

A Bill for an Act Relating to Securities Law.

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

SECTION 1. Section 485A-102, Hawaii Revised Statutes, is amended by amending the definition of "security" to read as follows:

"Security" means a note; stock; treasury stock; security future; bond; debenture; evidence of indebtedness; certificate of interest or participation in a profit-sharing agreement; collateral trust certificate; preorganization certificate or subscription; transferable share; investment contract; variable annuity contract; voting trust certificate; certificate of deposit for a security; fractional undivided interest in oil, gas, or other mineral rights; put, call, straddle, option, or privilege on a security, certificate of deposit, or group or index of securities, including an interest therein or based on the value thereof; put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency; in general, an interest or instrument commonly known as a "security"; or a certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. The term:

- (1) Includes both a certificated and an uncertificated security;
- (2) Does not include an insurance or endowment policy or annuity contract under which an insurance company promises to pay a fixed sum of money either in a lump sum or periodically for life or other specified period;
- (3) Does not include an interest in a contributory or noncontributory pension or welfare plan subject to the Employee Retirement Income Security Act of 1974;
- (4) Includes any contractual or quasi-contractual arrangement pursuant to which:
  - (A) A person furnishes value, other than services, to an offeror;
  - (B) A portion of that value is subjected to the risk of the offeror's enterprise;
  - (C) The furnishing of that value is induced by the representations of an offeror which gives give rise to a reasonable understanding that a valuable benefit will accrue to the offeree as a result of the operation of the enterprise; and
  - (D) The offeree does not ~~intend to be actively involved in the~~ receive the right to exercise practical and actual control over the management of the enterprise in a meaningful way; and
- (5) Includes as an "investment contract", among other contracts, an interest in a limited partnership and a limited liability company and an investment in a viatical settlement or similar agreement."

SECTION 2. Section 485A-402, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The following individuals are exempt from the registration requirement of subsection (a):

- (1) An individual who represents a broker-dealer in effecting transactions in this State limited to those described in section [15(h)(2)] 15(i)(3) of the Securities Exchange Act of 1934 [(15 U.S.C. 78(e)(2));] (15 U.S.C. 78o(i)(3)), relating to de minimis transactions by associated persons;

- (2) An individual who represents a broker-dealer that is exempt under section 485A-401(b) or 485A-401(d);
- (3) An individual who represents an issuer with respect to an offer or sale of the issuer's own securities or those of the issuer's parent company or any of the issuer's subsidiaries, and who is not compensated in connection with the individual's participation by the payment of commissions or other remuneration based, directly or indirectly, on transactions in those securities;
- (4) An individual who represents an issuer and who effects transactions in the issuer's securities exempted by section 485A-202, other than section 485A-202(a)(10) and (13);
- (5) An individual who represents an issuer that effects transactions solely in federal covered securities of the issuer; provided that an individual who effects transactions in a federal covered security under section 18(b)(3) or 18(b)(4)(D) of the Securities Act of 1933 (15 U.S.C. 77r(b)(3) or 77r(b)(4)(D)) is not exempt if the individual is compensated in connection with the agent's participation by the payment of commissions or other remuneration based, directly or indirectly, on transactions in those securities;
- (6) An individual who represents a broker-dealer registered in this State under section 485A-401(a) or exempt from registration under section 485A-401(b) in the offer and sale of securities for an account of a nonaffiliated federal covered investment adviser with investments under management in excess of \$100,000,000 acting for the account of others pursuant to discretionary authority in a signed record;
- (7) An individual who represents an issuer in connection with the purchase of the issuer's own securities;
- (8) An individual who represents an issuer and who restricts participation to performing clerical or ministerial acts; or
- (9) Any other individual exempted by rule adopted or order issued under this chapter."

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved June 21, 2013.)