of one or more corporations party to the merger or share exchange was required:~~
 - ~~(A) The designation, number of outstanding shares, and number of votes entitled to be cast by each voting group entitled to vote separately on the plan as to each corporation; and~~
 - ~~(B) Either the total number of votes cast for and against the plan by each voting group entitled to vote separately on the plan or the total number of undisputed votes cast for the plan separately by each voting group and a statement that the number cast for the plan by each voting group was sufficient for approval by that voting group;~~
 - (6) (4) If a merger, a statement indicating any changes in the organizing articles of the surviving entity to be given effect by the merger; provided that if no changes are made, a statement that the organizing articles of the surviving entity shall not be amended pursuant to the merger; and
 - ~~[(7)]~~ (5) A statement that includes:
 - (A) An agreement that the surviving entity may be served with process in this State in any action or proceeding for the enforcement of any liability or obligation of any entity previously subject to suit in this State which is to merge;
 - (B) An irrevocable appointment of a resident of this State as its agent to accept service of process in any such proceeding, that includes the resident's street address in this State; and
 - (C) An agreement for the enforcement, as provided in this chapter, of the right of any dissenting member, shareholder, or partner to receive payment for their interest against the surviving entity."

2. By amending subsection (d) to read:

"(d) Articles of merger shall act as articles of dissolution or an application for a certificate of withdrawal for the respective domestic or foreign corporation that is not the surviving entity in the merger~~]; provided that:~~

- ~~(1) If the surviving entity is a foreign entity registered in this State, it shall file with the department director a certificate evidencing the merger duly authenticated by the proper officer of the state or country under the laws of which the foreign entity was organized no later than sixty days after the merger is effective; or~~
- ~~(2) If a foreign entity registered in this State does not survive the merger, the surviving entity shall file with the department director a certificate evidencing the merger as provided in paragraph (1), together with an application for withdrawal for each nonsurviving foreign entity, no later than sixty days after the merger is effective]."~~

SECTION 11. Section 414-316, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) When a merger takes effect:

- (1) Every other ~~[corporation]~~ entity that is a party to the merger merges into the surviving ~~[corporation]~~ entity and the separate existence of

every [corporation] entity except the surviving [corporation] entity ceases;

- (2) The title to all real estate and other property owned by each [corporation] entity that is a party to the merger is vested in the surviving [corporation] entity without reversion or impairment;
- (3) The surviving [corporation] entity has all liabilities of each [corporation] entity that is a party to the merger;
- (4) A proceeding pending against any [corporation] entity that is a party to the merger may be continued as if the merger did not occur or the surviving [corporation] entity may be substituted in the proceeding for the [corporation] entity whose existence ceased;
- (5) The organizing articles [~~of incorporation~~] of the surviving [corporation] entity are amended to the extent provided in the plan of merger and indicated in the articles of merger; and
- (6) The shares of each corporation party to the merger that are to be converted into shares, obligations, or other securities of the surviving [~~or any other corporation~~] entity or into cash or other property are converted, and the former holders of the shares are entitled only to the rights provided in the articles of merger or to their rights under part XIV.”

SECTION 12. Section 414-342, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A shareholder is entitled to dissent from, and obtain payment of the fair value of the shareholder’s shares in the event of, any of the following corporate actions:

- (1) Consummation of a plan of merger to which the corporation is a party:
 - (A) If shareholder approval is required for the merger by section 414-313 or the articles of incorporation [~~and~~]; provided that the shareholder is entitled to vote on the merger; or
 - (B) If the corporation is a subsidiary that is merged with its parent under section 414-314;
- (2) Consummation of a plan of share exchange to which the corporation is a party as the corporation whose shares will be acquired, if the shareholder is entitled to vote on the plan;
- (3) Consummation of a sale or exchange of all, or substantially all, of the property of the corporation other than in the usual and regular course of business, if the shareholder is entitled to vote on the sale or exchange, including a sale in dissolution, but not including a sale pursuant to court order or a sale for cash pursuant to a plan by which all or substantially all of the net proceeds of the sale will be distributed to the shareholders within one year after the date of sale;
- (4) An amendment of the articles of incorporation that materially and adversely affects rights in respect of a dissenter’s shares because it:
 - (A) Alters or abolishes a preferential right of the shares;
 - (B) Creates, alters, or abolishes a right in respect of redemption, including a provision respecting a sinking fund for the redemption or repurchase, of the shares;
 - (C) Alters or abolishes a preemptive right of the holder of the shares to acquire shares or other securities;
 - (D) Excludes or limits the right of the shares to vote on any matter, or to cumulate votes, other than a limitation by dilution through issuance of shares or other securities with similar voting rights; or

- (E) Reduces the number of shares owned by the shareholder to a fraction of a share if the fractional share so created is to be acquired for cash under section 414-74;
- (5) Any corporate action taken pursuant to a shareholder vote to the extent the articles of incorporation, bylaws, or a resolution of the board of directors provides that voting or nonvoting shareholders are entitled to dissent and obtain payment for their shares; or
- (6) Consummation of a plan of conversion to which the corporation is the converting entity, if the shareholder is entitled to vote on the plan.”

SECTION 13. Section 414-384, Hawaii Revised Statutes, is amended to read as follows:

“~~[(E)]~~**§414-384** ~~[(E)]~~ **Revocation of dissolution.** (a) A corporation may revoke its dissolution within one hundred twenty days of its effective date.

(b) Revocation of dissolution ~~[must]~~ shall be authorized in the same manner as the dissolution was authorized unless that authorization permitted revocation by action of the board of directors alone, in which event the board of directors may revoke the dissolution without shareholder action.

(c) After the revocation of dissolution is authorized, the corporation may revoke the dissolution by delivering to the department director for filing articles of revocation of dissolution, together with a copy of its articles of dissolution, that set forth:

- (1) The name of the corporation;
- (2) The effective date of the dissolution that was revoked;
- (3) The date that the revocation of dissolution was authorized;
- (4) If the corporation’s board of directors (or incorporators) revoked the dissolution, a statement to that effect;
- (5) If the corporation’s board of directors revoked a dissolution authorized by the shareholders, a statement that revocation was permitted by action by the board of directors alone pursuant to that authorization; and
- (6) If shareholder action was required to revoke the dissolution, the information required by section 414-383(a)(3) or (4).

(d) Within the applicable revocation of dissolution period, should the name of the corporation, or a name substantially identical thereto be registered or reserved by another corporation, partnership, limited partnership, limited liability company, or limited liability partnership, or should the name or a name substantially identical thereto be registered as a trade name, trademark, or service mark, then revocation of dissolution shall be allowed only upon the registration of a new name by the dissolved corporation pursuant to the amendment provisions of this chapter.

~~[(d)]~~ (e) Revocation of dissolution is effective upon the effective date of the articles of revocation of dissolution.

~~[(e)]~~ (f) When the revocation of dissolution is effective, it relates back to and takes effect as of the effective date of the dissolution and the corporation resumes carrying on its business as if dissolution had never occurred.”

SECTION 14. Section 414-422, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) When any corporation organized and authorized to issue shares under the laws of this State ~~[is]~~ shall be or shall have been dissolved or ~~[ceases]~~ shall cease or shall have ceased to exist, the circuit court, upon application of any creditor, stockholder, or director of the corporation, or any other person who shows good cause therefor, and upon a finding that the persons responsible for settling the

unfinished business and winding up the affairs of the corporation either are not diligently pursuing such obligations, or cannot be found or otherwise are not available, may either appoint one or more of the directors of the corporation to be trustees or appoint one or more persons to be receivers of and for the corporation, to do all acts that are necessary for the final settlement of the unfinished business of the corporation. The powers of the trustees or receivers shall be effective for the time period determined by the circuit court.”

SECTION 15. Section 414D-14, Hawaii Revised Statutes, is amended by amending the definition of “entity” to read as follows:

““Entity” includes domestic and foreign corporations[;], domestic professional corporations[;], domestic and foreign limited liability companies[;], domestic and foreign ~~not-for-profit~~ nonprofit corporations[;], domestic and foreign business trusts[;], estates[;], domestic and foreign partnerships[;], domestic and foreign limited partnerships[;], domestic and foreign limited liability partnerships[;], trusts[;] and, two or more persons having a joint or common economic interest[;], associations and cooperative associations, and state, federal, and foreign governments.”

SECTION 16. Section 414D-201, Hawaii Revised Statutes, is amended as follows:

1. By amending subsections (a) and (b) to read:

“(a) Pursuant to a plan of merger approved as provided in section 414D-202, a domestic or foreign corporation may merge with one or more [profit or nonprofit] domestic professional corporations, or with one or more associations, one or more corporations, or other business entities organized under the laws of this State, any state or territory of the United States, any foreign jurisdiction, or any combination thereof, with one of the domestic professional corporations, associations, domestic or foreign corporations, or other business entities whether domestic or foreign, being the surviving [corporation,] entity as provided in the plan; provided that the merger is permitted by the law of the state or country under whose law each foreign corporation that is a party to the merger is organized.

(b) The plan of merger shall set forth:

- (1) The name and jurisdiction of formation or organization of each [corporation planning to merge] entity that is a party to the merger, and the name of the surviving [corporation] entity into which each plans to merge;
- (2) The terms and conditions of the merger;
- (3) The manner and basis for converting memberships of each merging corporation into memberships, obligations, or securities of the surviving [or any other corporation] entity or into cash or other property in whole or part;
- (4) The street address of the surviving [corporation’s] entity’s principal place of business, or if no street address is available, the rural post office number or post office box designated or made available by the United States Postal Service; and
- (5) Amendments, if any, to the organizing articles [of incorporation or bylaws] of the surviving [corporation to be effected by the planned merger] entity or, if no amendments are desired, a statement that the organizing articles [of incorporation] of the surviving [corporation] entity shall not be amended pursuant to the merger.”

2. By amending subsection (e) to read:

“(e) The surviving [corporation] entity shall furnish a copy of the plan of merger, on request and without cost, to any member or shareholder of any [corporation] entity that is a party to the merger.”

SECTION 17. Section 414D-201.5, Hawaii Revised Statutes, is amended to read as follows:

“§414D-201.5 Foreign mergers. ~~[Filings for mergers between foreign entities registered in this State shall be subject to section 414D-203(d).]~~ (a) Whenever a foreign entity authorized to transact business in this State shall be a party to a statutory merger permitted by the laws of the state or country under which it is organized, and the foreign entity shall be the surviving entity, it shall, within sixty days after the merger becomes effective, file with the department director a certificate evidencing the merger, duly authenticated by the proper officer of the state or country under the laws of which the statutory merger was effectuated. The certificate evidencing the merger shall be evidence of a change of name if the name of the surviving entity is changed thereby. If the certificate is in a foreign language, a translation attested to under oath by the translator shall accompany the certificate.

(b) Whenever a foreign entity authorized to transact business in this State shall be a party to a statutory merger permitted by the laws of the state or country under the laws of which it is organized, and that entity shall not be the surviving entity, the surviving entity shall, within sixty days after the merger becomes effective, file with the department director a certificate evidencing the merger in the form prescribed by subsection (a).”

SECTION 18. Section 414D-203, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

“(a) After a plan of merger is approved by the board of directors and, if required by section 414D-202, by the members and any other persons, ~~[the surviving or acquiring corporation shall deliver to the department director]~~ articles of merger ~~[setting forth:]~~ shall be signed on behalf of each corporation and each other entity that is a party to the merger and shall be delivered to the department director for filing. The articles of merger shall set forth:

- (1) The name and jurisdiction of ~~[incorporation of]~~ each ~~[of the corporations]~~ entity that ~~[are parties]~~ is a party to the merger, and the name, address, and jurisdiction of ~~[incorporation of]~~ the surviving ~~[corporation:]~~ entity;
- (2) A statement that the plan of merger has been approved by ~~[the board of directors of]~~ each ~~[corporation]~~ entity involved in the merger ~~[and if required by section 414D-202, by the members; provided that if approval of members was not required, a statement to that effect and a statement that the plan was approved by a sufficient vote of the board of directors;~~
- (3) If approval by members was required:
 - (A) The designation, number of memberships outstanding, number of votes entitled to be cast by each class entitled to vote separately on the plan, and number of votes of each class indisputably voting on the plan; and
 - (B) The total number of votes cast for and against the plan by each class entitled to vote separately on the plan or the total number of undisputed votes cast for the plan by each class and a statement that the number cast for the plan by each class was sufficient for approval by that class;
- (4) If approval of the plan by some person or persons other than the members or the board is required pursuant to section 414D-202, a statement that the approval was obtained;

- (5) ~~If a merger, a~~; (3) A statement indicating any changes in the organizing articles of the surviving entity to be given effect by the merger; provided that if no changes are made, a statement that the organizing articles of the surviving entity shall not be amended pursuant to the merger; and
- [(6)] (4) A statement that includes:
- (A) An agreement that the surviving entity may be served with process in this State in any action or proceeding for the enforcement of any liability or obligation of any entity previously subject to suit in this State which is to merge;
 - (B) An irrevocable appointment of a resident of this State as its agent to accept service of process in any such proceeding, that includes the resident's street address in this State; and
 - (C) An agreement for the enforcement, as provided in this chapter, of the right of any dissenting member, shareholder, or partner to receive payment for their interest against the surviving entity."

2. By amending subsection (d) to read:

"(d) Articles of merger shall act as articles of dissolution or an application for a certificate of withdrawal for the respective domestic or foreign corporation that is not the surviving entity in the merger~~;~~ provided that:

- (1) ~~If the surviving entity is a foreign entity registered in this State, it shall file with the department director a certificate evidencing the merger duly authenticated by the proper officer of the state or country under the laws of which the entity was organized no later than sixty days after the merger is effective; or~~
- (2) ~~If a foreign entity registered in this State does not survive the merger, the surviving entity shall file with the department director a certificate evidencing the merger as provided in [paragraph] (1), together with an application for withdrawal for each nonsurviving foreign entity, no later than sixty days after the merger is effective]."~~

SECTION 19. Section 414D-244, Hawaii Revised Statutes, is amended to read as follows:

"**§414D-244 Revocation of dissolution.** (a) A corporation may revoke its dissolution within one hundred twenty days of its effective date.

(b) Revocation of dissolution ~~must~~ shall be authorized in the same manner as the dissolution was authorized unless that authorization permitted revocation by action of the board of directors alone, in which event the board of directors may revoke the dissolution without action by the members or any other person.

(c) After the revocation of dissolution is authorized, the corporation may revoke the dissolution by delivering to the department director for filing articles of revocation of dissolution, together with a copy of its articles of dissolution, that set forth:

- (1) The name of the corporation;
- (2) The effective date of the dissolution that was revoked;
- (3) The date that the revocation of dissolution was authorized;
- (4) If the corporation's board of directors (or incorporators) revoked the dissolution, a statement to that effect;
- (5) If the corporation's board of directors revoked a dissolution authorized by the members alone or in conjunction with another person or persons, a statement that revocation was permitted by action by the board of directors alone pursuant to that authorization; and

(6) If member or third person action was required to revoke the dissolution, the information required by section 414D-243(a)(5) or (6).

(d) Within the applicable revocation of dissolution period, should the name of the corporation, or a name substantially identical thereto, be registered or reserved by another corporation, partnership, limited partnership, limited liability company, or limited liability partnership, or should the name or a name substantially identical thereto be registered as a trade name, trademark, or service mark, then revocation of dissolution shall be allowed only upon the registration of a new name by the dissolved corporation pursuant to the amendment provisions of this chapter.

~~[(d)]~~ (e) Revocation of dissolution is effective upon the effective date of the articles of revocation of dissolution.

~~[(e)]~~ (f) When the revocation of dissolution is effective, it relates back to and takes effect as of the effective date of the dissolution and the corporation resumes carrying on its activities as if dissolution had never occurred.”

SECTION 20. Section 414D-308, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Each domestic corporation, and each foreign corporation authorized to transact business in the State, shall deliver to the department director an annual report on a form prescribed and furnished by the department director that sets forth:

- (1) The name of the corporation and the state or country under whose law it is incorporated;
- (2) The mailing address of its principal office, the address of its registered office in this State, and the name of its registered agent at its registered office in the State;
- (3) The names and [~~business or residence~~] addresses of its directors and [~~principal~~] officers; and
- (4) A brief description of the nature of its activities[~~;~~ and
- (5) ~~Whether or not it has members.~~”

SECTION 21. Section 415A-18, Hawaii Revised Statutes, is amended to read as follows:

“**§415A-18 [Involuntary] Administrative dissolution; reinstatement.** (a) The director may commence a proceeding to dissolve a professional corporation administratively if the corporation fails to:

- (1) Pay any fees prescribed by law;
- (2) File its annual report for a period of two [~~consecutive~~] years;
- (3) Appoint and maintain an agent for service of process as required; or
- (4) File a statement of a change in the name or business address of the agent as required under this chapter.

Before the director may declare a corporation dissolved, the director shall give notice of the ground or grounds for dissolution [~~as provided in section 414-401~~] by mailing the notice to the professional corporation at its last known address appearing in the records of the director[~~;~~ and may give public notice of the intention to dissolve the corporation].

(b) If the corporation does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the director that each ground determined by the director does not exist within sixty days after the date of mailing of the director’s written notice, the director shall administratively dissolve the corporation by signing a decree of dissolution that recites the ground for dissolution and its effective date. The decree shall be filed in the director’s office. The administrative dissolution of a corporation does not terminate the authority of its registered agent.

~~[(b)]~~ (c) Parties of interest may petition a court of competent jurisdiction to appoint a trustee to settle the affairs of any professional corporation so dissolved. If a trustee is appointed, the trustee shall pay to the State out of any funds that may come into the trustee's hands as trustee, a sum equal to any penalty imposed under section 414-473. If a trustee is not appointed by a court of competent jurisdiction, the last directors of the dissolved corporation shall be and act as trustees for the creditors and shareholders of the dissolved professional corporation with full powers to settle its affairs.

~~[(e) The director shall, in each case, deliver a copy of the decree of dissolution to the director of taxation and to the finance officer of each county.]~~

(d) In each case where the director has given a professional corporation notice of intention to dissolve the corporation on the grounds that its articles of incorporation have been procured through fraud, the corporation shall be entitled to petition for an administrative hearing under chapter 91 and shall give written notice to the director thereof, before the director may declare the corporation dissolved under subsection (a) of this section.

(e) Within two years after the involuntary dissolution of a professional corporation under this section, the corporation may be reinstated by the director upon a written application executed by any two officers of the corporation setting forth such information as the director may require, and the payment of all delinquent fees, penalties, assessments, taxes, costs of involuntary dissolution, and the filing of all reports due and unfiled. Within the applicable reinstatement period, should the name of the professional corporation, or a name substantially identical thereto be registered or reserved by another corporation, partnership, limited liability company, or limited liability partnership, or should the name or a name substantially identical thereto be registered as a trade name, trademark, or service mark, then reinstatement shall be allowed only upon the registration of a new name by the involuntarily dissolved professional corporation pursuant to the amendment provisions of this chapter.

(f) A professional corporation whose articles of incorporation have expired shall cease to exist by operation of law.”

SECTION 22. Section 419-7, Hawaii Revised Statutes, is amended to read as follows:

~~“§419-7 [Extensions and renewals. The duration of the corporation, if not perpetual, may be extended by amendment of its articles, and at any time not more than two years after the expiration of its articles it may be renewed upon application to the director of commerce and consumer affairs for that purpose; provided that no renewal shall become effective until it is allowed by the director by and with the consent of the governor. Such application shall be made in the manner and form provided for amendment of articles, as nearly as may be.] Duration. If a corporation sole was dissolved due to the expiration of its period of duration, the corporation sole, at any time within two years of such dissolution, may amend its articles of incorporation to extend its period of duration; provided that if the name of the corporation sole, or a name substantially identical is registered or reserved by another entity, or if such name or a name substantially identical is registered as a trade name, trademark, or service mark, the extension of corporate existence shall be allowed only upon the registration of a new name by the corporation sole pursuant to section 419-4.”~~

SECTION 23. Section 419-9, Hawaii Revised Statutes, is amended to read as follows:

“§419-9 Corporations sole heretofore formed; general laws. (a) Any corporation sole heretofore formed and existing under the laws of this State for ecclesiastical purposes may elect to continue its existence under this chapter by filing an application for amendment of its charter in the manner and form provided for an application for an original charter, together with the required certificates as to the incumbency of the corporation. If such amendment is allowed by the director of commerce and consumer affairs [~~by and with the consent of the governor~~], this chapter thereupon shall apply to such corporations sole the same as to corporations formed under this chapter.

(b) Any charter or amended charter granted or corporation created or existing under the authority of this chapter shall be subject to all general laws enacted in regard to corporations.”

SECTION 24. Section 421-6, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

~~“(e) [An association organized under this chapter shall be subject to chapter 414 relating to the payment of fees by corporations to the director.] Except for annual reports, statutes and fees that apply to domestic profit corporations shall apply to stock associations. Except for annual reports, statutes and fees that apply to domestic nonprofit corporations shall apply to nonstock associations.”~~

SECTION 25. Section 421-21.6, Hawaii Revised Statutes, is amended to read as follows:

“§421-21.6 Mergers [and consolidation]; procedures; approval by members. (a) ~~[Unless otherwise prohibited, any]~~ Pursuant to a plan of merger, any agricultural cooperative association organized under this chapter may merge [~~or consolidate with another association or with any association incorporated under the laws of another state by complying with this section or the law of the state where the surviving or new association will exist.~~] with one or more domestic professional corporations, or with one or more associations, or other business entities formed or organized under the laws of this State, any state or territory of the United States, any foreign jurisdiction, or any combination thereof, with one of the domestic professional corporations, associations, or other business entities whether domestic or foreign, being the surviving entity as provided in the plan; provided that the merger is permitted by the law of the state or country under whose law each foreign association or entity that is a party to the merger is organized.

(b) The board or a committee selected by the board or the members shall adopt a [~~written~~] plan of merger [~~or consolidation setting~~] that sets forth:

- (1) The names of the [~~associations~~] entities proposing to merge [~~or consolidate~~];
- (2) The name of the surviving [~~or new association;~~] entity;
- (3) The manner and basis of converting the stock or membership of each association into stock or membership in the surviving [~~or new association;~~] entity;
- (4) The terms of the merger [~~or consolidation~~];
- (5) The proposed effect of the [~~consolidation or~~] merger on the members of the association; and
- (6) [~~For a consolidation, the articles of the new association.~~] Amendments, if any, to the organizing articles of the surviving entity or, if no amendments are desired, a statement that the organizing articles of the surviving entity shall not be amended pursuant to the merger.

(c) The board of each association shall mail a notice of the proposed merger [~~or consolidation~~] to each member. The notice shall contain the full text of the

merger [~~or consolidation~~] plan and the time and place of the meeting at which the plan will be considered. An association with more than two hundred members may publish the notice as provided in section 421-12.

(d) At the meeting, a vote of the members shall be taken on the proposed plan; provided that a quorum of the members [is] shall be registered as being present or represented by proxy vote at the meeting. The plan shall be approved upon receiving the affirmative vote of:

- (1) Two-thirds of the votes cast; or
- (2) For an association with articles or bylaws requiring more than two-thirds of the votes cast or other conditions for approval, a proportion of the votes cast or a number of total members as required by the articles or bylaws and the conditions for approval in the articles or bylaws have been satisfied.

After the plan has been approved, the chair, vice-chair, president, vice president, secretary, or assistant secretary of each association merging [~~or consolidating~~] shall sign the articles of merger [~~or consolidation and a statement that the plan was adopted according to this section.~~] which shall also be signed on behalf of each other entity that is a party to the merger.

(e) The articles of merger [~~or consolidation~~] shall be filed with the director of commerce and consumer affairs. The articles shall set forth:

- (1) The name and jurisdiction of each entity that is a party to the merger, and the name, address, and jurisdiction of the surviving entity;
- (2) A statement that the plan of merger has been approved by each entity involved in the merger in accordance with the applicable laws of each entity;
- (3) A statement indicating any changes in the organizing articles of the surviving entity to be given effect by the merger; provided that if no changes are made, a statement that the organizing articles of the surviving entity shall not be amended pursuant to the merger; and
- (4) A statement that includes:
 - (A) An agreement that the surviving entity may be served with process in this State in any action or proceeding for the enforcement of any liability or obligation of any entity previously subject to suit in this State which is to merge;
 - (B) An irrevocable appointment of a resident of this State as its agent to accept service of process in any such proceeding, that includes the resident's street address in this State; and
 - (C) An agreement for the enforcement, as provided in this chapter, of the right of any dissenting member, shareholder, or partner to receive payment for their interest against the surviving entity.

Articles of merger shall act as articles of dissolution or an application for a certificate of withdrawal for the respective domestic or foreign entity that is not the surviving entity in the merger.

~~(f) For a merger, the articles of the surviving cooperative or association shall be deemed amended to the extent provided in the articles of merger.~~

(g) (f) The merger [~~or consolidation~~] shall become effective upon the effective date and time of filing the articles of merger [~~or consolidation~~], or upon a date and time subsequent to the filing as set forth in the articles, but not more than thirty days after being filed.

~~(h) The director of commerce and consumer affairs shall issue a certificate of merger or consolidation.~~

(i) (g) A certified copy of the articles [~~or of a certificate~~] of merger [~~or consolidation issued by the director~~] shall be filed with the department of agriculture.

~~[(j) After the effective date, the associations that are parties to the plan shall become a single association. For a merger, the surviving association shall be the association designated in the plan. For a consolidation, the new cooperative shall be the association provided for in the plan. Except for the surviving or new association, the separate existence of all cooperatives and associations that are parties to the plan shall cease on the effective date of the merger or consolidation.~~

~~The surviving or new association shall possess all of the rights and property of each of the merged or consolidated associations, and shall be responsible for all their obligations. The title to property of the merged or consolidated association shall be vested in the surviving or new association without reversion or impairment of the title caused by the merger or consolidation.]~~

~~(h) When a merger takes effect:~~

- ~~(1) The separate existence of each entity that is a party to the merger, other than the surviving entity, terminates;~~
- ~~(2) All property owned by each of the entities that are parties to the merger vests in the surviving entity;~~
- ~~(3) All debts, liabilities, and other obligations of each entity that is a party to the merger become the obligations of the surviving entity;~~
- ~~(4) An action or proceeding pending by or against an entity that is party to a merger may be continued as if the merger had not occurred or the surviving entity may be substituted as a party to the action or proceeding; and~~
- ~~(5) Except as prohibited by other law, all rights, privileges, immunities, powers, and purposes of every entity that is a party to a merger become vested in the surviving entity.~~

~~(i) If a surviving entity fails to appoint or maintain an agent designated for service of process in this State or the agent for service of process cannot with reasonable diligence be found at the designated office, service of process may be made upon the surviving entity by sending a copy of the process by registered or certified mail, return receipt requested, to the surviving entity at the address set forth in the articles of merger. Service is effected under this subsection at the earliest of:~~

- ~~(1) The date the surviving entity receives the process, notice, or demand;~~
- ~~(2) The date shown on the return receipt, if signed on behalf of the surviving entity; or~~
- ~~(3) Five days after its deposit in the mail, if mailed postpaid and correctly addressed.~~

~~[(k) (j) The rights of creditors shall not be impaired by the merger [or consolidation] without the creditors' consent.~~

~~[(4) (k) The director of commerce and consumer affairs may charge a filing fee for filing the articles.~~

~~(l) For the purposes of a merger, an association shall be defined as an association organized under chapter 421 or 421C.”~~

SECTION 26. Section 421-23, Hawaii Revised Statutes, is amended to read as follows:

~~“§421-23 Taxation. [Domestic associations organized under this chapter shall pay an annual license fee of \$10 to the director of commerce and consumer affairs (and which shall be a general realization of the State) which shall be in lieu of all other corporation, franchise, and income taxes, and taxes and charges upon reserves held by the association for distribution to members, including without limitation upon the generality of the foregoing any taxes imposed under chapter 235.] To obtain the exemptions from taxation granted by this section or any other law, the association annually shall file with the director of taxation a copy of its~~

report made under section 421-22, and in addition thereto, within ninety days after the close of its fiscal year, shall file with the tax assessor of each district in which there are persons doing business to whom it has paid, during the preceding fiscal year, any proceeds of goods marketed, a report showing the name of each person to whom the proceeds were paid, the total proceeds of sales for which such person is taxable under chapter 237 for the fiscal year, and the rate or rates of such tax applicable thereto or to the several amounts thereof, as the case may be.”

SECTION 27. Section 421C-31, Hawaii Revised Statutes, is amended to read as follows:

“~~§421C-31 Merger [and consolidation].~~ The general corporation laws relating to the merger ~~[and consolidation]~~ of domestic corporations shall apply to associations formed under this chapter.”

SECTION 28. Section 425-101, Hawaii Revised Statutes, is amended as follows:

1. By adding two new definitions to be appropriately inserted and to read:

““Entity” includes domestic and foreign corporations, domestic professional corporations, domestic and foreign limited liability companies, domestic and foreign nonprofit corporations, domestic and foreign business trusts, estates, domestic and foreign partnerships, domestic and foreign limited partnerships, domestic and foreign limited liability partnerships, trusts, two or more persons having joint or common economic interest, associations and cooperative associations, and state, federal, and foreign governments.

““Individual” means a natural person, or the estate of an incompetent or deceased individual.”

2. By amending the definition of “person” to read:

““Person” [means an] includes any individual[, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency, or instrumentality,] or [any other legal or commercial] entity.”

SECTION 29. Section 425-106, Hawaii Revised Statutes, is amended to read as follows:

“§425-106 Governing law. [The] (a) Except as otherwise provided in subsection (b), the law of the jurisdiction in which a partnership has its chief executive office governs relations among the partners and between the partners and the partnership.

(b) The law of this State governs relations among the partners, and between the partners and the partnership, and the liability of partners for an obligation of a limited liability partnership.”

SECTION 30. Section 425-153, Hawaii Revised Statutes, is amended to read as follows:

“§425-153 Statement of qualification. A statement of qualification shall contain:

- (1) The name of the partnership; ~~[and]~~
- (2) A statement that the partnership elects to be a limited liability partnership~~[-]; and~~
- (3) The mailing address of the partnership’s initial principal office, the street address of the partnership’s initial registered office in the State,

and the name of its initial registered agent at its initial registered office in the State.”

SECTION 31. Section 425-158, Hawaii Revised Statutes, is amended to read as follows:

“**§425-158 Statement of foreign qualification.** A statement of foreign qualification shall contain:

- (1) The name of the foreign limited liability partnership, which name complies with:
 - (A) The law of the state or other jurisdiction under which the foreign limited liability partnership is formed; and
 - (B) Section 425-151; ~~and~~
- (2) A statement that the partnership elects to be a foreign limited liability partnership~~[-]; and~~
- (3) The mailing address of the partnership’s initial principal office, the street address of the partnership’s initial registered office in the State, and the name of its initial registered agent at its initial registered office in the State.”

SECTION 32. Section 425-201, Hawaii Revised Statutes, is amended as follows:

1. By adding a new definition to be appropriately inserted and to read: ““Association” means an association organized under chapter 421 or 421C.”

2. By amending the definitions of “organizing articles” and “other business entity” to read:

““Organizing articles” means:

- (1) For ~~[a]~~ an association, corporation, or nonprofit corporation, the articles of incorporation;
- (2) For a general partnership or limited liability partnership, the registration statement;
- (3) For a limited partnership, the certificate of limited partnership; and
- (4) For a limited liability company, the articles of organization.

“Other business entity” means a corporation, [a] limited liability company, ~~[or a] limited partnership[-], or association.~~”

SECTION 33. Section 425-202, Hawaii Revised Statutes, is amended to read as follows:

“**§425-202 Foreign mergers.** ~~[Filings for mergers between foreign entities registered in this State shall be subject to section 425-204(d).]~~ (a) Whenever a foreign entity authorized to transact business in this State shall be a party to a statutory merger permitted by the laws of the state or country under the laws of which it is organized, and the foreign entity shall be the surviving entity, it shall, within sixty days after the merger becomes effective, file with the director a certificate evidencing the merger, duly authenticated by the proper officer of the state or country under the laws of which the statutory merger was effectuated. The certificate evidencing the merger shall be evidence of a change of name if the name of the surviving entity is changed thereby. If the certificate is in a foreign language a translation attested to under oath by the translator shall accompany the certificate.

(b) Whenever a foreign entity authorized to transact business in this State shall be a party to a statutory merger permitted by the laws of the state or country under the laws of which it is organized, and that entity shall not be the surviving

entity, the surviving entity shall, within sixty days after the merger becomes effective, file with the director a certificate evidencing the merger in the form prescribed by subsection (a)."

SECTION 34. Section 425-204, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

~~"(d) Articles of merger shall act as a statement of dissolution or as an application for withdrawal for the respective domestic or foreign general partnership or domestic or foreign limited liability partnership that is not the surviving entity in the merger; provided that:~~

- ~~(1) If the surviving entity is a foreign entity registered in this State, it shall file with the director a certificate evidencing the merger duly authenticated by the proper officer of the state or country under the laws of which the entity was organized no later than sixty days after the merger is effective; or~~
- ~~(2) If a foreign entity registered in this State does not survive the merger, the surviving entity shall file with the director a certificate evidencing the merger as provided in subparagraph (1), together with an application for withdrawal for each nonsurviving foreign entity, no later than sixty days after the merger is effective.]"~~

SECTION 35. Section 425E-102, Hawaii Revised Statutes, is amended as follows:

1. By adding two new definitions to be appropriately inserted and to read:

"Entity" includes domestic and foreign corporations, domestic professional corporations, domestic and foreign limited liability companies, domestic and foreign nonprofit corporations, domestic and foreign business trusts, estates, domestic and foreign partnerships, domestic and foreign limited partnerships, domestic and foreign limited liability partnerships, trusts, two or more persons having joint or common economic interest, associations and cooperative associations, and state, federal, and foreign governments.

"Individual" means a natural person, or the estate of an incompetent or deceased individual."

2. By amending the definition of "person" to read:

"Person" [means an] includes any individual[, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal] or [commercial] entity."

SECTION 36. Section 425E-210, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Each limited partnership and each foreign limited partnership authorized to transact business in this State shall deliver to the director for filing an annual statement that sets forth:

- (1) The name of the limited partnership and the state or country under whose law it is [organized; and] formed;
- (2) The mailing address of the limited partnership's principal office, the street address of the limited partnership's registered office in this State, and the name of its registered agent at its registered office in this State[.]; and
- (3) The name and address of each general partner."

SECTION 37. Section 425E-905, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§425E-905]]~~ **Name.** (a) A foreign limited partnership whose name does not comply with section 425E-108 may not obtain a certificate of authority until it adopts, for the purpose of transacting business in this State, an alternate name that complies with section 425E-108~~[-]~~, by filing a copy of a certificate of registration of a trade name with the director. After obtaining a certificate of authority with an alternate name, a foreign limited partnership shall transact business in this State under that name unless the foreign limited partnership is authorized to transact business in this State under another name.

(b) If a foreign limited partnership authorized to transact business in this State changes its name to one that does not comply with section 425E-108, it shall not thereafter transact business in this State until it complies with subsection (a) ~~[and obtains an amended certificate of authority].~~”

SECTION 38. Section 425E-907, Hawaii Revised Statutes, is amended by amending subsection (g) to read as follows:

“(g) If a foreign limited partnership transacts business in this State without a certificate of authority or cancels its certificate of authority, it ~~[shall appoint the director as its agent for service of process for rights of action arising out of the transaction of business in this State.]~~ consents that service of process in any action, suit, or proceeding based upon any cause of action arising out of the transaction of business in this State may thereafter be made on the partnership by service thereof on the director.”

SECTION 39. Section 425E-1101, Hawaii Revised Statutes, is amended as follows:

1. By adding a new definition to be appropriately inserted and to read:

““Association” means an association organized under chapter 421 or 421C.”

2. By amending the definitions of “organizing articles” and “other business entity” to read:

““Organizing articles” means:

- (1) For ~~[a]~~ an association, corporation, or nonprofit corporation, the articles of incorporation;
- (2) For a general partnership or limited liability partnership, the registration statement;
- (3) For a limited partnership, or limited liability limited partnership, the certificate of limited partnership; and
- (4) For a limited liability company, the articles of organization.

“Other business entity” means a corporation, limited liability company, general partnership, ~~[or] limited liability partnership[-], or association.~~”

SECTION 40. Section 425E-1107, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) Articles of merger shall act as a statement of dissolution or as an application for withdrawal for the respective domestic or foreign limited or limited liability limited partnership that is not the surviving entity in the merger~~[-]; provided that:~~

- (1) ~~If the surviving entity is a foreign entity registered in this State, it shall file with the director a certificate evidencing the merger duly authenticated by the proper officer of the state or country under the laws of which the foreign entity was organized no later than sixty days after the merger is effective; or~~
- (2) ~~If a foreign entity registered in this State shall not survive the merger, the surviving entity shall file with the director a certificate evidencing~~

~~the merger as provided in paragraph (1), together with an application for withdrawal for each nonsurviving constituent foreign entity no later than sixty days after the merger is effective].”~~

SECTION 41. Section 425E-1109, Hawaii Revised Statutes, is amended to read as follows:

~~“[E]§425E-1109[~~] Effect of merger[;–dissenter’s rights].~~ (a) When a merger becomes effective:~~

- ~~(1) The separate existence of each entity that is a party to the merger, other than the surviving entity, terminates;~~
- ~~(2) All property owned by each of the entities that are parties to the merger vests in the surviving entity;~~
- ~~(3) All debts, liabilities, and other obligations of each entity that is a party to the merger become the obligations of the surviving entity;~~
- ~~(4) An action or proceeding pending by or against an entity that is a party to a merger may be continued as if the merger had not occurred or the surviving entity may be substituted as a party to the action or proceeding; and~~
- ~~(5) Except as prohibited by other law, all rights, privileges, immunities, powers, and purposes of every entity that is a party to a merger become vested in the surviving entity.~~

~~(b) If a surviving entity fails to appoint or maintain an agent designated for service of process in this State or the agent for service of process cannot with reasonable diligence be found at the designated office, service of process may be made upon the surviving entity by sending a copy of the process by registered or certified mail, return receipt requested, to the surviving entity at the address set forth in the articles of merger. Service is effected under this subsection at the earliest of:~~

- ~~(1) The date the surviving entity receives the process, notice, or demand;~~
- ~~(2) The date shown on the return receipt, if signed on behalf of the surviving entity; or~~
- ~~(3) Five days after its deposit in the mail, if mailed postpaid and correctly addressed.~~

~~(c) A general partner or limited partner of a surviving limited partnership shall be liable for all obligations of a party to the merger for which the general partner or limited partner was personally liable prior to the merger.~~

~~(d) Unless otherwise agreed, a merger of a limited partnership that is not the surviving entity in the merger shall not require the limited partnership to wind up its business under this chapter or pay its liabilities and distribute its assets pursuant to this chapter.~~

~~[(e) The shareholders of a domestic corporation that is a party to a merger authorized by section 425E-1106 shall have the rights of dissenting shareholders in the manner provided in part XIV of chapter 414.]”~~

SECTION 42. Section 425E-1114, Hawaii Revised Statutes, is amended to read as follows:

~~“[E]§425E-1114[~~] Foreign mergers. [Filings for mergers between foreign entities registered in this State shall be subject to section 425E-1107(d).] (a) Whenever a foreign entity authorized to transact business in this State shall be a party to a statutory merger permitted by the laws of the state or country under the laws of which it is organized, and the foreign entity shall be the surviving entity, it shall, within sixty days after the merger becomes effective, file with the department director a certificate evidencing the merger, duly authenticated by the proper officer~~~~

of the state or country under the laws of which the statutory merger was effectuated. The certificate evidencing the merger shall be evidence of a change of name if the name of the surviving entity is changed thereby. If the certificate is in a foreign language, a translation under oath of the translator shall accompany the certificate.

(b) Whenever a foreign entity authorized to transact business in this State shall be a party to a statutory merger permitted by the laws of the state or country under the laws of which it is organized, and that entity shall not be the surviving entity, the surviving entity shall, within sixty days after the merger becomes effective, file with the director a certificate evidencing the merger in the form prescribed by subsection (a)."

SECTION 43. Section 428-101, Hawaii Revised Statutes, is amended as follows:

1. By adding a new definition to be appropriately inserted and to read:

"~~Individual~~" means a natural person, or the estate of an incompetent or deceased individual."

2. By amending the definitions of "entity" and "person" to read:

"~~Entity~~" [means a person other than an individual.] includes domestic and foreign corporations, domestic professional corporations, domestic and foreign limited liability companies, domestic and foreign nonprofit corporations, domestic and foreign business trusts, estates, domestic and foreign partnerships, domestic and foreign limited partnerships, domestic and foreign limited liability partnerships, trusts, two or more persons having joint or common economic interest, associations and cooperative associations, and state, federal, and foreign governments.

"Person" [means an] includes any individual[, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal] or [commercial] entity."

SECTION 44. Section 428-103, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Except as provided in subsection (b), all the members of a limited liability company may enter into an operating agreement[, which must be in writing,] to regulate the affairs of the company and the conduct of its business, and to govern relations among the members, managers, and company. To the extent the operating agreement does not otherwise provide, this chapter governs relations among the members, managers, and company."

SECTION 45. Section 428-901, Hawaii Revised Statutes, is amended as follows:

1. By adding a new definition to be appropriately inserted and to read:

"~~Association~~" means an association organized under chapter 421 or 421C."

2. By amending the definitions of "organizing articles" and "other business entity" to read:

"~~Organizing articles~~" means:

- (1) For [a] an association, corporation, or nonprofit corporation, the articles of incorporation;
- (2) For a general partnership or limited liability partnership, the registration statement;
- (3) For a limited partnership, the certificate of limited partnership; and
- (4) For a limited liability company, the articles of organization.

"Other business entity" means a corporation, [a] general partnership, [a] limited partnership, [~~or a~~] limited liability partnership[-], or association."

SECTION 46. Section 428-901.5, Hawaii Revised Statutes, is amended to read as follows:

“§428-901.5 Foreign mergers. ~~[Filings for mergers between foreign entities registered in this State shall be subject to section 428-905(d).]~~ (a) Whenever a foreign entity authorized to transact business in this State shall be a party to a statutory merger permitted by the laws of the state or country under the laws of which it is organized, and the foreign entity shall be the surviving entity, it shall, within sixty days after the merger becomes effective, file with the director a certificate evidencing the merger, duly authenticated by the proper officer of the state or country under the laws of which the statutory merger was effectuated. The certificate evidencing the merger shall be evidence of a change of name if the name of the surviving entity is changed thereby. If the certificate is in a foreign language a translation attested to under oath of the translator shall accompany the certificate.

(b) Whenever a foreign entity authorized to transact business in this State shall be a party to a statutory merger permitted by the laws of the state or country under the laws of which it is organized, and that entity shall not be the surviving entity, the surviving entity shall, within sixty days after the merger becomes effective, file with the director a certificate evidencing the merger in the form prescribed by subsection (a).”

SECTION 47. Section 428-903, Hawaii Revised Statutes, is amended to read as follows:

“§428-903 Effect of conversion. When a conversion becomes effective:

- (1) The converting entity shall continue to exist without interruption, but in the organizational form of the converted entity;
- (2) All rights, title, and interest in all real estate and other property owned by the converting entity shall automatically be owned by the converted entity without reversion or impairment, subject to any existing liens or other encumbrances thereon;
- (3) All liabilities and obligations of the converting entity shall automatically be liabilities and obligations of the converted entity without impairment or diminution due to the conversion;
- (4) The rights of creditors of the converting entity shall continue against the converted entity and shall not be impaired or extinguished by the conversion;
- (5) Any action or proceeding pending by or against the converting entity may be continued by or against the converted entity without any need for substitution of parties;
- (6) The shares and other forms of ownership in the converting entity that are to be converted into shares, or other forms of ownership, or other securities in the converted entity as provided in the plan of conversion shall be converted, and if the converting entity is a domestic limited liability company, the members of the domestic limited liability company shall be entitled only to the rights provided in the plan of conversion or to the rights to dissent under section 414-342;
- (7) A shareholder, partner, member, or other owner of the converted entity shall be liable for the debts and obligations of the converting entity that existed before the conversion takes effect only to the extent that such shareholder, partner, member, or other owner:
 - (A) Agreed in writing to be liable for such debts or obligations;
 - (B) Was liable under applicable law prior to the effective date of the conversion, for such debts or obligations; or

- (C) Becomes liable under applicable law for existing debts and obligations of the converted entity by becoming a shareholder, partner, member, or other owner of the converted entity; and
- (8) If the converted entity is a foreign limited liability company or other entity, such converted entity shall appoint a resident of this State as its agent for service of process in a proceeding to enforce any obligation or the rights of dissenting members of the converting domestic limited liability company[; and
- (9) ~~If the converting entity is a domestic limited liability company, section 428-907 shall apply as if the converted entity were the survivor of a merger with the converting entity].~~

SECTION 48. Section 428-905, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

~~“(d) Articles of merger shall act as [a statement of dissolution] articles of termination or [as] an application for [withdrawal] cancellation for the respective domestic or foreign limited liability company that is not the surviving entity in the merger[; provided that:~~

- ~~(1) If the surviving entity is a foreign entity registered in this State, it shall file with the director a certificate evidencing the merger duly authenticated by the proper officer of the state or country under the laws of which the foreign entity was organized no later than sixty days after the merger is effective; or~~
- ~~(2) If a foreign entity registered in this State does not survive the merger, the surviving entity shall file with the director a certificate evidencing the merger as provided in paragraph (1), together with an application for withdrawal for each nonsurviving foreign entity, no later than sixty days after the merger is effective].~~

SECTION 49. Section 428-1002, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

~~“(a) A foreign limited liability company may apply for a certificate of authority to transact business in this State by delivering an application to the director for filing. The application shall set forth:~~

- ~~(1) The name of the foreign limited liability company or, if its name is unavailable for use in this State, a name that satisfies the requirements of section 428-1005;~~
- ~~(2) The name of the state or country under whose law it is organized;~~
- ~~(3) A representation and warranty that a list of the names of and addresses of all members and their respective capital contributions are kept and will be kept at [this] its principal office until cancellation, in accordance with section 428-1007, of the foreign limited liability company’s authority to transact business in this State;~~
- ~~(4) The mailing address of its principal office, the street address of its initial registered office in this State, and the name of its initial registered agent at its initial registered office in this State;~~
- ~~(5) Whether the duration of the company is for a specified term and, if so, the period specified;~~
- ~~(6) Whether the company is manager-managed, and:

 - ~~(A) If so, the name and address of each manager; or~~
 - ~~(B) If not, the name and address of each member;~~~~
- ~~(7) Whether the members of the company are to be liable for its debts and obligations under a provision similar to section 428-303(c); and~~

- (8) Any additional information as may be necessary or appropriate to enable the director to determine whether the foreign limited liability company is entitled to obtain authority to transact business in this State.”

SECTION 50. Section 482-3, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Upon receiving the application accompanied by the fee, the director shall cause the trade name to be recorded and shall issue to the applicant a certificate of registration. The certificate of registration shall be constructive notice to all persons of the applicant’s claim of the use of the trade name throughout the State, for the term of five years from the date thereof; provided that the director shall not register any trade name which is substantially identical with any registered trade name or with the name of any corporation, partnership, limited partnership, limited liability partnership, or limited liability company registered in accordance with chapters 414, 414D, 415A, 425, 425E, and 428; provided further that the trade name is continued in actual use by the applicant in [~~the~~ this State ~~or elsewhere in the United States~~]. The acceptance of an application and issuance of a certificate of registration by the director shall not abrogate or limit any common law or other right of any person to any corporation, partnership, limited partnership, limited liability partnership, or limited liability company name, or trade name.”

SECTION 51. Section 482-7, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Sections 482-1 to 482-9 are applicable to all registrations filed in the office of the director; the intent being that all trade names not used by the applicant in this State [~~or elsewhere in the United States~~] may be immediately reissued to such applicant who is actually using the same.”

SECTION 52. Section 482E-2, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

““Commissioner” means the commissioner of securities of the department of commerce and consumer affairs.”

SECTION 53. Section 482E-5, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Any person who is engaged or hereafter engaged directly or indirectly in the sale of a franchise or in business dealings concerning a franchise, either in person or in any other form of communication, shall be subject to this chapter, shall be amenable to the jurisdiction of the courts of this State, and shall be amenable to the service of process as provided by law and rule. Every person who sells a franchise in this State [~~other than a Hawaii corporation,~~] shall file with the director in such form as the director by rule [~~prescribed,~~] prescribes, an irrevocable consent appointing the [~~director~~] commissioner or the [~~director’s~~] commissioner’s successor in office to be the person’s attorney, to receive service or any lawful process in any noncriminal suit, action, or proceeding against the person or the person’s successor, executor, administrator, or personal representative which arises under this chapter or any rule or order hereunder after the consent has been filed, with the same force and validity as if served personally on the person filing consent. A person who has filed such a consent in connection with a previous sale under this law need not file another. Service may be made by leaving a copy of the process in the office of the [~~director~~] commissioner but [~~it~~] is not effective unless:

- (1) The plaintiff, who may be the director, in a suit, action, or proceeding instituted by the plaintiff forthwith sends notice of the service and a

copy of the process by registered or certified mail to the defendant or respondent at the defendant's or respondent's last address on file with the director; and

- (2) The plaintiff's affidavit of compliance with this section is filed in the case on or before the return day of the process, if any, or within such further times the court allows."

SECTION 54. Section 485-1, Hawaii Revised Statutes, is amended by amending the definition of "investment adviser" 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 bank, savings institution, or trust company;
- (B) 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 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 publisher of any bona fide newspaper, news magazine, or business or financial publication of general, regular, and paid circulation;
- (E) A person whose advice, analyses, or reports relate only to securities exempted by section 485-4(1);
- (F) A person who has no place of business in this State if:
 - (i) 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 any period of twelve consecutive months the person does not have more than five clients who are residents of this State other than those specified in clause (i);
- (G) A person who is employed by an investment company that is registered under the Investment Company Act of 1940;
- [~~(H) A person who:~~
 - ~~(i) Is registered with the United States Securities and Exchange Commission under the Investment Advisers Act of 1940;~~
 - ~~(ii) Does not have custody of any client money, securities, or other assets;~~
 - ~~(iii) Does not collect fees from clients more than six months in advance of the end of the period for which the fees are intended to compensate the person for the person's services;~~
 - ~~(iv) 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 not advise a client whose money, securities, and other assets under management by 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;

- (~~F~~) (H) A person who is excluded from the definition of “investment adviser” under section 202(a)(11) of the Investment Advisers Act of 1940;
- (~~G~~) (I) A federal covered adviser; or
- (~~K~~) (J) Other persons not within the intent of this paragraph as the commissioner by rule or order may designate.”

SECTION 55. Section 485-4, Hawaii Revised Statutes, is amended to read as follows:

“**§485-4 Exempt securities.** The following securities are exempt from sections 485-4.5, 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 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 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~~) (B) Regulated in respect of its rates and charges by a governmental authority of the United States or any state or territory; or
 - (~~D~~) (C) 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;~~ A federal covered security specified in section 18(b)(1) of the Securities Act of 1933 or by rule adopted under that provision, or a security listed or approved for listing on another securities market specified by rule under this chapter;
- (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 the paper which is likewise limited, or any guarantee of the paper or of any 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 cooperative association membership stock, membership certificates or shares, or membership capital, pursuant to section 421C-36, or chapter 421;
- (14) Any security for which a registration statement has been filed under the Securities Act of 1933; provided that no sale shall be made until the registration statement has become effective;
- (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; and
- (16) Any security appearing on the list of over-the-counter and foreign securities approved for margin by the Board of Governors of the Federal Reserve System or any such security incorporated by reference to the list of over-the-counter and foreign securities approved for margin by the Board of Governors of the Federal Reserve System; any other securities of the same issuer that are of senior or substantially equal rank; and any warrant or right to purchase or subscribe to any security described in this paragraph."

SECTION 56. 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 transaction in 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 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)) during any twelve consecutive months;
 - (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) Any transactions not involving a public offering within the meaning of section 4(2) of 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);
- (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);
 - (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;
 - (19) Any offer or sale of securities made in compliance with rules 501, 502, 503, and 505[~~and 506~~] of Regulation D, 17 Code of Federal Regulations sections 230.501, 230.502, 230.503, 230.505, [~~230.506,~~] 230.507, and 230.508 under the Securities Act of 1933; and
 - (20) Any transaction that the commissioner may exempt, conditionally or unconditionally, by rules adopted in accordance with chapter 91 that:
 - (A) Furthers the objectives of compatibility with exemptions from securities registration authorized by the Securities Act of 1933 and uniformity among the states; or
 - (B) The commissioner finds that registration is not necessary or appropriate in the public interest for the protection of investors.”

SECTION 57. 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.~~

(e) (b) Application for registration as a dealer. An application for registration as a dealer shall be filed 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 previous 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;
- (3) 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 consent to the service of process upon the commissioner in actions against the dealer in manner and form prescribed by the commissioner by rule or order.

~~[(d)] (c) 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.~~

(e) (d) Registration of investment advisers. An application for registration as an investment adviser, in such form as the commissioner may prescribe by rule or order, shall be filed with the office of the commissioner. 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;
- (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; and
 - (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.

To the extent appropriate, the commissioner shall use uniform registration 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 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)] (e) 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)]~~ (f) Investment adviser's approval; bond. 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 a sum as provided in rules adopted by the commissioner. 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 or as a security to be approved 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] shall be 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)]~~ (g) 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)]~~ (h) Registration of salespersons. 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;
- (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)]~~ (i) 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. 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)]~~ (j) Registration of investment adviser representative. An application for registration as an investment adviser representative shall be filed 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) 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
- (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.

~~[(4)]~~ (k) Recording; duration; renewal; fee. The names and business addresses of all persons registered under this chapter as dealers, investment advisers, salespersons, or investment adviser representatives, and all orders with respect thereto, shall be open to public inspection. Except as otherwise provided by the commissioner by rule or order, every registration for dealers, 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 year, 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 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 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 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 termination shall take effect as of the date and time of filing of the notice. The fee for registration and for each renewal shall be \$200 in the case of dealers, \$100 in the case of investment advisers, and \$50 in the case of salespersons and investment adviser representatives.

~~[(m)]~~ (l) Changes. 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)]~~ (m) 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.

~~[(o)]~~ (n) 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.

~~[(p)]~~ (o) 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.

~~[(q)]~~ (p) 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 58. Section 421-27, Hawaii Revised Statutes, is repealed.

SECTION 59. Section 425-206, Hawaii Revised Statutes, is repealed.

SECTION 60. Section 428-907, Hawaii Revised Statutes, is repealed.

SECTION 61. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.²

SECTION 62. This Act shall take effect on July 1, 2004.

(Approved June 15, 2004.)

Notes

1. Period should not be bracketed.
2. Edited pursuant to HRS §23G-16.5.